

CALIFORNIA COASTAL COMMISSION

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A-3-SLO-99-014 Filed: 02/24/99
A-3-SLO-99-032 Filed: 04/27/99
A-3-SLO-99-014 49th Day: 04/14/99
A-3-SLO-99-032 49th Day: 06/15/99
Staff: SM-SC
Staff Report: 09/22/99
Hearing Date: 11/03/99
Commission Action: A-3-SLO-99-014 Opened and Continued on 04/14/99; Substantial Issue Determination for both appeals postponed by applicant from 06/08/99 hearing; hearing on both appeals continued by Commission on 8/11/99

**COMBINED STAFF REPORT: TWO APPEALS
SUBSTANTIAL ISSUE DETERMINATIONS
AND DE NOVO REVIEW**

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: On September 15, 1995¹, the San Luis Obispo County Subdivision Review Board conditionally approved COAL 94-130 for the lot line adjustment. On January 26, 1999, the San Luis Obispo County Board of Supervisors approved Development Plan/Coastal development Permit D970195D for grading and roadway construction to serve the adjusted lots.

APPEALS: **A-3-SLO-99-014 and A-3-SLO-99-032**

APPLICANT: **Morro Bay Limited**
AGENT: Dan Lloyd, Engineering Development Associates

APPELLANTS: David McBride, Commissioners Wan and Nava (A-3-SLO-99-014); Commissioners Wan and Potter (A-3-SLO-99-032)

LOCATION: West of Highway One, approximately 3 miles south of Harmony and 6 miles north of Cayucos, in the Agriculture land use category of the San Luis Obispo County North Coast Planning Area (APNs 046-082-013 through 046-082-022)

¹ The Commission did not receive a Notice of Final Local Action for this decision until April 23, 1999.

DESCRIPTIONS: San Luis Obispo County, A-3-SLO-99-032 approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres. A-3-SLO-99-014 involves the grading and construction of approximately 19,860 linear feet (4.76 miles) of access roads to serve the adjusted lots, and relocation of two of the building sites designated by the lot line adjustment. As recently revised by the applicant, the lot line adjustment will result in 8 residential parcels ranging in size from 20 acres to 39.06 acres, and one agricultural lot of 542.08 acres. The revised project also includes offers to dedicate a lateral and vertical coastal access easement, a deed restriction that limits use and development of 684.55 acres of the site to agricultural and resource conservation purposes, and a reduction in the roadway project of 5,350 feet.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Final Local Action Notices 3-SLO-99-011 and 3-SLO-99-046; July 20, 1999 letter from Sheppard, Mullin, Richter & Hampton (Exhibit 3) describing project revisions, and accompanying maps, documents, and data submitted by Engineering Development Associates

EXECUTIVE SUMMARY

Staff recommends that the Commission conditionally approve Coastal Development Permits for the revised lot line adjustment and roadway projects.

The appealed projects consist of a lot line adjustment (A-3-SLO-99-032) and roadway construction project (A-3-SLO-99-014) intended to facilitate future residential development on nine lots currently in single ownership, on a 746-acre agricultural site west of Highway One (*Middle Ranch*). The project site, which has historically been used for cattle grazing, is approximately 3 miles south of Harmony, and about 6 miles north of the town of Cayucos, in a rural agricultural area of San Luis Obispo's North Coast (Exhibits 1 and 2).

San Luis Obispo County approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres (shown by Exhibit 7). The residential lots would be generally located along the coastal ridge on the western portion of the property, while the agricultural parcels would comprise the area of the site east of the residential parcels. Approximately 4.8 miles of grading and construction of roadway was approved to serve the residential building sites.

The County-approved projects were appealed by the Commission because the approved residential lot configuration and associated road construction raised compliance questions concerning the preservation of rural agricultural lands, scenic public views, and sensitive wetlands. Further evaluation has also established that the existing agricultural lots, as currently configured, do not meet the LCP's minimum size of 320 acres for grazing, and are also arranged in a pattern that would limit the long-term agricultural viability of the site should these individual lots be sold and pursued for residential or other allowable non-agricultural development.

In response to the appeals and Commission concerns, the applicant has reduced the size of the 8 residential parcels (Parcels 1 – 8) so that they range between 20 acres and 39.06 acres, and has consolidated the two agricultural lots into a single agricultural lot (Parcel 9) of 542.08 acres (please see Exhibit 4). In addition, as currently proposed, use of the 8 residential parcels will be limited to building envelopes totaling 10.69 acres of the site and range in size from 0.23 to 1.92 acres each. Road construction has been reduced by approximately 1 mile and relocated to protect sensitive wetlands.

Another significant revision to the lot line adjustment and roadway projects that has occurred since the County's approval is the incorporation of offers to dedicate both a lateral shoreline access easement across all 9 lots, and a vertical access easement from Highway One to the mean high tide, along the northern boundary of the project site.

Commission staff has also worked with the applicant to develop restrictions on future site development, including specific siting and design criteria to protect visual resources (Condition 3i). These restrictions include:

- Agricultural setback areas surrounding the residential building envelopes that total 50.72 acres of the site and range in size from 2.95 acres to 13.75 acres each. The purpose of these setback areas is to provide a buffer between future residential development and agricultural use of the site. No structural development, other than that which is directly related to agriculture or resource conservation, is allowed within this setback area.
- The remainder of the residential lots (144 acres), as well as all areas of Parcel 9 outside of the building envelope (540.65 acres) will be deed-restricted for agricultural and resource conservation purposes. Within these areas, only those uses and development directly related to the cultivation of agricultural products for sale, and/or the protection and enhancement of natural and archaeological resources, is allowed. Structural development within the agricultural and resource conservation area is limited to agricultural accessory structures, and fencing to separate incompatible agricultural uses or to protect resource areas (e.g., wetlands). One

exception to this rule is the allowance of a corral in a specific area of Parcel 9 that will be available for the joint use of the owners of the 9 lots.

- All future development will need to comply with siting and design criteria to protect views from public viewing areas, including state waters. Specifically, development must be designed to blend in with and be subordinate to the natural landscape, including limiting height and vertical features above ridgelines; using earthtones and non-reflective materials; and limiting exterior lighting (see Condition 3i for more detail)

Finally, as required by the LCP, future site development will be subject to future Coastal Development Permit review and approval. In addition, the recommended conditions of approval require the applicant to submit a Storm Water Pollution Prevention Program for Executive Director review and approval, to ensure that water quality and wetland habitats are effectively protected during roadway construction. The conditions also require evidence that the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Regional Water Quality Control Board, and Department of Fish and Game have reviewed and approved the roadway project, or that no such approvals are required. This is necessary to ensure that the roads will not result in any wetland fill, and that any impacts to water quality or sensitive species associated with the replacement of the existing bridge over Ellysly Creek are appropriately addressed. Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

Overall, while the proposed lot line adjustment would not resolve the fundamental problem of non-conforming lots within an agricultural zone, it would reconfigure the lots in a manner that consolidates non-agricultural (residential) uses outside of the most agriculturally productive area of the site (684.5 acres or 92% are limited to agricultural use). Staff has considered alternative parcel configurations to that which was proposed by the applicant, and determined that in light of the site's environmental constraints (e.g., soils, views, topography, wetlands) there are no feasible alternatives that would better protect the agricultural, scenic, archaeological, and natural resources of the site, while allowing for residential development on the nine lots.

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I. SUMMARY OF APPELLANTS' CONTENTIONS

Please see Exhibit 1 for the full texts of the appeals.

The appeal of the lot line adjustment by Commissioners Wan and Potter contends that the project conflicts with LCP standards protecting agricultural and visual resources, as well as those requiring evidence that there are adequate on-site water and wastewater treatment capacities available to serve future residential development proposed to be accommodated by the lot line adjustment. More specifically, the Commissioners' appeal asserts that the project does not comply with LCP Policies 1 and 2 for Agriculture, or with Sections 23.04.024b, 23.04.024e(f), 23.04.021c, 23.04.050, and 23.04.430b of the Coastal Zone Land Use Ordinance (CZLUO). The appeal also questions project conformance with CZLUO Section 23.04.420, requiring vertical and lateral coastal access, as neither were provided by the original project or required by the County's approval.

The appeal of the roadway project by Commissioners Wan and Nava contends that the proposed roadway development will result in greater site disturbance than necessary to accommodate the proposed use of the site, and that portions of the proposed roadways will

be located within 100 feet of an existing wetland, inconsistent with sections 23.05.030e.1 and 23.07.172a of the CZLUO.

David McBride's appeal of the roadway project contends that "the project does not conform with Local Coastal Area Planning Standards" because "the designated ridgetop building sites are visible to the public and require development on some of the steepest and most fragile areas of the property". Mr. McBride's appeal also states that "development plans have been offered in a piecemeal fashion, avoiding the next obvious issues of constructing multiple driveways and other infrastructure on steep and erosive slopes".

II. LOCAL GOVERNMENT ACTION

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by the previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld. The conditions of this approval are attached as Exhibit 2.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to the Commission's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. As requested by Commission staff, the County provided such notice, received by Commission staff on April 23, 1999.

The County's review of the lot line adjustment and the roadway project (which also included a minor revision to one of the building envelopes previously identified in the lot line adjustment) included analyses of the projects impacts on views from Highway One, marine mammals, wetlands, and archaeological resources. Through this review, the building envelopes were oriented to not be visible from Highway One², and conditions were placed on the project that prohibit any human use areas from being established where they may be seen from known marine mammal haul-out areas along the shoreline. In addition, an archaeologically sensitive area of the site, adjacent to the main access road was identified and required to be protected by retaining an archaeologist to observe all earth disturbing activities in this area. Other notable aspects of the local approval include:

² Because the building envelopes on parcels 5 and 6 might have been partly visible from Highway One, the County's approval required landscaping at the entrance to the property that will prevent future development of these lots from being visible.

- requirements that: no development shall occur within 800 feet of the edge of a bluff (local condition 3c);
- limitations for development within the envelopes of Parcels 1 and 2 that prohibit rooflines from extending more than 10 feet above the grade of the saddle and require that roof forms be shaped similarly to the natural topography (local condition 3o);
- all units shall be limited to a height of 22 feet above natural grade, and provide articulated roof forms which follow the general shapes of the hills and avoid flat planes which project against the sky in long straight lines or acute angles. Areas adjacent to structures must be landscaped to cover exposed ground surfaces, cut faces and retaining walls (local condition 3r);
- no ancillary structures may be constructed in areas that are visible from Highway 1 or the coastline (local condition 3t);
- the applicant must disclose to all prospective buyers that nearby ranchlands may generate dust, noise, odors, and agricultural chemicals. The applicant must also disclose the importance of controlling domestic pets to prevent conflicts with agricultural activities. All deeds shall be recorded with the County's Right to Farm Ordinance (local conditions 3z and 4).

The entirety of the local conditions of approval, for both the lot line adjustment and the roadway project, are attached to this report as Exhibit 14. As recommended by staff, Special Condition 1 identifies that these local conditions of approval continue to apply to the projects, except where they conflict with the project revisions proposed by the applicant and the conditions of the Coastal Commission's approval.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. Both the roadway project and lot line adjustment are appealable because they are between the first public road and the sea, and are partly located within a Sensitive Resource Area designated by the LCP.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea; thus, this additional finding must be made in a *de novo* review in this case.

IV. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

The appeals raised a substantial issue, because as approved by the County, the projects are inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) protecting agricultural and scenic resources. The lot configuration approved by the County allows for the conversion of an excessive amount of the site's agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region. In addition, the lot configuration and proposed building sites will allow for future residential development that may be visible from Highway 46, the coastline, and the ocean, causing adverse impacts to the scenic open space qualities of the area. Finally, a substantial issue was also raised by the lack of provisions for public access to and along the coast, as required by both the LCP and the Coastal Act. These issues are explained in more detail in the De Novo findings of this staff report.

V. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, approve the Morro Bay Limited permits with conditions.

MOTION. Staff recommends a "YES" vote of the following motion:

I move that the Commission **APPROVE** Coastal Development Permits A-3-SLO-99-014 and A-3-SLO-032 subject to the conditions below.

RESOLUTION.

The Commission hereby **grants** a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII. SPECIAL CONDITIONS

1. Scope of Permits. These permits authorize, subject to the standard conditions above and the Special Conditions below, the lot line adjustment and roadway construction illustrated by the Revised Lot Configuration Plan prepared by Engineering Development Associates dated July 12, 1999 (attached as Exhibit 4). Grading, drainage, and roadway details approved by Permit A-3-SLO-99-014 are illustrated by the roadway plans prepared by Garing Taylor and Associates dated November and December 1997, subject to the revised configuration and roadway reductions identified by Exhibit 4. Except where in conflict with the revised project approved by these permits, and these conditions of approval, all conditions of San Luis Obispo County's approval of these projects (attached as Exhibit 14) continue to apply. All other conditions required pursuant to planning authority other than the Coastal Act continue to apply.

2. Amended Certificates of Compliance. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall submit, for Executive Director review and approval, amended Certificates of Compliance which reflect the revised lot line adjustment approved by Permit A-3-SLO-99-032.

3. Deed Restrictions. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall finalize, execute, and record, in a form and content acceptable to the Executive Director, a Deed Restriction for each of the newly configured parcels which limits future use and development of each parcel according to the specific provisions listed below. The Deed Restrictions shall include legal descriptions of the parcel being restricted, as well as legal descriptions for the portions of the parcel that are designated as Agricultural and Resource Conservation Areas, Agricultural Setback Areas, and Building Envelopes (shown by Exhibit 4). These Deed Restrictions shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This Deed Restrictions shall not be invalidated or changed without a Commission amendment to this coastal development permit.

The Deed Restrictions shall provide for the following:

- a. A prohibition against future subdivisions.
- b. Recordation of a right to farm statement that states "This parcel is adjacent to property that is used, or planned to be used, for agricultural purposes. Residents may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including animal grazing, plowing, spraying, pruning and harvesting, which

occasionally generate dust, smoke, noise, and odor. San Luis Obispo County and the State of California has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.”

- c. A prohibition against locating any new structures on prime soils.
- d. The following definition of agricultural production activities:

Agricultural production activities are those directly related to the cultivation of agricultural products for sale. Agricultural products are limited to food and fiber in their raw unprocessed state, and ornamental plant material.

- e. Acknowledgement that all future development activities on the site, including, but not limited to residential construction and installation of fencing will be subject to future coastal development permit review by San Luis Obispo County and/or the Coastal Commission. As part of this review, it shall be confirmed that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses.
- f. Measures to ensure that agricultural and development activities will be conducted in a manner that protects the archaeological resources of the site. These measures shall include, but not be limited to, ensuring that a qualified archaeologist shall be on-site to monitor any agricultural activity or development that involves subsurface disruptions. At least 15 days prior to undertaking any such activity or development, the applicant shall notify the cultural resource representative of the Chumash Tribe, and provide the Chumash representative with the opportunity to observe the activity or development. If either the archaeologist or Chumash representative identifies that the activity or development is uncovering archaeological or paleontological resources, all activities that may impact such resources shall cease until appropriate mitigation measures are reviewed and approved by the State Historic Preservation Office and the Executive Director of the Coastal Commission.
- g. Recognition that nothing in the Deed Restriction shall limit the public's right to vertical and lateral access across the site that may be established through easements, prescriptive rights, or other legal means.
- h. Specific criteria for the installation of fencing, and the type of fencing allowed. Fencing shall be allowed only to: mark the exterior boundary of Parcel 9 with Highway One and the properties to the north and south of the project; mark the exterior boundary of lots 1 and 2 with the property to the south of the project; separate non-compatible agricultural uses; protect sensitive natural resources (i.e., wetlands or other habitats for rare plants or animals); or, to separate lateral and vertical coastal access easements from agricultural or resource protection activities. Any fencing installed in order to separate non-compatible agricultural activities shall be removed immediately upon the termination of one of the non-compatible activities.

All allowable fencing shall be located at least 100 feet from the edge of any wetland, except where the roadway approved by A-3-SLO-99-014 encroaches within 100 feet of the wetland; in that area, the fence shall be located as close to the road as possible, but in no case any more than 5 feet from the roadway shoulder. All fence posts shall be constructed of 4-inch diameter wood posts, colored a natural earth tone color approved by the Executive Director, and limited to a maximum height of 5 feet.

- i. Parameters for visual resource protection that must be met by any structural development on the site. Future development proposals shall be accompanied by a complete as-built visual analysis demonstrating compliance with these provisions. As viewed from any public viewing area, including Highways 1 and 46, and state coastal waters (between mean high tide and three miles out), all new development shall be sited and designed *to blend in with and be subordinate to the natural landscape*, including but not limited to meeting the following requirements:
 - i.) any vertical structural features that extend above ridgelines as seen from any public viewing area must be minimized to the greatest extent feasible and shall not result in an overall design that fails to blend in with or be subordinate to the natural landscape;
 - ii.) for buildings which will profile against any sky or ocean area as seen from any of the public viewing areas identified above, the roof pitch shall not exceed 25% or the average natural gradient of the ground surface adjacent to the structure, whichever is greater (e.g., if the adjacent slope is 30%, the roof pitch would be limited to 30%);
 - iii.) hip roofs may be used to soften the mass of residences and gable roofs are permissible so long as they are responsive to the landform or do not result in a visual inconsistency with the natural surroundings;
 - iv.) no portion of any residential structures shall exceed 22 feet above natural grade;
 - v.) the sum total footprint of all residences and residentially-related structures (including guest houses, gazebos, garages, etc.) within the building envelopes shall not exceed 7,000 sq. ft. and in no case shall the footprint of any one structure exceed 5,000 sq. ft.;
 - vi.) total coverage of other non-structural impervious surfaces and outdoor activity areas within the residential building envelope, including all parking areas and other areas outside of the building footprints on which development is proposed, shall be limited to a maximum coverage of 7,000 square feet;
 - vi.) the use of reflective roofing and exterior siding materials is prohibited;

- vii.) buildings and other development (including fencing and paving) must use only earth tone and non-reflective exterior materials;
 - viii.) exterior lighting shall be low level and limited to that necessary for safe passage within the designated building envelopes; all lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface are visible from public viewing areas; floodlighting or spotlighting of ground or water surfaces visible from the public viewing areas shall be prohibited;
 - ix.) building design must incorporate extended eaves, at least 3 feet deep, in order to minimize the potential for window glare;
 - x.) native landscaping shall be used to soften the transition between natural landform and new residences;
 - xi.) new development shall be consistent with all previous County siting and design conditions
- j. Restrictions for future development within the Agricultural Use and Resource Conservation Area that limits such development to:
- i) agricultural production activities as defined by 3.d, above;
 - ii) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014;
 - iii) restoration, protection, and enhancement of native habitat and/or sensitive resources (e.g. wetlands);
 - iv) agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site, and a corral available for the joint use of the owners of parcels 1 -9 in the area shown by Exhibit 4. All agricultural support facilities must be consistent with visual resource protection criteria;
 - v) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve residential development in the building envelopes designated by Exhibit 4, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - vi) public access improvements.; and,
 - vii) fencing consistent with the Deed Restriction criteria.

- k. Restrictions for future development within Agricultural Setback Areas that limits such development to:
- i) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014, and the extension of these roadways to serve any residential development within designated building envelopes that may be approved in the future;
 - ii) development of agricultural support facilities directly related to agricultural production activities (i.e., the cultivation of food, fiber, and ornamental plants) within the Agriculture and Resource Conservation Area. All agricultural support facilities must be consistent with visual resource protection criteria;
 - iii) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to any residential development within designated building envelopes that may be approved in the future, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - iv) restoration, protection, and enhancement of native habitat and/or sensitive resources; and
 - v) public access improvements; and
 - vi) fencing consistent with the Deed Restriction criteria.
- l. Restriction for future development within Building Envelopes that limits such development to one single family residence and one guest unit or other allowable accessory structure, outdoor activity areas, and the minimum infrastructure necessary to serve a single family residential use (i.e., one septic system/leachfield, one electrical main, one telephone main, and one cable television main) designed consistent with the visual resource protection criteria.

4. Lateral Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for lateral public access and passive recreational use along the shoreline proposed as part of the project. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 50 foot wide easement along the entire width of the property, which will be generally located in the area between the mean high tide line and a line 200 feet inland of the daily high water line, which is understood to be ambulatory from day to day. The easement area shall be located or, over time, relocated further upslope than 200 feet from the mean high tide line where necessary to address topographical and safety constraints, to avoid erosion and to allow safe passage in perpetuity. The recorded document shall include

legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

5. Vertical Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for vertical public access and passive recreational use to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 10 foot wide easement between the Highway One right-of-way and the mean high tide line, along a specific route to be determined in consultation with the Executive Director. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

6. Storm Water Pollution Prevention Plan. PRIOR TO COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review and approval, a detailed Storm Water Pollution Prevention Plan that identifies specific construction practices and controls that will be implemented in order to minimize erosion during and after roadway construction. Such measures shall include, but may not be limited to:

- a. timing construction to avoid or minimize grading during the rainy season (November 1 – April 30)
- b. staging construction to minimize the area of bare soil exposed at one time
- c. installing temporary boundary fencing to define grading limits
- d. seeding and/or mulching of exposed soils
- e. maintaining construction access roads free of dirt and sediments
- f. implementing dust control measures
- g. use of filter fabric fences, straw bale barriers, sand bag barriers, and/or sediment traps to intercept and detain sediment contained in storm water runoff
- h. providing temporary waterway crossings for construction equipment where applicable;
- i. covering excavated materials and construction debris stockpiles on a daily basis;
- j. appropriately disposing of, at a licensed landfill, any excess construction or fill material.
- k. Any permanent site plantings, structural controls, etc., necessary for the prevention, treatment and proper conveyance of storm water runoff through the life of the project.

7. Final Roadway Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit, for Executive Director review and approval, final engineered plans for the approved roadways and associated drainage facilities that revise the alignment of the driveways to lots four through eight in a manner that follows existing topographical contours and minimizes the alterations of natural landforms (i.e., cuts and fills) to the greatest degree feasible.

8. Other Agency Approvals. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit written evidence that the necessary approvals for roadway construction have been obtained from the following regulatory agencies, or that no such approvals are required:

- a. U.S. Army Corps of Engineers
- b. U.S. Fish and Wildlife Service
- c. Regional Water Quality Control Board
- d. California Department of Fish and Game

Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

9. Removal of Existing Fence Posts. PRIOR TO THE COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review

and approval, evidence that the fence posts previously installed around the wetland area of the site have either been removed in their entirety, or that a Coastal Development Permit has been obtained which allows for their retention and/or relocation in compliance with the Deed Restriction required by Special Condition 3 above.

VIII. DE NOVO FINDINGS AND DECLARATIONS

A. Background

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by a previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to both the Commission's and County's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. Similarly, the Commission had not been noticed of the two Conditional Certificates of Compliance for two of the lots affected by the adjustment, granted by the County prior to its approval of the lot line adjustment. As requested by Commission staff, the County provided the required Final Local Action Notices for the lot line adjustment and the Conditional Certificates of Compliance; Commission staff received these notices on April 23, 1999.

As evidenced by the local record for the lot line adjustment, the County review focused on siting future development in a manner that would avoid geologic hazards and prevent adverse impacts to scenic, natural, and archaeological resources. A detailed assessment of the visibility of future development from Highway One, as well as from shoreline areas that are used by marine mammals as haul-out areas, was conducted at the local level, and building envelopes and guidelines for future residential development were accordingly specified. In addition, the County Department of Agricultural reviewed the project's impact on the agricultural viability of the site and concluded that the project would have an insignificant impact.

However, fundamental issues regarding the size and orientation of the residential lots in relationship to the LCP's directive to maintain the maximum amount of land in agricultural production, as well as other unresolved issues such as the visibility of the building envelopes from Highway 46, wetland setbacks, and the need to provide for public led to the

Commission's appeal of both the roadway project and the lot line adjustment (the roadway project also had another appellant). The Conditional Certificates of Compliance previously granted for two of the existing lots were not appealed, based upon staff's review and conclusion that they were legal lots appropriately approved consistent with LCP requirements. The other 8 non-conditional certificates of compliance were also reviewed by staff and determined to be valid.

Commission staff scheduled the appeals of the roadway project and lot line adjustment for Substantial Issue hearing at the Commission's June 1999 meeting, but this hearing was postponed at the applicant's request. The appeals were then presented to the Commission at the August 1999 meeting, where the hearing was continued until October 1999 in order to resolve various issues related to the protection of visual and agricultural resources, as well those issues related to the provision of public access. Due to unforeseen circumstances of the applicant's representative, it was not possible to adequately respond to the issues raised at the August Commission meeting in time for an October hearing. This staff report and recommendation represents the culmination of the additional research and negotiations between staff and the applicant's representative that have occurred since the August hearing, in an attempt to address the Coastal resource issues identified by the Commission.

B. Project Descriptions

The two projects involve a lot line adjustment and roadway construction intended to serve future residential development on a 746-acre agricultural site. As originally approved by San Luis Obispo County, A-3-SLO-99-032 involved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres and total 270 acres, and two agricultural lots of 243.8 and 226.4 acres. The grading/roadway project (A-3-SLO-99-014) involved the grading and construction of approximately 19,860 linear feet (3.76 miles) of access roads to serve the adjusted lots, which generally equates to 18 acres of site disturbance, and relocation of two designated building sites identified as part of the lot line adjustment.

In response to the issues identified in the appeals of this project, the applicant has recently revised the project (please see Exhibits 3, 4, and 5). As revised, the lot line adjustment will result in 8 residential parcels (Parcels 1 - 8) that range in size from 20 acres to 39.06 acres and total 204 acres, and one 542.08-acre agricultural lot (Parcel 9). Future residential development is limited to specific building envelopes on each parcel that range from 0.23 acres to 1.92 acres in size, and total 10.69 acres. The 8 residential lots also include agricultural setback areas that range in size from 4.87 acres to 15.18 acres, and total 50.72 acres. The remainder of the 8 residential lots (approximately 144 acres) have been designated as Agricultural Use and Resource Conservation areas, where agricultural and resource conservation activities can be pursued by either the residential lot owner(s) and/or the owner/operator of the large agricultural parcel. In combination with Parcel 9, this results in 684.55 acres (92%) of the site as being available for agricultural and resource

conservation purposes. Other revisions to the project include a reduction in new roadway construction by approximately 5,350 feet, and the incorporation of an offers to dedicate both a lateral coastal access easement along the shoreline across all 9 lots into the project; and a vertical access from Highway One to the sea along the northern property line.

Existing lot configurations are shown by Exhibit 6. The originally proposed lot line adjustment approved by San Luis Obispo County is shown by Exhibit 7. The currently proposed lot line adjustment is illustrated by Exhibit 4. Table 1, on the following page of this report, compares the existing and proposed sizes of each lot.

Table 1: Comparison of original and currently proposed lot line adjustments.

Parcel #	Existing Acreage	Previously Proposed Acreage ³	Currently Proposed Acreage
Parcel #1	318.42	37.4	20.0
Parcel #2	8.76	29.7	20.65
Parcel #3	67.72	27.1	23.44
Parcel #4	168.02	22.8	32.87
Parcel #5	61.02	20.9	25.91
Parcel #6	59.80	29.7	21.21
Parcel #7	19.59	47.6	20.70
Parcel #8	7.76	54.9	39.06
Parcel #9	1.39	243.8	542.08
Parcel #10	2.80	226.4	0

Table 2: Quantities of land dedicated for agricultural and residential uses.

Parcel #	Total Acreage	Acreage within Agricultural Use and Resource Conservation	Acreage within Agricultural Setback	Building Envelope Acreage

³ The figures in the "Previously Proposed Acreage" Column (as well as the Existing Acreage Column) represent the parcel acreages identified by the San Luis Obispo County Notice of Final Local Action for the original lot line adjustment approved by the County. These figures are different from the acreages for the original lot line adjustment submitted by the applicant's representative, but do not have a substantive effect on the Commission's consideration of the appeals or permits.

		Area		
1	20.00	4.82	13.75	1.43
2	20.65	13.35	7.07	0.23
3	23.44	16.14	6.28	0.98
4	32.87	28.94	2.45	1.48
5	25.91	17.14	7.93	0.84
6	21.29	15.09	4.61	1.59
7	20.70	14.23	5.68	0.79
8	39.06	34.19	4.87	1.92
9	542.08	540.65	0	1.43
Totals	746.00	684.55	50.72	10.69

C. Project Location

The projects are located west of Highway One, on an agricultural site of 746 acres, approximately $\frac{3}{4}$ of a mile north of Villa Creek Road and 3 miles south of Harmony, in the North Coast Planning Area of San Luis Obispo County (please see Exhibit 3). This site, also known as "Middle Ranch", has previously been used for cattle grazing, and is adjacent to "North Ranch" and "South Ranch", which are currently used for grazing.

Site topography is bowl like, with hills and the coastal ridge surrounding the valley in the center of the property where the stock pond is located. Spectacular views of the coastline and inland areas are available from the top of these hills, as shown in the photographs attached as Exhibit 13. In recognition of the natural and scenic values of this section of coastline, the LCP designates the western portion of the site as a Sensitive Resource Area (please see Exhibit 2).

A large stock pond, which is also considered a wetland, exists on the site, as does an old farmhouse and an unpaved agricultural road. As observed by Commission staff on a recent site visit, other wetland areas, in addition to the stock pond, exist on the site. The applicant's representative has attempted to map these areas in updated Environmental Constraints Map, attached to this report as Exhibit 5. Ellysly Creek runs through the site at its eastern boundary with Highway One.

In addition to wetland and riparian habitats, the site provides important habitat values for marine mammals, which use the shoreline as haul-out areas. The site is also known to

provide foraging habitat for raptors including the Bald eagle (listed as Endangered by the State Endangered Species Act and threatened by the Federal Endangered Species Act) and the Golden eagle (considered a California Species of Special Concern by the Department of Fish and Game).

The site is also known to contain archaeological resources, which were partly evaluated during the local review of the lot line adjustment. During this review an archaeologically sensitive area was identified adjacent to the proposed access road. Additional archaeologically sensitive areas may exist on the site, but have not been fully evaluated or mapped.

D. Agricultural Resources

1. Applicable Policies:

LCP Policy 1 for Agriculture states in part:

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

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

LCP Policy 2 for Agriculture provides:

Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based on the following requirements:

- a. The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential

agricultural production of at least three crops common to the agricultural economy would not be diminished.

- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agriculture and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.)

LCP Policy 3 for Agriculture identifies requirements for non-agricultural uses on agricultural lands intended to supplement the agricultural use. Among these requirements, an agricultural and/or open space easement must be granted to the County for all lands that are not a part of the supplemental non-agricultural development.

LCP Policy 4 for Agriculture requires:

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

LCP Policy 6 for Agriculture states:

In some portions of the coastal zone where historical land divisions created lots that are now substandard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone

Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots, that would not permit continued agricultural use if sold individually.

LCP Policy 7 for Agriculture states:

Water extractions consistent with habitat protection requirements shall give highest priority to preserving available supplies for existing or expanded agricultural uses.

CZLUO Section 23.04.024b states:

b. Size based upon existing use. Where a legal lot of record is developed with agricultural uses at the time of application for land division, the minimum size for a new parcel shall be based on the type of existing agricultural use, with the required minimum being the largest area determined by the following tests. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum size for its respective use:

(1) Crop production: ...

...Grazing 320 acres

CZLUO Section 23.04.024f provides:

f. Overriding requirements for division of non-prime agricultural soils. Land divisions on non-prime agricultural soils as defined by this title shall be subject to the following requirements:

(1) Mandatory findings. A proposed land division shall not be approved unless the approval body first finds that the division will maintain or enhance the agricultural viability of the site.

(2) Application content. The land division application shall identify the proposed uses for each parcel.

Section 23.04.050 of the CZLUO states, in relevant part:

23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category:

- a. **Sighting of structures.** A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.

2. Analysis:

LCP Policy 1 for Agriculture requires that lands suitable for agriculture be maintained in, or available for, agricultural production unless, among other reasons, the permitted conversion will not adversely affect surrounding agricultural uses. Similarly, CZLUO Section CZLUO Section 23.04.024f requires that land divisions maintain or enhance the agricultural viability of the site, while Section 23.04.050(a) requires that single family dwellings and accessory buildings reduce negative impacts on agricultural uses. LCP Policy 4 for Agriculture requires residential development on agricultural land to incorporate whatever mitigation measures are necessary to reduce negative impacts on adjacent agricultural uses. Thus, a primary focus of the LCP's agricultural protection policies is to prevent conversions or land divisions of agricultural lands that would negatively impact agricultural production.

The original lot line adjustment approved by the County is inconsistent with this objective because it converts more agricultural land than necessary to accommodate residential development. As approved by the County, residential lots ranged in size from 21 to 55 acres each, which is clearly more than what is required to accommodate residential development⁴. This would have resulted in up to 270 acres of agricultural land being converted to residential use, thereby reducing the agricultural productivity of the site and jeopardizing the viability of agricultural operations. In addition, this approval could have set a precedent for the adjustment of other similarly situated non-conforming agricultural lots that would have a cumulative adverse impact on the viability of agriculture in the region.

The first step in addressing this problem was for Commission staff to undertake a thorough analysis of alternative lot configurations that would better protect agricultural use of the site and surrounding area. Fundamental coastal resource constraints that were applied to this analysis included the need to avoid the creation of building envelopes that would be visible from Highway One or other public areas, or located on steep slopes, prime agricultural land, or sensitive habitats. The LCP's minimum lot size of 20 acres in rural agricultural areas was also considered.

Alternative configurations that were analyzed included: locating the residential lots closer to Highway One, along the existing agricultural road; and, locating the residential lots on the

⁴ The minimum lot size for a parcel within an agricultural designation can be no less than 20 acres, but may be larger depending upon the type of agricultural use, as established by Section 23.04.024 of the CZLUO.

western slope of the first hill west of Highway One and north of the access road. Staff conducted numerous site visits, and met with the applicant's representatives on many occasions, to discuss these alternatives. Through this evaluation process, it was determined that these alternatives would not be more protective of agriculture because the eastern portion of the site is more agriculturally productive. This is due to the following factors which make the central and eastern portion of the property more suitable for grazing: the topography is generally less steep than the western portions of the site; it is more protected from the predominant westerly winds; and, the central portion of the site contains the best agricultural soils (please see Exhibits 8 and 9). In addition, the following factors make the central and eastern portion of the site less suitable for residential development from a coastal resource protection standpoint: eucalyptus trees used by foraging raptors are located in this area; a known archaeological site is located in this area; and, certain portions of this area would be visible from Highway One.

Another alternative that was considered was the option of requiring that the lots be consolidated into a single agricultural lot pursuant to Policy 6 cited above. This policy, however, is only applicable to areas where the Land Use Element identifies that parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes. The Land Use Element has not identified the project site as such an area. Without consolidating the existing lots, it is impossible for all of the adjusted lots to meet the minimum lot size of 320 acres for grazing uses, as established by CZLUO Section 23.04.024b and called for by LCP Policy 2 for Agriculture.

Given the lack of superior alternatives for the location of the residential lots, the next step was to attempt to reduce the extent of agricultural conversion that would result from the proposed adjustment to the greatest degree feasible. As reflected in the revised proposal submitted by the applicant, the size of each residential parcel has been reduced and clustered in the southwestern portion of the parcel to the degree that the 20-acre lot minimum and natural topography will allow. Moreover, the applicant has restricted the extent of residential use allowed on the adjusted parcels to building envelopes that total 10.69 acres, established agricultural setbacks for these building envelopes totaling 50.72 acres, and has restricted the use of the remainder of the site (684.55 acres) to agricultural and resource conservation purposes.

The applicant has also reduced the conversion of agricultural land associated with roadway construction by eliminating a significant stretch of road, and reconfiguring the approach to lots 4-9, for an overall reduction of approximately 5,350 linear feet of roadway. With a typical roadway width of 20 feet, this reduction will avoid the conversion of almost 2.5 acres of agricultural land.

While the revised projects represent significant improvements over the original proposals in terms of minimizing impacts to agriculture, additional measures are needed to ensure that the agricultural productivity of the site and surrounding land will be effectively protected.

These measures, which range from defining what constitutes an agricultural activity to specifying the particular circumstances in which fencing is allowed, are critically important elements that will impact the ability of the proposed Agricultural Use and Resource Conservation Area's ability to preserve the agricultural productivity and viability of the site. Other such measures include the need to record a Right to Farm statement, which recognizes that residential development shall not interfere with the ability of adjacent agricultural operations to continue, and a prohibition against future subdivisions to prevent any reduction in the area of the site reserved for agricultural use. Finally, the need to specifically identify the particular uses that are allowed within the proposed Building Envelopes, Agricultural Setback Areas, and the Agricultural Use and Conservation Area are essential ingredients to preventing the lot line adjustment and future residential development from adversely affecting the agricultural productivity of the site. To ensure that such measures are incorporated into the project, and will be carried out in perpetuity, Special Condition 3 requires that Deed Restrictions be recorded for each of the newly created parcels that embody these provisions.

In terms of prime agricultural soils, LCP Agricultural Policies 2b and 4, as well as CZLUO Section 23.04.050 call for non-agricultural development and agricultural accessory structures to be located outside of areas containing prime agricultural soils. The limited areas of prime agricultural soils on the site (shown by Exhibit 8) will be retained within the proposed Agricultural Use and Resource Conservation area. In addition, the Deed Restrictions required by Special Condition 3 requires all structures, as well as any water or wastewater treatment infrastructure, to avoid areas of prime soils.

Another section of the LCP that is relevant, but not directly applicable, to the proposed lot line adjustment is Policy 3 for Agriculture, which identifies requirements for non-agricultural uses on agricultural lands that are intended to supplement the agricultural use. As opposed to such supplemental uses, single-family residences are specifically allowed by the LCP on agricultural lands, and are considered to be a part of, rather than supplementary to, agricultural use. However, this project presents a problem not specifically contemplated by the LCP, namely, how to address the impact of residential development on non-conforming lots within an agricultural area on existing agricultural uses.

Policy 3, while not directly germane, provides some guidance on how non-agricultural uses should be sited, designed, and restricted to protect agricultural resources to meet the broad agricultural protection policies of the LCP and, by extension, the Coastal Act. For example, part e of this Policy calls for clearly defined buffer areas between agricultural and non-agricultural uses. Another important aspect of this Policy is the requirement that an agricultural and/or open space easement be granted to the County for all lands that are not a part of the supplemental non-agricultural development. In the case of the proposed lot line adjustment, the provisions of Policy 3 are generally satisfied by the recommended conditions of approval. In particular, Special Condition 3 requires recordation of Deed Restrictions (as opposed to easements) that will maintain all areas of the site outside of the

residential building envelopes for agricultural and resource conservation purposes, and will establish buffer areas between agricultural and non-agricultural areas.

A final concern regarding the projects' impacts on agricultural resources has to do with the availability of water to serve non-agricultural development, and whether additional extractions of groundwater to serve such development will limit water supplies necessary to support agricultural production. As required by LCP Policy 7 for Agriculture, the highest priority for the use of new water extractions, which must be consistent with habitat protection, is to preserve available supplies for existing or expanded agricultural uses. To ensure compliance with this requirement, Special Condition 3e requires confirmation that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses, during the future coastal development permit reviews required for residential development.

3. Conclusion:

The lot line adjustment and roadway projects, as revised by the applicant and conditioned by the Commission, are consistent with LCP standards protecting agricultural lands because the conversion of prime agricultural soils have been avoided, and the conversion of non-prime agricultural land has been minimized to the degree that the agricultural viability of the site and surrounding area will be maintained. The revised lot configuration, when compared to the potential for residential development to occur in an unconsolidated fashion on each of the non-conforming lots as currently configured, is a betterment towards preserving the agricultural viability of the site, especially in light of the provisions of the Deed Restrictions required by Special Condition 3.

E. Sensitive Habitats

1. Applicable Policies:

LCP Policy 1 for Environmentally Sensitive Habitats states:

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

LCP Policy 2 for Environmentally Sensitive Habitats provides:

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate.

LCP Policy 5 for Environmentally Sensitive Habitats states:

Coastal Wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.

LCP Policy 18 for Environmentally Sensitive Habitat provides:

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

Policy 19 for Environmentally Sensitive Habitats requires:

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns.

Policy 36 for Environmentally Sensitive Habitat Areas, entitled "Protection of Kelp Beds, Offshore Rocks, Rocky Points, Reefs and Intertidal Areas", states:

Uses shall be restricted to recreation, education and commercial fishing. Adjacent development shall be sited and designed to mitigate impacts that would be incompatible with the continuance of such habitat areas.

CZLUO Section 23.07.164e requires the following specific findings, applicable to the project, to be made when approving development in Sensitive Resource Areas:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.

- (2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.

...

CZLUO Section 23.07.166c identifies the following minimum site design and development standard for projects that may impact wetlands or other aquatic habitats as follows:

- c. Construction and landscaping activities shall be conducted to not degrade lakes, ponds, wetlands, or perennial watercourses within an SRA through filling, sedimentation, erosion, increased turbidity, or other contamination.

CZLUO Section 23.07.170b requires the following specific findings to be made when approving new development within or adjacent to Environmentally Sensitive Habitats:

- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- (2) The proposed use will not significantly disrupt the habitat.

CZLUO Section 23.07.172 provides, in relevant part:

23.07.172 – Wetlands.

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

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

...

- a. **Wetland setbacks:** New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval

body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.

- (1) **Permitted uses with wetland setback:** Within the required setback buffer, permitted uses are limited to . . . roads when it can be demonstrated that:
 - (i) Alternative routes are infeasible or more environmentally damaging.
 - (ii) Adverse environmental effects are mitigated to the maximum extent feasible.

2. Analysis:

Four characteristics of the project site qualify certain areas of the site as a Sensitive Resource Area and/or and Environmentally Sensitive Habitat. The first relates to the portion of the site fronts on the Pacific Ocean, and the fact that this rocky intertidal area is used by marine mammals as haul-out areas. In fact, the LCP specifically maps the shoreline area of the site as a Sensitive Resource Area (please see Exhibit 2).

The second site characteristic that qualifies as an Environmentally Sensitive Habitat is the presence of scattered wetlands. These include the three wetlands identified in the updated Environmental Constraints map prepared by the applicant and attached as Exhibit 5. However, based on the site visits that have been conducted by Commission staff, during which significantly wet areas were observed elsewhere on the site, it can not be concluded that the submitted map depicts *all* wetlands that may exist on the site.

The third important habitat value provided by the site is the fact that it is used by raptors for foraging. According to the 1995 County staff report for the lot line adjustment, Dr. V.L. Holland and Jennifer Langford jointly prepared biological assessments of the site, and identified that Golden and Bald eagles use the site as a foraging area. The Bald eagle is listed as endangered under the California Endangered Species Act, and listed as threatened under the Federal Endangered Species Act. The Department of Fish and game considers the Golden eagle to be a California Species of Special Concern.

The fourth sensitive habitat contained on the site is Ellysly Creek, which parallels Highway One at the entrance to the site. In addition to supporting riparian vegetation, the creek may also provide habitat for the Tidewater goby, listed as endangered by the Federal Endangered Species Act.

To protect these resources, the projects, as well as the local approvals, incorporate specific measures intended to prevent negative impacts and allow for continued biological productivity. With respect to marine mammals, the project was designed in coordination with the National Marine Fisheries Service. As a result of this coordination, Condition 3h

of the local approval of the lot line adjustment requires future residential development to demonstrate that no activity area of the development will be visible from marine mammal haul-out points (non-activity portions of the structures such as a roof or chimney may be visible from such areas). In addition, Condition 3I of the local approval requires that CC&R's inform all property owners of the presence of marine mammals that are sensitive to human intrusion and/or disturbance. This must include an explanation of the sensitivity of the animal, examples of possible disturbance, and a disclosure that disturbance of the animals may be considered harassment and is illegal under the Marine Protection Act. These CC&R's must be developed in consultation with the National Marine Fisheries Service, and subsequently reviewed and approved by the San Luis Obispo County Department of Planning and Building.

With respect to foraging habitat for Bald and Golden eagles, the 1995 County staff reports states that the consulting biologists recommended that large areas of the site be preserved in open space, that wetlands be revegetated and enhanced, and that residential development be clustered in the rear portion of the site. These measures, which were incorporated in to the local conditions of approval, have been improved upon by the currently recommended conditions of approval; open space has been maximized, residential development is more tightly clustered and restricted, and wetland resources are protected from future development (please see wetland discussion below). In addition, the County's approval of the roadway project prohibits construction in the area near the Eucalyptus trees that are used by eagles during the eagle's breeding and fledging period (April through July).

Regarding Ellyslly Creek, the project will not result in any in-stream alterations or removal of riparian vegetation, and involves only minor modifications to the existing creek crossing (i.e., the addition of railings). Thus, no negative impacts to the habitat values of the creek are expected. This will be confirmed by Special Condition 8, which requires that the applicant provide evidence that the Department of Fish and Game and the U.S. Fish and Wildlife Service have reviewed and approved the roadway project, or that no such approvals are required.

Finally, with respect to wetlands, all of the proposed building envelopes, and most of the new roadway will be setback at least 100 feet from the identified wetlands. However, in one location along the southern side of the largest wetland area, the proposed road encroaches within approximately 30 feet of the wetland. Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development shall be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use. Roads may be allowed within the required setback if it is demonstrated that alternative routes are infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible.

The limited encroachment of the roadway within the 100 foot setback area is approvable under the LCP because the applicant has demonstrated that the required exception findings of section 23.07.172(d)(I) can be made. First, alternative routes further south or to the north of the stock pond that would observe the 100 foot buffer would be more environmentally damaging because they would involve either significantly more grading and disturbance or construction and grading on steep slopes. This would create more significant impacts to the wetland due to slope instabilities and sedimentation problems related to roadway design. Second, the primary adverse environmental effects of the proposed road construction within the buffer are mitigated to the maximum extent feasible through Special Condition 6, which requires the implementation of a storm water pollution prevention plan. This includes standards to control runoff and erosion both during and after construction.

As previously noted, staff observations of the site indicate that there may additional wetland areas on the site that have not been delineated by project plans, or the submitted Environmental Constraints Map, to date. This concern is addressed by Special Condition 8, which requires the applicant to submit written evidence that the necessary approvals for roadway construction have been obtained from the U.S. Army Corps of Engineers (among other regulatory agencies). Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

3. Conclusion:

As conditioned, the currently proposed lot line adjustment and roadway project will not have an adverse impact on the sensitive habitat values provided by the site, and will protect the biological productivity of these areas, consistent with LCP Policies and Ordinances cited above.

F. Visual Resources

1. Applicable Policies:

Policy 1 for Visual and Scenic resources requires:

Unique and attractive features of the landscape, including but not limited to natural landforms, scenic vistas and sensitive habitats are to preserved and protected, and in visually degraded areas restored where feasible.

Policy 2 for Visual and Scenic Resources provides:

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

Policy 4 for Visual and Scenic Resources addresses new development in rural areas, and states:

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

Policy 5 for Visual and Scenic Resources requires:

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

CZLUO Section 23.04.021c provides:

New land divisions where the only feasible building site would be on slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road shall be prohibited as required by Visual and Scenic Resources Policy 4 of the Local Coastal Plan.

2. Analysis:

The proposed development poses adverse impacts to visual and scenic resources primarily through its designation of residential building sites along an undeveloped rural coastal ridgeline. The locations of the building envelopes were defined at the local level in large part to completely eliminate, or allow only extremely limited, visibility from Highway One. The natural topography of the project site now prevents most of the building envelopes from being visible from Highway One. To address the limited instance when one or two of the envelopes may be seen from Highway One, through the narrow ravine in which the access road is located, the County's approval requires landscaping that will block such views.

Although the proposed building envelopes may not be visible from Highway One, they are visible, at least in part, from other public view corridors, including the shoreline, the ocean, and Highway 46 (at a distance). The local review of the lot line adjustment and roadway projects did not address the impacts to the public view corridors available from these areas.

The applicant has submitted additional information analyzing the potential visual impact of the project from Highway 46. This analysis concludes that any visibility of the structures from Highway 46 will be insignificant, given the brief viewing window available to westbound drivers at the very top of Highway 46, as well as the angle of direct sunlight necessary to reflect back into the drivers view.

Nonetheless, this does not necessarily account for visual impacts that may be perceived by the public at public viewpoints along Highway 46 (there is a significant pullout at the top of 46 that affords spectacular views of the Harmony coast south to Morro Bay). Nor does it address the impacts to scenic views available from the shoreline and ocean (discussed in more detail below). Thus, in order to assure that visual impacts are avoided and minimized, Special Condition 3i contains specific requirements for visual resource protection that must be met by future development. The overall objective of this condition is to ensure that new development will be sited and designed to blend in with, and be subordinate to, the natural landscape, as called for by LCP Policy 4.

In order to minimize visual impacts from the Highway 46 viewshed, Special Condition 3i prohibits future construction from using reflective roofing and exterior siding materials, and requires that such construction use only earth-tone materials and incorporate extended eaves to minimize glare from windows. In addition, Special Condition 3i requires that water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve future residential development be located underground to the greatest degree feasible. Special Condition 3i also limits the maximum height and site coverage of future development, and restricts exterior lighting, in order to prevent extremely large and/or brightly lighted development that would be more visible from public viewsheds.

With regard to the building envelopes' visibility from the shoreline and ocean, it is clear that as approved by the County, portions of future development will be visible. In fact, Condition 3h of the County approval specifically allows portions of future development to be visible from shoreline areas, so long as human activity areas are not visible from marine mammal haul out areas along the shoreline. Under this scenario, future development would be highly visible from offshore areas.

The Special Conditions attached to this permit intended to minimize visual impacts from the Highway 46 viewshed (described above) will also help minimize impacts to views available from the shoreline and ocean by limiting the size and glare of new development. They are not adequate, however, to address the requirements of Policy 2, which calls for the

protection of views to and along the ocean, and requires new development should utilize slope created "pockets" to shield development and minimize visual intrusion.

In order to achieve compliance with this Policy, Special Condition 3i requires that any vertical structural features that would extend above the ridgeline as seen from any public viewing area (including up to three miles seaward of the mean high tide line) must be minimized to the greatest extent feasible. Such vertical features are prohibited if they would result in an overall design that fails to blend in with or be subordinate to the natural landscape. Special Condition 3i also minimizes the visual impact of any non-vertical feature that would extend above a ridgeline as seen from a public viewing area by limiting roof pitch to 25% or the natural gradient of the ground surface adjacent to the structure (whichever is greater). This will prevent unnatural structural forms from silhouetting against the sky or ocean. Similarly, hip roofs are encouraged by this condition as a means of softening the mass of future development. Finally, Special Condition 3i requires native landscaping to soften the transition between natural landform and new residences.

With respect to the roadway project, Special Condition 7 requires revised roadway plans that revise the alignment of the proposed driveways so that they follow existing topographical contours and minimize the alteration of natural landforms (i.e., cuts and fills). This will minimize the visibility of the roadways from the Highway 46 viewshed, consistent with LCP Policy 5.

3. Conclusion:

As approved by San Luis Obispo County, future development within the proposed building envelopes would have an adverse impact on the visual and scenic resources enjoyed by the public from Highway 46, the shoreline, and the ocean. In order to avoid and minimize these impacts, Special Conditions have been attached to this permit. Only with these conditions can the project be found to be consistent with LCP Policies for visual and scenic resources cited above.

G. Infrastructure

1. Applicable Policies:

CZLUO Section 23.04.430b

23.04.430 – Availability of Water Supply and Sewage Disposal Services.

- b.** Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal

systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

2. Analysis:

CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Water to serve future residential development will be obtained from on-site well(s), and wastewater treatment will be provided by on-site septic systems. The applicant has submitted information from the County Environmental Health Department and water consultants (Exhibit 10) that supports a finding of adequate water and wastewater treatment to support future residential development.

First, well and pump tests show that there is adequate water supply, and that water quality would be adequate, although treatment may be necessary based on further analysis. Second, an analysis of onsite wastewater disposal requirements supports a finding that adequate areas for disposal will be available for future residential development, again, with the understanding that further technical analysis of appropriate system locations will be necessary when any future residential development is proposed. This, in combination with the understanding that future residential development proposals will be subject to coastal development permit review and approval, during which further detailed analyses to document the necessary water treatment and septic siting options must be conducted, the Commission finds that the proposed lot line adjustment is consistent with the LCP.

H. Archaeological Resources

1. Applicable Policies:

Policy 1 for Archaeological Resources states:

The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required.

Policy 6 for Archaeological Resources provides:

Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resource and submit alternative mitigation measures.

2. Analysis:

As stated in the County's 1995 review of the lot line adjustment, Dr. Charles Dills conducted a detailed surface survey of the site to ensure that the adjusted lots, their building sites, and roadway access would avoid degradation of any archaeological sites. The County found the project to be consistent with the above LCP requirements because the archaeological resources that exist on the coastal bluff would not be impacted, and the project was conditioned to require on site monitoring by a qualified archaeologist during the construction of access roads and future residential development.

The 1998 County staff report addressing the proposed roadway project notes that a potentially significant archaeological site was discovered in the area of the existing farmhouse during the initial study of the lot line adjustment. The County approved the roadway project with an additional condition regarding Archaeological Resources (Condition 7) that requires the portion of the roadway within 400 feet of the archaeologically sensitive area designated by the Environmental Constraints Map (Exhibit 5) to be staked and inspected by an archaeologist. The applicant must implement all mitigations proposed by the archaeologist and the County's Environmental Coordinator, which, according to this condition, may include minor route adjustments, placement of fill, and/or monitoring.

The mitigation measures required by the County do not, however, specify that the review of archaeological impacts, and the required on-site monitoring, must be conducted by an archaeologist knowledgeable in the Chumash culture, as required by Policy 6. Nor does the local approval address potential impacts to archaeological resources that may occur through non-permit related activities, as required by Policy 6. As a result, a Special Condition has been attached to this report that supplements the County requirements by requiring that the applicant provide opportunities for a qualified Chumash representative to participate in the archaeological reviews and observations, including observations of any future agricultural activities that involve subsurface disruptions. In the event that either the archaeologist and/or Chumash representative identify that activities being conducted on the site may be impacting archaeological resources, the activity must cease until the appropriate mitigations are developed in coordination with the Executive Director and the State Historic Preservation Officer.

c. Conclusion:

Only with the additional archaeological conditions described above can the project be found to be consistent with the archaeological resource protection requirements of the LCP.

I. Public Access and Recreation

1. Applicable Policies:

LCP Policy 12 for Agriculture addresses Access in Agricultural Areas, and states:

Consistent with other LCP access policies which provide for access dedications, the county shall require at the time a Coastal Development permit is processed, the establishment of vertical and/or lateral access to the beach for which no established vertical or lateral access exists. The County shall close undeveloped trails which are hazardous or conflict with existing agricultural operations and when an alternative safe, existing or potential access is available for the same beach. Access trails shall be located on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, trails shall be located at the edge of the field and/or along parcel lines that would not significantly disrupt the agricultural operations.

Improvements and management of accessways shall be provided in agricultural areas adequate to avoid adverse impacts on, and protect the productivity of, adjacent agricultural soils. Improvement and management practices shall include, but not be limited to, the following:

Limit the seasons of the year when public access is permitted by using seasonal barriers and signs; and
Develop access trails with fences or other buffers to protect agricultural lands.

Consistent with the access section of the CZLUO access requirements may be waived if it can be conclusively demonstrated that the adverse impacts on agricultural operations are substantial and cannot be feasibly mitigated.

CZLUO Section 23.04.420 states, in relevant part:

23.04.420 – Coastal Access Required.

c. **When new access is required.** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
- (2) The site already satisfies the provisions of subsection d of this section; or
- (3) Agriculture would be adversely affected; ...

d. **Type of access required:**

(1) **Vertical Access:**

(ii) **In rural areas:** In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, and accessway shall be provided for each mile of frontage

(2) **Lateral access dedication:** All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff.

Coastal Act Section 30210 requires:

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

Coastal Act Section 30212 states in part::

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

2. Analysis

With the revised project, the applicant has provided an offer to dedicate a 200 foot wide lateral coastal access dedication the length of the property landward of the mean high tide land (Exhibit 5). This is a significant public access offer, and will provide an important future link in the California Coastal Trail. In order to incorporate the applicant's offer into the project, Condition 4 requires the recordation of this offer that reflects this aspect of the project.

The applicant has also provided a conditional offer to dedicate a vertical public access along the northern boundary of the property, extending from Highway One to the mean high tide. This is also a significant public access offer, and will provide a greatly needed vertical link to the Harmony coast (currently there is no vertical public access to the shoreline between Cambria and Cayucos (approximately 11 miles). Condition 5 incorporates the applicant's offer into the project. As conditioned, the project is consistent with the public access policies of the LCP and the Coastal Act.

I. California Environmental Quality Act

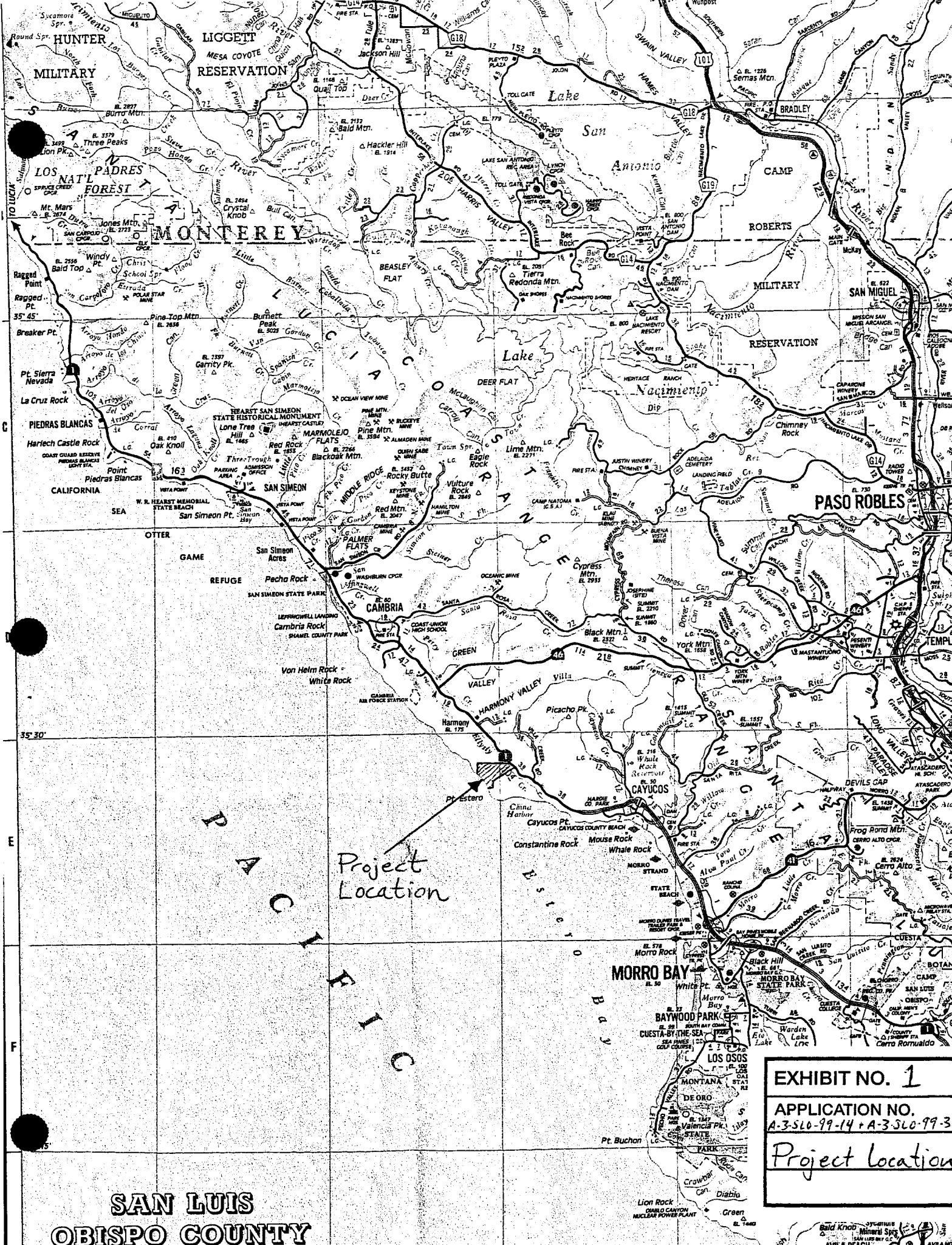
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed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

San Luis Obispo County certified a Negative Declaration for the Lot Line Adjustment on September 11, 1995, and a Negative Declaration roadway project and January 26, 1999. Both of these Negative Declarations include mitigation measures that have been incorporated into the terms of the County's approvals, and are intended to prevent the project from having a significant impact on the environment. These mitigation measures continue to apply to the project, except where they may conflict with the project revisions and conditions of approval adopted by the Commission (please refer to Special Condition 1).

As detailed in the findings of this staff report, and the findings previously adopted by the Commission with respect to the Substantial Issue Determination, the Commission has identified environmental impacts of the project that were not effectively addressed by the

certified Negative Declarations. In order to address these issue, the applicant has revised the projects, and the Commission has adopted Special Conditions of approval, which will prevent the Lot Line Adjustment and roadway projects from having a significant adverse impact on the environment within the meaning of CEQA.

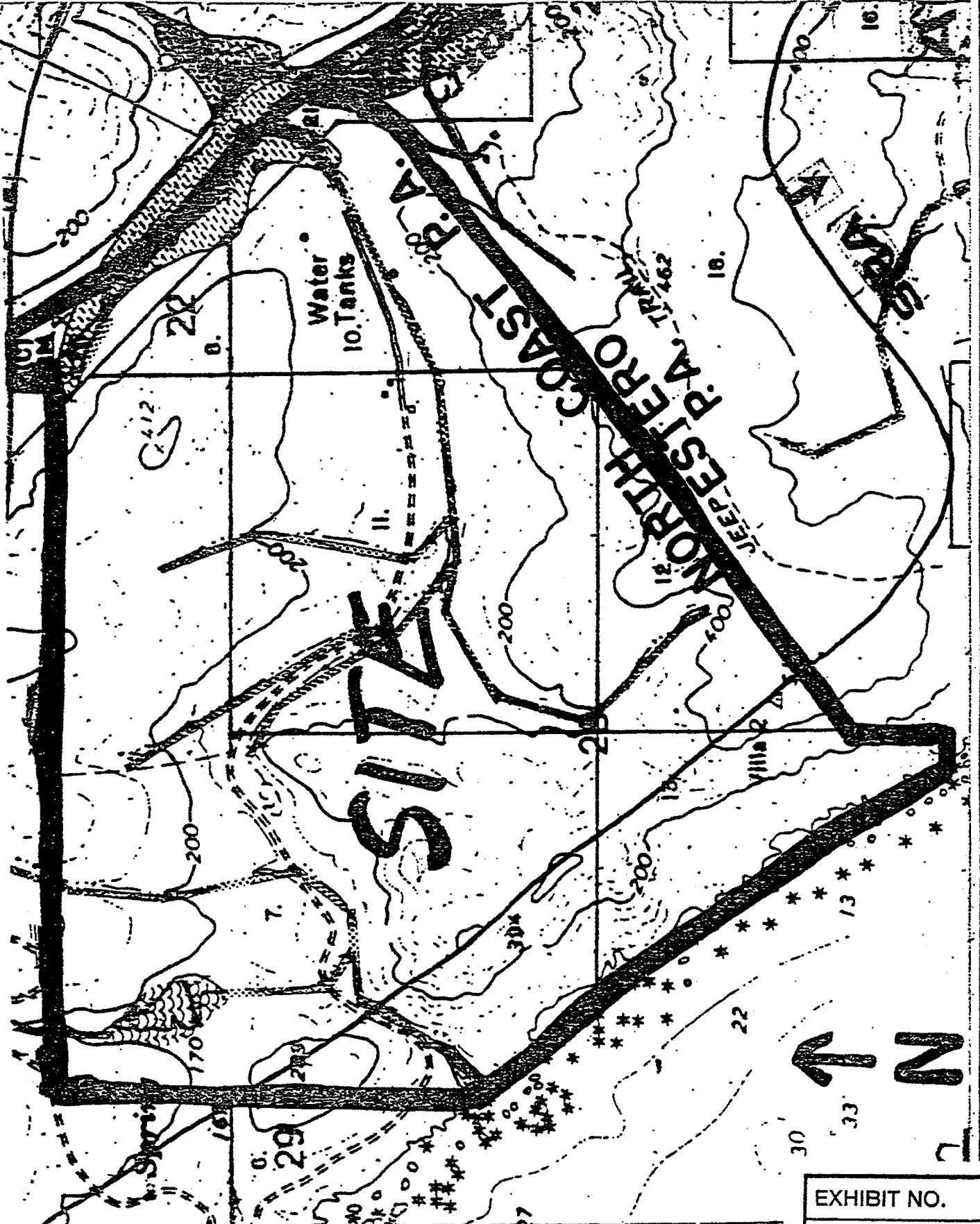




**SAN LUIS
OBISPO COUNTY**

EXHIBIT NO. 1
APPLICATION NO.
A-3-SLO-99-14 + A-3-SLO-99-32
Project Location

Bald Knob, Mineral Spring, San Luis Obispo, AVILA BEACH, AVILA NOT SPRING



PROJECT
MORRO BAY LTD
D970195D



EXHIBIT
LAND USE CRT

EXHIBIT NO. **2**
 APPLICATION NO.
43-360-99-14 + 43-360-99-22
LCP Map

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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OUR FILE NUMBER

XMK-68736

July 20, 1999

VIA FACSIMILE AND U.S. MAIL

Mr. Steve Monowitz
California Coastal Commission
725 Front Street
Santa Cruz, CA 95060

Re: Coastal Commission Appeal No. SLO-99-032

Dear Steve:

On behalf of Morro Bay Limited, this letter is to provide you with formal notification of recent revisions to the Morro Bay Ltd. permit application before the Commission on appeal, No. A-3-SLO-99-032. These revisions to the application are based on our extensive collaboration with you, Lee Otter and Dianne Landry of the Coastal Commission Central Coast Area office, to ensure that the application fully and completely responds to the concerns raised in the recent notice of appeal.

On the basis of these changes, combined with mutually agreeable conditions to be included with the permit, we believe the application is fully consistent with Coastal Act policies and warrants approved by the Commission.

As per your request, and to facilitate an understanding of the substance of our project modifications, the following is a description of the revised project. While key tables and support material are attached to this letter, additional detailed maps and technical materials you requested have been dispatched to your office directly by Mr. Dan Lloyd of Engineering Development Associates under separate cover. These materials correspond to your previous meetings with Mr. Lloyd and

EXHIBIT NO. 3, p 1

APPLICATION NO.
A-3-SLO-99-14 + A-3-SLO-99-32

Revised Project Descriptio

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July 20, 1999
Page 2

myself, and should demonstrate that all issues raised in the appeal have been addressed.

1. Parcel Map Modification and Agricultural Land Use Policies 1 and 2

The parcel map for the Property has been revised to further reduce and cluster each of the parcels to the maximum extent feasible, and has significantly increased the primary agricultural parcel (from 460.94 acres to 511.94 acres) In addition, the applicant agrees to place an agricultural easement on each of the 8 remaining parcels, this adds 149.9 acres for a total agricultural use of 654.41 acres outside the buildable area, continuous with the larger grazing parcel. This lot division is designed to maximize and enhance the agricultural viability of all parcels and will ensure maximum utilization of prime agricultural soils. Additionally, building areas on the site have been carefully selected in collaboration with Commission and County staff to completely avoid impacts on prime soils, views, wetlands or other natural resources such as marine mammal haul-out areas.

By virtue of these adjustments the application satisfies LCP Policies 1 and 2 to maximize preservation of agricultural lands, and to minimize non-agricultural uses, and to avoid land divisions which would limit potential agricultural capacity.

2. Minimized Parcel Size and Enhanced Agricultural Viability as per Coastal Land Use Ordinances (CZLUO) 23.04.024(b) and (f)

While the Notice of Appeal raised some concern that the grazing parcels on site were less than the 320 acre minimum parcel size, this is not correct. The grazing parcel (Parcel 9) approved by the County was over 460.94 acres. The viability of the potential agricultural land has been further increased in the revised plan to exceed 511 acres, by further reducing the residential parcels sizes. When combined with the adjacent agricultural easements on the residential parcels, the agricultural area will exceed 650 acres. It is notable that the agricultural easements and building sites have been designated to maximize the connectivity of the agricultural lands. Detailed figures are included on the EDA maps and tables already provided to staff and attached hereto. This directly responds to staff's request for additional cluster and residential parcel size reduction.

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Exhibit 3, p. 2

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3. Siting of Non- Agricultural Structures (CZLUO 23.04.050) and Viewshed Protection as per CZLUO 23.04.021(c)

The buildable or developable areas on each site has been selected with several key environmental factors in mind. First, to avoid location on ridgetops or other public viewsheds. Secondly, to avoid silhouettes against the skyline from public roads, including Highway One and Highway 46. We believe all sites achieve these criteria. In addition, we have selected sites which are clustered below the western ridge and set back over 1000 feet from the shoreline to avoid impacts on marine mammal habitat. Visual studies submitted with this application, and supplemental analysis for this appeal verify that no protected viewsheds are impacted by this project. Visibility from Highway 46, while remote (over 6 miles) can be completely mitigated by use of appropriate building materials and vegetation. To further reduce visual impacts, the applicant agrees to use non-reflective building materials and to downlight where feasible. The original buildable areas on Parcels 8 and 9 have been eliminated, further clustering all development on the inside of the western ridge of the property. This was done as per staff request and is reflected on the maps submitted by EDA.

4. Water and Sewer Capacity

In addition to the water and sewer capacity materials provided to the County and the Commission to date, we have conducted additional analysis which demonstrates these sites have more than adequate water and sewer disposal capacity than required by the County for these services. Written verification of this capacity from Creek Laboratories is attached. As you have asked for review of these materials by from the County Environmental Health Department, we have made such a request, and we anticipate a response from their office today. We will forward a copy of their written response upon receipt. In any event, we believe this new information more than satisfies any concerns raised in the appeal.

5. Roadway and Grading Reductions: Avoidance and Setback from Wetland Areas

As a result of the revised parcel layout, we have been able to extensively reduce proposed road alignments and grading on the site. The reductions in the amount of roadway is more than 4000 linear feet and grading has been reduced by

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Exhibit 3, p. 3

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approximately 30%. (see materials supplied by EDA). All roadways and development will be setback at least 100 feet from wetlands where feasible. Development closer than 100 feet will be subject to review and approval by Commission staff, in order to ensure that inappropriate grading impacts would not result from a 100 foot setback.

6. Coastal Access Opportunities

As per our discussion with staff, we do not believe that vertical access through these parcels is appropriate due to key factors included in CZLUO 23.04.420, nor do we believe such access is warranted by any impacts which may be caused by the project. As noted by the County, the coastal bluff is over 1.4 miles from the entrance to the site, and is too high for safe public access without substantial improvements discouraged by other coastal policies. In addition, the active agricultural use of the property would be inconsistent with vertical access. The applicant, however, is willing to consider lateral access 50 feet from the mean high tide in the future if a qualified public or private entity were prepared to take responsibility for improvement, management and liability for such access. We are prepared to make a limited offer of dedication to the Commission for such access under these conditions.

7. Conditions to Approval

The applicant has agreed to additional amendments to the permit in the form of conditions which will need to be reviewed and approved by staff before construction. We also are willing to include certain conditions, such as setbacks, building material restrictions, and agricultural restrictions in the form of CC& R's as appropriate.

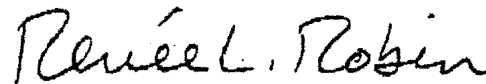
A-3-SLO-99-14 + A-3-SLO-99-32
Exhibit 3, p. 4

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Steve Monowitz
July 20, 1999
Page 5

We hope this information is helpful to your evaluation of this matter, and that you will agree the applicant has taken every possible measure to satisfy Coastal Act policies. Please contact me or Dan Lloyd if you have any questions or need any additional materials.

Very truly yours,



Renee L. Robin

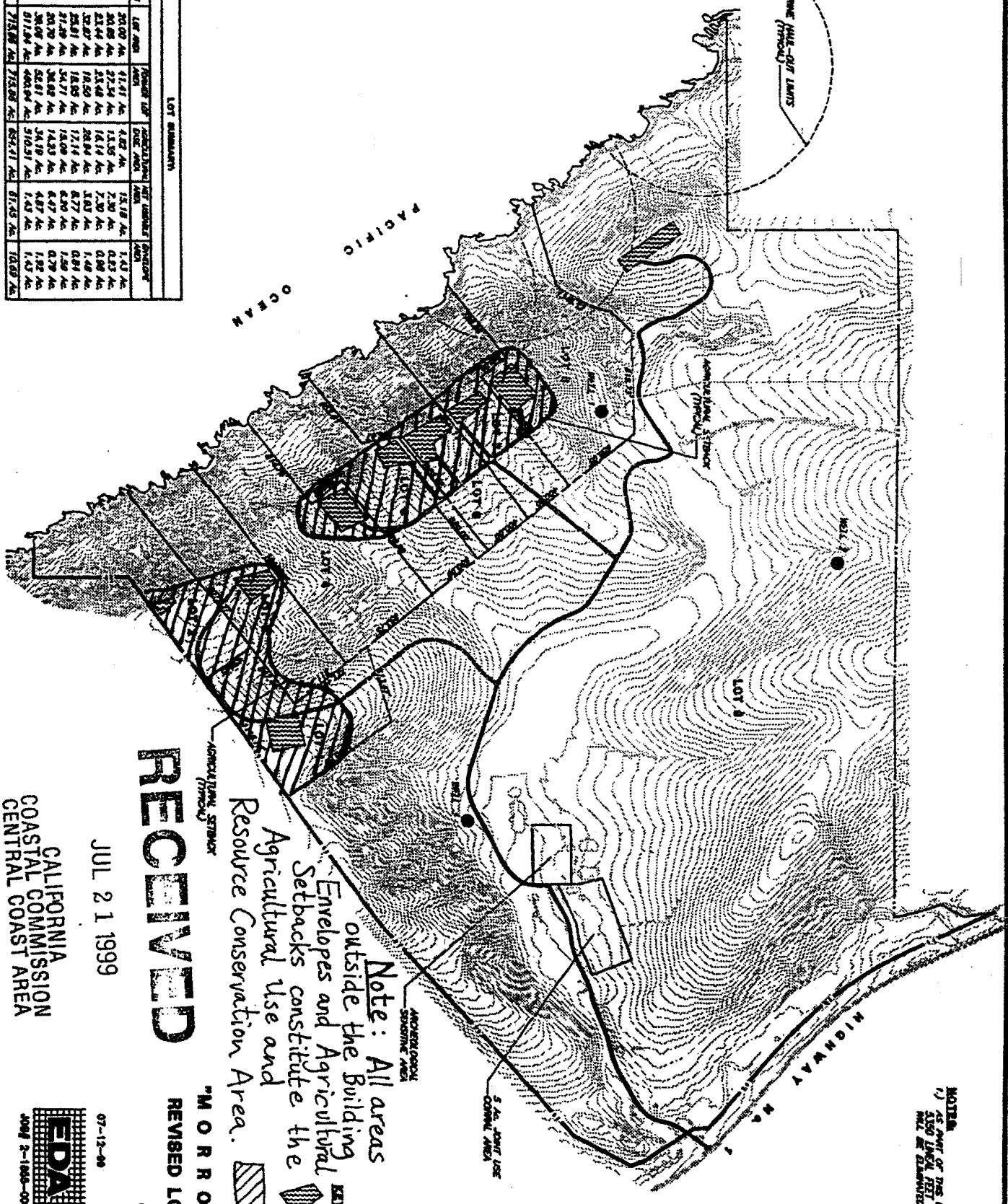
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SF-FLRLETXMK61156320.1

cc: Ms. Dianne Landry
Mr. Lee Otter
Mr. Dan Lloyd
Mr. Monty Ormsby
Mr. Robert Philibosian

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Exhibit 3, p. 5

LOT	ACRES	PERCENTAGE OF TOTAL	PERCENTAGE OF TOTAL	PERCENTAGE OF TOTAL
1	1.43	0.03	0.03	0.03
2	1.43	0.03	0.03	0.03
3	1.43	0.03	0.03	0.03
4	1.43	0.03	0.03	0.03
5	1.43	0.03	0.03	0.03
6	1.43	0.03	0.03	0.03
7	1.43	0.03	0.03	0.03
8	1.43	0.03	0.03	0.03
9	1.43	0.03	0.03	0.03
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44	1.43	0.03	0.03	0.03
45	1.43	0.03	0.03	0.03
46	1.43	0.03	0.03	0.03
47	1.43	0.03	0.03	0.03
48	1.43	0.03	0.03	0.03
49	1.43	0.03	0.03	0.03
50	1.43	0.03	0.03	0.03
51	1.43	0.03	0.03	0.03
52	1.43	0.03	0.03	0.03
53	1.43	0.03	0.03	0.03
54	1.43	0.03	0.03	0.03
55	1.43	0.03	0.03	0.03
56	1.43	0.03	0.03	0.03
57	1.43	0.03	0.03	0.03
58	1.43	0.03	0.03	0.03
59	1.43	0.03	0.03	0.03
60	1.43	0.03	0.03	0.03
61	1.43	0.03	0.03	0.03
62	1.43	0.03	0.03	0.03
63	1.43	0.03	0.03	0.03
64	1.43	0.03	0.03	0.03
65	1.43	0.03	0.03	0.03
66	1.43	0.03	0.03	0.03
67	1.43	0.03	0.03	0.03
68	1.43	0.03	0.03	0.03
69	1.43	0.03	0.03	0.03
70	1.43	0.03	0.03	0.03
71	1.43	0.03	0.03	0.03
72	1.43	0.03	0.03	0.03
73	1.43	0.03	0.03	0.03
74	1.43	0.03	0.03	0.03
75	1.43	0.03	0.03	0.03
76	1.43	0.03	0.03	0.03
77	1.43	0.03	0.03	0.03
78	1.43	0.03	0.03	0.03
79	1.43	0.03	0.03	0.03
80	1.43	0.03	0.03	0.03
81	1.43	0.03	0.03	0.03
82	1.43	0.03	0.03	0.03
83	1.43	0.03	0.03	0.03
84	1.43	0.03	0.03	0.03
85	1.43	0.03	0.03	0.03
86	1.43	0.03	0.03	0.03
87	1.43	0.03	0.03	0.03
88	1.43	0.03	0.03	0.03
89	1.43	0.03	0.03	0.03
90	1.43	0.03	0.03	0.03
91	1.43	0.03	0.03	0.03
92	1.43	0.03	0.03	0.03
93	1.43	0.03	0.03	0.03
94	1.43	0.03	0.03	0.03
95	1.43	0.03	0.03	0.03
96	1.43	0.03	0.03	0.03
97	1.43	0.03	0.03	0.03
98	1.43	0.03	0.03	0.03
99	1.43	0.03	0.03	0.03
100	1.43	0.03	0.03	0.03



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 JUL 21 1999
 CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

Note: All areas outside the Building Envelopes and Agricultural Setbacks constitute the Resource Conservation Area.

MORRO BAY LTD.
 REVISED LOT CONFIGURATION
 POB
 COAL 94-190

07-13-98
EDA
 409F 2-1008-000
 SCALE 1" = 1'-00"
 DRAWN BY KJM

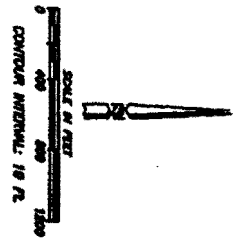
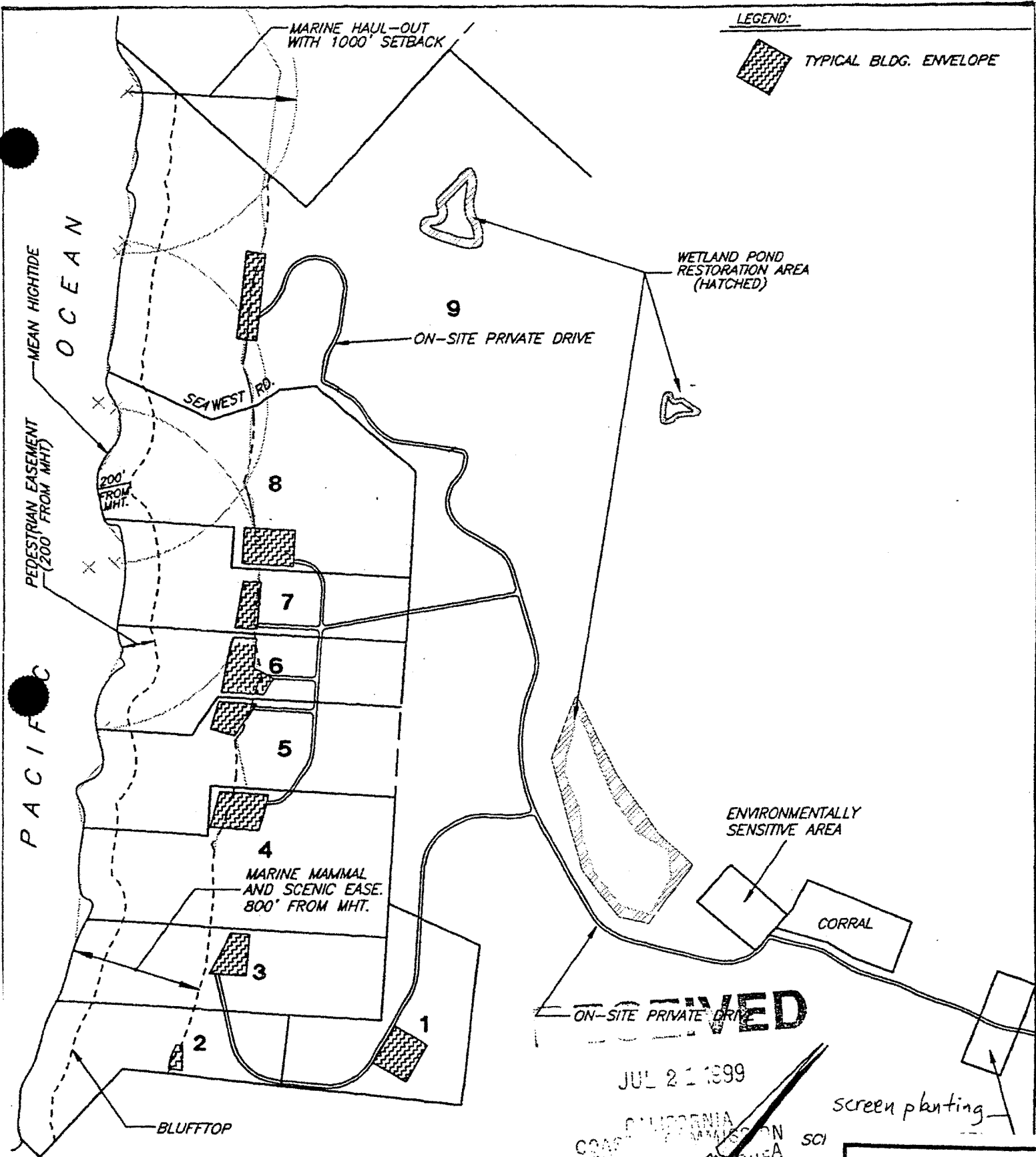


EXHIBIT NO. 4
 APPLICATION NO.
 A-3-SLO-99-14 + A-3-SLO-99-32
 Revised Project
 Plans

NOTES
 1) AS PART OF THIS LOT RE-CONFIGURATION AGREEMENT, THE APPLICANT HAS AGREED TO PROVIDE THE FOLLOWING INFORMATION:



LEGEND:



TYPICAL BLDG. ENVELOPE

PORTIONS OF SECTIONS 21, 22, 27, 28, 29, AND 33 OF TOWNSHIP 28 SOUTH, RANGE 9 EAST, MOUNT DIABLO MERIDIAN, AND A PORTION OF LOT NO. 38 OF THE RANCHO SAN GERONIMO AS SHOWN IN BOOK B PATENT MAPS AT PAGE 85 COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

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JUL 21 1999

CALIFORNIA
COASTAL COMMISSION
GENERAL OFFICE

screen planting

SCALE: 1" = 800'

EXHIBIT NO. 5
APPLICATION NO.
A-3-SLO-99-14 + A-3-SLO-99-32
Revised Environmental
Constraints Map and
Proposed Lateral
Access Easement

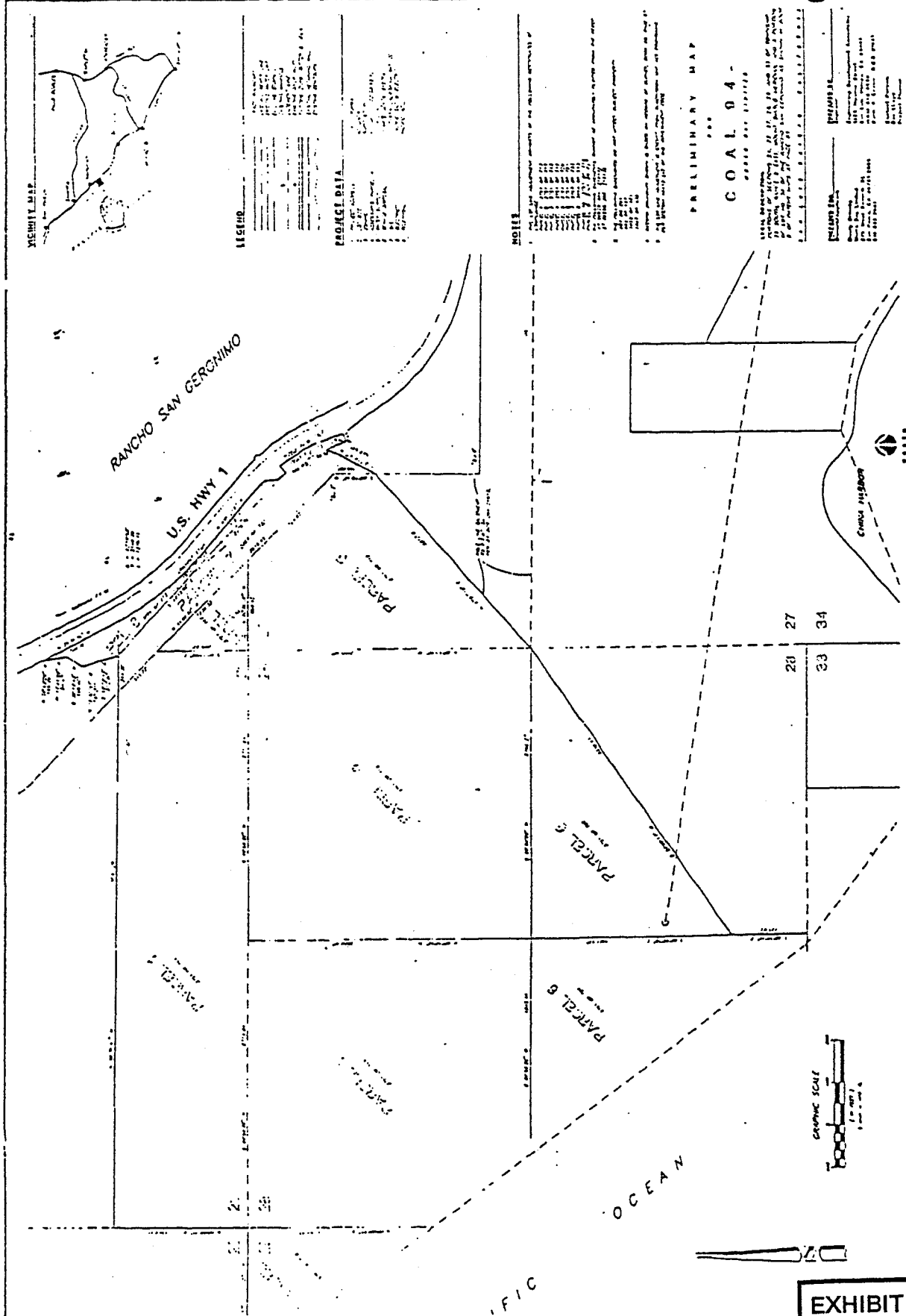
EDA ENGINEERING
DEVELOPMENT
ASSOCIATES
ENGINEERING - LAND SURVEYING - PLANNING
1320 NIPOMO STREET, SAN LUIS OBISPO, CA 93401

JOB NO. 2-1855-000

ENVIRONMENTAL CONSTRAINTS MAP

SHEET 1 OF 1

8-7-19



PROJECT
MORRO BAY LIMITED/EDA
LOT LINE ADJUSTMENT
GOAL 94-130

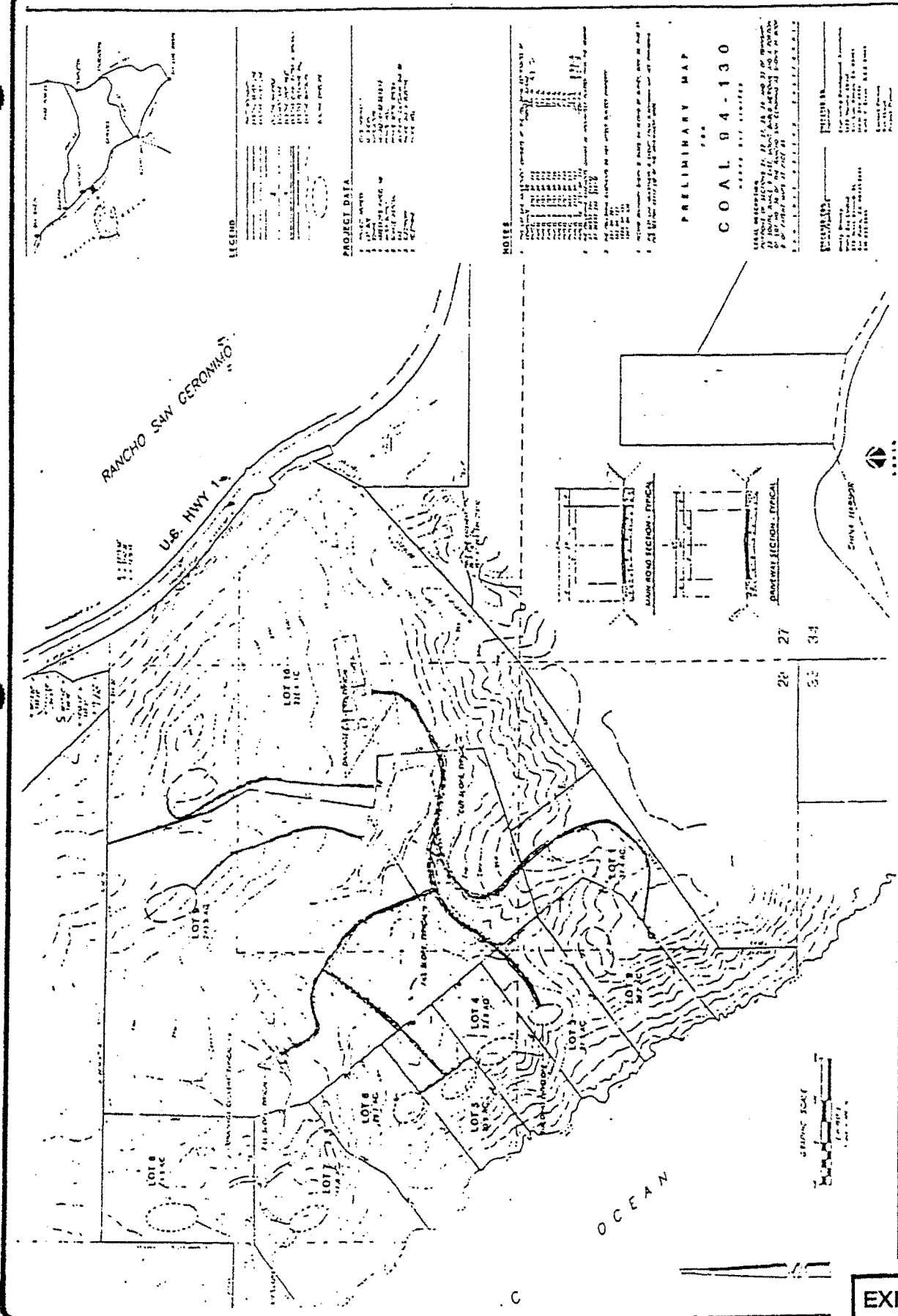


EXHIBIT
EXISTING &
CONFIGUR.

EXHIBIT NO.
 APPLICATION NO.
 A-3-560-99-14 + A-3-560-99-32
 Existing Parcel
 Configuration

8-7-21

Figure 4
Proposed Lot Line Adjustment
Morro Bay, LTD



LEGEND

... ..

PROJECT DATA

PROJECT NO. ...

DATE ...

... ..

NOTES

1. THIS PLAN IS THE PROPERTY OF ...

2. THE ...

3. ...

4. ...

5. ...

PRELIMINARY MAP

COAL 94-130

... ..

... ..

... ..

... ..

PROJECT
**MORRO BAY LIMITED/EDA
LOT LINE ADJUSTMENT
COAL 94-130**



EXHIBIT
**PROPOSED
ADJUSTME**

EXHIBIT NO. 7
APPLICATION NO.
A-3-560-99-14 + A-3-560-99-32
Original lot line
Adjustment

28 S.
1000
FEET

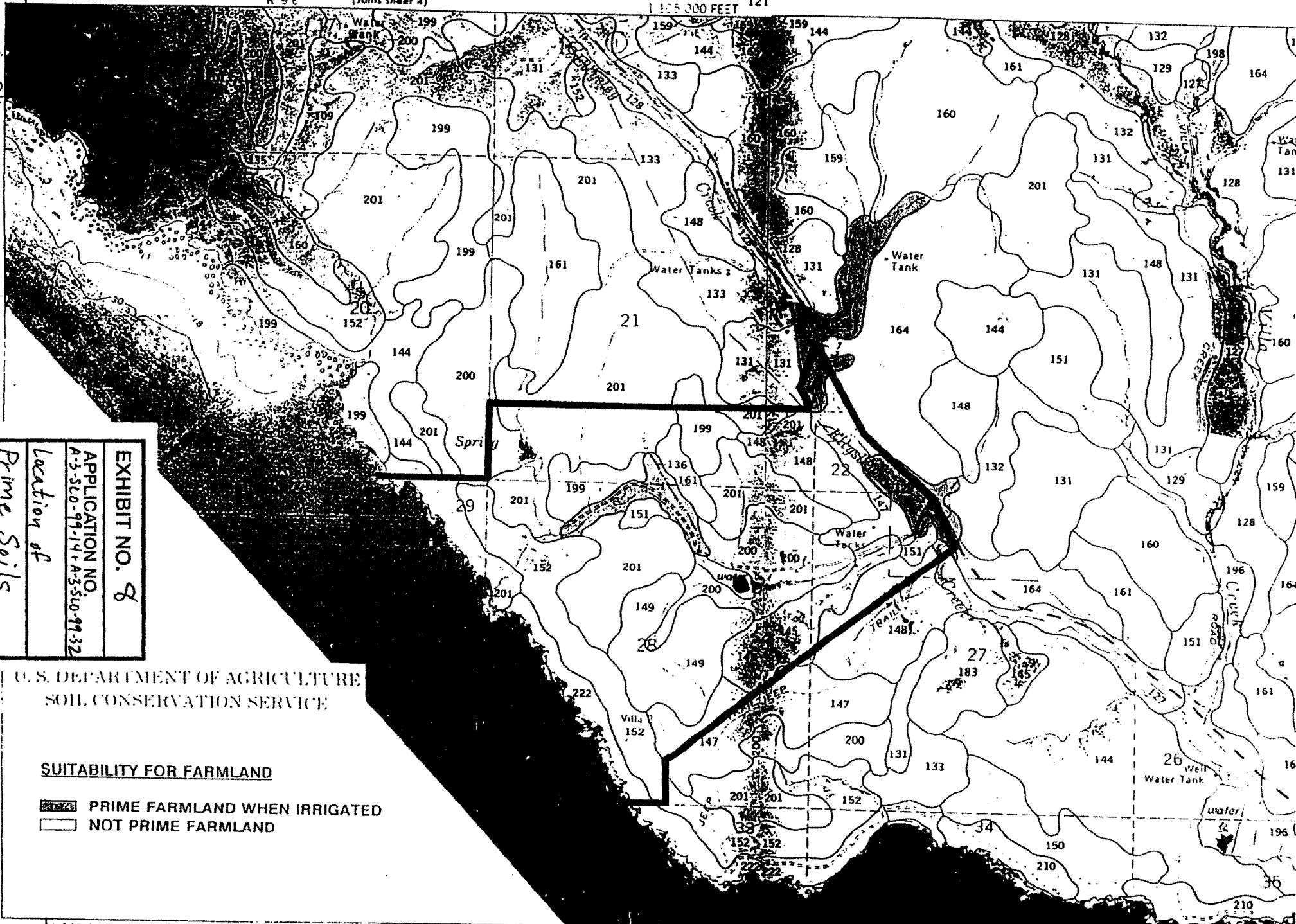


EXHIBIT NO. 2
APPLICATION NO. A-3-510-97-14 + A-3-510-97-32
Location of Prime Soils

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

SUITABILITY FOR FARMLAND

-  PRIME FARMLAND WHEN IRRIGATED
-  NOT PRIME FARMLAND

INSET B

R 9 F (Joins sheet 4)

1:100,000 FEET

85
000
E.L.T.

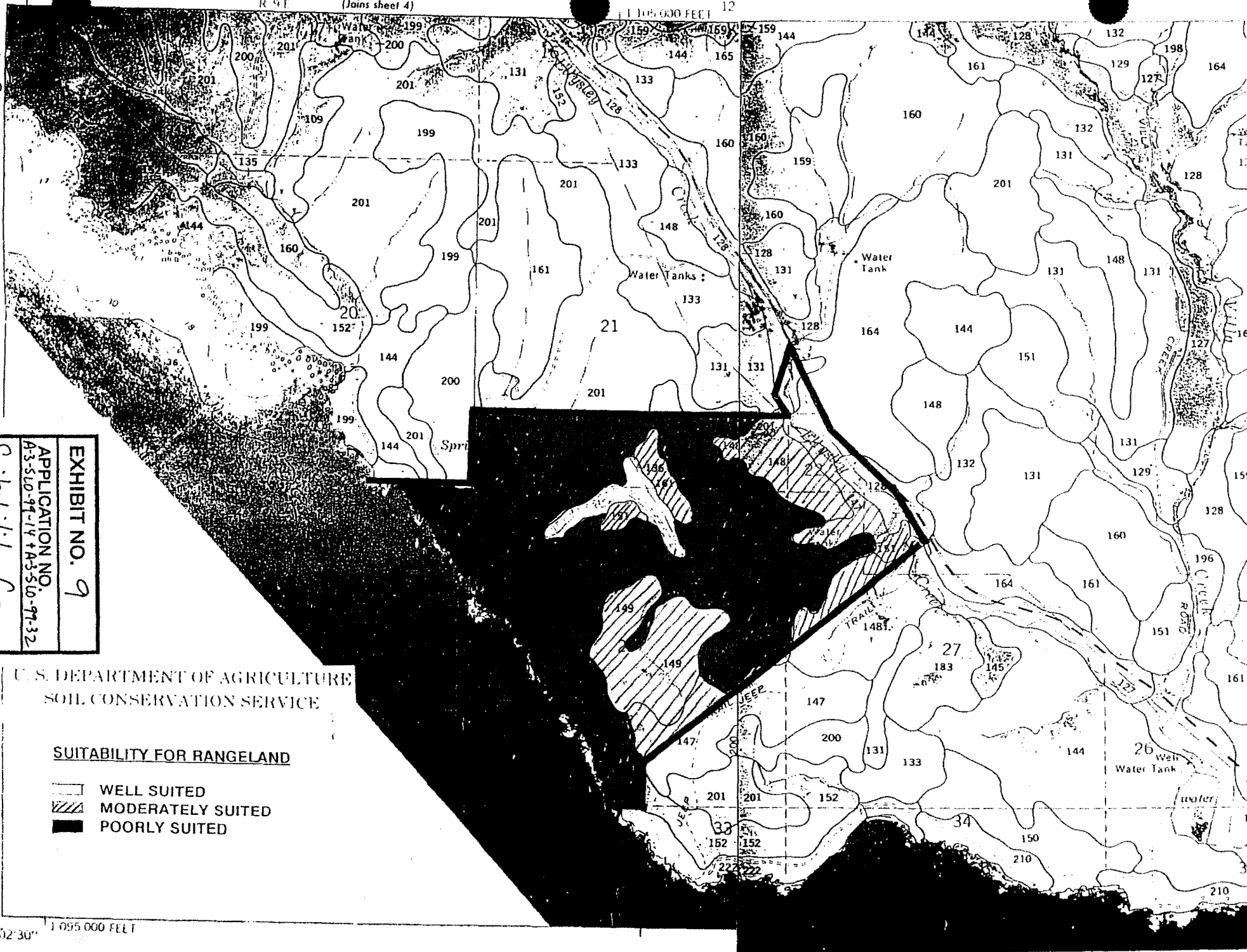





EXHIBIT NO. 9
 APPLICATION NO. A-3-SUD-97-14 + A-3-SUD-97-32
 Suitability for Rangeland

U.S. DEPARTMENT OF AGRICULTURE
 SOIL CONSERVATION SERVICE

SUITABILITY FOR RANGELAND

-  WELL SUITED
-  MODERATELY SUITED
-  POORLY SUITED

21°02'30" 1:95,000 FEET



COUNTY OF SAN LUIS OBISPO
HEALTH AGENCY
 PUBLIC HEALTH DEPARTMENT
 Environmental Health Division
 2156 Sierra Way • P.O. Box 1489
 San Luis Obispo, California 93406-1489
 Phone: (805) 781-5544 FAX: (805) 781-4211

KM YUK

Susan G. Zapeda, Ph.D.
 Health Agency Director

Gregory Thomas, M.D., M.P.H.
 Health Officer

Curtis A. Betson, R.E.H.S.
 Director

JUL 20 1999

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JUL 21 1999

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

Engineering Development Associates, Inc.
 1320 Nipomo Street
 San Luis Obispo CA 93401

ATTN: DAN LLOYD

RE: MORRO BAY LTD. (ORMSBY)/WATER SUPPLY AND WASTEWATER
 DISPOSAL AVAILABILITY

Water Supply

This office has reviewed onsite water supply information for the above noted property. Twenty-four (24) hour water well production tests conducted by Smith & Smith in June of 1997, show three water wells capable of producing 10, 10 and 30 gallons per minute respectively. Be advised that State Health Department Standards would require a minimum of 12 gallons per minute be made available to meet maximum day demand for a small community water system. Even though water quality testing shows iron, manganese and total dissolved solids requiring treatment, the Division would expect an adequate water supply to be available to the nine parcels.

Wastewater Disposal

Reviewed soil testing information included submitted percolation test results from 1984, and existing Health Department file data. Be advised that soil testing analyzes conducted in 1984 should be considered to be baseline only information at this point in time. The test results do offer a preliminary look at site conditions for proposed onsite systems. Although said testing results indicate soils to be generally satisfactory for onsite systems, it is important to note that Cleath & Associates and Medall Geotechnical Associates, Inc. have also analyzed site soils in a 1995 geological hazards study. The study characterized site soils as generally providing poor drainage, moderate to high erodibility, low to moderate shrink-swell potential and within the approved building envelopes, concerns regarding slope severity and depth to bedrock. Based on this information, the County Planning staff report for COAL 94-130 indicated that due to the severity of slopes and shallow bedrock, onsite systems may be required to locate outside respective building envelopes.

H:\COMMON\WP\DOCUMENT\TRICHORMSBY.DOC

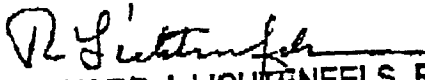
EXHIBIT NO. 10, p. 1
APPLICATION NO. A-3-510-99-14 + A-3-510-99-32
Water + Septic Information

July 20, 1999
Page 2

Dan Lloyd
Ormsby

Pursuant to our review of the information, this office recommends that careful consideration be given to the placement of onsite individual wastewater disposal systems. The Division further recommends that each system be designed and installation certified by a registered civil engineer, experienced in sanitary engineering.

Feel free to contact me should you have any questions regarding this matter.



RICHARD J. LICHTENFELS, R.E.H.S., M.P.H.
Supervising Environmental Health Specialist

c: Pat Beck, Co. Planning
Steve McMasters, Co. Planning

A-3-SLO-99-14 + A-3-SLO-99-32
Exhibit 10, p. 2

Smith & Smith
934 Paso Robles Street
Paso Robles, Calif. 93446

Smith & Smith

Monty Ormsby
346 Tejon Place
Palos Verdes Estates
California 90274

Dear Mr. Ormsby

Our company performed a continuous 24 hour pump test on your Coastal property in June of 1997. The attached Log will show a total 50 gallons per minute between the three wells. Which is nearly two times the amount required for your nine lots by the County of San Luis Obispo. The requirements has been 2.5 gallons per minute per lot; however things change but to date we have not been notified.

We have been in the water development business in San Luis Obispo County, Since the latter part of 49.

If need be, we would be willing to testify as to your job and the accuracy of your report. Feel free to call us any time.

Sincerely Yours,

E. F. Smith + P. O. Smith

E. F. Smith & P. O. Smith

.....
Changing the Way the World Communicates

A-3-SLO-99-14 + A-3-SLO-99-32
Exhibit 10, p. 3

Cleath & Associates

Engineering Geologists
Ground Water
(805) 543-1413
1390 Oceanaire Drive
San Luis Obispo
California 93405



July 12, 1999

Monty Ormsby
346 Tejon Place
Palos Verdes Estates, CA 90274

Subject: Water Availability for 9 proposed lots on the Sea West Ranch, Rancho Estero,
Between Highway 1 and the Coast near Harmony

Dear Mr. Ormsby:

Per your request, Cleath & Associates summarizes information on the water wells at the Sea West Ranch property which could serve as sources for a mutual water supply system for the proposed nine lots. A map showing the locations of the wells is attached along with the available well logs, pump test records, water quality information. Each of these wells, with the exception of the two Ellesley Creek wells, produce from totally different ground water sources.

The two old wells in the Ellesley Creek valley are shallow but have served the old farmhouse in the past. These produced 3.5 gallons per minute and 1.5 gallons per minute during a 4 hour test. These shallow wells are located such that they have a potential for bacterial contamination.

The Rauch Drilling Company well #1 was tested at 10 gpm for 24 hours and was found to have a high salt content (2 grams per litre).

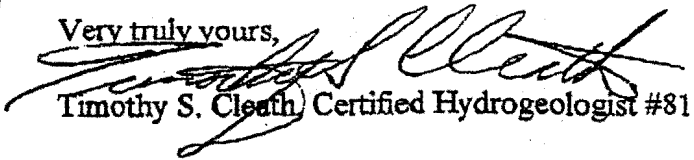
The Rauch Drilling Company well #2 was tested at 10 gpm for 24 hours and had acceptable water quality for primary drinking water constituents. The concentration of manganese was greater than the secondary drinking water standard, however.

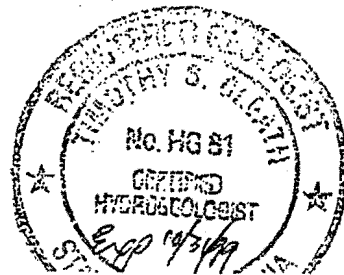
The Rauch Drilling Company well #3 was tested at 30 gpm for 24 hours and had acceptable water quality for primary drinking water constituents. The concentrations of iron and manganese were greater than the secondary drinking water standards.

In addition to these existing wells, there are other locations on the ranch where ground water could be encountered which have yet to be explored.

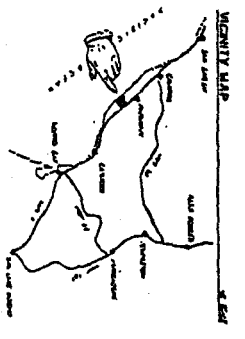
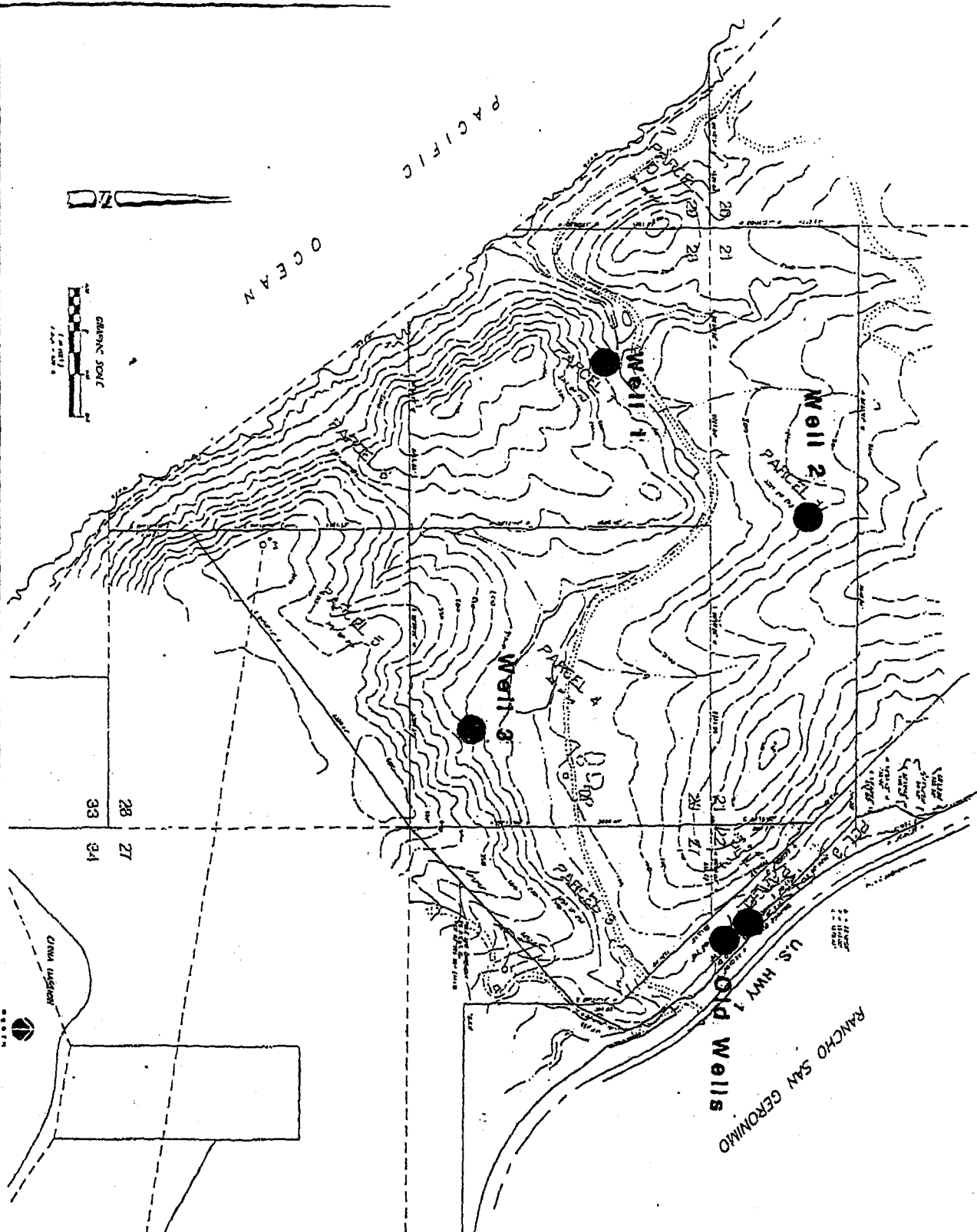
The existing facilities have the capacity to supply the proposed 9 lots with some treatment to remove iron and manganese.

Very truly yours,


Timothy S. Cleath, Certified Hydrogeologist #81



A-3-SLO-99-14 +
A-3-SLO-99-32
Exhibit 10,
p. 4



LEGEND

Contour lines: 10-foot interval
 100-foot interval
 200-foot interval
 300-foot interval
 400-foot interval
 500-foot interval
 600-foot interval
 700-foot interval
 800-foot interval
 900-foot interval
 1000-foot interval

PROJECT DATA

Project Name: COAL 94-
 Project No.: 3103751182
 Date: 1999
 Scale: 1" = 100'

NOTES

- This map was prepared by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.
- The data were collected by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.
- The data were processed by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.
- The data were plotted by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.
- The data were checked by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.
- The data were approved by the Surveying Department of the U.S. Geological Survey, Reston, Virginia.

PRELIMINARY MAP

COAL 94-

Scale: 1" = 100'

Date: 1999

23-66-07S-3-A-41-69-07S-3-2

Exhibit 10, p. 5

PHONE NO. : 3103751182

JUL 15 1999 12:15PM P4

California Coastal Commission Visual Resources Appeal Issues

The only visual resources issue discussed in the Coastal Commission's appeal is found under the heading "Reasons Supporting this Appeal", item no. 4. In this paragraph the following is stated:

..... *"While the building envelopes designated by the lot line adjustment have been designed to minimize visibility from Highway One, their ridgetop locations may be visible from Highway 46, especially in the morning hours when the sun would be reflected off of the future residences."*

Upon review of the proposed project site from Highway 46, I have the following comments:

1. The most favorable line of site to view the proposed project is at the highest points of Highway 46 as it traverses the pass and the Pacific comes into view. This is a direct line of site of approximately 6 to 7 miles, depending on the viewer's location along Highway 46. At lower elevations along Highway 46, topography associated with interceding mountain ranges screens the project site.
2. The areas along Highway 46 where the project site is potentially visible would include those areas of the Highway near the summit and from westbound travel lanes only. Viewing the site from the westbound travel lanes and at a distance of 6 to 7 miles would require prolonged periods of focus away from the primary cone of vision for travelers (i.e., beyond 45 degrees from the roadway centerline).
3. It was possible to view one ridgetop residence on an adjacent property from Highway 46, but only from a stationary vantage point and not facing in the direction of a westbound traveler (i.e., getting out of the vehicle at an established viewing point and carefully scanning the horizon). For location reference only, the residence is located approximately 1 to 2 miles to the north of the proposed residences and is that of the above referenced project appellant (refer to attached photo #1). It is my opinion that there are two reasons why this residence was visible. One is that I was not in a vehicle concentrating on the roadway or vistas within my primary cone of vision and the other is because the roof of the residence is comprised of a silver, corrugated metal material with considerably high reflection capacity (refer to attached photo #2).

It is my opinion that under optimum viewing conditions (e.g., on very clear days, when the sun is at the right angle), glare may be noticed by those traveling westbound on Highway 46 for a matter of only a few seconds (and only if reflective roofing materials are permitted to be used on the proposed residences). Glare from reflective roofing materials would be more noticeable for those who park along portions of Highway 46 to view the coastline from that vantage point.

It is also my opinion that glare from windows of proposed residences will not be an issue due to the fact that residences potentially visible from points along Highway 46 would be located at elevations substantially less than the elevations of Highway 46 vantage points. This is an important physical characteristic of the situation due to the "law of reflection" being an applicable consideration. The law of reflection basically states that the angle of incidence equals

the angle of reflection (refer to attachment for further detail). In other words, for there to be reflective glare from windows of the proposed residences as seen from the higher elevations of Highway 46, the sun would probably need to rise at an elevation comparable to sea level and be completely unimpeded by mountains and other intervening topography. Therefore, I feel that it is physically impossible for there to be a window glare issue as seen from Highway 46.

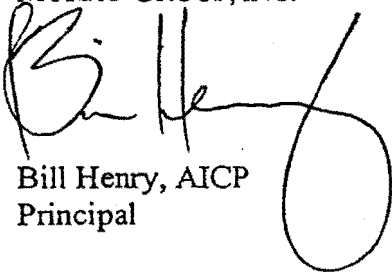
Instead of belaboring this point further, I think that a more proactive approach should be taken which would include adopting measures to eliminate the potential for glare as seen from Highway 46. In order to accomplish this I would propose the following measures:

1. Prohibit the use of reflective roofing and exterior siding materials and recommend the use of only earth tone and non-reflective materials; and,
2. Propose the use of extended eaves to minimize glare from windows closest to the roofline.

If you have any questions regarding my comments and opinions expressed above or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

MORRO GROUP, INC.



Bill Henry, AICP
Principal

Attachments:

- 1) Appeal Letters and Reports
- 2) Color Photo Exhibits
- 3) Law of Reflection Exhibit

c: Dan Lloyd
EDA, Inc.

A-3-SLD-99-14 +
A-3-SLD-99-32
Exhibit 11, p. 2

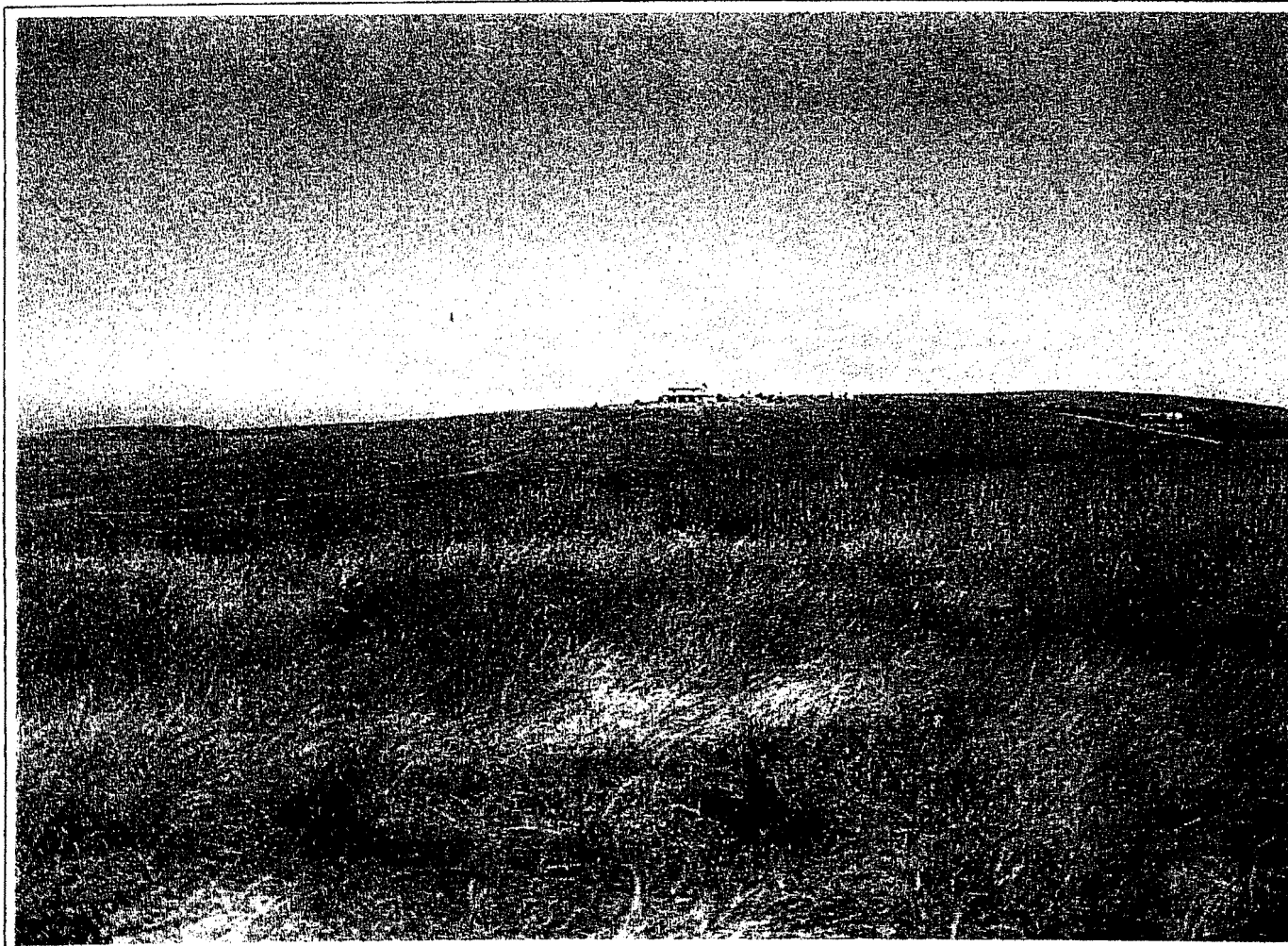


Photo #1:
Viewing in a northerly direction (at a distance of approximately 0.5 to 1.0 mile). Residence located mid-photo shows metallic roofing material which is an example of a roofing material that should be avoided in construction of proposed residences.

A-3-SLO-99-14 +
A-3-SLO-99-32
Exhibit 11, P. 3

Morro Bay Ltd.
Visual Resources

Figure 1

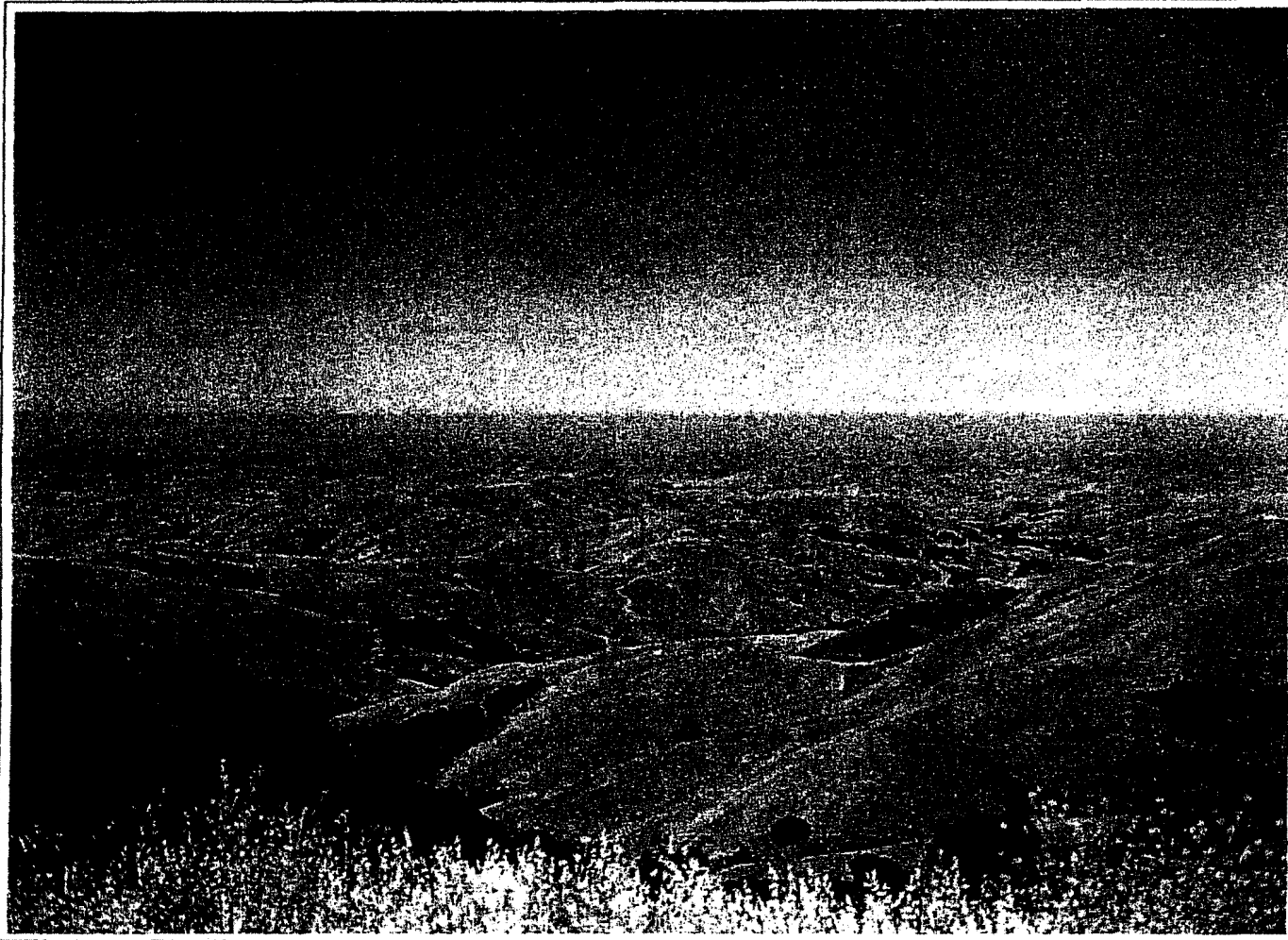


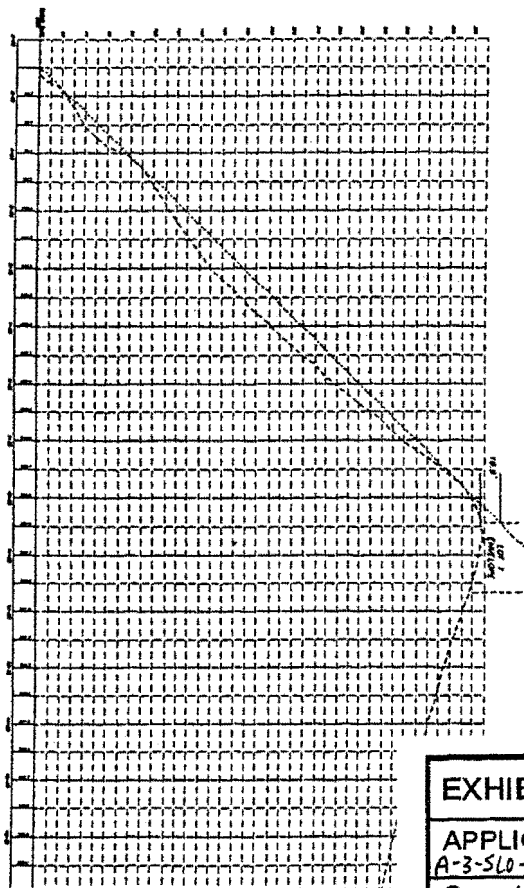
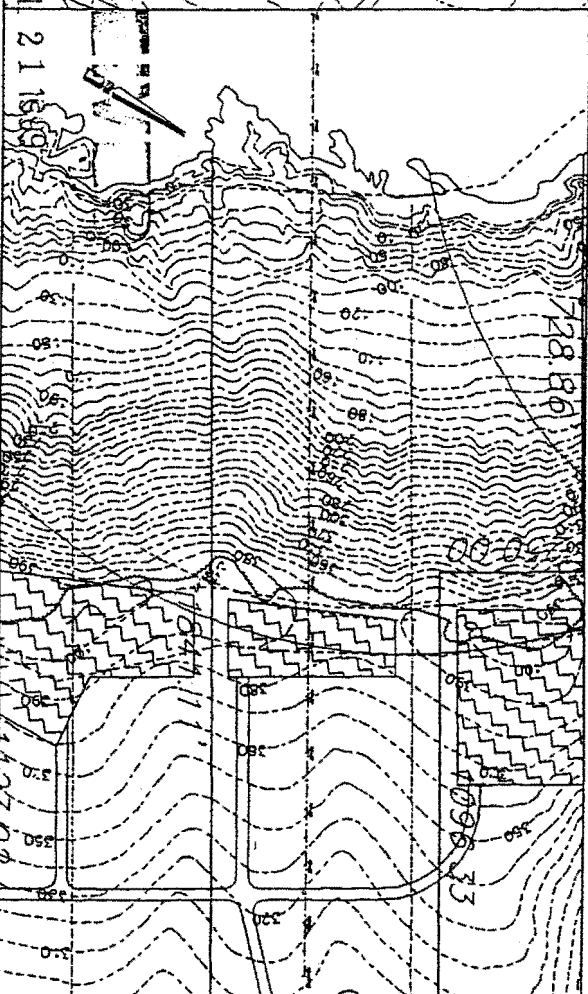
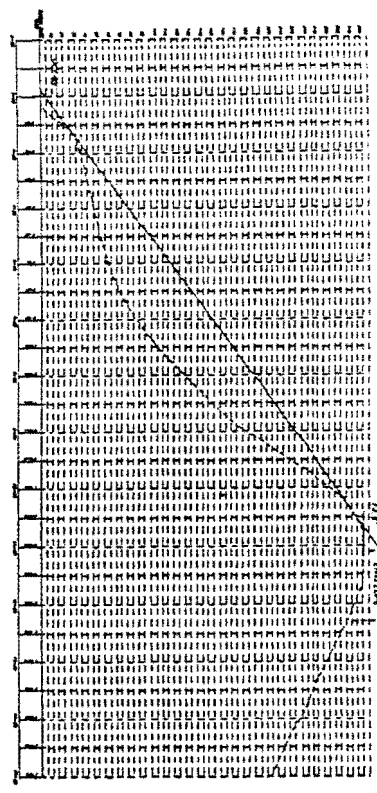
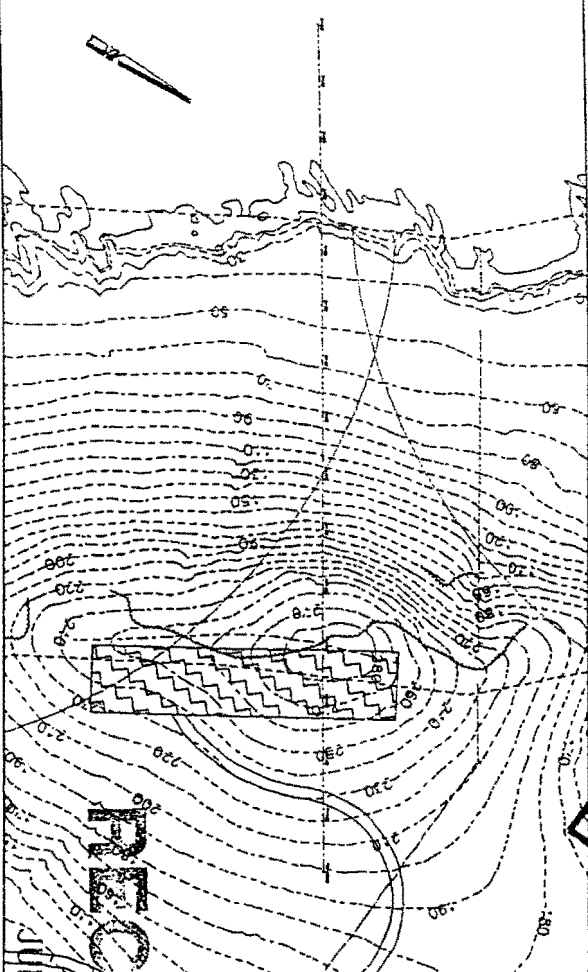
Photo #2:

Viewing in a westerly direction from a Highway 46 pull-out area near the summit. This photo taken using 50mm lens (comparable to human eye) approximately 6 to 7 miles from the project site. Location of project site (Lots 1 through 7) can be seen along the most distant ridge line which is backed by the Pacific Ocean (approximately 1.75 - 2.0 inches from left edge of photo). The reflective roofing material of the residence shown in Photo #1 can be seen as a small white dot approximately 4.0 inches from left edge of photo.

A-3-510-99-14 +
A-3-510-99-32
Exhibit 11, p. 4

Morro Bay Ltd.
Visual Resources

Figure 2



CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

21 15 19

MORRO BAY LTD.
REVISED LOT CONFIGURATION
FOR
COUNCIL 94-128

07-12-98
SCALE 1" = 1'-00"
EDA
2-183-000
M.B. N.H.

EXHIBIT NO. 12
APPLICATION NO.
A-3-SLO-99-14 + A-3-SLO-99-32
Sample Visual Analysis
Used to determine
building envelopes and
avoid visibility from shoreline

EXHIBIT NO. 13

APPLICATION NO.
A-3-SLO-99-14 + A-3-SLO-99-52

Views of and from
Project Site

EXHIBIT B

CONDITIONS OF APPROVAL - COAL 94-130
MORRO BAY LIMITED/EDA

Lot Line Adjustment

EXHIBIT NO. <i>14, p. 1</i>
APPLICATION NO. <i>A-3-SLO-99-14, A-3-SLO-99-32</i>
<i>Local Conditions</i>
<i>of Approval</i>

ENVIRONMENTAL MITIGATION

Implementation

1. Prior to finaling the lot line adjustment, the applicant shall do the following:

Agreements

- a. Enter into an agreement for environmental mitigations to include the provisions noted below.
- b. Enter into a scenic preservation agreement to establish perpetual agricultural land use areas, open space and preservation areas and delineate building restriction areas.

CC&Rs

- c. Obtain approval from the county for CC&Rs for disclosure purposes, land use restrictions, building limitations, and architectural limitations; and assignment of road maintenance responsibilities, road and related access responsibilities.

Fencing

- d. Fence (or bond for fence) backside of coastal parcels #1 through 8 from agricultural parcels #9 and 10.
- e. Fence (or bond for fence) all wetlands areas (as shown on Environmental Constraints Map) to prevent destruction by cattle. Fencing to be of a type that allows for wildlife entry and exit, to be approved by the Environmental Coordinator.

Landscaping

- f. Submit a landscape plan for visual screening to the Department of Planning and Building for review and approval. Install (or bond for installation) landscaping prior to finaling the adjustment.

Wetlands

- g. Submit wetlands revegetation plan to the Department of Planning and Building for review and approval. Complete (or bond for) initial seeding for wetlands enhancement prior to finaling the adjustment.

Scenic Preservation Agreement

2. Prior to finaling the lot line adjustment, the applicant shall enter into a scenic preservation agreement with the county in a form prepared by County Counsel for the following purposes:
- a. To establish a building restriction area along the bluff face, for Parcels #1 though 8 for protection of marine mammals and open space preservation.
 - b. To establish and protect the wetlands revegetation areas throughout the site.

Ex. 14, p. 1

EXHIBIT B (Continued)

CONDITIONS OF APPROVAL -- COAL 94-130
MORRO BAY LIMITED/EDA

- c. To establish and protect in perpetuity the agricultural land use areas on parcels # 9 and 10 (minus the designated building areas, wetlands and allowing for siting of agricultural accessory structures subject to minor use permit approval).

Environmental Mitigations Agreement

3. Prior to finaling the lot line adjustment, the applicant shall enter into an agreement with the county, in a form acceptable to the County Counsel, whereby the applicant agrees, on behalf of himself and his successors in interest, that the following shall be done:

- a. Environmental Constraints Map. The applicant shall prepare an Environmental Constraints Map (ECM) which shall be attached to the environmental agreement. The ECM shall show all areas within each parcel to be protected or avoided due to identified constraints or environmentally sensitive areas. Development envelopes, utility easements or other easements, and the internal road system shall also be shown on the ECM and shall conform to the approved lot configuration map. The ECM shall be prepared by the applicant and submitted to the Department of Planning and Building for review and approval.
- b. Building Envelopes. The ECM shall include development restriction areas (bluff top, wetlands, visually sensitive areas, archaeological sites, other environmentally sensitive areas) and designated building envelopes. Designated building envelopes and areas have been located on each of the ten parcels by the applicant. Each development envelope shall contain a limited building site area (building envelope) as specified in the applicant's project description and shall comprise no more than 2 acres. All residential structures requiring a building permit shall be located within the designated building envelopes (except as provided for accessory structures). The ECM shall reflect recommended adjustments in the designated building sites included in the expanded initial study.

The designated building envelopes and building restriction areas shown on the ECM respond to presently identified environmental conditions, including slope stability, landslide potential, septic system siting, etc. The designated building envelopes have been designated to avoid archaeological sites, reduce biological impacts, avoid wetlands to the greatest extent possible, reduce visual impacts from State Highway 1, and reduce any potential geologic hazards.

A land use permit (minor use permit or development plan if otherwise required) shall be required for each residence and residential accessory structure. The designated 2 acre building envelopes shall be shown more precisely on the ECM, but must be in the general vicinity of the sites shown on the lot configuration map.

The applicant shall survey and stake the designated building envelope and the proposed revised location shown on the ECM, and clearly indicate on a site or plot plan the staked locations. The staked building site shall be available for inspection by the Department of Planning and Building.

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EXHIBIT B (Continued)

CONDITIONS OF APPROVAL -- COAL 94-130
MORRO BAY LIMITED/EDA

If the applicant wishes to relocate the building envelope, he shall have to demonstrate that the location has less or no greater potential to impact sensitive resources than areas within the development envelope, is not a geological hazard, and is not visible from the marine mammal haul out sites or State Highway 1.

Agricultural accessory structures (barns) may be located outside the designated residential building sites but shall require siting through the minor use permit approval process and shall address the same concerns and constraints noted for residential structures.

- c. Bluff Erosion. No development shall occur within 800 feet of the edge of the bluff or within 1000 feet of a marine mammal haul-out area if the activity areas are visible from the haul-out area. No land disturbance or structures shall occur within this area, and the area shall remain unimproved open space with pedestrian access only. Any CC&Rs prepared for the property shall identify the reasons for no development within this area, including geologic hazards, landslides, bluff erosion, sensitive plant and animal species, marine haul-out areas, etc.
- d. Geologic Hazards. Any geologic hazards that exist on the property and that have been identified in the Cleath & Associates Report (Cleath & Associates and Medall Geotechnical Associates, Inc., May 1995) shall be identified on the ECM.
- e. Drainage/Erosion. A sedimentation and erosion control plan shall be submitted for all construction activities (e.g. road improvements, residence construction, grading). The plan shall address both temporary measures during construction as well as long term drainage solutions. The drainage plan shall consider sensitive resources including archaeological areas, sensitive marine resources, botanical resources, coastal bluffs, wetlands areas, and other areas prone to erosion activities. All drainage plans shall be approved by County Engineering in consultation with the Department of Planning and Building.
- f. Wetlands Protection. All wetlands areas on the subject property shall be indicated on the ECM. Where there are any improvements (e.g., structures, road improvements, stone or other fencing requiring the use of motorized equipment) that will be within 100 feet of a wetlands area, these shall be noted on the ECM. The applicant shall include all measures to be used to avoid siltation, pollution, and removal of wetlands vegetation on the ECM. In addition, any construction that will occur within wetlands habitat shall be under the supervision of a qualified botanist with expertise in wetlands restoration. Any wetlands areas that are disturbed by construction shall be revegetated with appropriate wetlands plant species. The applicant shall retain at his expense a qualified botanist or landscape horticulturist approved by the Department of Planning and Building for monitoring of wetlands disturbance and for supervision of restoration of any wetlands areas.

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EXHIBIT B (Continued)

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- g. Ponds. The applicant shall retain at his expense a qualified botanist or landscape horticulturist with expertise in wetlands restoration to: 1) prepare a revegetation plan for the pond areas and who shall be responsible for overseeing the revegetation efforts. The applicant shall show verification (in the form of a contract) of the retention of the botanist and shall submit a draft revegetation plan for review and approval by the Department of Planning and Building.
- h. Visibility from Marine Mammal Haul Out Points. The applicant shall be required to demonstrate that the homes and any outdoor activity areas on Parcels #2 through 8 will not be visible from marine mammal haul out points along the coast. A diagram showing a line of sight from the nearest haul-out site showing the relationship between the proposed development and the location of the haul out sites would be acceptable proof. Non activity portions of proposed structures (e.g., roof, chimney, etc.) may be visible but these shall be shown on the line of sight drawings. Future development shall consider any known or identified haul out areas, and efforts or features that reduce or minimize long and short term impacts to these sites shall be considered and incorporated into the design, including design features that buffer or block potential sources of noise disturbance (e.g., garages and parking areas).
- i. Marine Mammal Haul Out Points. The applicant shall note the location of the known marine mammal haul-out points on the ECM. Prior to the development of roads or residences, the applicant shall incorporate language into the CC&Rs that informs all future property owners of the presence of marine mammals that are sensitive to human intrusion and/or disturbance. Included shall be an explanation of the sensitivity of the animals, examples of possible disturbance, and a disclosure that disturbance of the animals may be considered harassment and is illegal under the Marine Protection Act. The applicant shall consult with the National Marine Fisheries Service prior to the CC&Rs being reviewed and approved by the Department of Planning and Building.
- j. Construction of the Main Access Road. The applicant shall include a note on the construction plans that construction work on the main access road from the entrance to the corral area noted on the lot configuration map on Parcel #10 shall not occur during breeding and fledgling periods of the bald eagle and golden eagle. Construction for this portion of the road shall not occur during the months of April through July.
- k. Wetlands Protection Adjacent to Main Access Road. The applicant shall demonstrate that construction adjacent to wetland areas shall be under the supervision of a botanist or ornamental horticulturist acceptable to the Department of Planning and Building. The road shall be widened north of the existing road alignment to reduce any taking of wetlands areas. Appropriate silt fencing and/or other measures shall be noted on the grading plans for the road.

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EXHIBIT B (Continued)

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1. Ellysy Creek Entrance Crossing. The applicant shall retain a qualified expert acceptable to the Department of Planning and Building to determine any impacts on the tidewater goby and recommend mitigation measures, if necessary. A copy of the report shall be submitted to the Department of Planning and Building for review and approval.
- m. Revegetation of Cuts and Fills. A landscape plan shall be submitted in conformity with County requirements for all road cuts and fills. The applicant shall insure that the proposed planting will mature in two to three years and that the planting will be maintained until established (a minimum of three years).
- n. Alternative Building Envelopes and Exclusion Areas. The applicant shall show on the ECM the location of the building envelopes outside the exclusion line shown on Exhibit #1 attached to the developer's statement.
- o. Architectural Requirements for Parcels #1 and 2. For Parcels #1 and 2, the applicant shall demonstrate the following:
 - 1) The roofline shall not exceed 10 feet above the grade of the saddle.
 - 2) Architecture roof form be shaped similarly to that of the hill.
 - 3) Colors shall be limited to earthen tones--that blend with the natural landscape.
 - 4) Landscaping shall be planted to obscure the roof form but be kept low.
 - 5) Final design for the structures shall be prepared by a design professional and a follow up visual analysis shall be done to insure that the design does not intrude on the view.
 - 6) All development shall be consistent with North Coast Planning Area standard #6. Site Selection (visual mitigation).
- p. Landscaping Requirements for Parcel #10. A screen of low trees and native shrubs shall be planted parallel to Highway 1 on Parcel #10, as shown on Exhibit #1. The planting scheme shall be reviewed by a landscape architect, horticulturist or landscape planner to ensure that the grouping of the vegetation is arranged in a natural fashion and blends in with existing vegetation along Highway 1. The planting shall occur prior to development of roads or residences if not previously established.
- q. Architectural Requirements for Parcels #9 and 10. For Parcels #9 and 10, the applicant shall demonstrate the following:
 - 1) The roofline shall not exceed 10 feet above the grade of the saddle.
 - 2) Architectural roof form be shaped similarly to that of the hill.
 - 3) Colors shall be limited to earthen tones--that blend with the natural landscape.
 - 4) Landscaping shall be planted to obscure the roof form but be kept low.
 - 5) Final design for the structures shall be prepared by a design professional.
 - 6) A visual analysis shall be done to insure that the structures are not visible from Highway 1.

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EXHIBIT B (Continued)

CONDITIONS OF APPROVAL -- COAL 94-130
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- 7) All development shall be consistent with North Coast Planning Area standard #6. Site Selection (visual mitigation).
- r. Architectural Requirements. For all parcels, the applicant shall demonstrate the following:
- 1) All units shall be limited to a height of 22 feet above natural grade except where noted at 10 feet (Parcels #1, 2, 9 and 10).
 - 2) The architectural design shall provide for articulated roof forms which follow the general shapes of the hills and avoid flat planes which project against the sky in long straight lines or acute angles which may be considered intrusive to the existing natural character of the hills and vegetation.
 - 3) Areas adjacent to structures shall be landscaped with material to cover exposed ground surfaces, cut faces and retaining walls. Such landscaping, while meeting County Fire/CDF requirements shall be selected to be compatible with the existing native materials both in color and texture.
- s. Lighting. The applicant shall submit an exterior lighting plan indicating that all exterior lighting shall be low-level and shielded so that no exposed light element is visible to a public road or the ocean (marine mammal haul out points). All exterior fixtures shall be shielded in such a manner that the bare bulb or luminare is not directly visible beyond the residential property.
- t. Ancillary Structures. No ancillary structures for agricultural operations or residential use (such as corrals, water tanks, out buildings, gazebos, horse stalls) shall be visible from Highway 1, or the coastline, unless a visual study is undertaken to locate the facilities such that they do not silhouette and are screened from view. Any ancillary structures located outside the building envelope shall require a visual analysis to determine the potential visual impacts to Highway 1, and this study shall be submitted at the time of future application for land use or construction permits. (Visual analysis shall also satisfy the planning area standards of the North Coast Area Plan)
- u. Abandoned Water Tank. The water tank located on Parcel #10 on the crest of the hill that is visible from Highway 1 shall be relocated or removed if it is no longer needed. If it cannot be relocated, then it should be painted a color that matches the surrounding vegetation during the summer months.
- v. Archaeologist. The applicant shall retain at his expense a qualified archaeologist, approved by the Environmental Coordinator, to monitor all earth disturbing activities within the archaeologically sensitive area as delineated on the ECM until such time as all earth disturbing activities are completed. If any archaeological resources are found at that time, work shall stop within 150 feet of the resources until such time as the resource can be evaluated by an archeologist. The applicant shall implement the recommendations of the archaeologist, as required by the Environmental Coordinator.

EXHIBIT B (Continued)

CONDITIONS OF APPROVAL -- COAL 94-130
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- w. Access Road Construction. Prior to any ground disturbance activities related to construction of the road in the area of the farmhouse, in an area at least four hundred feet in each direction, as designated on the ECM, the applicant shall:
- 1) Stake the route.
 - 2) The staked route shall be inspected by a qualified archaeologist.
 - 3) Agree to any mitigation proposed by the archaeologist including minor route adjustments, placement of fill where feasible, and/or monitoring.
 - 4) Indicate on construction plans, the mitigations recommended by the consulting archaeologist.
 - 5) The road in the vicinity of the farmhouse, approximately 400 feet on each side of the farmhouse, shall be constructed on fill, as specified by the consulting archaeologist.
- x. Archaeological Monitoring Report. Upon completion of all monitoring/mitigation activities, but prior to final inspection, the consulting archaeologist shall submit a letter summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met.
- y. Parcels # 9 and 10 Development Envelope Restrictions. The ECM shall indicate that the building envelopes for Parcels #9 and 10 leave the lower elevations of the parcel available for agricultural use. Barns and ancillary structures needed for agricultural uses can be located in the lower elevations, provided that they meet other criteria related to visibility from Highway 1, geologic hazards and wetlands protection. The Environmental Coordinator shall review the building envelopes at the time of submittal of the ECM for consistency with this objective.
- z. Fencing. The applicant shall submit CC&Rs to the satisfaction of the County that include the requirement of mandatory fencing along property lines adjacent to Parcels #9 and 10 of sufficient design and materials to restrict pets (e.g., dogs) from trespassing into open rangeland areas. In addition, the applicant shall disclose to all prospective buyers of all lots created by this proposal, the importance of controlling all pets in order to eliminate the potential for conflicts with livestock or other agricultural activities on the Morro Bay LTD property or on adjacent ranchlands.

Disclosure

4. The applicant shall disclose to all prospective buyers of all of the parcels created by this proposal that agricultural operations on Parcels #9 and 10 and nearby ranchlands may generate dust, noise, odors and agricultural chemicals. Further, there shall be a recordation on the deeds of the County's Right to farm Ordinance currently in effect.

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EXHIBIT B (Continued)

CONDITIONS OF APPROVAL – COAL 94-130
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CONDITIONS FOR RECORDATION

5. If a map is filed:
 - a. public utility easements be shown on the map, and
 - b. approved street names be shown on the map, and
 - c. a tax certificate/bonding shall be provided.
6. The applicant shall submit a preliminary title report to the County Engineer for review when the map is submitted for checking, or when the Certificate of Compliance application is filed.
7. Any private easement, as shown on the title report, must be shown on the map with recording data.
8. All conditions of approval herein specified are to be complied with prior to recordation of the Certificates of Compliance or Parcel Map which effectuates the adjustment. The Parcel Map is at the option of the applicant. However, if a Parcel Map is not filed, an application for Certificates of Compliance is mandatory.
9. The Certificates of Compliance or Parcel Map shall be filed with the County Recorder prior to transfer of the adjusted portions of the property or the conveyance of the new parcels.
10. In order to consummate the adjustment of the lot lines to the new configuration when there are multiple ownerships involved, it is required that the parties involved quitclaim their interest in one another's new parcels. Any deeds of trust involving the parcel or parcels must also be adjusted by recording new trust deeds concurrently with the map or Certificates of Compliance. The adjustment is not complete until the applicant completes the necessary transfers.
11. After approval by the Subdivision Review Board, compliance with the preceding conditions will bring the proposed adjustment in conformance with the Subdivision Map Act and Section 21.02.030 of the Real Property Division ordinance.
12. The lot line adjustment will expire two year (24 months) from the date of the Subdivision Review Board approval unless the Certificates of Compliance or Parcel Map effectuating the adjustment is recorded. Lot line adjustments may be extended by the Subdivision Review Board for a period not to exceed one year. Written requires with appropriate fees must be submitted to the Planning Department prior to the expiration date.

Covenants, Conditions, and Restrictions

13. The developer's statement for the project's CEQA review included the applicant's proposal for CC&Rs to address ongoing use of the property, environmental mitigation, road maintenance and other aspects of the project that need to be addressed post recordation.

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EXHIBIT B (Continued)

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Therefore, prior to finaling the adjustment the applicant shall establish covenants, conditions and restrictions for the project. The applicant shall submit CC&Rs to the county Department of Planning and building for review and approval. The CC&Rs shall reflect all measures identified in the developers statement conditions 1 through 4 above as well as the following items:

- a. Road Maintenance - Assignment of maintenance responsibilities for all common roads and related drainage facilities.
- b. The Agreement for Environmental Mitigations, with the Environmental Constraints Map, shall be attached to the CC&Rs as a separate exhibit.
- c. All structures within parcels 1 though 8 shall be confined to one designated building site of 2 acres subject to minor adjustment or relocation through minor use permit or development plan review at the time development is proposed. Parcels 9 and 10 may locate agricultural support buildings out side the two acre building site subject to the provisions of the environmental mitigation agreement. (See Environmental Constraints Map).
- d. Fencing plan for agricultural use areas and openspace and habitat protection pursuant to environmental agreement and fencing plan.
- e. Disclosure Statement: "The applicant shall disclose to all prospective buyers of all of the parcels created by this proposal that agricultural operations on Parcels #9 and 10 and nearby ranchlands may generate dust, noise, odors and agricultural chemicals. Further, there shall be a recordation on the deeds of the County's Right to farm Ordinance currently in effect."
- f. Architectural provisions contained in the environmental mitigation agreement shall be included the CC&Rs.
- g. Marine mammal mitigation measures from the environmental mitigation agreement shall be listed in the CC&Rs.

Landscaping Plan

14. Prior to finaling the lot line adjustment the applicant shall submit landscape, irrigation and landscape maintenance plans as required by Section 23.04.180 of the Coastal Zone Land Use Ordinance to the Development Review Section of the Department of Planning and Building for review and approval. Plan to include:

- a) All landscaping provisions referenced in the environmental mitigation agreement.

Landscaping shall be installed or bonded for prior to finaling the lot line adjustment.

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CONDITIONS OF APPROVAL – COAL 94-130
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Revegetation Plan

15. Prior to finaling the lot line adjustment the applicant shall submit a revegetation plan for wetland/riparian enhancement. Revegetation shall be installed or bonded for prior to finaling the lot line adjustment.

Fencing Plan

16. Prior to finaling the lot line adjustment the applicant shall submit a fencing plan for wetland/riparian zone and agricultural use areas. Fencing shall be installed or bonded for prior to finaling the lot line adjustment.

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Roadway Project

EXHIBIT B: PLANNING COMMISSION CONDITIONS OF APPROVAL FOR DEVELOPMENT PLAN - D97O195D

Approved Use/Project Description

1. This approval authorizes the following:
 - grading for construction of access roads, related drainage improvements, and
 - modification of the existing agreement for environmental mitigations including the exhibit showing building envelope locations, subject to approval of the modified agreement by the Board of Supervisors. The project and future residential development is subject to the existing provisions of the agreement for environmental mitigations currently in effect which will be included in the amended agreement.

Effective Time Period

2. The approval period for this development plan shall be 24 months unless time extensions are granted as allowed by Section 23.02.050. Time extensions must be submitted in writing by the applicant and are subject to evaluation and action based on the circumstances prevailing at the time of the request.

Grading

3. Prior to any site disturbance, grading or issuance of any construction permits, submit grading, sedimentation and erosion control, and drainage plans prepared in accordance with the requirements of Section 23.05.028, 23.05.036, and 23.05.044 of the County Coastal Zone Land Use Ordinance to the Department of Planning and Building for review and approval. The plans shall be designed by a registered civil engineer, or other qualified professional. Review of the plans shall be subject to an inspection and checking agreement with the Engineering Department. Prior to issuance, the grading permit shall also require approval by California Department of Forestry for finish road grades and surfacing requirements. The term "grading" as used within the conditions of approval shall be as defined by the CZLUO and established Department of Planning and Building interpretation and practice, not by any notes that may occur on plans. Grading permit to cover and include all project improvements plans for road grading/improvements, drainage facilities, utilities, and related improvements.

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4. Grading activities shall not occur between October 15 and April 15 unless a phased grading plan, mitigation monitoring plan, and the plan shall allow for unseasonal or excessive rainfall (including provisions for a mitigation monitor and applicant funded review by an erosion and sediment control specialist such as RCD or RWQCB staff) submitted by the applicant and approved by the Planning Director. All erosion sedimentation control measures shall be installed, inspected and be in operating condition by October 1.

Agency Review

5. Prior to issuance of any permits, a letter of clearance from the CDF/ County Fire Department shall be required indicating compliance with their standards and requirements.

Amended Agreement for Environmental Mitigations

6. Prior to finaling the grading permit, the applicant shall enter into an amended agreement with the county to address the revised building envelope locations, in a form acceptable to the County Counsel, whereby the applicant agrees, on behalf of himself and his successors in interest, to modify designated building nenvelopes as modified in this Development Plan.
7. The applicant shall ensure all the following are done:

Archaeological Resources

- a. Prior to issuance of a grading permit for any ground disturbing activities related to construction of the road in the area of the farmhouse, in an area at least four hundred feet in each direction as designated on the Environmental Constraints Map, the applicant shall:
 - 1) stake the route;
 - 2) have the staked route inspected by a qualified archaeologist;
 - 3) agree to implement and complete all mitigations proposed by the archaeologist and required by the Environmental Coordinator including minor route adjustments, placement of fill where feasible, and/or monitoring;

Upon completion of all monitoring/mitigation activities, but prior to final inspection, the consulting archaeologist shall submit a letter to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met.

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- b. **During construction activities**, the applicant shall retain a qualified archaeologist, approved by the Environmental Coordinator, to monitor all earth disturbing activities within the designated Environmentally Sensitive Area. If any archaeological resources are found during monitoring work shall stop within 150 feet of the resource until such time as the resource can be evaluated by an archaeologist. The applicant shall implement the recommendations of the archaeologist, as required by the Environmental Coordinator. **Upon completion of all monitoring/mitigation activities, and prior to occupancy or final inspection, whichever occurs first**, the consulting archaeologist shall submit a letter to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met.

Drainage, Erosion and Sedimentation

- c. **At the time of application for a grading permit**, the applicant shall submit to the County Engineer for review and approval a drainage, sedimentation and erosion control plan. The plan shall address both temporary measures during construction as well as long term drainage solutions. The plan shall consider sensitive resources including archaeological areas, sensitive marine resources, coastal bluffs, wetland areas, and other areas prone to erosion effects.

Biological Resources

- d. **At the time of application for a grading permit**, the applicant shall include a note on the construction plans that construction work on the main access road from the entrance to the corral area noted on the Environmental Constraints Map on Parcel 9 shall not occur during breeding and fledging periods of the bald and golden eagle. Construction for this portion of the road shall not occur during the months of April through July.
- e. **Prior to issuance of a grading permit for road construction**, the applicant shall provide evidence that a qualified botanist or horticulturist acceptable to the Department of Planning and Building has reviewed and approved the alignment of the main access road to reduce any taking of the wetlands areas. Appropriate silt fencing and/or other measures shall be noted on the road grading plans.

Visual Resources

- f. If the applicant elects to pursue the westerly building envelope on Parcel

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1, the following requirements apply:

- 1) Construction is limited to those areas below the 492 foot contour elevation;
- 2) Construction at the 492 foot contour elevation is limited to a maximum height of ten (10) feet above natural grade. Construction on areas at elevations below the 492 foot contour should not exceed an elevation above 502 feet above mean sea level. If grading (cut) of the building pad is permitted, the maximum height of a unit could be adjusted upward accordingly, allowing for a maximum ridge height of 502 feet above mean sea level.
- 3) A second tier visual analysis shall be prepared by a qualified individual which incorporates the specific details of construction of a unit within the non-restricted area of the building envelope (i.e. grading, staking of building corners, use of pylons for scale, and preparation of photo simulations incorporating unit elevations, roof forms, etc.).

g. If the applicant elects to pursue construction of a unit on the easterly building envelope of Parcel 1, the following requirement applies:

A building envelope in this location must be carefully selected to avoid visibility from Key Viewing Area 1 and from Highway 1 near the project site's entrance — viewing in a westerly direction. A first tier visual analysis must be prepared prior to finalizing building envelope location.

h. The following requirements apply to development within "revised building envelope (5/98) for Parcel 2:

- 1) The 484 foot contour elevation is a control point at which development greater than 18 feet in height above natural grade shall not be located. If grading (cut) of the building envelope is permitted or reduction of unit height is considered, the 484 foot contour elevation control point could be adjusted upward accordingly.
- 2) A second tier visual analysis shall be prepared by a qualified individual which incorporates the specific details of construction of a unit in relation to the 484 foot contour elevation control point (i.e. grading, staking of building corners, use of pylons for scale, and preparation of photo simulations incorporating unit elevations, roof

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forms, etc.).

- i. The following requirements apply to development within "revised building envelope (5/98) for Parcel 9:
 - 1) The 337 foot contour elevation is a control point at which development greater than 18 feet in height above natural grade shall not be located. If grading (cut) of the building envelope is permitted or reduction of unit height is considered, the 337 foot contour elevation control point could be adjusted upward accordingly.
 - 2) A second tier visual analysis shall be prepared by a qualified individual which incorporates the specific details of construction of a unit in relation to the 337 foot contour elevation control point (i.e. grading, staking of building corners, use of pylons for scale, and preparation of photo simulations incorporating unit elevations, roof forms, etc.).

- j. **At the time of application for construction permits**, the applicant shall clearly delineate the location and visual treatment of water tanks on the project plans. All water tanks shall be located in the least visually prominent location feasible when viewed from Highway 1. Screening with topographic features, existing vegetation or existing structures is encouraged. If the tank(s) cannot be screened, then the tank(s) shall be a neutral, non-contrasting color, and landscape screening shall be provided.

- k. **At the time of application for construction permits**, the applicant shall provide an exterior lighting proposal. The proposal shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface is visible from Highway 1. All lighting poles, fixtures, and hoods shall be dark colored.

All exterior light sources shall be low-level and adjusted so that light is directed away from Highway 1.

The height of free standing outdoor lighting fixtures shall be limited so that they are not visible from Highway 1.

Security lighting shall be shielded so as not to create glare when viewed from Highway 1.

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Wetlands

- I. Prior to commencement of construction activities, the applicant shall provide evidence to the Environmental Coordinator that the United States Army Corps of Engineers has been consulted as to the need for a permit under Section 404 of the Clean Water Act. If a permit is required, the applicant agrees to comply with all conditions of that permit.

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Exhibit 14, p. 16

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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October 19, 1999

Mr. Charles Lester
Mr. Steve Monowitz
California Coastal Commission
725 Front Street
Santa Cruz, CA

Re: A-3-SLO-99-014, Morro Bay Limited

Dear Charles and Steve:

This letter is to provide you with a summary of the changes we are proposing to the application of Morro Bay Limited for a lot line adjustment, previously approved by San Luis Obispo County in 1995. These changes are in response to our numerous meetings with staff, and in response to specific requests by members of the Coastal Commission at the meeting in Los Angeles in August, 1999.

The key elements included in our revised application include:

1. An agricultural and conservation deed restriction on all 9 parcels, with the exception of the residential building envelopes. In total the deed restriction will apply to all 746 acres, with clarification of uses for the agricultural and conservation areas, the agricultural setback areas and the building envelopes. We propose to use the standard deed restriction format provided to us by Commission legal staff, with the conditions approved by the Commission incorporated therein. (see attached sample Deed Restriction).

2. The deed restriction also includes viewshed protection requirements, wetland setback requirements, habitat protection requirements, fencing guidelines, and building design guidelines. In addition to the conditions incorporated

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Additional Project Revisions

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Mr. Charles Lester
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in the attached deed restriction, and those conditions imposed by the County of San Luis Obispo in their earlier approval, the applicant has elaborated on these elements in the attached Management Plan. All of these documents will be reconciled to remove any conflicting provisions before recordation - and that the CDP will have precedence on these matters.

3. We have prepared and submitted an offer to dedicate lateral coastal public access along the shoreline of the Ranch Property. The draft access easement has been submitted to staff for their review and will be recorded along with the deed restriction. Because of the steep bluff and variable topography along the coastal frontage, the final easement shall included a topographic map of the proposed access alignment to be developed in cooperation with, and approved by Commission staff.

4. We have concerns regarding the restrictive nature of the visibility condition suggested by staff for structures viewed from offshore rather than from the shoreline, especially because the previously imposed restrictions were calculated from the marine mammal haul-out area, as required by the National Marine Fisheries Service and the County. Nevertheless, we have agreed to, and have jointly prepared with Commission staff, revised visual conditions which will implement Coastal Act policies while allowing the applicant to construct reasonable dwellings on the parcels. This mutually acceptable alternative is attached to this letter as Attachment A.

5. Assuming the visual conditions remain reasonable, and therefore the lots would retain a reduced but reasonable value, the applicant is in a position to offer a dedication of a vertical access easement with this application. This conditional offer to donate a vertical public access easement is made so long as the development conditions allow reasonable development. We have provided staff with a sample easement, and have discussed a preliminary pedestrian trail location along the northern portion of the property. The final alignment of such an easement would be determined with staff in the same manner as the abovementioned lateral access easement.

Finally, you have asked us to provide you with background information regarding the development criteria in the application. In response to your inquiry, Dan Lloyd of EDA Associates has prepared the following brief description of the rationale

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we used in determining building and site development criteria for the Morro Bay Limited lot line adjustment.

1. Building Envelopes

When determining the most suitable areas for development within the parcels we reviewed soil information, existing slopes, and proximity to adjacent parcels. We then established a building envelope which established the maximum area within which a future property owner could build their residence. We did not assume that the entire building envelope would be developed, rather, that a parcel owner could work within this envelope to establish their home site. We established set backs from the proposed property line to each of the building envelopes, and set the envelopes back from the bluff so as to protect marine mammal areas and allow for a reasonable building height.

As you know, the marine mammal haul-out areas could be affected by activity areas within these parcels so we have intentionally set them back off the bluff edge. As a measure assurance, any development within these parcels will require a subsequent minor use permit/coastal development permit application to be filed by the new property owner at which time all issues will be considered.

2. Individual Driveways to Parcels

Our recent redesign of the parcels includes common driveways to as many of the lots as possible. The driveways have been located downslope from the parcels to allow for the installation of a sewage disposal system between the home site and the driveways serving the adjacent parcels. There is also area downslope of the proposed driveways that could be used for construction of a leach field if additional space is necessary.

Although the plan shows a driveway location roughly parallel with the coastline, the driveway will need to meander downslope of the building

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envelopes around existing grade in an "S" fashion to more appropriately follow the contours of the land. We will provide a specific plan for you once the project is approved and prior to construction for your review and approval. In this way we can create a roadway grade that is easily navigable by the parcel owners.

3. Archaeologically Sensitive Area

The Archaeologist who evaluated the site determined that the former dairy was built on an archaeological site. His requirement is to place fill over the area of the archaeologically sensitive zone when bringing in our primary access road. This is a customary technique employed where sensitive resources are close to the surface. Prior to construction of the road an archaeologist will be on-site to determine the level of sensitivity and the appropriate mitigation.

If anytime during construction archaeological resources are discovered, construction shall be halted until an archaeologist can visit the site and prescribe appropriate mitigation measures. This is a typical solution to discovery of cultural resources and will be generally employed throughout the project site during all construction activities.

4. Road Construction Through Drainage Areas

The private on-site driveways serving the parcels will cross areas where seasonal drainage is concentrated. These are not creeks or conveyance channels, but are areas where drainage is concentrated due to land form constraints. Crossing these areas will require consultation with the Army Corps of Engineers and interested agencies as a matter of course. The most likely construction process will involve provision of subsurface french drains which will allow the migrating water to pass underneath the roadbed without interrupting its migration down gradient.

Previous biological studies of the site have indicated that no threatened or endangered species are present. However, normal safeguards will be employed during the permitting process to assure that proper construction techniques are employed and that appropriate mitigation's are implemented.

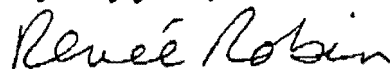
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We hope this brief discussion of these site related development issues are helpful. If you have any questions regarding the application revisions, draft documents, or our approach to these or other issues, please do not hesitate to call.

Very truly yours,



Renee L. Robin
for Sheppard Mullin Richter & Hampton

SF:FLRLETXXMK61170595.1

cc: Ms. Tami Grove
Ms. Dianne Landry
Mr. Lee Otter
Mr. Dan Lloyd
Mr. Monty Ormsby
Robert Philibosian
Joseph Petrillo

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Attachment A

It is our understanding that staff has proposed an additional condition on visibility which would minimize "vertical structural feature from extending above the ridgeline when viewed from public viewing areas". This has now been interpreted to mean from the public waters - or open ocean. We concur with such a condition with the understanding that any potential visibility can be mitigated through the appropriate criteria listed below:

VISUAL RESOURCES PERFORMANCE OBJECTIVES AND CRITERIA

The Deed Restriction shall contain:

i.) Parameters for visual resource protection that must be met by any structural development on the site. Future development proposals shall be accompanied by a complete as-built visual analysis demonstrating compliance with these provisions. As viewed from any public viewing area, including Highways 1 and 46, and state coastal waters (between mean high tide and three miles out), all new development shall be sited and designed to *blend in with and be subordinate to the natural landscape*, including but not limited to meeting the following requirements:

i.) any vertical structural features that extend above ridgelines as seen from any public viewing area must be minimized to the greatest extent feasible and shall not result in an overall design that fails to blend in with or be subordinate to the natural landscape;

ii) for buildings which will profile against any sky or ocean area as seen from any of the public viewing areas identified above, the roof pitch shall not exceed 25% or the average natural gradient of the ground surface adjacent to the structure, whichever is greater (e.g., if the adjacent slope is 30%, the roof pitch would be limited to 30%);

iii) hip roofs may be used to soften the mass of residences and gable roofs are permissible so long as they are responsive to the landform or do not result in a visual inconsistency with the natural surroundings;

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- iv.) the use of reflective roofing and exterior siding materials is prohibited;
- v.) buildings and other development (including fencing) must use only earth tone and non-reflective exterior materials;
- vi.) exterior lighting shall be low level and limited to that necessary for safe passage within the designated building envelopes; all lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface are visible from public viewing areas; floodlighting or spotlighting of ground or water surfaces visible from the public viewing areas shall be prohibited;
- vii) building design must incorporate extended eaves, at least 3 feet deep, in order to minimize the potential for window glare;
- viii) native landscaping shall be used to soften the transition between natural landform and new residences;
- ix.) new development shall be consistent with all previous County siting and design conditions ;
- x). Residential footprints, including garages, shall not exceed 7,000 SF within the designated building envelope (Agricultural accessory buildings are exempt from this criteria).
- xi). Hardscape improvements (e.g. walkways, patios, and other outside activity areas) shall be limited to 7,000 square feet.

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Exhibit 15, p. 7

RECORDING REQUESTED BY:

SAMPLE AGRICULTURAL DEED RESTRICTION

I. WHEREAS, Morro Bay Limited and Monty R. Ormsby, (hereinafter referred to as, "Owners", are the record Owners of the following real property (hereinafter referred to as "Property")

which consists of nine (9) parcels totalling 746 acres in San Luis Obispo County, and more fully described herein at Exhibit B.

II. WHEREAS, the California Coastal Commission (hereinafter referred to as "Commission"), is acting on behalf of the People of the State of California; and

III. WHEREAS, all of the Property is located within the coastal zone as defined in section 30103 of Division 20 of the California Public Resources Code, (hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owners applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, on _____, the Commission granted coastal development permit (CDP) No. _____ in accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Permit was subject to the terms and conditions including, but not limited to the following condition(s):

Prior to issuance of the Coastal Development Permit No. _____, the applicant shall record an agricultural deed restriction to the deed of the Properties which incorporates the attached Management Plan and the following additional conditions:

- a. A definition of the term "agriculture "
- b. [insert additional conditions as drafted by Staff and as agreed by Owner]

EXHIBIT NO. 16
APPLICATION NO. A-3-SLO-99-14 + A-3-SLO-1
Sample Deed Restriction

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VII. WHEREAS, the Commission, acting on behalf of the People of the State of California and pursuant to the Act, granted the Permit to the Owners upon condition (hereinafter referred to as the "Condition") requiring inter alia that the Owners record an agricultural preservation deed restriction over the Property so as to preserve the agricultural values present on the Property and so as to prevent the adverse direct and cumulative effects on coastal resources which could occur if the Property were not restricted in accordance with this deed restriction; and

VIII. WHEREAS, the Commission has placed the Condition on the Permit because a finding must be made under Public Resources Code section 30604 (a) that the proposed development is in conformity with the provisions of Chapter 3 of the Act and that in the absence of the protections provided by the Condition said finding could not be made; and

IX. WHEREAS, Grantor has elected to comply with the Condition and execute this Deed Restriction so as to enable Owners to undertake the development authorized by the Permit; and

NOW, THEREFORE, in consideration of the above and mutual benefits and conditions set forth herein, the substantial public benefits for the protection of coastal resources to be derived, the preservation of the Property in agricultural uses and the granting of the permit to the Owners by the Commission, Owners hereby irrevocably covenant with the Commission that there be and hereby is created the following restriction on the use and enjoyment of said Property, to be attached to and become a part of the deed to the property.

1. USE OF PROPERTY. The use of the Protected Land as shown on Exhibit B attached hereto and incorporated herein by reference, shall be limited to agricultural uses and natural open space. No development as defined in Public Resources Code section 30106, attached hereto as Exhibit C and incorporated herein by reference, including, but not limited to, removal of trees and other major or native vegetation, grading, paving or

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Exhibit 16, p. 2

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2 installation of structures such as signs, buildings, etc., shall occur or be allowed on the Protected Land with the
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5 exception of the following subject to applicable governmental regulatory requirements:

- 6 (a) the removal of hazardous substances or conditions or diseased plants or trees;
- 7 (b) the removal of any vegetation which constitutes a fire hazard to residential use of neighboring
8 properties, and which vegetation lies within 100 feet of existing or permitted residential development;
- 9 (c) the installation or repair of underground utility lines and septic systems;
- 10 (d) the development of agricultural and residential structures consistent with the CDP and the
11 Management Plan attached hereto and incorporated by reference. The CDP shall specify the terms
12 for the protection of viewshed, wetland, habitat and agricultural resources. The Management Plan
13 will include additional development guidelines for fencing, residential and related development
14 consistent with the Coastal Development Permit and the Conditions of Approval set forth by the
15 County of San Luis Obispo in their resolution COAL 94-130.
- 16 (e) The Coastal Development Permit provides additional conditions regarding permissible uses in the
17 residential building envelopes and agricultural setback areas. Conditions [Insert correct numbers]
18 are incorporated herein by reference.

19
20 6. DURATION. Said Deed Restriction shall remain in full force and effect during the period that the
21 Permit, or any modification or amendment hereof remains effective, and during the period that the development
22 authorized by the Permit or any modification of said development remains in existence in or upon any part of
23 and thereby confers benefit upon the Property described herein, and shall bind Owner and all his/her assigns or
24 successor in interest.

25 7. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable and shall
26 constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the California
27 Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor statute.
Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property

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Exhibit 16, p. 3

with in the meaning of section 3712(d) of the California Revenue and Taxation Code or successor statute, survives a sale of tax-deemed property.

8. RIGHT OF ENTRY. The Commission or its agent may enter onto the Property at times reasonably acceptable to the Owners to ascertain whether the use of restrictions set forth above is being observed.

9. REMEDIES. Any act, conveyance contract, or authorization by the Owner whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission and Owners may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce at terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

10. SEVERABILITY. If any provision of these restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

DATED: _____, 1999

TYPE OR PRINT NAME ABOVE

TYPE OR PRINT NAME ABOVE

STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____, a Notary Public,

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

WITNESS my hand and official seal.

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Exhibit 1b, p. 4

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Signature _____

This is to certify that the Agricultural Deed Restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit _____ on _____, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Date: _____, 1999

CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On _____, before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

A-3-SLO-99-14 + A-3-SLO-99-32
Exhibit 1b, p. 5