

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
726 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
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**Th5c****RECORD PACKET COPY**

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Prior Commission Actions  
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**STAFF REPORT: APPEAL  
SUBSTANTIAL ISSUE DETERMINATION**

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**Appeal number**.....A-3-SLO-98-108, TRACT 1646  
**Applicant**.....Noel Rodman and Ron Holland  
**Appellants**.....Commissioners Wan and Reilly, Jerry and Elsie Dietz  
**Local government**.....San Luis Obispo County  
**Local decision**.....Extension of permit and amendment to allow the use of an alternative sewer system to serve the subdivision and to allow an existing "Will Serve" letter to demonstrate adequate water supply to serve the development .  
**Project location**.....Northerly side of Los Osos Valley Road,(19 acre site between Pecho Road and Monarch Lane), Los Osos, (San Luis Obispo County)  
**Project description** .....Extension of Tentative Map for Tract 1646 and Coastal Permit for a period of five years; revision to conditions imposed on the original permit relative to the provision of sewer and water to the 100 lot subdivision at the time the Final Map is presented for filing.  
**File documents**.....San Luis Obispo County certified LCP, San Luis Obispo Board of Supervisors Resolution No. 98-336, Minutes of the Board of Supervisors hearing on the project on September 22 and August 25 1998, Coastal Commission Appeal File A-4-SLO-91-2.  
**Staff recommendation**...The Appeal presents a substantial issue

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**Staff Summary:** This is an appeal of an action by the San Luis Obispo County Board of Supervisors to extend and amend the terms of the original permit approved by operation of law in 1990 for Tract 1646, a 100 lot subdivision of a 19 acre parcel in Los Osos.

Before the permit was approved by operation of law the applicant added thirty revisions to the project description at a final Board of Supervisors hearing on the item on December 11, 1990. The project as revised therefore includes a number of features which the County believes define the permit authorized by operation of law. The appeal currently before the Commission concerns a recent action by the Board to amend two of these features or as referred to by the County, conditions, of the 1990 approval.

Staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal was filed. The action taken by the county to amend the Coastal Permit is inconsistent with Public Works policies of the LCP relevant to the provision of water and sewer services for new development. Staff further recommends that the Commission continue the de novo hearing on the merits of the project in order to provide staff with the additional time needed to fully investigate the LCP issues raised by the project.

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## SUMMARY OF APPELLANTS' CONTENTIONS

The following summary identifies the appellants' contentions that the action by the County on this project is inconsistent with the policies and ordinances of the certified San Luis Obispo County LCP thus providing the grounds for this appeal. Please see Exhibit 1 for the full text of the appeals.

Jerry and Elsie Dietz, and Commissioners Wan and Reilly appealed the project for the following reasons:

1. The county action is inconsistent with San Luis Obispo County Public Works Policy 1 which requires that new development must be able to show that adequate public or private services are available to serve it. As originally approved, the applicant was not allowed to record the Final Map for the subdivision, thus triggering the potential for new development,

which would require sewer service, until a community wide sewer system was approved by the Regional Water Quality Control Board and constructed. The Board action of September 22, 1998 revised this "condition" to allow the applicants' project to develop an alternative system and proceed ahead of a system approved and constructed for the Community. The site for this subdivision is within the "prohibition area" designated by the Regional Water Quality Control Board. The effect of this designation is to prohibit any additional septic systems within the defined area. It is not clear that an adequate sewer system could be provided nor does it appear that this Board of Supervisors' approved change complies with current discharge prohibitions.

2. The county action is inconsistent with San Luis Obispo County Public Works Policy 1 which requires that new development demonstrate an adequate water supply. As originally approved, the Final Map for the subdivision could not be filed unless an adequate water supply *consistent with the county policies in effect at the time* the Final Map was presented for filing was shown. The proposed amendment allows the applicant to file the Final Map using an increasingly outdated 1990 "Will Serve" letter from one of the water purveyors.
3. The September 28, 1998 Board action made substantive changes which effectively amended the project without adequate public notice or the Findings required by the certified LCP Ordinance.
4. The Tentative Map for Tract 1646 was not properly extended and the Coastal Permit for the project has expired.

Appellants Jerry and Elsie Dietz appealed the project for the following additional reasons:

5. The Dietz's have also asserted that the County action is inconsistent with Title 21, Section 21.06.060 of the certified LCP Ordinance. Section 21.06.060 outlines a process and describes criteria for revising recorded ( Final ) tract or parcel maps. The Final Map for Tract 1646 has yet to be recorded and therefore this section of the ordinance is not applicable to the project. There are no provisions for amending Tentative Maps other than through the process outlined in Section 23.02.038 of Title 23 of the certified LCP Ordinance discussed above.
6. The County action was inconsistent with Sections 21.06.060, 21.08.020, 21.08.022, 23.02.038, 23.04.430 and 23.06.102 of the certified zoning ordinance. These sections address notice and hearing requirements for changes to approved projects. Section 23.04.430 requires new development to demonstrate adequate sewer and water availability. Section 23.06.102 requires notice to the Regional Water Quality Control Board when new development or a change in an existing use may affect groundwater quality.

7. The applicant failed to properly notice the Coastal Commission of the 1990 approval of the project by operation of law as required by the Permit Streamlining Act.

## STAFF PROCEDURAL NOTE

Staff is currently researching several procedural questions underlying this appeal. This note discusses the type of action taken by the County which gives rise to the appeal, the validity of the Tentative Map and Coastal Development Permit, and notice requirements.

### 1. Nature of the County's Action

The Board of Supervisors characterized their September 22, 1998 action as an "interpretation" of the "conditions" originally approved as part of Tract 1646. The Board action resulted, however, in substantive revisions to critical components of the subdivision approval and thus effectively amended the Coastal Development Permit, albeit outside the process for amendments that is set out in the LCP. A review of the substantive effect of the Board's action demonstrates that the revisions made in September go far beyond the insignificant adjustments that could be defined as interpretive guidance. The following discussion of the changes made to "Conditions 1 and 2 of Tract 1646 illustrate this point.

"Condition 1" was originally approved by law as follows:

*The project shall connect to a community wide sewer system approved by the Regional Water Quality Control Board. The applicant shall not file the Final Map unless and until a community wide sewer system has been constructed and is available for the project to connect to.*

The Board revised this "condition" to state, *"this condition can be met with either the Los Osos Community sewer project or some other project which meets the definition of community wide"*. The Board did not offer a definition of what type of project, other than the current Los Osos Community sewer project would meet the requirements of a "community wide" project. The applicant, however, was clear that they were asking the Board to allow them to implement an alternative sewer project for their subdivision only, so that they could file their Final Map before the Los Osos Community sewer facilities were approved or in place. (Please see Exhibit 3, Minutes of the August 25 and September 22, 1998 Board Hearings on this item). The Board minutes reflect agreement with the applicant's position.

The appellants challenge the Board's characterization of this action to revise the terms of the project as an "interpretation". They contend that it was effectively an amendment to a "condition" of the original permit based on criteria for changes to projects in the LCP. Of

particular relevance are the LCP criteria which trigger the need for an amendment to a permit. These are summarized as follows:

1. The change relates to a project feature that was specifically addressed in the conditions of approval.
2. The change was a specific consideration by the review authority (in this case the Board of Supervisors) in the approval of the original project.

The recent Board action to revise Condition 1 of Tract 1646 meets both of these criteria. The method of sewerage the project was specifically addressed by Condition 1 and was a specific concern of the Board as reflected in the Minutes of the December 11, 1990 hearing on this item.

The same issue is raised by the Board's action relevant to "condition" 2. The original provisions of "condition" 2 are as follows:

*Prior to the filing of the Final Map, the Applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the Final Map is filed. (emphasis added)*

In response to the applicant's request, the Board amended this "condition" to accept an existing 1990 "Will Serve" letter as an adequate demonstration of water availability for filing the Final Map. A revision which allows reliance on an increasingly dated "Will Serve" letter is clearly a substantial change from the original, prospective, "condition" which required up to date water information at the time, in the future, when the final map was presented for filing.

As with the revision to Condition 1, the proposed change to Condition 2 also satisfies the criteria of Sec. 23.02.038(b) because the timing of the demonstration of water availability was specifically addressed by Condition 2 and was a specific concern of the Board of Supervisors as reflected in the Minutes of the hearing on this item in 1990. Therefore, the Board's action must be reviewed as an amendment to the Coastal Development Permit for Tract 1646. The County has since forwarded the record of the final decision made by the Board of Supervisors to the Coastal Commission.

## **2. Validity of the Tentative Map and Coastal Permit**

The appellants contend that the Tentative Map and Coastal Development Permit for this subdivision have expired. In response to inquiries by staff, the County has submitted information that purports to trace the various extensions granted to the applicant for this project. (Please see Exhibit 6). The evidence submitted thus far is conclusionary and is not

supported by documentation or analysis of the County's authority to grant the extensions. Based on Commission staff's review of the material received to date and on what appear to be the appropriate authorities for granting the permit and map extensions, there is a possibility that both of these permits have expired. Staff has, however, requested additional supporting material on this topic from both the applicant and the County. Therefore, pending a final determination on this issue and for the purposes of allowing the appeal to continue to go forward in a timely manner, staff will assume that the Tentative Map and Coastal Development Permit are valid.

### **3. Notice**

The appellants raise a number of issues regarding proper notice of the Board of Supervisors' action to amend the permits for Tract 1646 and the obligation of the applicant to notice the Commission regarding the original approval by operation of law in 1990. (Appellant's contentions numbers 6 and 7)

Notice Of The Board Of Supervisors' Action To Amend The Permit: The appellants contend that according to the process outlined in the LCP, any action to make a substantive amendment to an approved project must be done at a properly noticed public hearing. Section 23.01.060 of the certified LCP describes the noticing procedures for public hearings. This procedure includes the following elements:

- Description of the subject of the hearing
- Date and location of the hearing
- Description of County procedures for the conduct of the hearing
- Persons to be notified

A review of the County documents indicate that only the extension of the permit was described on the agenda transmittal prepared for this item. It is thus arguable that the appropriate notice requirements were not met. However, the Commission need not reach this issue because the action has been appealed to the Commission and, as an appeal, the potential amendments to the coastal development permit have been properly noticed, thus curing any faulty notification at the County level.

The appellants also contend that the Regional Water Quality Control Board should have received notice as required by Section 23.06.102 because the amendment has the potential to affect groundwater quality. As with the previous contention, the Commission need not reach this issue because the Regional Board has and will continue to be notified of any hearings on this appeal.

Notice of Approval of the 1990 Permit by Operation of Law: The appellants contend that the applicant had an obligation to advise the Commission that the Permit had been approved by operation of law. This requirement has been upheld by the Appellate Court in the ruling on Ciani v. San Diego Trust and Savings Bank (1991) Cal. App 3d at 1604. The LCP also includes a requirement that the applicant notify the Coastal Commission and that the County notify persons entitled to notice of the approval. It is unclear from the Commission's original appeal file for this project (A-4-SLO-91-2) whether this requirement was fully met. The project was, however, appealed to the Commission thus rendering the issue moot.

### **LOCAL GOVERNMENT ACTION**

The extensions and amendments to Tract 1646 approved by the Board of Supervisors are attached as Exhibit 3. On September 22, 1998, the Board of Supervisors upheld the applicants' appeal from the Planning Commissions' decision to extend the permits for three years and from the county staffs' interpretation of some of the original permit conditions. The Board approved a five year extension for the Tentative Map and upheld the applicants' proposed revisions to the "conditions". Amendments to the "conditions" allow the applicant to pursue an alternative sewer system for the subdivision and to rely on an old "Will Serve" letter to demonstrate water at the time the Final Map is presented for filing. ( Please see Exhibit 3, County Resolution and Minutes of the August 25 and September 22, 1998 Hearings.)

### **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. This project is appealable because the site is located between the first through public road and the sea as shown on the adopted appeal maps for this area, and because subdivisions are not listed as a Principal Permitted use on Table "O" of the certified Land Use Element of the San Luis Obispo County 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 and thus, this additional finding must be made in a *de novo* review in this case.

### **STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeals have been filed because the county action on the project is inconsistent with the certified Local Coastal Program.

**MOTION** Staff recommends a **NO** vote on the following motion.

*I move that the Commission determine that Appeal no. A-3-SLO-98-108 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.*

Staff recommends a NO vote which would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. A majority of the Commissioners present is needed to pass the motion.

### **RECOMMENDED FINDINGS AND DECLARATIONS**

#### **PROJECT DESCRIPTION AND HISTORY**

The project extended and amended by the recent Board action is for the subdivision of a 19 acre parcel into 100 individual lots. The site, currently vacant, is located immediately west of Pecho Road near the intersection of Pecho Road and Los Osos Valley Road in the unincorporated community of Los Osos. Land use in the vicinity of the project site includes single family homes and other, vacant, lands. Morro Bay lies 1000' north of the site. (Please see Exhibit 4, Location Map and Exhibit 5, Site Plan)

As mentioned earlier in this report, this subdivision was originally approved by operation of law on December 12, 1990. The project was subsequently appealed to the Coastal Commission by Bob Semonsen and the Los Osos Land Use Committee. The item was scheduled for hearing before the Coastal Commission on June 14, 1991. The staff report prepared for the project recommended that the Commission find substantial issue and deny the project as follows:



*As no water is now available for this project (or any other subdivision in this area) as the groundwater basin is in severe overdraft (2300 AFY over and above the safe yield of 2200 AFY), on site septic systems are not permitted by the Regional Water Quality Control Board in Los Osos, and a Community Sewer facility is not available.*

The appeal was withdrawn one week before the hearing and, because the Commission had not filed its own appeal, the opportunity to assert jurisdiction over the project was lost and the permit authorized by operation of law was upheld.

As noted previously, at the final Board hearing on the subdivision on December 11, 1990, the project applicant added thirty revisions to the project description. The County takes the position that the permit approved by operation of law includes these thirty revisions. Changes to two these revisions were approved by the County and constitute amendments to the permit approved by operation of law. It is these two changes which raise the question of substantial issue regarding conformity of the development, as so amended, to the certified LCP.

## **SUBSTANTIAL ISSUE FINDINGS**

### **1. PUBLIC WORKS**

#### **a. Wastewater Treatment**

The County's action to amend the original permit conditions regarding sewer and water service presents a substantial issue relevant to Public Works Policy 1 of the certified Land Use Element of the San Luis Obispo County LCP. This policy requires that new development demonstrate "there are sufficient services to serve the proposed development given the outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable". The "conditions" attached to the original project ensured that this policy would be met by requiring that before the Final Map could be recorded, and development that would require these services could proceed, a community wide sewer facility would be in operation. The amendments to the project approved by the county in September of 1998 allow the applicant to file the Final Map on the basis of an alternative sewer treatment system.

The site of the subdivision is located in the "prohibition area" designated by the Regional Water Quality Control Board as an area where any additional septic systems are inappropriate. Over the last few years, the county and the Regional Board have been actively pursuing a permit for the construction of a sewage treatment facility to serve the area of Los Osos located within the "prohibition area". This project is currently before the Coastal

Commission. Realization of this community wide sewage treatment facility, or one similar to it, would provide adequate sewage treatment facilities for not only this project but for the remainder of Los Osos, thus allowing compliance with LCP Public Works Policy 1. The Board action of September 22, 1998, however, makes compliance with this policy problematic because the "condition" which required the completion of a community wide sewage treatment facility to be operational *before* the Final Map for the subdivision was filed was changed to allow the applicant to proceed ahead of the community wide facility with a sewage treatment project that would apparently serve only the subject development. The action of the Board is somewhat confusing because the minutes suggest that the Board agreed with the applicant's proposition – to allow an alternative system for their subdivision, but qualified the amendment by stating that the alternative would be "community wide". It is therefore, not clear what direction the Board was giving regarding the timing and type of sewage treatment facilities that would be adequate to allow the Final Map for this project to be filed. It is also not clear how this action affects the county's current permit application for the Los Osos Community Sewer Treatment Facilities or if an alternative system could comply with the Regional Board's actions in this area. Given these uncertainties, the amendment to the original project is inconsistent with LCP Public Works Policy 1 and represents a substantial issue.

b. Water Service

The same issue arises because of the amendment to the original requirement that the applicant demonstrate the availability of water, consistent with county policies in effect at the time the Final Map is presented for filing. The amendment allows the map to be filed and county policy to be met anytime in the future based on a 1990 "will serve" letter. As originally written, condition 2 was consistent with Public Works Policy 1 because it required an assessment of water availability at the time of filing of the Final Map to ensure that water service consistent with the LCP was available to serve the new parcels. The recent amendment is inconsistent because it assumes water will always be available to this project due to the old "will serve" letter no matter how circumstances or policies may have changed since 1990. As discussed in the following paragraphs, changes in water availability have already occurred over the last nine years since this project was approved. It might also be noted that notwithstanding the 1990 will-serve letter, the adequacy of water was a central issue in the staff recommendation for the 1991 appeal of this project that was never heard by the Commission.

Currently, there appears to be inadequate water supply for any new development in the Los Osos area. The Los Osos groundwater basin, on which all development in this area relies, is severely overdrafted as described in the certified Estero Area Plan (adopted in 1988) which states:

Net urban demand added to net agricultural demand has already exceeded the lower safe yield of 1300 AFY cited in the Brown and Caldwell study. The maximum safe yield of 1800 AFY will be attained when the population reaches 12,600 assuming only modest increases in agricultural uses. Continued irrigation is realistic since Coastal Act policies require protection of agricultural uses.

The most current population figures for the area are found in the draft Estero Area Plan Update. This document states that in 1996 the population of urban Los Osos was 14,568. It thus appears that the safe yield figures given in the Estero Plan have been exceeded and, if coastal resources are to be protected consistent with the policies of the certified LCP, a finding that there is an adequate water supply for new development may be difficult to make now. Future water availability is even less certain. Thus, reliance on a 1990 "Will Serve" letter to allow the recordation of a Final Map for a 100 lot subdivision presents a substantial issue regarding consistency with LCP Public Works Policy No. 1.

## **2. PROCEDURAL ISSUES**

The appellants have raised a number of procedural issues relevant to the Board of Supervisors' action on this item. These are addressed in the Staff Procedural Note which begins on page 3 of this report.

STATE OF CALIFORNIA—THE RESOURCES AGENCY

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

721 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTRECEIVED  
PETER WILSON, Governor

NOV 02 1998

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREAPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant(s)

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

Jerry and Elsie Deitz1181 Green Oaks DriveLos Osos, CA 93402(805) 528-7136ZipArea CodePhone No.SECTION II. Decision Being Appealed1. Name of local/port  
government: San Luis Obispo Board of Supervisors2. Brief description of development being  
appealed: Tract Map 1646 (Holland)3. Development's location (street address, assessor's parcel  
no., cross street, etc.): Los Osos Valley Road and Pecho Road,  
Los Osos, CA

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X \_\_\_\_\_

c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-98-108DATE FILED: DEC. 2, 1998DISTRICT: CENTRAL COAST

H5: 4/88

EXHIBIT 1  
A-3-SLO-98-108

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

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

- a.    Planning Director/Zoning Administrator      c.    Planning Commission
- b. X City Council/Board of Supervisors      d.    Other

6. Date of local government's decision: 9/22/98

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

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Noel Rodman and Ron Holland  
1220 Marsh Street  
San Luis Obispo, CA 93401

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

(1) Solution Group

P.O. Box 6828  
Los Osos, CA 93412

(2) TAPPS

P.O. Box 7168  
Los Osos, Ca 93422

(3) Pandora Nash-Karner

350 Mitchell Drive  
Los Osos, CA 93402

(4) Gordon Hensley

P.O. Box 6884  
Los Osos, CA 93412

Continued on Exhibit A

SECTION IV. Reasons Supporting This Appeal

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

EX. ONE

EXHIBIT A

APPEAL OF SAN LUIS OBISPO COUNTY ACTION TO EXTEND COASTAL  
DEVELOPMENT PERMIT FOR TRACT 1646 (Holland)

SECTION III. b (Continued)

5. Roy Ogden
6. Ann Calhoun
7. Shirley Bianchi  
San Simeon Creek Road  
4375 Cambria, CA 93428
8. Stan Stein
9. Eric Greening
10. Jan Marx  
864 Osos Street  
San Luis Obispo, CA 93401
11. Joe Kelly
12. Virginia Dobias

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

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

SEE ATTACHED EXHIBIT "B"

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

SECTION V. Certification

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

Gordon R. Hensley

Signature of Appellant(s) or  
Authorized Agent

Date 10/29/98

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

Section VI. Agent Authorization

Gordon Hensley

I/We hereby authorize Eloise Deity to act as my/our representative and to bind me/us in all matters concerning this appeal.

Eloise Deity

Signature of Appellant(s)

EX. ONE

EXHIBIT B

APPEAL OF SAN LUIS OBISPO COUNTY ACTION TO EXTEND COASTAL DEVELOPMENT PERMIT

FOR TRACT 1646 (Holland)

On September 22, 1998, the County of San Luis Obispo considered appeals by N. Rodman and R. Holland of San Luis Obispo Planning Commission's decision to:

- A. Grant a three year extension for Tract 1646, a 100-lot subdivision located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in the community of Los Osos, and,
- B. Accept County staff's interpretation of the conditions of approval for Tract 1646.

While the issue of the map extension was a fully noticed public hearing, "interpretation" of the conditions of the map was not. Both items were heard together on September 22, 1998. SLO County does not intend to file a notice of final action to the Coastal Commission, because the Planning Department and County Counsel contend that the County took no appealable action. It is the County's position that it is not required to notify the Commission for extensions of coastal development permits that they have issued. However, this appeal contends that the action of September 22, 1998 constitutes an amendment to the approved map and a change in the project description without adequate findings or proper public notice and should require Coastal Commission notification as per Title 21.06.060 of the County General Plan.



The California Coastal Commission is requested to take this extremely unusual case on appeal for the following reasons:

1. The Board's actions on September 22, 1998, constitute significant changes to the conditions of Tract Map 1646, and should have been the subject of a fully noticed public hearing. (County General Plan 21.06.060, 21.08.020, and 21.08.022; CZLUO 23.02.038, 23.04.430, and 23.06.102.) By characterizing its actions as merely "re-interpretations" of the project conditions, the Board has skirted its obligations under CEQA, the Coastal Act and its own CZLUO.
2. The Coastal Development Permit for Tract 1646 should have expired in 1993 as per Subdivision Map Act Section 66452.6, County General Plan 21.06.010 and 21.06.054, and CZLUO 23.02.050. Therefore the applicant has no project.

It is the opinion of the appellant that:

A) On September 22, 1998 the Board granted substantial changes in the 1990 conditions of approval of Tract Map 1646 in conflict with LCP Framework for Planning, Coastal Zone, General Goals (Scope and Purpose statement 6; Section A 3 b & e; Section A 5 c; Section A 9; Section A 15); County General Plan 19.10.030, 21.02.048(11), and 21.06.010 (a) & (b); as well as CZLUO 23.02.038, 23.04.430, and 23.06.102. Specifically, the Board of Supervisors has allowed the owners of Tract 1646 the option to install a privately operated, stand-alone sewer treatment facility to serve the 100-lot subdivision, pursuant to RWQCB approval. The Board also granted a change, against the advice of county counsel, holding the applicant responsible for paying only those fees that were applicable at the time the map was deemed approved in 1990. This ruling excuses the developer from nearly \$500,000 of development impact fees, thus depriving the community of

much-needed funds for community infrastructure and coastal access improvements. The Board's action changed the project descriptions, and should have been fully noticed, formally acted on, and triggered CCC notification (Title 21.06.060 (b)). Further, the Board did not make the findings called for in 21.06.060 (a) to support such modifications or amendments.

B) Tentative Tract 1646 has not been properly extended, and therefore its Coastal Development permit has expired. Justification of the 5-year stay granted in 1992 was based on the erroneous representation that its predecessor, Tract 1091, was still an active map, which it was not. In fact, Tract 1091 expired in 1988. This would have made Tract 1646 ineligible for a stay under Subdivision Map Act Section 66452.6, which allows local governments to grant stays for active maps which were approved prior to the implementation of building moratoriums. The applicant's position was that Tract 1091 and Tract 1646 were essentially the same project, and because 1091 had gained local approval (but not CCC approval) prior to the moratorium, 1646 was therefore eligible for a stay under 66452.6. The December 11, 1990 San Luis Obispo County Planning Department staff report makes the following leap of logic; "Section 66452.6 of the Subdivision Map Act...allows for a stay when a development moratorium has been imposed after tentative map approval. Tract 1091 is therefore an active map." *(No, we are not making this up.)*

## PROJECT HISTORY

The history of this Tract is unusually long and complicated.

On December 17, 1985, subdivision of the property in question received tentative approval from the San Luis Obispo Board of Supervisors as Tract 1091. Subsequently, the applicant (Holland) applied to the Coastal Commission for approval of a Coastal Development Permit. When the Commission staff recommended denial, the applicant withdrew his permit request, preferring to re-submit to the County following certification of San Luis Obispo County's LCP. After receiving one 12-month extension, tract 1091 was allowed to expire in 1988.

In 1988 the Regional Water Quality Control Board imposed a building moratorium in Los Osos, until such time as a community-wide sewer was constructed. Later that year the County's LCP was certified by the Commission. The applicant resubmitted his previously expired project in March, 1989, but this time the request was for a vesting tentative map (Tract 1646). The county accepted the new application for processing and was in the process of environmental review for V.T. Map 1646 when the November 1990 election changed the Board of Supervisors to what many people assumed was a less developer-friendly majority. Although the environmental work was still incomplete, the applicant forced a public hearing pursuant to the Permit Streamlining Act.

On Dec. 11, 1990, the last meeting of the year for the outgoing Board, a public hearing was held on Tract Map 1646. County Planning staff recommended denial of the project, citing unresolved issues pursuant to drainage, environmental impacts, etc. If the Board were to take no action, the map would vest by operation of law the following day. The meeting continued nearly until midnight, with the Board unwilling to approve the controversial map under the circumstances, but also not wanting to deny the project outright. In order to prevent his project from being denied per staff recommendation, the developer agreed to attach a series of conditions to the project. Specifically:

- a) the developer agreed to pay all applicable fees at the time a building permit was issued, and
- b) hook up to a community-wide sewer system at the time the moratorium was lifted.

The Board voted 3:1 to amend the conditions of the map, but did not take action to approve the map, which was deemed approved by operation of law the following day. It has not been determined if the applicant notified the CCC of this approval, as required under the permit streamlining act. Following the Board's action, a committee from the Los Osos Chamber of Commerce appealed the permit to the Coastal Commission. The Commission accepted the appeal, and staff recommended denial of the project. One week before the CCC

public hearing in June of 1991, the Chamber withdrew its appeal, and the applicant received a coastal development permit by default from the County.

In February of 1992, four months prior to the projected June 15, 1993 date of expiration, the applicant requested and received a 5-year "stay" from the Board of Supervisors. It is the position of this appeal that this stay was granted improperly, due in part to a misleading staff report. Nevertheless, the stay brings us up to the present, as the permit would otherwise expire in October, 1998.

On September 22, 1998, the applicant requested another extension, along with a request for clarification of the language of the conditions which the Board imposed on Tract Map 1646 in 1990. The Planning Department, on behalf of the applicant, made the request under the guise of "requesting clarification," rather than a "request to amend the conditions of Tract 1646." Thus the requirement to conduct a fully noticed public hearing, which would normally be required for substantial changes to a project description, was avoided. Board action changed the conditions of approval for Tract 1646 on a 4:1 vote as noted above. Against the advice of county counsel, and despite overwhelming public testimony and the objections of the Supervisor for the District, the Board determined that the applicant is responsible for paying only those fees which were applicable at the time the map was deemed approved (1990). The term "community-wide" sewer system was similarly interpreted to include the option that a stand-alone sewage treatment system would be allowed, if the Regional Water Quality Control Board considers a 100-lot subdivision a community. This would effectively remove 100 assessments from the district that has been established to pay for the State mandated Los Osos Community Sewer system.

The County contends that the following timeframe represents a summary of how the 2-year time period for Tract 1646 has run:

DATE	ACTION	TIME PERIOD
June 14, 1991	CCC Appeal Concluded	Time period starts
February 9, 1993	Board grants stay	June 14, 1991 to June 14, 1996
June 15, 1996	Two year period begins	June 14, 1996 to June 14, 1998
Sept 13, 1993 May 14, 1996	Two-year automatic extension One-year automatic extension	June 14, 1998 to June 14, 2001
June 11, 1998 Planning Comm.	Request for 5 year extension	PC Recommends 3 year extension To June 14, 2004

Source: SLO County Planning Department Recommendation to Board of Supervisor's August 25, 1998

It is clear that Tract 1646 was deemed approved by operation of law on December 12, 1990. However, the applicant's claim that 1646 was vested by the same action (operation of law) is less clear. Section 66498.1(b) of the State Subdivision Map Act states "maps have to be approved by an act of the local government authority." The 1990 board specifically did NOT approve this map. It was deemed approved, not actively approved, and it is the opinion of County Counsel that vesting is in question. But regardless of whether it is vested, and the Board's actions constitute an amendment to the conditions as stated in the staff report of 9/22/98, or whether it is not vested and the Board changed the project descriptions upon which the original approval had been based, either action should have been fully noticed, formally acted on, and should have triggered CCC notification (Title 21.06.060 (b)). Further, the Board did not make the findings called for in 21.06.060 (a) to support such modifications or amendments.

Representing the project changes as mere interpretation disguises their true nature and impact. This is an antiquated subdivision, which would benefit from substantial revision. Yet, through a series of questionable actions, the Board of Supervisors has kept the project alive far beyond its natural life span and away from the

established legal process and public review required by the Coastal Act, thereby creating the longest-lived tract map in County history. Because the Board has not followed the public process required in the CZLUO, specific to findings, public notification and Coastal Commission notification, the Board is in violation of the California Coastal Act.

The above findings are moot, however, if one considers that Tract 1646 was granted a 5-year stay in 1992 in direct violation of Section 66452.6 State Subdivision Map Act, Tract 1646 should rightfully have expired in 1995; and is therefore, no longer a project.

Appellant respectfully requests the Commission schedule a hearing on this case.

**DATE:** 11/25/98  
**TO:** DIANE LANDRY, CALIFORNIA COASTAL COMMISSION  
**FROM:** JERRY DEITZ  
**RE:** PENDING APPEAL

Dear Ms. Landry:

Please add the following points to your consideration of my appeal of the San Luis Obispo County Board of Supervisors' recent actions on Tract Map 1646.

1) If, indeed, the applicant never notified the Coastal Commission of the fact that Tract Map 1646 was approved by operation of law on December 12, 1990, as required under the California Map Act, I believe the applicant is in violation of the law and the Commission was denied due process and the potential to file their own appeal. As you know, the appeal filed by the Chamber of Commerce was withdrawn shortly before the Commission was scheduled to hear it. This is what has kept this project away from the Commission. While it may be argued that filing the appeal notified the Commission of the action and therefore served the purpose as notification by the applicant, in fact it did not. The applicant is specifically required to notice the Commission, and the 10 day appeal period begins from the date notification is received. If the applicant has never to this day notified the Commission, he should be required to do so now, and the appeal period should commence after said notification.

If Commission staff was satisfied to follow the same procedure as if the Tract Map had been formally approved by the Board (which it was not) that leaves only a 10 day window to file an appeal. If the appeal was the first and only notification received by the Commission, and it arrived on the 9th or 10th day after approval by operation of law, the Commission would have had no time to consider an appeal of its own.

2) I would also like to appeal the "reinterpretation" of the requirement for the applicant to provide a "will serve" letter. The "will-serve" letter of 1990 is outdated, and does not reflect the greater understanding we now have of our local aquifer.

EX. ONE

**CALIFORNIA COASTAL COMMISSION**

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

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

**RECEIVED**

Please review attached appeal information sheet prior to completing this form. DEC 15 1998

**SECTION I. Appellant(s):**

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

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

Commissioner Sara Wan; Commissioner Mike Reilly  
California Coastal Commission  
45 Fremont St. Suite 2000, San Francisco, CA 94105 (415 904-5200)

**SECTION II. Decision Being Appealed**

1. Name of local/port government: San Luis Obispo County

2. Brief description of development being appealed:

Grant a five year extension for Tract 1646 and amend a variety of conditions including the provision and timing of wastewater treatment facilities to serve the 100 lot proposed subdivision and methods of demonstrating an adequate potable water supply for the lots.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

Northerly Side of Los Osos Valley Road (19 acre site between Pecho Road and Monarch Lane), Los Osos (San Luis Obispo County)

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_  
b. Approval with special conditions:   X    
c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-98-108  
DATE FILED: 12/2/98  
DISTRICT: Central Coast District

EXHIBIT ONE  
A-3-SLO-98-108



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

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

a. ☐ Planning Director/Zoning  
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of  
Supervisors

d. ☐ Other: \_\_\_\_\_

6. Date of local government's decision: Sept. 22, 1998

7. Local government's file number: Tract 1646 extension (Holland)

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Noel Rodman; Ron Holland  
1220 Marsh Rd.  
San Luis Obispo, CA 93401

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

Gordon Hensley  
P.O. Box 6884  
Los Osos, CA 93412

Jerry and Elsie Deitz  
1181 Green Oaks Drive  
Los Osos, CA 93402

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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

1. San Luis Obispo County LCP Ordinance 23.02.050 allows a maximum of three, 12-month extensions to the initial time limit of coastal land use permits. This permit was approved by operation of law on December 11, 1990. It was subsequently appealed to the Coastal Commission. The appeal was withdrawn on June 5, 1991 and the locally issued Coastal Permit became effective on that date. According to the certified San Luis Obispo County LCP, this original permit for this project was valid for two years. Even if all legal extensions for the Coastal Permit for this project had been applied for and received, the permit for the project would have nonetheless expired on June 5, 1996. The Board's recent September 22, 1998 action, which purported to extend the 1991 Coastal Permit for another five years, until 2003, is inconsistent with Section 23.02.050.

2. San Luis Obispo County LCP Ordinance 23.02.038(b) requires that a new project approval be obtained when changes to an approved project would result in an increased impact to an aspect of the project specifically addressed in previous environmental review or when such changes relate to a project feature that was specifically addressed in the conditions of prior approval, or that was a specific consideration by the Review Authority in the prior approval. The County's action substantively changed conditions of the original approval concerning adequate water supply and adequate sewage treatment. Specifically, an original project condition stated that the Final Map for the Holland Subdivision could not be filed until a community wide sewer system approved by the RWQCB has been approved and constructed. The Board's recent action revised the condition to allow the project to pursue some other sewer project that meets the definition of community wide, although the action did not specify the meaning of "community wide". The Board also revised the project condition relevant to the demonstration of adequate potable water prior to the recordation of a Final Map. The original permit required the subdivider to "demonstrate an adequate water supply *consistent with the county policies in effect at the time the final map is filed*". The Board revised this condition to allow the subdivider to use a "Will-Serve" letter from 1990 to constitute proof of adequate water. No amendment to the original approval was applied for by the project applicant or processed by the County for these substantive changes to the original project conditions. This is inconsistent with the section 23.02.038(b) concerning project changes. Moreover, as discussed above, because the Coastal Permit for the project has apparently expired, and thus cannot be amended, the Board's action is also inconsistent with the coastal development permit procedures of the LCP.

3. San Luis Obispo County LCP Public Works Policy 1 requires that new development demonstrate that adequate public or private service capacities are available to serve the proposed development. The original project approval was conditioned to require that the Final Map for the Holland Subdivision not be filed until a community wide sewer system approved by the RWQCB has been approved and constructed. The Board's September 22, 1998 action interpreting this condition to allow the use of an alternative "community wide" sewage treatment system is vague, and it is not clear whether adequate sewage treatment capacity for the subdivision would be provided under this revision of the condition. In particular, it is not clear how the change meets the intent of the current Regional Water Quality Control Board discharge prohibition in the Los Osos community.

4. San Luis Obispo County LCP Public Works Policy 1 requires that new development demonstrate that adequate public or private service capacities are available to serve the

proposed development. LCP Coastal Watersheds Policy 1 requires that the long-term integrity of groundwater basins within the coastal zone be protected, and that the safe yield of the groundwater basin not be exceeded. The original permit required the subdivider to "demonstrate an adequate water supply *consistent with the county policies in effect at the time* the final map is filed". The Board revised this condition to allow the subdivider to use a "Will-Serve" letter from 1990 to constitute proof of adequate water. This is inconsistent with Public Works Policy 1 and may be inconsistent with Coastal Watersheds Policy 1.

SECTION V. Certification

(See Attached Signature Sheets)

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

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date \_\_\_\_\_

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

SECTION VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

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

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

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

SECTION V. Certification

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

Signed Mike Rung  
Appellant or Agent

Date 12/15/98

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

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

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

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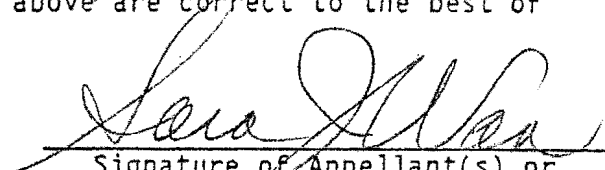
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Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal,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

SECTION V. Certification

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

  
Signature of Appellant(s) or  
Authorized Agent

Date December 15, 1998

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

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

EX. ONE

CHANGES MADE TO THE  
PROJECT BY THE APPLICANT  
(AMENDED PROJECT DESCRIPTION)  
AS OF DECEMBER 11, 1990

ADDITIONAL PROJECT DESCRIPTION  
TRACT 1646

The following items are additional features of the project incorporated into the project at the request of the Applicant. These items are in addition to the project description provided in the project application and the Vesting Tentative Tract Map 1646.

Water Supply and Sewage Disposal

1. The project shall connect to a community-wide sewer system approved by the Regional Water Quality Control Board. The Applicant shall not file the final map unless and until a community-wide sewer system has been constructed and is available for the project to connect to.
2. Prior to filing the final map, the Applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the final map is filed.

Vector Control and Solid Waste

3. Adequate provisions shall be made to prevent standing water in order to prevent mosquito breeding and other associated nuisance and safety hazards.
4. Provisions for handling of solid waste within the subdivision shall be made to the satisfaction of the County Health Department. The Health Department may require a "will serve" letter from the waste handling facility prior to the filing of the final map.

Access and Improvements

5. Roads and/or streets to be constructed to the following standards:
  - A. Interior streets constructed to an A-2 section within a 50 foot dedicated right-of-way, which includes curbs, gutters and sidewalks.
  - B. Skyline Drive constructed to a 2/3 A-2 section within a minimum 40 foot dedicated right-of-way.
  - C. Pecho Valley Road between Los Osos Valley Road and Monarch Lane constructed to the project 1/2 of an A-2 4-lane arterial section. (The estimated improvement cost to be deposited with the County Engineer in lieu of construction.)

EXHIBIT TWO  
1990 REVISIONS

POST HEARINGS - PROVIDED  
BY APPLICANT

- D. Monarch Lane, Butte and Howard Avenue widened to complete the project side of an A-2 section fronting the property.
- E. Pecho Road to a constructed to 2/3 of an A-2 section including the undergrounding of the drainage facility.
- 6. The Applicant offer for dedication to the public by certificate on the map or by separate document:
  - A. For road widening purposes 0 to 10 feet in width along Pecho Valley Road.
- 7. [Reserved]
- 8. Access be denied to lots along Pecho Road and Pecho Valley Road and that this be by certificate and designation on the map.
- 9. A pedestrian easement be reserved on the map for access for the end of Butte Street to Monarch Lane. The easement be constructed with steps as requested.
- 10. Butte may not be capable for carrying additional runoff. Construct off-site drainage facilities for an adequate outlet, or provide evidence of adequate drainage easements.
- 11. Submit complete drainage calculations to the County Engineer for approval.
- 12. Drainage may have to be detained in a drainage basin on the property. The design of the basin to have approved by the County Engineer, in accordance with County standards.
- 13. If required, the drainage basin along with rights of ingress and egress be:
  - A. Offered for dedication to the public by certificate on the map.
- 14. If a drainage basin is required, a zone of benefit be formed within CSA #9 for maintenance of the drainage basin. Application to be filed with the County Engineer Special Districts Administrator, and be recommended for approval by the C.S.A. #9 Advisory Committee.

#### Utilities

- 15. Cable T.V. conduits be installed in the street.
- 16. Gas lines are to be installed.

Plans

17. Improvement Plans be prepared in accordance with San Luis Obispo County Improvement Standards and Specifications by a Registered Civil Engineer and submitted to the County Engineer and County Health Departments for approval. The plan to include:
  - A. Street plan and profile;
  - B. Drainage ditches, culverts, and other structures;
  - C. Water Plan (County Health);
  - D. Sewer plan (Engineering and Health);
  - E. Grading and erosion control plan for subdivision related improvements;
  - F. Public utility location.
18. The Applicant shall enter into an agreement with the County for inspection of said improvements.
19. The engineer, upon completion of the improvements, must certify to the County Engineer that the improvements are made in accordance with Subdivision Review Board requirements for the approved plans.
20. Submit a detailed landscaping plan for a retention basin, if it is required, for Planning Department review and approval prior to filing of the map. Said plans to include location, species and size of all proposed plants materials, and location of any pedestrian walks, outdoor furniture and lighting, and trash disposal areas. Plan to include:
  - A. Screening of drainage basin (if required);
  - B. Planting of cut and fill slopes pursuant to erosion control plan.
21. All approved landscaping shall be installed or bonded for prior to filing of the map and thereafter maintained in a viable condition on a continuing basis. If bonded for, landscaping shall be installed within 60 days of final acceptance of the improvements.

Covenants, Conditions and Restrictions

22. The Applicant shall establish covenants, conditions, and restrictions. These CC&R's shall be administered by the subdivision homeowners' association. These CC&R's shall be



submitted to the County Planning Department for review and approval with respect to condition 24(A).

23. The Applicant shall form a property owners' association (homeowners' association) for the area within the subdivision, so as to administer the CC&R's as noted above, and it shall conform to the requirements of the State Department of Real Estate.
24. The Applicant at a minimum shall provide the following provisions in the CC&R's:
  - A. Maintenance of any common areas.

#### Miscellaneous

25. Three (3) copies of a Preliminary Soils Report prepared by a Registered Civil Engineer in accordance with Sections 17953, 17954, 17955 of the California Health and Safety Code must be submitted to the Engineering, Planning and Health Departments prior to the filing of the map by the County Engineer. The date and person who prepared the report are to be noted on the map.
26. The Applicant agrees to pay any fees applicable to the Tract Map 1646 hereinafter enacted by the Board of Supervisors upon completion of the South Bay Circulation Study pursuant to San Luis Obispo County Code Chapter 13.01.
27. Applicant agrees to be subject to the current growth ordinance, limiting growth rate to 2.3% in the unincorporated areas of the County.
28. Applicant will defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from all claims or causes of action, arising out of County's deemed approved status of Tract 1646 pursuant to the California Permit Streamlining Act. Applicant's duty hereunder shall include, without limitation any action for mandamus, administrative mandamus, violation of civil rights, inverse condemnation, trespass, slander of title, personal injury, property damage, negligent infliction of emotional distress, or negligent breach of any statutory, or regulatory duty. To the extent this indemnity extends to causes of action related to construction of structures or improvements, it shall be limited to causes of action which are not based upon indemnitees' sole negligence or misconduct.

Applicant covenants not to sue the County of San Luis Obispo or any of its officers, agents, or employees, nor subsidiary district or successor agency, or their officers, agents or employees, for any cause of action it now has, or may later

have as a result of Applicant's inability to process the final map, build improvements for, or sell lots in Tract 1646 as a result of the County's failure to act with respect to any features of the project agreed to by the Applicant; specifically, any moratorium on land use and building permits imposed as a result of the deemed approval of this application and, specifically, the non-completion or untimely completion of the Los Osos Community sewer system. This covenant shall bind successors in interest and shall run with the land. Applicant's duty hereunder shall include, without limitation any action for mandamus, administrative mandamus, violation of civil rights, inverse condemnation, trespass, slander of title, personal injury, property damage, negligent infliction of emotional distress, or negligent breach of any statutory, or regulatory duty.

29. Prior to the filing of the final map, the Applicant shall enter into an agreement with the county to provide 15 residential units for low and moderate income families as defined by Section 50093 of the Health and Safety Code as part of the proposed project or elsewhere in the community. The agreement with the county by the Applicant will include acknowledgment that it is feasible to provide a level of affordable housing in conjunction with this project. If any of the 15 units have not been purchased by a qualified buyer within six months of the units being available for sale, and evidence can be provided that shows a reasonable advertising campaign was used to attract qualified buyers, the Applicant may be relieved from the requirements to sell the units to qualified buyers.
30. Applicant is subject to the stock conditions of approval of the County of San Luis Obispo for community water and community sewer, which are incorporated herein by reference.
31. Applicant agrees to payment of any fees adopted by the County and imposed on an area-wide basis for the Los Osos community, payable at the time of application for building permits.

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) Department PLANNING AND BUILDING	(2) Meeting Date SEPTEMBER 22, 1998	(3) Contact PAT BECK, PRINCIPAL PLANNER	(4) Phone 781-5981
(5) Subject APPEAL OF PLANNING COMMISSION DECISION TO GRANT A THREE YEAR EXTENSION - TRACT 1646 (LOS OSOS)--ADOPT RESOLUTION APPROVING THE APPEAL			(6) Supervisor District(s) 2nd
			(7) Location Map <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A
(8) Summary of Request APPLICANT APPEALED DECISION OF PLANNING COMMISSION TO GRANT A THREE YEAR EXTENSION OF TRACT 1646 RATHER THAN THE FIVE YEAR EXTENSION AS REQUESTED. BOARD HEAR THIS ITEM ON AUGUST 25 AND TENTATIVELY APPROVED A FIVE-YEAR EXTENSION			
(9) Recommended Action APPROVE THE APPEAL AND ADOPT THE RESOLUTION GRANTING FIVE YEAR EXTENSION			
(10) Administrative Office Review			
(11) Funding Source(s) FEE FOR APPEAL OF DECISION	(12) Current Year Cost \$474.00	(13) Annual Cost NA	(14) Budgeted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/> No
(15) Will Request Require Additional Staff? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
(16) Supportive Documents		(17) Past Actions on Item APPROVAL - DECEMBER 12, 1990: PROJECT STAY 2/93, AUGUST 25, 98 TENTATIVE APPROVAL	
(18) Agenda Placement <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. 5 Minutes) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			
(19) Executed Documents <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies)		(20) Need Extra Executed Copies? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached	
		(21) Appropriation Transfer Required? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	

EXHIBIT THREE  
A-3-SLO-98-108

C-2  
9-22-98



# SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

ALEX HINDS  
DIRECTOR

BRYCE TINGLE  
ASSISTANT DIRECTOR

ELLEN CARROLL  
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY  
CHIEF BUILDING OFFICIAL

**DATE:** SEPTEMBER 22, 1998

**TO:** BOARD OF SUPERVISORS

**FROM:** PAT BECK, PRINCIPAL PLANNER

**VIA:** ALEX HINDS, DIRECTOR OF PLANNING AND BUILDING

**SUBJECT:** APPEAL BY NOEL RODMAN AND RON HOLLAND OF PLANNING  
COMMISSION DECISION TO GRANT A THREE YEAR EXTENSION  
OF TRACT 1646 (LOS OSOS)--ADOPT RESOLUTION APPROVING THE  
APPEAL

## ATTACHMENTS:

1. Resolution of Board Action

## RECOMMENDATION

Adopt the resolution approving the five year extension for Tract 1646 to June 14, 2006.

## DISCUSSION

### Background

Tract 1646 (Holland) was approved under operation of law of December 12, 1990 and became effective following Coastal Commission review on June 14, 1991. The Board of Supervisors granted a five-year stay based upon the sewer moratorium in the community of Los Osos on February 9, 1993. The current map is approved through June 14, 2001. The applicants requested that your Board overturn the Planning Commission decision to grant a three year extension for the project rather than the maximum extension of five years. Following the public hearing your Board took tentative action to approve the appeal and grant a five year extension for Tract 1646. Staff has prepared a revised resolution to reflect your Board's tentative action.

EX. THREE

C-2  
N

Relationship to Other Board Item

The applicants have requested clarification of the requirements established as "features" of the map. The final map is processed by County Engineering in consultation with other departments. A separate memorandum is presented by County Engineering to reflect the tentative actions taken by your Board on the "features".

Other Agency Involvement

This issue, and the accompanying discussion on interpretation of the project "features" has included involvement from County Engineering, County Counsel, and Environmental Health.

Financial Considerations

The appeal fee paid covers the costs for processing the appeal on the time extension. No additional costs occur for the county.

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

\_\_\_\_\_ day \_\_\_\_\_

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION UPHOLDING THE APPEAL  
OF RON HOLLAND AND GRANTING A  
FIVE YEAR TIME EXTENSION  
FOR TRACT 1646 (HOLLAND)**

The following resolution is now offered and read:

WHEREAS, on June 11, 1998, the Planning Commission of the County of San Obispo (hereinafter referred to as the "*Planning Commission*") duly considered and conditionally approved a three year time extension for tentative Tract Map 1646 (Holland); and

WHEREAS, Ron Holland appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "*Board of Supervisors*") pursuant to the applicable provisions of Title 21 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on August 25, 1998, and determination and decision was made on September 22, 1998; and

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

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be upheld and the decision of the Planning Commission should be overturned.

EX. THREE

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2. That the appeal filed by Ron Holla. is hereby approved and the decision of the Planning Commission is overturned to allow for a five year time extension of Tract Map 1646 to June 14, 2006.

Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_

, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

\_\_\_\_\_  
Chairman of the Board of Supervisors

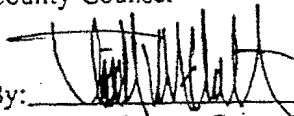
ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By:   
Deputy County Counsel

Date: 9.10.98

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

Tuesday, September 22, 1998

**PRESENT:** Supervisors Harry L. Ovitt, Laurence L. Laurent, Peg Pinard, Ruth E. Brackett,  
Chairperson Michael P. Ryan

**ABSENT:** None

In the matter of appeal by T. Orton of the County staff's interpretation of the conditions of approval for Tract 1646:

This is the time set for continued consideration of an appeal by T. Orton of the County staff's interpretation of the conditions of approval for Tract 1646, a 100 lot subdivision located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in the community of Los Osos; 2nd District (continued from August 25, 1998).

**Mr. Richard Marshall:** Engineering, presents the staff report and indicates he mischaracterized the wording "lost revenue" in the first paragraph of the second page of the staff report; presents a letter from Roy Ogden, attorney for Mr. Holland and responds to same.

**Mr. Alex Hinds:** Director of Planning and Building, addresses the issue of Public Facilities Fees.

**Mr. Roy Ogden:** attorney for the appellant, states that it has been "disheartening" to hear concerns about this waiver, there are no fees that are lost to the County; this is a vested map and the only fees that can be charged are those that were in effect back in 1990; urges the Board to follow the law with respect to this map.

**Ms. Ann Calhoun:** presents a letter for the record and highlights same questioning how 100 new homes can be allowed without the fees/services to support them.

**Ms. Shirley Bianchi:** addresses her concerns to the loss of this money for use Countywide and urges the Board to not rescind the fees.

**Mr. Stan Stein:** Chairperson for the CSA #9 Advisory Group, addresses the intent of the Public Facilities Fees and urges the Board to not waive this requirement.

**Mr. Jerry Deitz:** addresses his concerns and wants the fees to be imposed.

**Mr. Eric Greening:** agrees with the comments by Ms. Bianchi and expands giving his views on why these fees shouldn't be waived.

**Ms. Jan Howell Marx:** urges the Board to follow the advise of their staff and impose this fee.

**Mr. Joe Kelly:** addresses his concern to the Countywide impact of waiving these fees.

**Ms. Virginia Dobias:** questions the applicant regarding the waiver and speaks in support of maintaining this fee.

**Mr. Ogden:** responds to issues raised by the public.

**Supervisor Laurent:** questions the original language of Condition #31 versus the changed language; and whether this is appealable to the Coastal Commission.

**Mr. Tim McNulty:** Deputy County Counsel, indicates it could be possible, through some indirect



way, to appeal this to the Coastal Commission; indicates he is not sure what that way would be.  
Matter is fully discussed and thereafter, on motion of Chairperson Ryan, seconded by  
Supervisor Brackett and on the following roll call vote:

AYES: Supervisors Chairperson Ryan, Brackett, Ovitt  
NOES: Supervisors Laurent, Pinard  
ABSENT: None

the Board reaffirms their tentative action of August 25, 1998.

cc: Planning  
Engineer (2)  
9/30/98 vms

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

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

WITNESS my hand and the seal of the said Board of Supervisors, affixed this 30th day of  
September, 1998.

(SEAL)

JULIE L. RODEWALD  
County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By Uue m bnelly  
Deputy Clerk

Law Offices of  
**ROY E. OGDEN**  
1060 Palm Street, Suite D  
San Luis Obispo, California 93401

September 21, 1998

Richard Marshall  
Development Services Engineering  
County of San Luis Obispo  
Engineering Department  
1050 Monterey Street  
San Luis Obispo, California 93408

VIA HAND DELIVERY

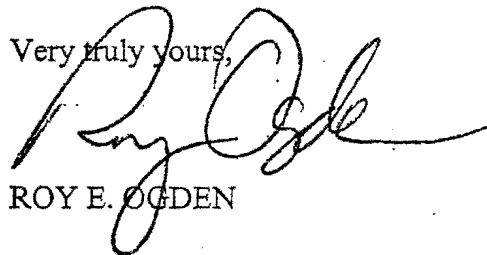
Re: Tract 1646 (Holland) Appeal

Dear Mr. Marshall:

As a follow up to our telephone conversation today, I wanted to again emphasize my clients' position that they should not be required to pay any assessments respecting the proposed Los Osos Sewer System if the above project does not utilize such System. You informed me of the Engineering Department's position that the payment or nonpayment of such assessments is not currently before the Board of Supervisors.

Nevertheless, I again encourage the Engineering Department to revise its memorandum to the Board of Supervisors for the hearing tomorrow concerning the above project to make clear that my clients will not be required to pay any assessments if the System is not utilized by their project.

Very truly yours,



ROY E. OGDEN

REO:kaw  
ltr\Holland & Rodman\980921 R. Marshall

cc: Clients

*Aug*

## IN THE BOARD OF SUPERVISORS

### COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, August 25, 1998

PRESENT: Supervisors Harry L. Ovitt, Laurence L. Laurent, Peg Pinard, Ruth E. Brackett, Chairperson Michael P. Ryan

ABSENT: None

In the matter of Appeals by N Rodman, R. Holland, and T. Orton:

This is the time set for consideration of appeals by N. Rodman and R. Holland of the Planning Commission's decision to grant a three year extension for Tract 1646, a 100 lot subdivision located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in the community of Los Osos; 2<sup>nd</sup> District and T. Orton of the County staff's interpretation of the conditions of approval for Tract 1646, a 100 lot subdivision located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in the community of Los Osos; 2<sup>nd</sup> District.

Chairperson Ryan: indicates these two appeals will be heard together as they are interrelated.

Mr. Alex Hinds: Planning and Building Director, introduces the first appeal by Rodman/Holland indicates the applicants are asking for a time extension to the year 2006 and the Planning Commission has only granted an extension to the year 2004.

Mr. Richard Marshall: Engineering, introduces the second appeal by T. Orton; indicates the project was originally approved by "operation of law"; states the applicants are appealing the staff interpretation of five of the conditions; briefly reviews the conditions and recommends the Board approve staff's interpretation and deny the appeal.

Supervisor Laurent: questions if the project should be redesigned, with Mr. Marshall responding.

(SUPERVISOR BRACKETT IS NOW ABSENT.)

Mr. Roy Ogden: representing the appellants, states this project has a "long and sad history"; indicates it took seven years to be approved; (SUPERVISOR BRACKETT IS NOW PRESENT.) discusses the delay due to the lawsuits filed relating to the Los Osos Sewer Project; states the applicant is in support of the Los Osos sewer, however, if the time runs out on their map

they are asking for approval of an alternative system so that the project will not be lost; if they are given a five year extension they can continue to support the County design; addresses the five conditions in dispute; Condition No. 1: states the last thing they want to do is to design another system but would like the ability to do that if it is needed; Condition No. 2: states the applicant has a valid "Will Serve" letter from Southern California Water Company and doesn't believe they need an updated letter; Condition No. 13: indicates this condition has been satisfied with the completion and approval of the improvement plans, which include a storm drain system and not a drainage basin; Condition No. 26: states the applicant feels the fees that were in place or were noticed for public hearing at the time the tentative map was submitted are the fees that they are responsible to pay, since this is a vesting tentative map; and Condition No. 31: states the applicant feels the fees are those that are in place at the time the application was submitted for processing.

Board Members: discuss various issues, comments and concerns regarding: the fees and the map being filed as a vested map.

Mr. Marshall: states the fees would be adopted following the circulation study and subject to annual updates and that is the reason for the reference to Chapter 13.01 of the County Code.

Supervisor Laurent: states the reference to the County Code describes an on-going process; neither Conditions Nos. 26 or 31 say they will pay fees in affect at the time of the vesting approval; addresses the "Will-Serve" letter.

Mr. Jerry Holland: Appellant, briefly describes the hearing on December 11, 1990 for the vested map.

Supervisor Pinard: clarifies that the applicant is asking for the ability to complete the project whether it be hooked up to the Los Osos sewer or an alternative system; questions what the difference would be in the fees; believes the drainage and the sewer will be solved by the Regional Water Quality Control Board.

Supervisor Laurent: indicates he would like to start with the second appeal by T. Orton.

A motion by Supervisor Laurent to deny the appeal and uphold the staff interpretation of all conditions of approval of the subdivision, dies for lack of a second.

A motion by Supervisor Brackett, seconded by Supervisor Ovitt to uphold the applicants

appeal for Condition No. 1, is discussed.

Supervisor Brackett: asks if these motions can be tentative motions and have language drawn up and brought back to the Board for approval, with the Board and staff concurring.

Matter is fully discussed and thereafter, on motion of Supervisor Brackett, seconded by Supervisor Ovitt, with Supervisor Laurent casting a dissenting vote, motion carries and the Board tentatively upholds the applicants appeal on Condition No. 1, which states this condition can be met with either the Los Osos Community sewer project or some other project that meets the definition of "community-wide".

A motion by Supervisor Ovitt, seconded by Supervisor Laurent to uphold the wording of Condition No. 2, is discussed.

Mr. Marshall: indicates County policy is to require an updated final "Will Serve" letter at the time of recordation of the final map.

Supervisor Ovitt: states his understanding is the applicant has to show adequate water; believes the intent of the motion is to state the existing letter is still current.

Supervisor Laurent: withdraws his second.

Thereafter, on motion of Supervisor Ovitt, seconded by Supervisor Brackett, with Supervisor Laurent casting a dissenting vote, motion carries and the Board tentatively upholds Condition No. 2 accepting the current "Will Serve" letter as meeting the intent of the condition.

Supervisor Ovitt: indicates his interpretation of Condition No. 26 is the applicant would pay the fees at the time the map was deemed approved and this condition relates to the fact that once the final circulation study was completed the fee would be incorporated.

Thereafter, a motion by Supervisor Ovitt, seconded by Supervisor Brackett, to tentatively recognize Condition No. 26 the fees were established for the vesting map at the time the South Bay Circulation was approved, fails on the following roll call vote:

AYES: Supervisors Ovitt, Brackett  
NOES: Supervisors Laurent, Pinard, and Chairperson Ryan  
ABSENT: None

Supervisor Ovitt: addresses Condition No. 31; indicates this is a vested map, the fees should be those in place at the time the map was deemed approved.

A motion by Supervisor Ovitt, seconded by Supervisor Brackett to determine that the fees are applicable at the time the map is deemed approved and the fees shall be imposed and payable at the time of the building permit, is discussed.

Supervisor Laurent: believes the condition infers all fees.

Supervisor Pinard: states development has costs and if this development does not pay its fair share others will have to make up the difference.

Thereafter, on motion of Supervisor Ovitt, seconded by Supervisor Brackett and on the following roll call vote:

AYES: Supervisors Ovitt, Brackett, Chairperson Ryan  
NOES: Supervisors Laurent, Pinard  
ABSENT: None

the Board tentatively determines the fees are applicable at the time the vesting map is deemed approved and the fees imposed shall be paid at the time the building permits are issued.

A motion by Supervisor Laurent to deny the appeal and uphold the Planning Commission decision to grant a three year extension for Tract 1646 to June 14, 2004, dies for lack of a second.

Thereafter, on motion of Supervisor Brackett, seconded by Supervisor Ovitt and on the following roll call vote:

AYES: Supervisors Brackett, Ovitt, Pinard, Chairperson Ryan  
NOES: Supervisor Laurent  
ABSENT: None

the Board tentatively upholds the appeal and approves the applicants request for a five year extension.

Thereafter, on motion of Supervisor Ovitt, seconded by Supervisor Brackett and unanimously carried, the Board continues said hearing to September 22, 1998 at 9:00 a.m..

cc: Planning 2, Engineering 2, 08/31/98 cla  
STATE OF CALIFORNIA )  
County of San Luis Obispo ) ss.

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

WITNESS my hand and the seal of the said Board of Supervisors, affixed this 31st day of August, 1998.

(SEAL) JULIE L. RODEWALD  
County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By *Cheri Dejeu*  
12 C-4 & D-1 Deputy Clerk

EX. THREE

# PHYSICAL CHARACTERISTICS

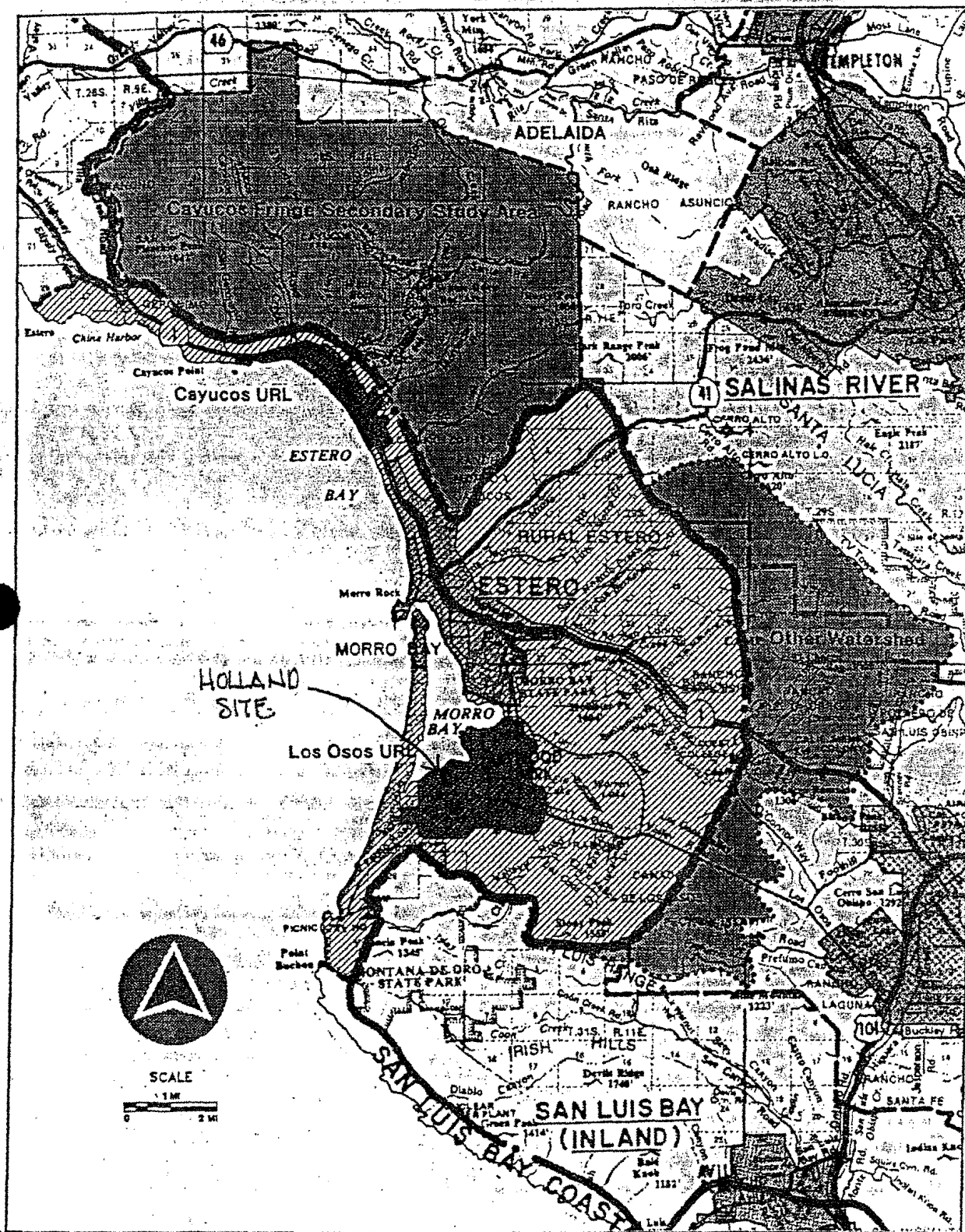
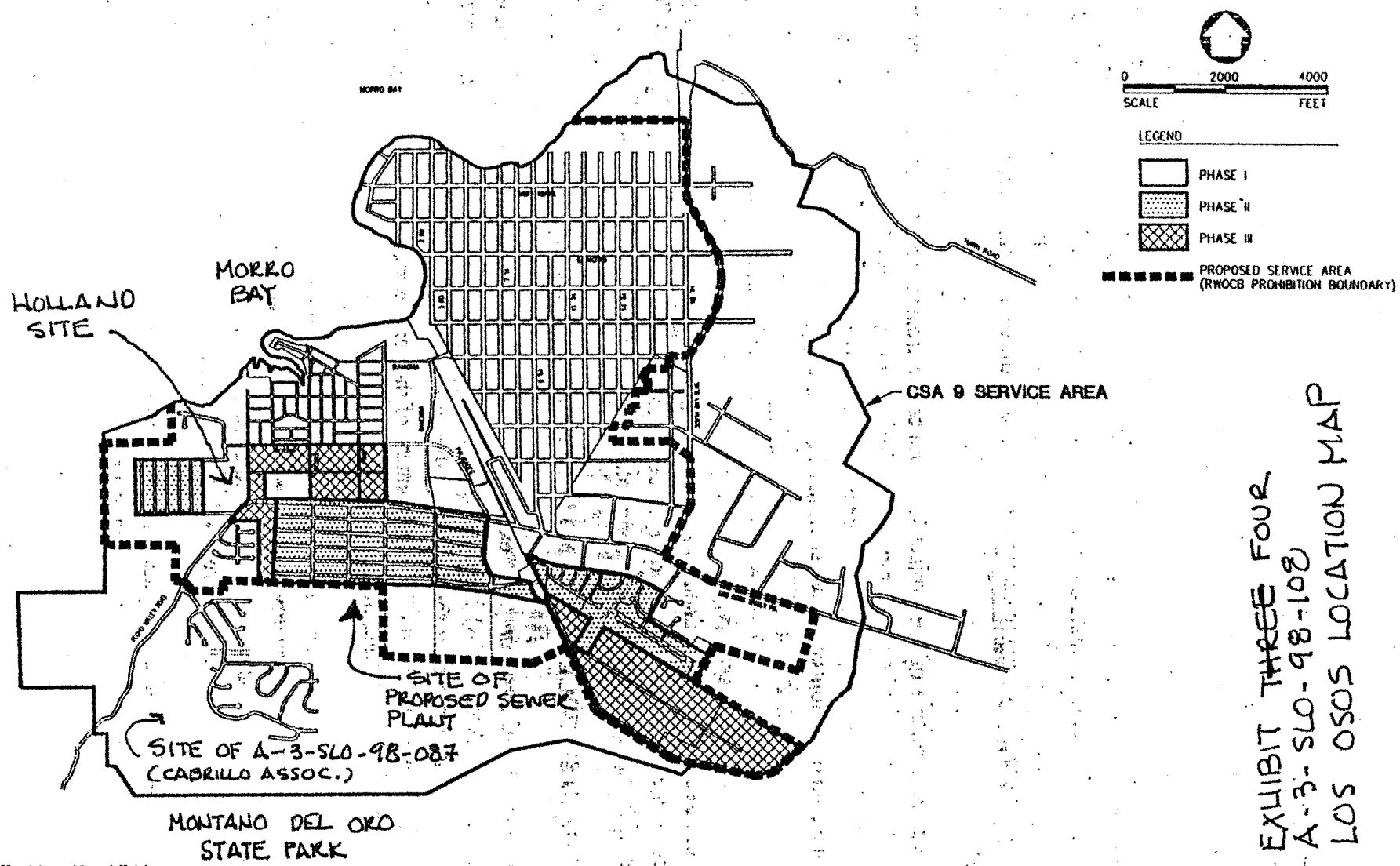


Figure 1-1: Estero Planning Area and Secondary Study Areas

EXHIBIT FOUR  
A-3-SLO-98-108



SOURCE: Metcalf and Eddy

EXHIBIT THREE FOUR  
A-3-SLO-98-102  
LOS OSOS LOCATION MAP

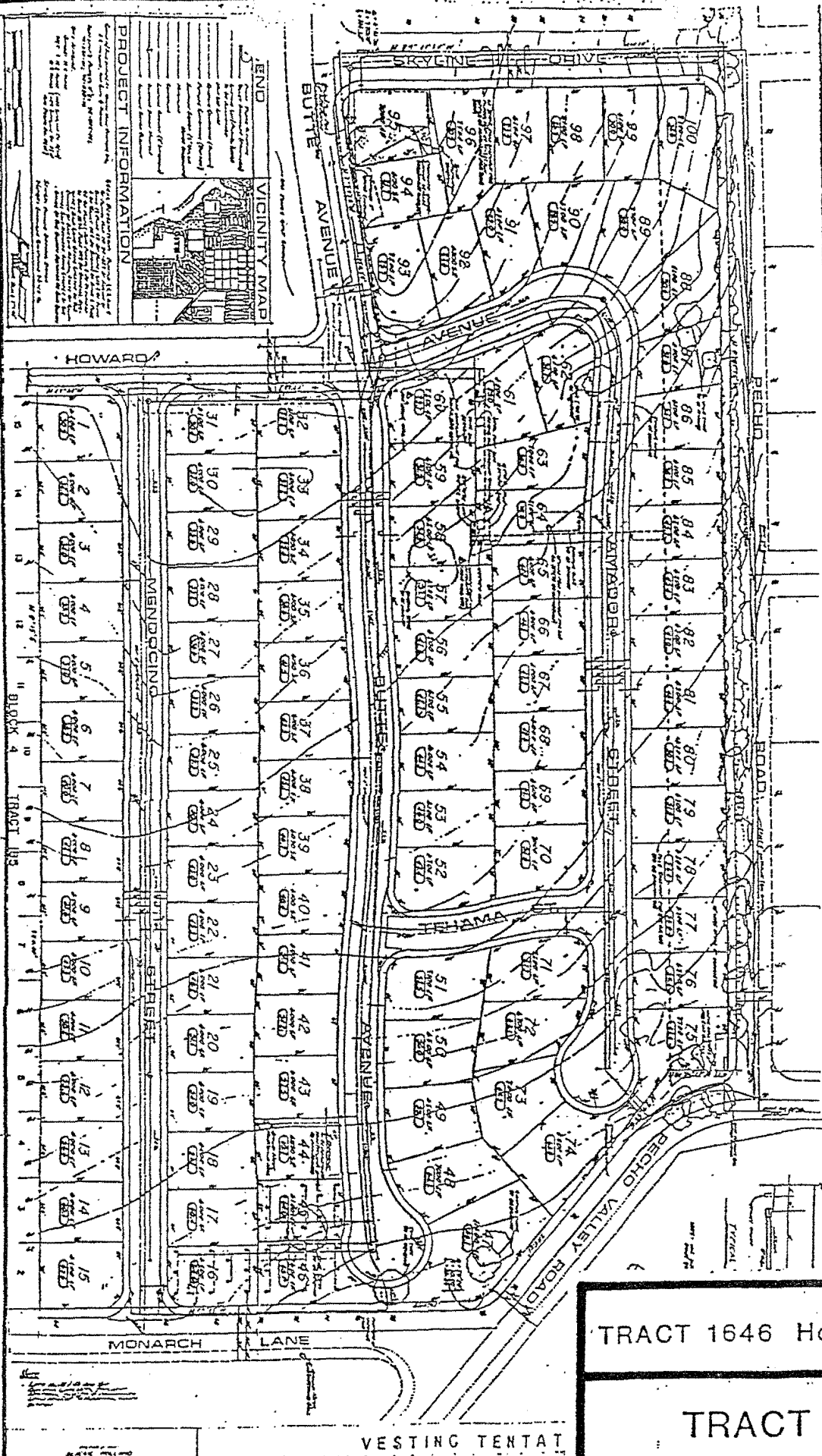
# PROPOSED SERVICE AREA AND IMPLEMENTATION PHASING

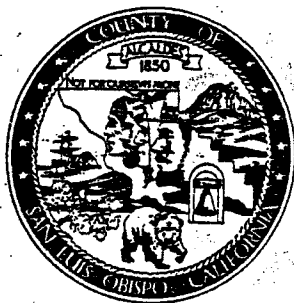


EXHIBIT FIVE  
SITE PLAN  
A-3-SLO-98-10/8

TRACT 1646 Holland/Westland.

TRACT MAP





# SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

ALEX HINDS  
DIRECTOR

BRYCE TINGLE  
ASSISTANT DIRECTOR

ELLEN CARROLL  
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY  
CHIEF BUILDING OFFICIAL

**DATE:** AUGUST 25, 1998

**TO:** BOARD OF SUPERVISORS

**FROM:** PAT BECK, PRINCIPAL PLANNER

**VIA:** ALEX HINDS, DIRECTOR OF PLANNING AND BUILDING

**SUBJECT:** APPEAL BY NOEL RODMAN AND RON HOLLAND OF PLANNING COMMISSION DECISION TO GRANT A THREE YEAR EXTENSION OF TRACT 1646 (LOS OSOS)

## ATTACHMENTS:

1. Resolution of Board Action
2. Planning Commission Staff Report - June 11, 1998
3. Planning Commission Minutes

## RECOMMENDATION

Deny the appeal and uphold the Planning Commission decision to grant a three year extension for Tract 1646 to June 14, 2004.

## DISCUSSION

### Background

Tract 1646 (Holland) was approved under operation of law of December 12, 1990 and became effective following Coastal Commission review on June 14, 1991. The Board of Supervisors granted a five-year stay based upon the sewer moratorium in the community of Los Osos on February 9, 1993. The current map is approved through June 14, 2001. The applicants are requesting that your Board overturn the Planning Commission decision to grant a three year extension for the project rather than the maximum extension of five years.

Tract 1646 is a proposed 100-lot subdivision in the Residential Single Family land use category, located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in Los Osos. Attached to the staff report are a location map and a site plan showing the layout of the subdivision. The tentative map of Tract 1646 was actually deemed approved by operation of law, under the requirements of the California Permit Streamlining act. The conditions in this case

EXHIBIT SIX  
CHRONOLOGY OF MAP EXTENSIONS

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are actually in the form of "Additional Project Descriptions," which were provided by the applicants at the December 11, 1990 hearing of the Board of Supervisors.

The appeal of the approval to the Coastal Commission was concluded on June 14, 1991. At that time, the two year time period for tract maps would have commenced for Tract Map 1646/CDP. However, this time did not start to run because it was stayed by a development moratorium. On February 9, 1993, the Board of Supervisors granted a "stay" under the provisions of the Government Code, effectively stopping the clock on the expiration of the original approval of the project due to the wastewater disposal moratorium in effect in the community. A copy of the findings for the stay are attached. The stay was granted for the period from June 14, 1991 until June 13, 1996, the maximum period of time permitted for a stay under the Subdivision Map Act.

On June 14, 1996, the two year period of time for Tract 1646 began. A summary of the timeframe of the project is provided below:

Date	Action	Time Period
June 14, 1991	CCC Appeal Concluded	Time period starts
February 9, 1993	Board grants stay	June 14, 1991 to June 14, 1996
June 15, 1996	Two year period begins	June 14, 1996 to June 14, 1998
Sept 13, 1993 May 14, 1996	Two-year automatic ext. One-Year automatic ext.	June 14, 1998 to June 14, 2001
June 11, 1998 Planning Comm.	Request for 5 year extension	PC Recommends 3 year extension to June 14, 2004

### Analysis

The normal administrative procedure for time extensions is to approve the extensions on a one-year basis. Because of the extenuating circumstances, the Planning Commission recommended that a three-year extension be provided. This would provide some additional time beyond the typical one-year period while allowing the county to revisit the issues associated with a time extension and determine if the findings for extensions can still be met. After this three year period, current provisions of the Subdivision Map Act would allow an additional two years which could be granted to extend Tract 1646 to June 14, 2006.

Board of Supervisors  
Holland Appeal - 8/25/98  
Page 3

Relationship to Other Board Item

The applicants have requested clarification of the requirements established as "features" of the map. The final map is processed by County Engineering in consultation with other departments. A separate memorandum is presented by County Engineering in the following item to address those features requiring clarification.

Other Agency Involvement

This issue, and the accompanying discussion on interpretation of the project "features" has included involvement from County Engineering, County Counsel, and Environmental Health.

Financial Considerations

The appeal fee paid covers the costs for processing the appeal on the time extension. No additional costs occur for the county.

EXHIBIT "A"  
Tract 1646/CDP

FINDINGS FOR THE  
1993 BOARD ACTION  
TO EXTEND THE MAP  
FOR FIVE YEARS

Findings

1. The applicant requested that the County of San Luis Obispo recognize a stay and the tolling of the time period for vesting tentative Tract Map 1646/CDP, which applicant asserts was deemed approved by operation of law in June 1991, upon the conclusion of the appeal to the California Coastal Commission.
2. The applicant has abandoned the theory that a stay existed and the time for the vesting tentative tract map was tolled due to a litigation stay under Government Code, section 66452.6(c).
3. The Board recognizes that the time period for Tract Map 1646/CDP and as described with the features submitted by the applicant on December 11, 1990, has been stayed by operation of law due to a development moratorium, pursuant to Government Code, Section 66452.6(b). The development moratorium is defined in Government Code, section 66452.6(f) and states:  
  
"For the purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits or delays the approval of a final or parcel map." ... " (Government Code, section 66452.6(f).)
4. The County is a public agency which regulates land use, development or the provision of services to land and has the authority to approve or conditionally approve the tentative map within the meaning of Government Code, section 66452.6(f).
5. The Board recognizes that a CEQA determination was made in 1984 and 1985 with respect to Tract Map 1091. (1)
6. The Board recognizes that Tract Map 1091 is substantially the same project as Tract Map 1646/CDP, including the features added on, December 11, 1990.
7. The Board recognizes that the addition of the features on December 11, 1990 was essentially an inclusion of additional, more effective mitigation measures, especially with respect to the issues pertaining to sewage disposal.

8. The Board recognizes that subsequent changes were proposed in the project. However, these subsequent changes did not require important revisions of the previous EIR because the subsequent

① TRACT MAP APPLICATION 1091 WAS WITHDRAWN  
BEFORE COUNTY ACTION ~~WAS~~ IN 1988. TRACT 1646  
IS LOCATED ON THE SAME SITE AS TRACT 1091

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EX. SIX

changes did not involve new significant environmental impacts not considered in the previous EIR on the project. (State CEQA Guidelines, California Code of Regulations, section 15162(a)(1).) The environmental impact of sewage disposal was considered in the EIR.

9. The Board recognizes that pursuant to the State CEQA Guidelines, California Code of Regulations, section 15161(a)(3)(A) a supplemental EIR, subsequent EIR or addendum to the EIR was not required because the alternative of hooking up to a community-wide sewer system was not new information and it could have been known at the time the previous environmental determination was made for Tract Map 1091.

10. The Board recognizes that Tract Map 1091 complied with CEQA. Tract Map 1646/CDP was essentially the processing of a coastal development permit for the project. The Board recognizes that due to the completion of the CEQA requirements for Tract Map 1091, that the project as currently described in Tract Map 1646/CDP with the features of December 11, 1990, complies with CEQA.

11. When the Board did not act on December 11, 1990, Tract Map 1646/CDP - with the features submitted December 11, 1990 - and the coastal development permit were deemed approved by operation of law, at the conclusion of the appeal to the California Coastal Commission.

12. The appeal to the California Coastal Commission was concluded on June 14, 1991. At that time, the two year time period for vesting tentative tract maps would have commenced for Tract Map 1646/CDP. However, such time did not start to run because it was stayed by a development moratorium.

13. On June 27, 1990, the CAWS lawsuit was served on the County of San Luis Obispo. Shortly thereafter, and at all times since June 14, 1991, when Tract Map 1646/CDP was deemed approved, the County has not proceeded with the Los Osos community-wide sewer.

14. The development moratorium will be effective until the County of San Luis Obispo commences selling the bonds for the Los Osos community-wide sewer or until five years after the commencement of the moratorium, whichever occurs first.

15. For the purposes of Tract Map 1646/CDP as modified with the features of December 11, 1990, the development moratorium maximum time period will run from June 14, 1991 until June 13, 1996. If the County of San Luis Obispo sells the bonds for the Los Osos community-wide sewer before June 13, 1996, the first date of the sale of the bonds shall be the date the development moratorium ends.

16. The next day after the development moratorium ends, the two year period of time for Tract Map 1646/CDP shall begin.

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C-4  
EX. SIX

17. The Board recognizes that this action of recognizing the existence of the moratorium stay is a ministerial action because if the facts supporting a moratorium are found, the tolling of the time exists as a matter of law. The Board's action recognizing the facts and the legal result is a ministerial action and is not a discretionary action requiring further analysis under CEQA.

18. If, in the future, the project requires further discretionary action, the project shall comply with all applicable laws including the laws pertaining to further environmental review in effect at the time of the future discretionary action.

EXHIBIT SIX

CC/d/w

EX-104  
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