

**CALIFORNIA COASTAL COMMISSION**

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**W11a**

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Staff Report: 03/23/99  
Hearing Date: 04/14/99  
Commission Action:  
Open and Continue 08/14/98

**STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE DETERMINATION**

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: The County Board of Supervisors conditionally approved a Development Plan/Coastal Development Permit for two Single Family Residences on May 12, 1998. This approval includes variances that allow the residences to encroach into wetland and wetland setback areas, and eliminate the need for a front yard setback. The Board of Supervisor's decision partly upheld the applicant's appeal from the Planning Commission's conditional approval, which had limited the development to a smaller building envelope outside of the site's wetland and oak woodland areas.

APPEAL NO.: A-3-SLO-98-061

APPLICANT: JAY FARBSTEIN AGENT: JEFF EDWARDS

APPELLANTS: 1) Commissioners Wan and Nava, 2) Morro Coast Audubon Society, 3) Gary Freiberg and David Dubbink

PROJECT LOCATION: 1111 and 1113 10<sup>th</sup> Street, Los Osos, San Luis Obispo County (APNs: 038-052-001 and 038-052-026)

PROJECT DESCRIPTION: Construction of two single-family residences, access driveway, and drainage improvements. Project wastewater will either be connected to a future community wastewater treatment system, or discharged via on-site septic systems.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Board of Supervisor's and Planning Commission Records for D960345V; Final EIR for Farbstein Development Plans ED89-201 (D880338D) and ED89-220 (D880295D); Coastal Development Permit Files 4-87-115, 4-87-117, and 4-87-118

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**STAFF RECOMMENDATION**

Staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal was filed. The proposed residential development, located in a Sensitive Resource Area designated by the San Luis Obispo County certified Local Coastal

Program (LCP), is inconsistent with LCP provisions regarding the protection of environmentally sensitive habitats because it is partially located within a wetland, does not provide the required wetland setback, and will impact pygmy oak woodland and coastal scrub habitat. The project also conflicts with LCP standards that require septic systems in the area to meet the requirements of the Regional Water Quality Control Board (RWQCB); the Regional Water Quality Control Board has not approved the on-site septic system proposed by the project, should community wastewater treatment not be available. In fact, the project is located within septic system prohibition area established by RWQCB Order 83-13. The lack of adequate setbacks from environmentally sensitive habitat areas, as well as outstanding issues regarding wastewater treatment, also conflict with LCP Policies protecting coastal watersheds (in this case, the Morro Bay National Estuary and the Los Osos groundwater basin).

Staff recommends that the Commission find substantial issue and continue the de novo hearing on the merits of the project in order to provide the staff with additional time to pursue project alternatives that would minimize impacts to sensitive habitats, and to provide the applicant with the opportunity to demonstrate that there is an adequate and effective means of treating project wastewater (i.e., obtain Regional Water Quality Control Board approval for an on-site wastewater treatment system).

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## **I. SUMMARY OF APPELLANTS' CONTENTIONS**

**The following summary identifies the appellant's contentions that provide valid grounds for an appeal (i.e., contentions related to the project's conformance with the standards of the San Luis Obispo County certified LCP). Please see Exhibit 1 for the full texts of the appeals.**

Commissioners Wan and Nava appealed the project because it conflicts with LCP Environmentally Sensitive Habitat (ESH) Policies 1, 2, 5, 6, 14, 15, and 27, as well as Sections 23.07.170 - 178 of the LCP's Implementation Plan. These LCP standards forbid significant disruptions to sensitive resources and habitat areas, allow only those uses that are dependent upon the sensitive resources of the site, and require implementation of the maximum feasible mitigation measures. Appellants assert project inconsistencies with these standards because of its encroachment into a wetland area, lack of the required wetland setback, removal of coastal scrub habitat, impacts to pygmy oak woodland, and failure to provide maximum mitigation. Appellants also assert that the project is inconsistent with these LCP Policies and ordinances because single family residences are not a permitted or resource dependent use within a sensitive resource area, and because the development design and siting could significantly degrade sensitive plant and wildlife habitats through sedimentation and septic system effluent.

The appeal by Gary Freiberg and David Dubbink contends that as approved by the Board of Supervisors, the project is inconsistent with 38 different LCP requirements. These include: inconsistencies with Policy 2 regarding Shoreline Access because no public access is being provided; inconsistencies with Policies 1, 2, 5, 6, 10, 14, 15, 16, 24, 27, 28, and 33 for Environmentally Sensitive Habitats because the project will significantly disrupt sensitive habitats, houses are not permitted uses within wetlands, there is a feasible alternative that would avoid or minimize impacts to sensitive habitats, and Department of Fish and Game recommendations were not followed; inconsistencies with Policies 7 and 10 for Coastal

Watersheds because setback requirements have not been met and project drainage will cause erosion into Morro Bay; inconsistencies with Policy 1 for Visual and Scenic Resources because views from the shoreline, public parklands, and the adjacent street right of way were not considered; inconsistencies with Estero Area Plan Standards 1, 3, 5, and 7 because groundwater depth is too shallow for proper functioning of a septic system, drainage plans have not been appropriately reviewed, there are no building elevations or specified height limitations, and the site plan can be feasibly altered to reduce the need for grading and tree removal; and, inconsistency with Combining Designation Standard 1 because buildings are located within the required wetland setback. In addition, the appeal by David Dubbink and Gary Freiberg contend that the project is inconsistent with elements of the Coastal Zone Land Use Ordinance requiring lot consolidation (23.04.048), front setbacks (23.04.108), and coastal access (23.04.420), as well as ordinances regarding grading and drainage (23.05.024, 23.05.034, and 23.05.046), tree removal (23.05.064), sensitive resource areas (23.07.160, 23.07.164, 23.07.166, 23.07.170, 23.07.172, and 23.07.174), and approvals of variances (23.01.045).

The Morro Coast Audubon Society appeal contends that the project will destroy 1500 square feet of wetland vegetation, and that the alternative approved by the Planning Commission would minimize this impact. Although not specifically identified by this appeal, these contentions raise issues of project compliance with many of the same LCP standards regarding environmentally sensitive habitats identified in the appeals by Commissioners Wan and Nava, as well as the appeal by David Dubbink and Gary Freiberg, described above.

## **II. LOCAL GOVERNMENT ACTION**

The project before the Commission, as approved by the San Luis Obispo County Board of Supervisors on May 12, 1998, is attached as Exhibit 3. The Board of Supervisor's action partially upheld the applicant's appeal of the project approved by the San Luis Obispo County Planning Commission on November 13, 1997, which is illustrated by Exhibit 4.

## **III. STANDARD OF REVIEW FOR APPEALS**

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

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 conjunction with *de novo* review in this case.

#### IV. 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 appeal has been filed, because the County has approved the project in a manner that 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-98-061 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. To pass the motion, a majority of the Commissioners present is required.

#### VI. RECOMMENDED FINDINGS AND DECLARATIONS

##### ***A. Project Description***

As approved by the San Luis Obispo County Board of Supervisors, the project includes the construction of two single-family residences, both with a height limit of 14 feet (see Exhibit 3). Since the layout of the houses have been subject to various revisions throughout the local review process, the exact size of the approved residences is not identified in the local record, but appear to be within a range of approximately 2,000 to 2,800 square feet each. As approved by the Board of Supervisors, the residences can encroach into a wetland area dominated by willow trees a maximum of 1,500 square feet. The remainder of the development envelope will result in the removal of an unquantified amount of coastal scrub habitat, and will encroach into pygmy oak habitat such that trimming, but not removal, of the pygmy oaks will be required. A single driveway connecting with the existing terminus of 10<sup>th</sup> Street will provide access to the two residences. Construction of the driveway involves the disturbance of approximately 5,406 square feet within the 10<sup>th</sup> Street public right-of-way, which will impact coastal scrub and pygmy oak habitat. Both the residences and the driveway involve the placement of imported fill in order to avoid impacts to archaeological resources.

A drainage channel that currently exists within the 10<sup>th</sup> Street right-of-way will be modified and extended underneath the shared driveway, then along the southern boundary of the project, and will discharge stormwater adjacent to a brackish marsh area of the Morro Bay National Estuary. Rip-rap will be installed at the discharge point, as well as in an area of the drainage channel east of the driveway. As required by the local conditions of approval, final plans for the drainage facilities must incorporate an oil and grease separator, as well as a sedimentation basin.

Condition 2 of the County's approval requires that the residential units either be connected to the future Los Osos community sanitary sewer, or that the applicant obtain approval of an on-site septic system from the Regional Water Quality Control Board prior to the issuance of construction permits. The project site, however, is within the septic system prohibition area established by Regional Water Quality Control Board Order 83-13.

Both the project approved by the Board of Supervisors and the alternative approved by the Planning Commission involve grading on slopes greater than 20 percent and development in areas mapped as Sensitive Resource Areas by the San Luis Obispo County LCP. However, the project approved by the Planning Commission would significantly reduce the amount of development within Sensitive Resource Areas, and would result in building sites that do not require grading on slopes in excess of 20% other than for access purposes.

### ***B. Project Location***

The project is located in the northern portion of the Community of Los Osos, San Luis Obispo County, immediately adjacent to the Morro Bay National Estuary (please see Exhibit 2). The site is within the single-family residential land use designation (Exhibit 5), and within a sensitive resource area and archaeologically sensitive area as shown on the LCP combining designation map (Exhibit 6). The project site is surrounded by the Morro Bay National Estuary to the north and east, single family residences to the south and southwest, and an open space area known as the Elfin Forest to the west/northwest.

### ***C. Substantial Issue Findings***

#### **1. ENVIRONMENTALLY SENSITIVE HABITAT**

Appellants raise various allegations concerning the consistency of the proposed subdivision with the environmentally sensitive habitat (ESH) protection policies and ordinances of the San Luis Obispo County certified LCP identified above. These policies, ordinances, and standards are attached as Appendix A.

The San Luis Obispo County LCP ESH policies reflect the general standards of the Coastal Act. In particular, ESH Policy 1 allows only "resource dependent" development within an existing ESH. Further, it requires that new resource dependent development not significantly disrupt the resource. These policies are repeated more specifically in Coastal Zone Land Use Ordinance 23.07.170. Of equal importance is LCP ESH Policy 2, which requires a demonstration that there will be "no significant impact on sensitive habitats and that the proposed development will be consistent the biological continuance of the habitat."

The project alternative approved by the County raises a clear substantial issue because it directly conflicts with the LCP's ESH policies and ordinances. First and foremost, as shown in Exhibit 6, the approved alternative involves development with a wetland sensitive resource area designated and mapped by the LCP. It also will result in the removal of coastal scrub habitat, and will impact the adjacent pygmy oak woodland, both of which may provide habitat for the federally endangered Morro Shoulderband snail. There is no question that the majority of the project site is ESH under the LCP, and that residential development is not dependent upon these resources. The adopted alternative, therefore, is inconsistent with LCP ESH Policies 1 and 27, and CZLUO 23.07.170 which allow only "resource dependent" development within ESH. In short, **a substantial issue is clearly raised by the alternative approved by the County, because of its fundamental conflict with the LCP's resource dependence requirement.**

Second, the locally approved project is inconsistent with ESH Policy 2, which requires that the applicant demonstrate that there will be no significant impact on sensitive habitats. Section 23.07.164 of the CZLUO requires that the approval body can find, among other things, that the development will not create significant adverse impact on the natural features of the site or vicinity that were the basis of the Sensitive Resource Area designation (i.e., wetland habitats). The Final EIR, on page 4-72, concludes "the proposed project will have significant adverse impacts on wetland riparian vegetation, which is the basis for the SRA designation at the project site. Therefore, the approval body can not make the required findings for approving this development within the SRA. Additional mitigation needs to be approved to reduce the level of adverse impacts to insignificance." Further, as stated in the California Environmental Quality Act findings adopted by the County, the project may result in the following significant, unavoidable environmental impacts to biological resources: Loss of approximately 6,800 square feet of partially disturbed central coast sage scrub habitat that is known to support the suffrutescent wallflower, and could support the Morro shoulderband snail, a species that is currently federally listed as endangered; loss of approximately 1500 square feet of county-designated wetland; and building encroachment into wetland setbacks and buffer zones adjacent to the Morro Bay National Estuary. To date, the biological surveys and Endangered Species Act consultations necessary to address potential impacts to endangered species have not been completed. ESH Policy 2 also requires the implementation of maximum feasible mitigation measures. In this case, mitigation measures are available to reduce project impacts on sensitive habitats, but have not been incorporated into the project. These include, but may not be limited to: reducing the footprint of the development so it does not intrude into designated wetland areas; and, providing for off-site wetland and coastal scrub preservation/restoration to offset on-site impacts. Thus, **a substantial issue is raised because the project will have a significant adverse affect on environmentally sensitive habitats, and fails to incorporate the maximum feasible mitigation measures.**

Third, the adopted alternative is inconsistent with ESH Policies specifically protecting wetland habitats. ESH Policy 5, which requires that "the ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored". The project approved by the County conflicts with this policy because it will result in the direct removal of up to 1,500 square feet of wetland habitat. Indirectly, the project has the potential to diminish the biological productivity and ecological functioning of the wetland by adversely impacting water quality through the use of an on-site septic system within close proximity to the wetland. This conflicts not only with ESH Policy 5, but also with ESH Policy 14, which requires that development adjacent to wetlands be sited and designed to prevent significant impacts to

wetlands. ESH Policy 6 establishes principally permitted uses within wetlands to be hunting, fishing, wildlife management, and education and research projects; the use of wetlands for residential purposes conflicts with this policy. ESH Policy 10 calls for the incorporation of the Department of Fish and Game recommendations into projects located within or adjacent to wetlands; the project approved by the County is not the least environmentally damaging alternative identified by the EIR and referenced by the Department of Fish and Game in its comments on the Draft EIR. Another significant project inconsistency is the lack of a wetland setback, required to be no less than 25 feet by ESH Policy 15, and the lack of the specific evidence required by ESH Policy 16 and CZLUO Section 23.07.172 necessary to justify anything less than a 100 foot wetland setback. CZLUO Section 23.05.034.c.(2) requires that "[i]n no case shall grading occur closer than 50 feet from the Environmentally Sensitive Habitat or allowed by the planning area standard, whichever is greater". Therefore, **a substantial issue is raised with respect to LCP policies protecting wetland resources because, among other reasons, the project will result in the direct loss of wetland habitat, does not provide the minimum required wetland setback, and is not a permitted use within a wetland.**

Fourth, the locally approved project is inconsistent with ESH Policies protecting terrestrial and riparian habitats, as well as with South Bay Urban Area Standard 7 which requires the protection of on-site vegetation whenever possible. In this case, terrestrial habitats include the site's coastal scrub habitat and pygmy oak woodland, and the riparian habitat is comprised of the willow trees that also delineate the site's wetland habitat. As previously noted, the proposed residential development is not dependent upon these sensitive terrestrial habitat areas. As a result, the project conflicts with ESH terrestrial Policy 27. The project also is inconsistent with ESH terrestrial habitat Policies 28 and 33, as well as with South Bay Urban Area Standard 7 and Combining Designation Standard 1 for Sensitive Resource Areas, because it would be possible to reduce the loss of the native willow trees, coastal scrub plants, and the potential loss of pygmy oaks through a smaller development envelope. Similarly, the project is inconsistent with ESH Policy 24 regarding riparian vegetation, and associated implementing ordinance 23.07.174 of the CZLUO, which limit the cutting or alteration of naturally occurring riparian vegetation except where no feasible alternative exists (or where there is an issue of public safety). CZLUO Section 23.05.064 also limits the removal of trees to specific criteria; part (b)(2) of this ordinance allows for the removal of trees only where proposed improvements cannot be reasonably designed to avoid such removal. Therefore, **the project raises a substantial issue with respect to ESH Policies protecting terrestrial and riparian habitats and vegetation because impacts to these resources have not been minimized.**

### Conclusion

Because of the clear inconsistencies of the County's adopted alternative with the ESH policies of the certified LCP, the Commission finds that a substantial issue exists with respect to these ESH policies. There may be alternatives available that would avoid significant disruption to the environmentally sensitive habitats on the project site. Additional staff research is needed to confirm whether or not such appropriate alternatives are in fact available and thus, whether the project can be approved in a de novo review of such alternatives under the policies of the certified LCP.

## 2. COASTAL WATERSHEDS

The appeal by David Dubbink and Gary Freiberg allege that the project is inconsistent with LCP Policies 7 and 10 for Coastal Watersheds. In summary, these policies call for the protection of coastal watersheds by siting development and limiting grading sufficiently outside of sensitive habitats such as wetlands, and by ensuring that drainage does not increase erosion. The full text of these policies are cited within Appendix A of this report.

The basis for this contention is that grading will occur within required setbacks from Environmentally Sensitive Habitat areas (i.e., the Morro Bay estuary), and that drainage will be directed to an area adjacent to the estuary that will result in erosion into the Bay. Related to the drainage/erosion control concern identified in the Dubbink/Freiberg appeal is the contention that the project conflicts with South Bay Urban Area Standard 3 of the Estero Area Plan, which requires drainage plan approval pursuant to Section 23.05.040 et seq. of the Coastal Zone Land Use Ordinance. In summary, these ordinances establish provisions for ensuring that drainage minimizes harmful effects of storm water runoff and protects neighboring and downstream properties from drainage problems resulting from new development.

As previously noted, the project approved by the Board of Supervisors does not comply with the wetland protection requirements of the LCP. The project is sited, and grading will occur, in areas not only within areas intended to provide a buffer between development and wetland habitats, but within wetland habitats themselves. **The direct loss of wetland habitat and the lack of a wetland setback raise a clear substantial issue regarding project compliance with Policy 7 for Coastal Watersheds.**

With respect to project compliance with Policy 10, South Bay Urban Area Standard 3, and CZLUO Sections 23.05.040 et seq., the County has conditioned the project in a manner that strives to reduce the impact of project drainage on erosion and water quality. These include conditions that require the incorporation of oil and grease traps and a sedimentation basin in the project drainage facilities, and the implementation of measures to reduce site disturbance and erosion during construction. However, as noted by the Dubbink/Freiberg appeal, the final design of the drainage facilities has yet to be submitted. **Further investigation is required to determine if the locally required modifications to the originally proposed drainage facilities effectively address the potential for site drainage to cause erosion into the Morro Bay estuary.**

Another coastal watershed issue raised by the Dubbink/Freiberg appeal Planning Area is that Standard 1 for the South Bay Urban Area contained in the LCP's Estero Area Plan requires that new development shall meet the septic tank requirements of the Regional Water Quality Control Board. Through its review of the Los Osos Wastewater Treatment Project, the Commission has become aware of the Regional Water Quality Control Board's long-standing concerns regarding the impact of septic systems on the integrity of the Los Osos groundwater basin and the Morro Bay estuary. In this case, the project approved by the County has the option of connecting to a future community wastewater treatment system or installing on-site septic systems that would need to be reviewed and approved by the Regional Water Quality Control Board. Currently, there is no community system eligible to serve the development, and the Regional Board has imposed a prohibition against septic discharges in the area. The proposed option of treating



project wastewater with on-site septic systems has yet to be reviewed and approved by the Regional Water Quality Control Board. **As a result, a substantial issue is raised regarding project compliance with South Bay Urban Area Standard 1, as well as with ESH Policy 5 and ESH Policy 14 discussed in previous findings. Further review of this issue, in terms of project consistency with Coastal Watershed Policies, as well as Public Works Policy 1 requiring adequate services, will take place during the De Novo review.**

### 3. PUBLIC ACCESS

The appeal by David Dubbink and Gary Freiberg contends that the project does not comply with LCP Policy 2 regarding Shoreline Access, and Section 23.04.420, both of which are cited in Appendix A. These standards require new development to provide maximum public access to the coast and along the shoreline, except where such access would be inconsistent with public safety, military security, the protection of fragile coastal resources, or agriculture, or if adequate public access exists nearby. The appeal also references the South Bay circulation plan (figure 11 of the Estero Area Plan, attached as Exhibit 7), which shows vertical access to the Bay along the 10<sup>th</sup> Street Right of way, and lateral access along the shoreline.

In this case, no public access improvements to or along the Morro Bay shoreline have been required by the local government, based on a finding that the provision of such access would be inconsistent with the protection of fragile coastal resources. The Dubbink/Freiberg appeal contends that it is a contradiction to allow two single-family homes to be built in a habitat area, and at the same time contend that it is too sensitive for public access. The appeal also states that public access along the 10<sup>th</sup> Street and Santa Lucia rights-of-way will not be "authentically accessible without County acceptance or conditions on the project".

The project involves the extension of a private driveway from the existing terminus of 10<sup>th</sup> Street, and it is assumed that the applicant will need to obtain an encroachment permit from the County to construct and utilize this driveway. The driveway will impact only a portion of the 10<sup>th</sup> street right-of-way. As a result, the remainder of the public right-of-way could be used provide shoreline access in the future. Clearly, the provision of such access would benefit coastal access and recreation opportunities in the area, and could be linked with other nearby access facilities to form a network of vertical and lateral coastal access trails that would maximize and enhance coastal access.

Contrary to the conclusions of the project EIR and the findings of the County's approval, there may be ways of constructing and managing such accessways so that sensitive coastal resources are effectively protected. For example, the Commission recently approved access improvements within the Elfin Forest (CDP 3-98-095), immediately east of the project, which accomplished this objective through the use of boardwalk trails and interpretive facilities. In fact, providing sensitively designed access and interpretive facilities can enhance protection of natural resources by educating the public about the resources and invoking a sense of stewardship.

Nonetheless, while public access to the shoreline along the 10<sup>th</sup> Street right of way, as well as lateral access along the shoreline of Morro Bay across the project site, may be desirable, it does not appear that the project will have a direct impact on public access. Thus, there may not be a nexus to require public access as a condition of project approval, and the contentions of the

appeal related to public access do not appear to raise a substantial issue. However, further investigation of this issue will be conducted as part of the De Novo review. In particular, it will be important to confirm and ensure that the proposed driveway within the 10<sup>th</sup> street public right-of-way will not eliminate the potential of providing future public access to the shoreline within the right-of-way.

#### **4. VISUAL RESOURCES**

Appellants Dubbink and Freiberg allege that the project is inconsistent with Visual and Scenic Resource Protection Policy 1 of the San Luis Obispo County certified LCP cited below.

**Policy 1:      Protection of Visual and Scenic Resources**

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

The Dubbink/Freiberg appeal also questions project conformance with South Bay Urban Area Standard 5, which limits project heights at the site to 14 feet.

With respect to Policy 1, the appeal contends that the view analysis conducted by the County did not consider views along the shoreline, from public parklands, or the abutting street right-of-way. Regarding South Bay Urban Area Standard 5, the appeal asserts that consistency with the 14-foot height limit is questionable because the applicant has not submitted building elevations, and the County has not specified a maximum height in its conditions.

In terms of height limits, condition number 4 of the County's approval specifically limits the height of the development to 14 feet. This limit is measured from finished grade, minus any fill in excess of two feet, in accordance with section 23.04.122 of the CZLUO. Thus, no substantial issue is raised regarding the height of the project.

However, a substantial issue is raised by the contention that the impact of the project on views from the shoreline, public parklands, and the abutting street right-of-way has not been adequately addressed. According to the March 17, 1998 staff report to the Board of Supervisors, County staff conducted a visual analysis of the site using a bright color pylon approximately 18 feet in height. As stated in this staff report, "[a]fter viewing the pylon from various locations, it was determined that there are no significant public views across the site that would be affected by the project because the ground elevation of the residence is below the elevation of Tenth Street and at 18 feet the pylon did not significantly extend above the vegetation backdrop into the view of the bay behind the site." Thus, it appears that the focus of the County's visual impact assessment focused on the project's visibility from 10<sup>th</sup> street, and did not consider views from other public areas. One important visual impact consideration is the impact of the project from the Elfin Forest, east of the project site, where the Commission recently approved public access improvements that include a public viewing platform of the Morro Bay and shoreline area. Furthermore, as identified on page 4-60 of the Final EIR, the project does not appear to meet the requirements of Policy 1 because the building sites "do not

preserve nor protect the sensitive riparian, wetland and oak woodland habitats on the site", and because "the site plan could feasibly be modified to reduce the direct impact to the native oak woodland and riparian vegetation". As a result, **a substantial issue is raised regarding project conformance with Visual and Scenic Resource Policy 1, because sensitive habitats will not be protected and preserved, and because project impacts on scenic vistas from the Elfin Forest have not been addressed.**

## 5. OTHER LCP ISSUES

In addition to the contentions of appeal addressed above, the Dubink/Freiberg appeal alleges project inconsistencies with the following LCP standards:

Lot Consolidation Ordinance 23.04.048. This ordinance requires the consolidation of adjoining vacant lots under single ownership with continuous frontage. The Final EIR concludes that the consolidation requirement is not applicable to the project because the two lots do not have continuous frontage along a public right-of-way. However, the ordinance does not specifically state continuous frontage must be along a right-of-way; the lots do share continuous frontage along the shoreline. Nevertheless, due to concerns regarding the legality of requiring two legal lots of record to be consolidated, a conclusion as to whether this contention raises a substantial issue can not be made at this time. Further analysis of the application of this ordinance to the project will take place during the De Novo review.

Front Setback Ordinance 23.04.108. The local approval includes a variance from the 25-foot front setback required by this ordinance. Given that such a variance will minimize project impacts on environmentally sensitive habitats in accordance with other policies of the LCP, no substantial issue appears to be raised by this contention.

Grading Ordinance 23.05.024. The appellants contend that the project is inconsistent with the ordinance's requirement for grading plan approval because the approved project requires revisions to the submitted grading plan, and that these revisions will involve cuts that conflict with cultural resource protection conditions. Commission staff has not had the opportunity to undertake a complete review of this contention, and will do so as part of the De Novo review.

Variance Ordinance 23.01.045. Appellants Dubink and Freiberg contend that the variances approved by the County are inconsistent with part (iii) of this ordinance because residences are not an allowable use within a wetland. They also allege inconsistency with part (iv) of this ordinance because the variance is not consistent with the provisions of the LCP. Finally, their appeal asserts that the variance conflicts with part (v) of this ordinance because it is detrimental to public welfare by negatively impacting natural resources and compromising multiple standards of the LCP. This contention raises a substantial issue for the specific reasons identified in the previous findings of this staff report.

# APPEAL BY COMMISSIONERS WAN & NAVA

## 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.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program 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.)

The San Luis Obispo County Board of Supervisors granted a coastal development permit and variance to the applicant to construct two new single family residences on two parcels designated for single family residential development but also mapped as sensitive habitat.

The County's approval is inconsistent with the following policies and regulations of the certified Local Coastal Program: Environmentally sensitive habitat policies 1, 2, 5, 6, 14, 15, and 27, and Coastal Zone Land Use Ordinance Sections 23.07.170 -178, which implement the environmentally sensitive habitat policies.

Policy 1 requires that development within or adjacent to environmentally sensitive habitats not significantly disrupt the resource and within a resource only resource-dependent uses be allowed. The county's approval allows for significant disruption of the wetlands and potential disruption of the environmentally sensitive pygmy oak forest and allows uses that are not dependent on the resources by allowing houses in the wetlands and adjacent to the pygmy oak forest.

Policy 2 requires that the applicant demonstrate that development will have no significant impacts on sensitive habitats and that the development will be consistent with the continuance of the habitat. The maximum feasible mitigation measures and a monitoring program to ensure effectiveness of the mitigation measures are required. It has not been clearly demonstrated that the development will not have significant impacts, nor has the County required maximum feasible mitigation measures. The Final EIR for the proposal identified three unavoidable significant impacts to pygmy oak woodland, coastal scrub habitat, and willow riparian forest habitat. The County has not required the maximum feasible mitigation measure of avoidance of impacts on sensitive habitats.

Policy 5 recognizes that wetlands are environmentally sensitive habitats and that the natural ecological functioning and productivity of wetlands shall be preserved and protected. The County's approval would allow for the destruction of wetlands, thus destroying the natural ecological functioning and productivity of that wetland area.

Policy 6 limits principally permitted uses in wetlands to hunting, fishing, wildlife management, education, and research projects. According to the LCP, principally permitted uses are those uses which are to be encouraged over non-principally permitted uses. Houses are not a principally permitted use in wetlands and should not be encouraged or approved in wetlands.

EXHIBIT NO. 1, P. 1

APPLICATION NO.  
A-3-SLO-98-061

Appeals

Policy 14 requires that development adjacent to wetlands be sited and designed to prevent significant impacts to wetlands through noise, sediment, or other disturbances. The County's approval would allow residential development in wetlands with accompanying noise, light, and sedimentation.

Policy 15 allows a reduction of wetland buffers to no less than 25 feet. The County's approval allows for a wetland buffer of less than 25 feet.

Policy 27 requires protection of the entire ecological community of environmentally sensitive plant and wildlife habitats, allows only those uses that are dependent on the resource to be located within the identified sensitive habitat, and requires development adjacent to environmentally sensitive habitat areas and holdings of the Department of Parks and Recreation to be sited and designed to prevent impacts that would significantly degrade such areas. The County's approval may not protect the entire ecological community of environmentally sensitive plant and wildlife because it allows non resource-dependent development in the environmentally sensitive habitats. The proposed development is adjacent to another sensitive habitat, the Morro Bay estuary, and the development's design and siting could significantly degrade that area through sedimentation and septic system effluent.

A-3-SLO-98-061  
Exhibit 1, p. 2  
(WAN & NAVA APPEAL,  
CONTINUED)

# APPEAL BY DUBBINK & FREIBERG

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

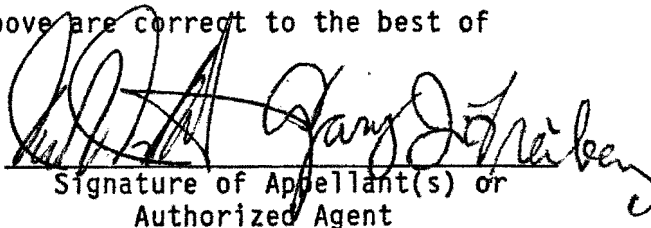
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

TWO SINGLE FAMILY HOMES ARE BEING PERMITTED WITHIN  
A WETLAND HABITAT. A LESS ENVIRONMENTALLY DAMAGING  
ALTERNATIVE WAS RECOMMENDED BOTH IN A PROJECT EIR  
AND IN THE DECISION OF THE COUNTY PLANNING COMMISSION  
AN ATTACHED SHEET LISTS 38 INCONSISTENCIES OF  
THE APPROVED PROJECT AND VARIANCES - WITH THE  
LCP AND CZLUO.

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 JUNE 1, 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

A-3-SLO-98-001  
Exhibit 1, p.3  
(DUBBINK &  
FREIBERG APPEAL)

## Summary of Project Inconsistencies with LCP Policies and the Coastal Zone Land Use Ordinance

The listing below describes 39 inconsistencies with LCP and CZLUO policies. Permitting two single family homes within a designated wetlands habitat is a fundamental violation of the Coastal Act. The Act permits only coastal dependent activities in such locations. There are other inconsistencies. These include departures from policies on public access, drainage, lot consolidation, and response to comments from trustee agencies. More extended discussion of these issues, as well as maps and photos were presented to the county planning commission and board of supervisors. This material is in the administrative record and should be considered a part of this appeal. Many plan inconsistencies and environmental problems noted in the project EIR apply to the approved project.

Coastal Plan Policies (LCP)		
1	Shoreline Access (Ch. 2 Policy 2)	Inconsistent: The "public" right of way along 10th Street and Santa Lucia is not authentically accessible without county acceptance or conditions on the project. It is a contradiction that two houses are being permitted in a habitat area deemed too sensitive for public access. The South Bay circulation plan shows shoreline access immediately adjacent to this property.
2	Disruption of Environmentally Sensitive Habitats (Ch. 6 Policy 1)	Inconsistent: The construction of homes within a designated environmentally sensitive habitat significantly disrupts the wetland habitat (EIR page 4-55)
3	Continuation of Sensitive Habitats (Ch 6 Policy 2)	Inconsistent: The applicant is required to demonstrate no significant impact and that the project permits biological continuance of the habitat. The two houses displace the habitat (EIR page 4-55)
4	Wetlands Habitat Protection (Ch 6 Policy 5)	Inconsistent: The approved project locates two houses partially within the area of a defined wetland when a feasible alternative exists. (EIR page 4-56)
5	Permitted Uses in Wetlands (Ch 6 Policy 16)	Inconsistent: Houses are not a principal permitted use within a wetland which is defined in Appendix C of Coastal Plan Policies. The county is not permitted to allow a Variance in such cases.
6	Department of Fish and Game Review (Ch 6 Policy 10)	Inconsistent: DFG was consulted but agency recommendations to maintain a habitat buffer were not followed. Recommended mitigations for habitat setbacks were not applied.
7	Development Adjacent to Wetlands (Ch 6 Policy 14)	Inconsistent: Development is to be located as far away from wetlands as feasible. Here, houses extend into the habitat area although a feasible alternative exists (EIR page 4-56)
8	Wetland Buffer (Ch 6 Policy 15)	Inconsistent: Projects are to be modified "as much as practical from a design standpoint" to provide a minimum 25' buffer. Neither design change or buffer is provided. (EIR page 4-57)

DUBRINK & FREIERSON ASSOCIATES

A-3-SLO-98-061  
Exhibit 1, P. 4

9	Less than 100 Foot Buffer (Ch 6 Policy 16)	Inconsistent: Required soil investigations were not done: a) Erosion not properly considered, b) Topo map inaccurate, c) Wetland capacity lost, d) Houses are inappropriate use for wetland, e) Lot consolidation not made pursuant to section 23.07.172 CZLUO. (EIR page 4-57)
10	Cutting Riparian Vegetation (Ch 6 Policy 24)	Inconsistent: Cutting not permitted except where no alternative exists or for public safety. An alternative is feasible and public safety is not an issue. (EIR page 4-58)
11	Protection of Habitat (Ch 6 Policy 27)	Inconsistent: Developments adjacent to environmentally sensitive habitats must not degrade such areas. The site plan could be modified to reduce its impact. (EIR page 4-59)
12	Protect Native Vegetation (Ch 6 Policy 28)	Inconsistent: Native tree and plant cover shall be protected wherever possible. The plan could feasibly be modified to avoid or lessen this impact (EIR page 4-59)
13	Protect Vegetation Which Shelters Endangered Wildlife (Ch 6 Policy 33)	Inconsistent: The DFG reports the site could shelter rare and endangered species. As demonstrated in the EIR and in the Planning Commission approval, the site plan can be feasibly modified to reduce the impact on native oak and riparian vegetation. (EIR page 4-59)
14	Protect Coastal Waters from Sedimentation (Ch 9 Policy 7)	Inconsistent: Grading occurs within the 100 foot setback and at less than 50 feet from coastal waters. The plan can be feasibly modified to reduce this impact (EIR page 4-60)
15	Drainage Does Not Increase Erosion (Ch 9 Policy 10)	Inconsistent: The only submitted drainage plan shows a lined swale ending 15 feet from the Bay, at a 10 foot elevation. This is a major drainage and the slope will undercut and erode into the Bay.
16	Protect Scenic Resources (Ch 10 Policy 1)	Inconsistent: The view analysis did not consider views along the shoreline, from public parklands (Elfin Forest), or the abutting street right of way.
<b>Estero Area Plan</b>		
17	Septic Tank Requirements (Standard 1)	Inconsistent: The RWQCB has argued that the project is subject the moratorium. The county contends it is grandfathered. The groundwater depth is arguably too shallow for proper functioning of a septic tank (EIR Appendix F-1)
18	Drainage Plan Requirement (Standard 3)	Inconsistent: The CZLUO requires drainage be considered with approval of plans. The original drainage plan does not apply to the current project. Added features include sedimentation basins and a rip rap surface flow intercept. Drainage plans are relegated to later staff review.
19	Building Height (Standard 5)	Questionable: The applicant has not submitted building elevations and the county has not specified a maximum height in its conditions.

DUBBINK &amp; FREIBERG APPEAL (CONT)

P.5  
 EXH. 1  
 98-61  
 4-3-20



20	Vegetation Protection (Standard 7)	Inconsistent: The site plan could be feasibly altered to reduce the need for grading and tree removal.
<b>Combining Designation Area Standards</b> - The Combining Designation Map shows the property is within the Sensitive Resource Area (SRA) for Wetlands		
21	Wetland Setback (Standard 1)	Inconsistent: The project does not meet this standard because the buildings are located within required setbacks from the upland extent of the wetland vegetation (EIR page 4-67)
<b>Coastal Zone Land Use Ordinance (CZLUO)</b>		
22	Lot Consolidation 23.04.048	Inconsistent: 1111 10th Street does not meet the minimum lot width criteria. The CZLUO prescribes that such parcels be combined with the adjacent lot if they are under the same ownership.
23	Front Setback 23.04.108	Inconsistent: The 25 foot setback applied to other properties on the 10th street has been reduced to zero.
24	Coastal Access 23.04.420	Inconsistent: The assumption that public access is provide by the undeveloped street right of ways is not accurate. The project makes the end of 10th street a private driveway.
25	Grading Plan 23.05.024	Inconsistent: The submitted grading plan is not relevant to the project as it has been redesigned. It includes cuts inconsistent with cultural resource protection conditions.
26	Grading Adjacent to Sensitive Areas 23.05.034	Inconsistent: Grading and filling occurs closer than 25 feet from (actually within) an environmentally sensitive habitat.
27	Drainage Plan Approval 23.05.046	Inconsistent: Drainage plans are to be approved <i>prior</i> to issuance of a land use permit. Instead, this is being relegated to later submittal and administrative review by staff.
28	Tree Removal 23.05.064	Inconsistent: Riparian tree removal is allowed only where developments cannot be redesigned to minimize the need for removal.
29	Sensitive Resource Areas 23.07.160	Inconsistent: "The . . . project will have a significant adverse impact on wetland riparian vegetation, which is the basis for the SRA designation at the project site. Therefore, the approval body cannot make the required findings for approving this development . . . " (EIR page 4-72)

DUBBINK & FREIBERG APPEAL (CONT)

A-3-SIO-98-061  
Exhibit 1, p. 6

30	Required Findings SRA 23.07.164	Inconsistent: (1) The development <i>does</i> create significant adverse effects on the natural features that were the basis for SRA designation. (2) The maps showing the edge of the marsh and/or the topography are not accurate. (3) The plan could be modified to lessen the need for grading and tree removal. (4) There is no drainage plan for the approved project. The site is a natural drainage. The proposal to empty drainage on a slope short of the bay will create erosion.
31	Design and Development Standards with an SRA 23.07.166	Inconsistent: The plan does not meet the intent of this section which is intended to maximize the setback from the shoreline, from wetlands, and from sensitive habitat. The ordinance states that where DFG requirements are more restrictive, these shall apply.
32	Environmentally Sensitive Habitat - Studies and Findings 23.07.170 (a), 23.07.170 (b)	Inconsistent: The CZLUO requires evaluation of impacts and the project EIR provides this. The EIR recommends a least environmentally damaging project design. The approved project does not reflect this design or include recommended mitigations. The CZLUO requires findings that there is no significant negative impact on the identified sensitive habitat. The EIR says, "it appears these findings cannot be made, since all significant impacts have not been mitigated to a level of insignificance". (EIR page 4-74) The county's Statement of Overriding Considerations declares the project has unmitigated significant impacts.
33	Environmentally Sensitive Habitat - Development Standards 23.07.170	Inconsistent: "The construction of homes and other features significantly disrupts the environmentally sensitive habitat" (EIR page 4-74)
34	Wetlands 23.07.172	Inconsistent: The project is located within CDFG and County designated riparian wetlands and has a significant adverse impact.
35	Wetland Setback Adjustment 23.07.172 (d) (2)	Inconsistent: Setback may be adjusted but to no less than 25'. The following findings cannot be made: (1) The site is usable without the setback (see EIR recommended alternative C-3) (2) A less environmentally damaging alternative is feasible. (3) The County has not considered the string line setback. The development is closer to the wetland than allowed by the string line method described in Section 23.04.118a.

DUBBINK &amp; FREIBERG APPEAL (CONT)

A-3-SLO-98-001  
Exhibit 1, p. 7

36	Requirements for Setback Adjustment 23.07.172 (d) (3)	Inconsistent: The CZLUO requires certain information prior to approval of adjustments. This includes consideration of terrain and a biologist's evaluation of the setback reduction - including identification of amounts and the effects on maintaining the functional capacity of the wetland. The topographic and/or wetland maps are in error. No biologist report was made and the accounting of the areas to be modified are vague and ill defined.
37	Setback from Riparian Vegetation 23.07.174 (d)	Inconsistent: A 50' setback is required. No setback is proposed.
38	Alteration of Riparian Vegetation 23.07.174 (e)	Inconsistent: "The site plan could be feasibly modified, with smaller homes, to protect the riparian vegetation." (EIR page 4-76)
39	Action on a Variance 23.01.045	Inconsistent: The CZLUO permits variances only in cases where specified findings can be made. The site does have special limitations, however some variance conditions have not been met: (iii) The LCP does not authorize single family homes as a permitted use in wetlands. (iv) LCP consistency is required and there are as many as 38 inconsistencies. (v) The approval is detrimental to the public welfare in that it negatively impacts identified natural resources as well as multiple adopted policy and plan standards.

One perplexing problem with the county's project approval is that it is ambiguous about what was authorized. The approved map shows roof outlines but the text says the authorization is for "building sites". The county staff and the applicant do not agree on how much area is to be developed. There are conditions requiring drainage improvements and importation of fill but there are no plans showing how these, or fire safety setbacks from vegetation would expand the building area.

Additionally, there are two very fundamental issues that should be considered in a *de novo* hearing of this project. First, The maps showing the topography of the site and the boundary of the bay are conspicuously inaccurate. The site plan base map shows the edge of the bay going from high tide level to an elevation that is 15 feet above high tide level. The location of the bay and wetland edge is a fundamental issue. Moreover, in spite of multiple biological studies, there is no accurate mapping the boundary of federal jurisdictional wetlands. The field biologists for the Corps of Engineers said in a September 11, 1996 letter that, "unless an updated topographic map or a current color aerial photograph of the property is provided, the Corps cannot verify the location of the wetland/upland boundary." The EIR preparers, "agree that the topographic mapping appears to be inaccurate" (EIR page H-47).

Second, a buildable lot has been omitted from the project between the time it was originally approved by the county in 1987. This "third lot" is entirely covered with pygmy oak woodland. The county has contended the project can be approved in spite of the RWQB moratorium because it was "frozen in time" but has permitted the boundaries of the original project to be reduced to exclude this developable parcel. California environmental regulations do not permit the division of a larger project into phases since this both understates the overall impact of a project and limits site redesign options. Both problems exist in this case.

A-3-SLO-98-061  
Exhibit 1, p. 8  
NARINK & ENGINEERS, APCAL (CON'T)



# Morro Coast Audubon Society, Inc.

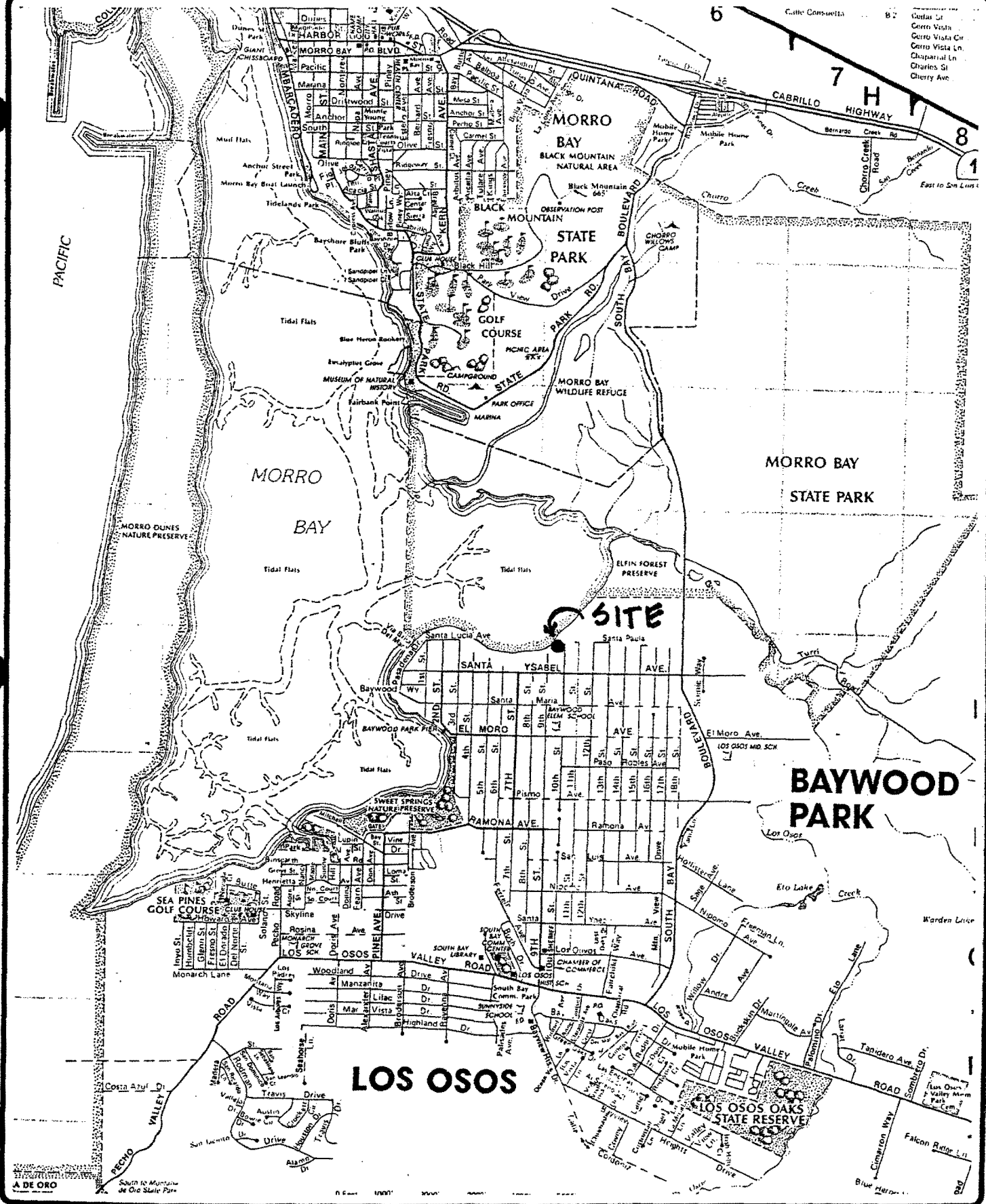
A Non-Profit Organization

## REASON FOR APPEAL

The private and public lands adjoining the Morro Bay Estuary are one of the success stories of wetlands protection. Therefore, the Morro Coast Audubon Society opposes the Board of Supervisors approval of two single-family residences on the two lots within the wetland 100' buffer area. Even though all the pygmy oaks on the property are to be preserved, this does not justify destroying 1500 Square feet of wetland vegetation. Wetlands are a vital part of the ecosystem of the Estuary, which is both a National and State Estuary.

The 600 members of the Morro Coast Audubon Society initially urged that the Planning Commission deny this project in its entirety. However, we realized that the owner has the right to develop his property within existing laws and regulations. The Planning Commission and the County Planning Department Staff worked hard on a compromise plan of one residence to minimize the impact to both the unique and sensitive Pygmy Oaks Woodland and the Wetlands vegetation.

A-3-SLO-98-061  
Exhibit 1, p. 9  
MORRO COAST AUDUBON  
SOCIETY APPEAL



PROJECT

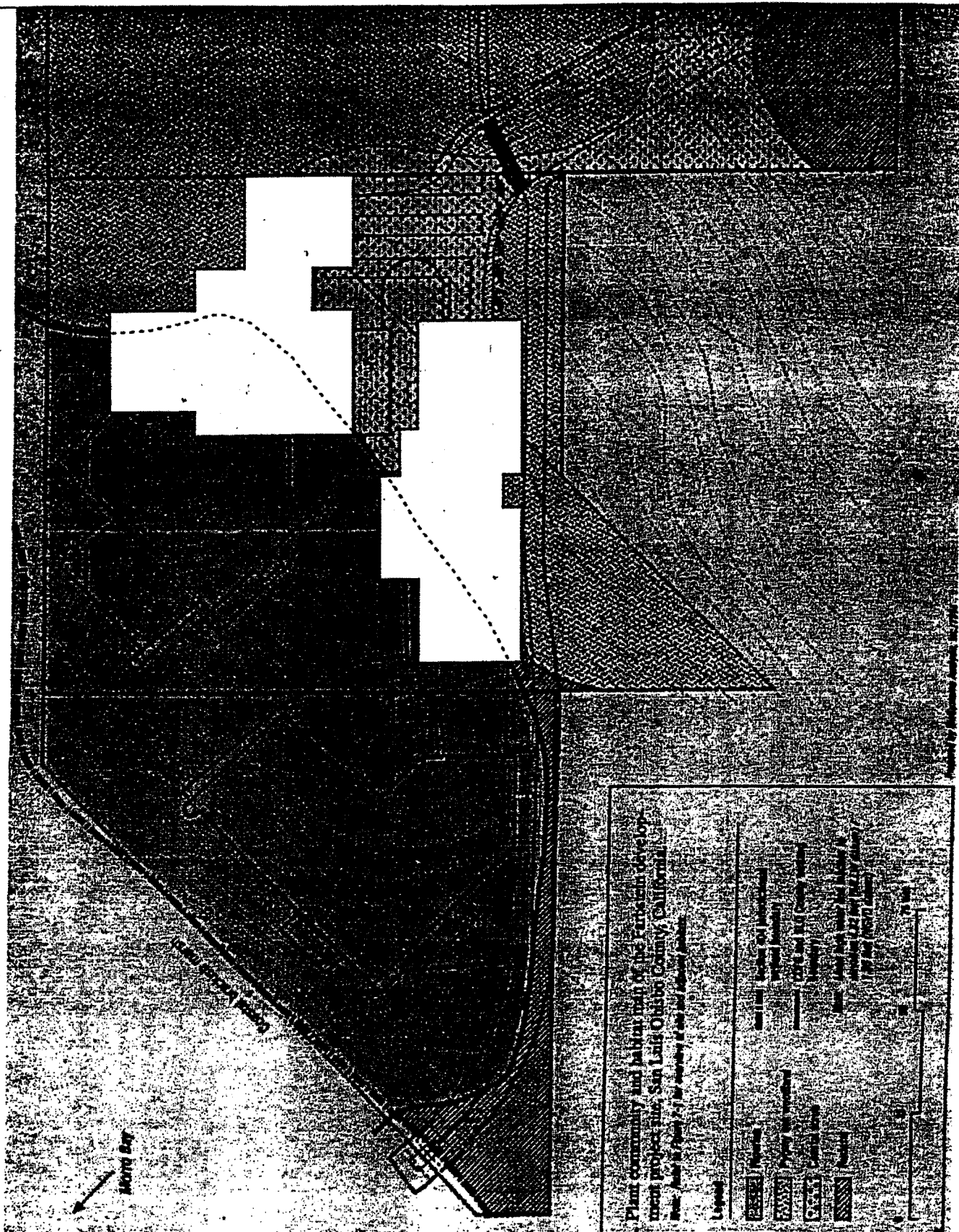
D880295D, D960345V  
D880338D, D960346V



EXHIBIT NO. 2

APPLICATION NO.  
A-3-SLO-98-061

Location Map



PROJECT  
D880295D; D880338D;  
D960345V; and, D960346V



EXHIBIT  
BOARD OF  
EXHIBIT C

EXHIBIT NO. 3, p.1  
APPLICATION NO.  
A-3-SLO-98-061  
Project Approved by  
Board of Supervisors

**EXHIBIT B**  
**CONDITIONS OF APPROVAL**

**Authorized Use**

1. This approval authorizes the construction of two single-family residences to be located as shown in Board of Supervisor's Exhibit C, dated May 12, 1998, except that the residences shall not encroach into the driplines of the pygmy oaks nor more than 1,500 square feet into the wetland vegetation.

**Wastewater Disposal**

2. The residential units shall be connected to the future Los Osos community sanitary sewer or the applicant shall obtain approval of an on-site septic system from the state RWQCB, **prior to issuance of construction permits.** This approval shall include any required determination or exemption from their septic system prohibition. The applicant shall meet the RWQCB requirements for separation from bedrock and separation from groundwater based on current information (after the date of this approval). Any approval or waiver of approval by the RWQCB shall be verified in writing by the RWQCB, dated after the date of this approval.

**Site Development**

3. Site development shall be consistent with a revised site plan to be submitted to the Development Review Section of the Department of Planning and Building for review and approval, **prior to issuance of construction permits.** The revised plan shall:
  - a. Be consistent with the Board of Supervisor's Exhibit C, dated May 12, 1998, except that the residences shall not encroach into the driplines of the pygmy oaks nor more than 1,500 square feet into the wetland vegetation;
  - b. Show revised lot lines based on an approved lot line adjustment;
  - c. Identify the drainage swale per condition (V-1);
  - d. The limits of fill;
  - e. Show the open space easement line; and,
  - f. Show the location of the drainage facilities including those per conditions (D-13 and D-14).
4. **Prior to issuance of construction permits,** that applicant shall submit new elevations, site sections and floor plans to be submitted to the Development Review Section of the Department of Planning and Building for review and approval. The sections and elevations shall identify fill required for archaeological mitigation and additional fill desired by the applicant. Height shall be measured from average finished grade minus any fill in excess of two feet. The height limit is 14 feet. The plans shall also show that the house foundation would be a raised foundation supported by wood pilings or other foundation system that will reduce grading and impacts to archaeological resources.
5. **Prior to issuance of construction permits,** the applicant shall obtain any necessary lot line adjustments to bring the proposed project into conformity with setback requirements.

A-3-SLO-98-061  
Exhibit 3, p.2



### Landscape

6. **Prior to issuance of construction permits**, the applicant shall submit a landscape and revegetation plan to the Development Review Section of the Department of Planning and Building for review and approval. The plans shall be consistent with V-3, D-1, D-2 and D-3, and the open space easement agreement.
7. **Prior to final building inspection**, the applicant shall install landscape consistent with the approved landscape plan. The applicant shall submit a letter, prepared by a qualified individual (landscape architect or landscape contractor), to the Environmental Coordinator stating the planting plan has been completed.
8. (D-4) **Prior to final inspection**, applicant shall show evidence from a botanist or landscape architect that all plants that die during the maintenance period shall be replaced and maintained for a period of time equal to the original maintenance period;
9. (V-3) **Prior to occupancy**, the proposed drainage swale shall be planted with riparian vegetation of arroyo willow and California wax-myrtle.

### Grading and Drainage

10. The applicant shall submit grading and drainage plans with the construction permit applications to be reviewed and approved by the Department of Planning and Building and the County Engineer in consultation with an erosion control specialist, **prior to issuance of construction permits**. In addition to ordinance requirements, the plans shall include:
  - a. (V-1) If an alternative drainage design cannot be achieved that improves erosion control and reduces sedimentation potential, the drainage swale shall be redesigned and shown on plans such that the rip-rap at the discharge point is placed up gradient and thus outside of the area of coastal brackish marsh. The swale does not need to be realigned but it should be shortened by at least 15 feet. This would ensure no work and placement of fill within the area of Section 404 jurisdictional wetlands.
  - b. The amount of proposed fill required for archaeological mitigation and any additional fill proposed by the applicant for the residential footprints. The amount of fill and depth of fill cannot exceed that identified in mitigation measures APD-1 and APD-2.
  - c. (APD-3) Fill ranging from less than 1 foot to 3 feet deep will be used for the main driveway leading to the houses.
  - d. (A-6) That sterile, compacted fill will be used to cover significant archaeological deposits in construction areas, as required by the consulting archaeologist. It is assumed that no keying of the present land surface is needed. Prior to the deposition of fill material, accurate topographic mapping of the site deposits shall be completed.

A-3-SLO-98-061  
Exhibit 3, p. 3



- e. (D-6) That the contractor shall provide uniform grades between control elevations with smooth vertical curves at grade breaks.
  - f. (D-7) That all cut and fill slopes shall be no steeper than two horizontal to one vertical (2:1).
  - g. (D-8) That existing terrain steeper than five horizontal to one vertical (5:1) shall be keyed and benched to support fill and all grading shall conform to the UBC chapter 70.
  - h. (D-9) That jute netting or suitable replacement will be used on bare ground which exceeds a 3:1 slope.
  - i. (D-10) That all fill is to be compacted to 90 percent relative compaction.
  - j. (D-11) A sedimentation and erosion control plan if construction is scheduled to take place between October 15 and April 15, as required per the CZLUO.
  - k. (D-12) That a silt fence of staked filter fabric and hay bales shall be constructed around the down gradient perimeter of the work area. This silt fence should be inspected weekly **during construction**, and repairs and maintenance should be performed as needed. The silt fence should be left in place until all construction is completed and all planted areas have stabilized. Prior to removal of silt fence, all sediments which have accumulated along the fence should be removed. Due to the sensitivity of the site habitats for wildlife resources and potential occurrence of special status wildlife species, the silt fence mitigation should be implemented even during the dry season as a measure to limit the work area and prevent potential indirect impacts outside of the area of disturbance boundary.
11. (V-2) During construction, sedimentation and erosion control measures D-1 through D-15 shall be implemented to minimize the potential for discharges of sediments into the area of coastal brackish marsh and Morro Bay. These measures shall be included in construction contracts for the project.
- a. (D-1) **During construction**, all disturbed surfaces and fill slopes shall be planted and/or revegetated within 30 days after completion of grading. This requirement shall be shown on plans.
  - b. (D-2; D-3) **Prior to final inspection**, all planted areas shall be watered and maintained until established and mature enough to prevent erosion. This requirement shall be shown on plans.
  - c. (D-5) **During construction**, the contractor shall provide dust control during all phases of the work. This shall be included in the construction contract.

A-3-SLO-98-061  
Exhibit 3, p. 4

12. (D-13) Prior to issuance of construction permits, applicant shall show on plans that an oil and grease separator shall be installed to entrain petroleum residue in the stormwater runoff. The separator's design and placement should be determined by a professional engineer but a likely place would be at the driveway underdrain (see Figure 3-2).
13. (D-14) Prior to issuance of construction permits, applicant shall show on plans that a sedimentation basin shall be constructed within the drainage system to trap sediments in the stormwater runoff from 10th Street and from the 18-inch storm drain pipe. The basin's design and placement should be determined by a professional engineer but a possible placement would be within the proposed drainage swale, on the down gradient (west) end of the driveway underdrain.

#### Wetlands

14. (W-1) Prior to issuance of construction permits, applicant shall provide, to the Department of Planning and Building, proof of a completed permit or a permit waiver, from the state Department of Fish and Game for a CDFG 1601 stream alteration permit.
15. (WF-1) Prior to issuance of construction permit, The project proponent shall have the project site surveyed by a qualified wildlife biologist (approved by the County Environmental Division) during the appropriate time of the year and prior to the actual construction to search for the legless lizard and the banded dune snail using USFWS approved protocols. Biologist shall prepare a report documenting the results of the survey, and preconstruction consultation with USFWS and CDFG shall be conducted to determine the necessary procedures to be taken to avoid killing individuals of this species if any are encountered and to determine if a permit for incidental take is required per the guidelines of the Endangered Species Act. If the taking of lizards or snails is unavoidable, the applicant may be required to prepare and implement mitigation measures subject to approval by the USFWS.

#### Archaeology

16. (A-1) Prior to the issuance of construction permit, the project proponent shall submit a detailed research design for a Phase III (data recovery) archaeological investigation prepared by a qualified archaeologist. The research design should follow the guidelines provided by the Office of Historic Preservation in *Archaeological Resource Management Reports (ARMR): Recommended Contents and Format* (State of California 1989) and *Guidelines For Archaeological Research Designs* (State of California 1991). The research design should integrate the work of Singer and Gibson (1984a) and Dills (1992) and other archaeological work in the Los Osos area with data collected by Sawyer (n.d.). The research design should include a site-specific mitigation plan based on potential impacts to site deposits. Because of the potential presence of human remains at CA-SLO-458, the research design should address Native American concerns regarding the resources. It may be appropriate to conduct further archaeological work if important cultural deposits will be degraded or removed due to construction or construction-related activities. The scope of work and level-of-effort for additional studies will be dictated by the amount of potential disturbance to the sites.
17. Prior to commencement of construction, the applicant shall implement the Phase III research design. A report shall be prepared after completion of the investigation detailing findings.

A-3-SLO-98-061  
Exhibit 3, p. 5

18. (A-2) **During construction**, applicant shall provide funding for conducting archaeological monitoring during the removal of site deposits and surface disturbing activities.
19. (A-3) **During construction**, vegetation in sensitive areas shall be cleared only by hand to reduce potential adverse impacts to site deposits.
20. (A-4) **During construction**, all surface disturbing construction work shall be monitored by a qualified archaeologist. This would include utility corridors, septic systems, and driveway sub-grade areas which are located below the fill.
21. (A-4) **During construction**, if archaeological features are encountered, all work in the immediate area of the find shall cease until the find has been evaluated for importance and a plan of action drawn up. This measure shall be included in the construction contract.
22. (A-5) **Prior to the commencement of grading**, applicant shall provide a plan, prepared by a qualified archaeologist approved by the Environmental Coordinator, for the possible discovery and recovery of large artifacts, other cultural remains, or human remains during construction. Plan will include measures for informing construction crews of the likelihood of encountering such remains and that they could be instructed to cease all work in the immediate area of the find. If human remains are encountered, the County Coroner and the Native American Heritage Commission shall be notified immediately by law.
23. (D-15) **Prior to issuance of construction permit**, a private drainage maintenance easement shall be placed over the drainage swale. The property owner(s) shall contract for yearly inspections and maintenance of the oil and grease trap swale and sediment basin. The inspections and maintenance should be conducted from summer to fall each year, prior to the beginning of the rainy season. A yearly maintenance report submitted to the County *Environmental Coordinator* would document the maintenance activities.

#### Cumulative, Groundwater Quality

24. (GW-1) **Prior to issuance of construction permits**, the project proponent shall show on plans that replacement materials such as pressure-treated or concrete pilings will be used in lieu of creosote-treated pilings.
25. (GW-2) **Prior to development plan approval**, The applicant shall mitigate the potential indirect impacts from the proposed leach fields by conducting additional groundwater *testing* during the winter months (December-March) to determine the water table elevation on the site during the wet period of the year. If groundwater monitoring reveals that the leach fields would not meet or exceed the 8-foot separation requirement, plans shall be revised such that the leach fields shall be relocated to an up gradient area or additional fill should be placed to achieve the required separation. The monitoring and (if necessary) relocation of the leach fields should be performed by a qualified engineer.

#### Fire Safety

26. **Prior to issuance of construction permits**, the applicant shall obtain a current fire safety plan from the South Bay Fire Department.
27. The applicant shall use fire-resistant building designs and materials.

A-3-SLO-98-061  
Exhibit 3, p.6

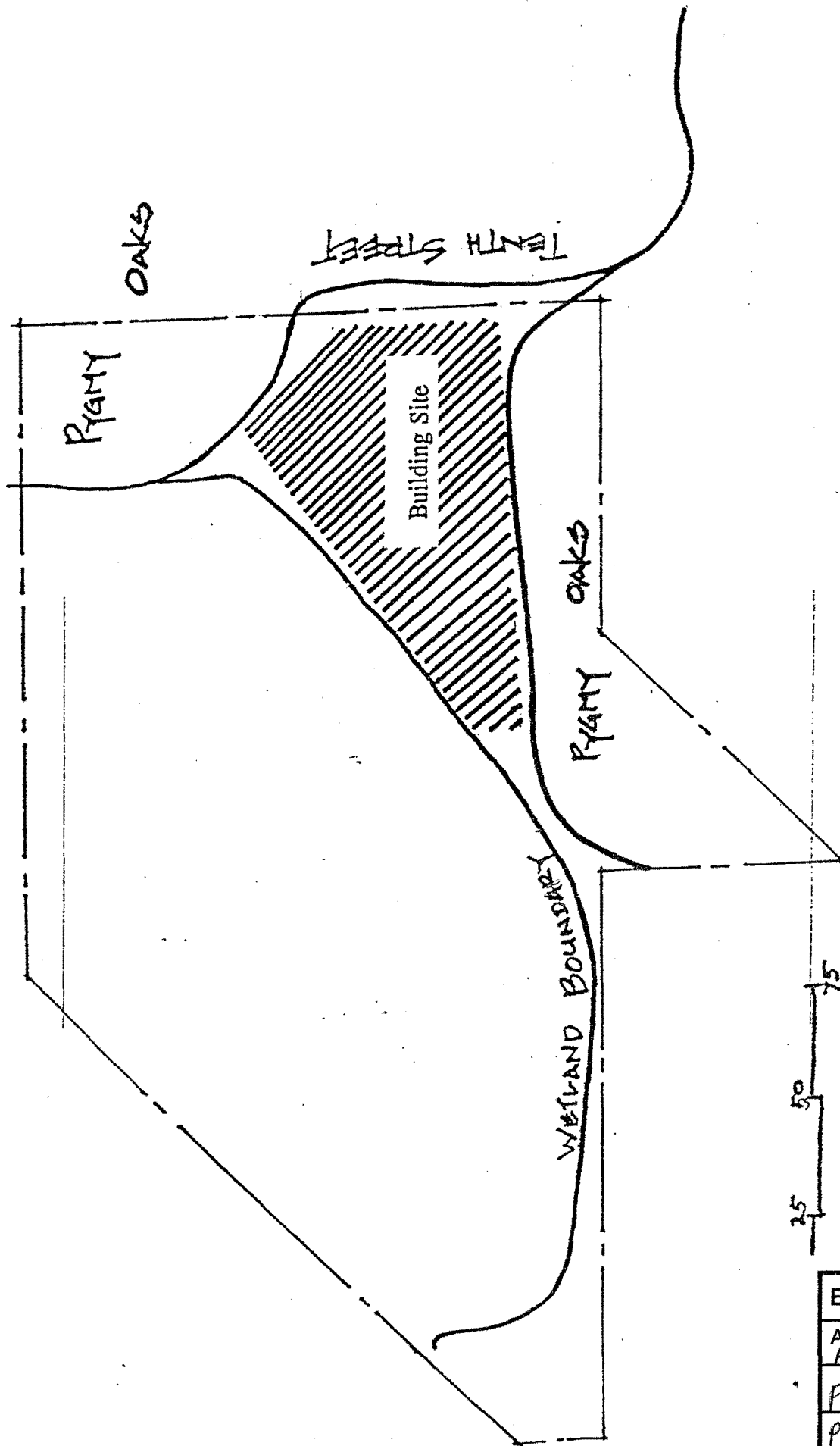
### Open Space Easement

28. Prior to issuance of construction permits, the applicant shall record an Open Space easement, in a form approved by County Counsel, for the areas of the site not designated for development. The Open Space easement shall preclude the construction of any structures, including fences or other improvements (except for the approved drainage facility), restrict the removal of vegetation, and prohibit the planting of any non-indigenous materials. It is to be held in single ownership or transferred to a public trust or conservancy agency approved by the County Counsel. The open space area is to be maintained as such in perpetuity.

### Pre-construction

29. Prior to construction, the applicant shall stake the area of disturbance and provide barrier fencing to prevent construction activities from encroaching into the sensitive areas. This shall be verified to be consistent with this approval in the field by the Department of Planning and Building.

A-3-SLO-98-061  
Exhibit 3, p. 7



PLANNING COMMISSION

EXHIBIT A

DATE: Nov 13, 1997

DO NOT REMOVE FROM FILE

PLANNING COMMISSION EXHIBIT A  
 DECEMBER 13, 1997

EXHIBIT NO. 4

APPLICATION NO.  
A-3-520-98-061

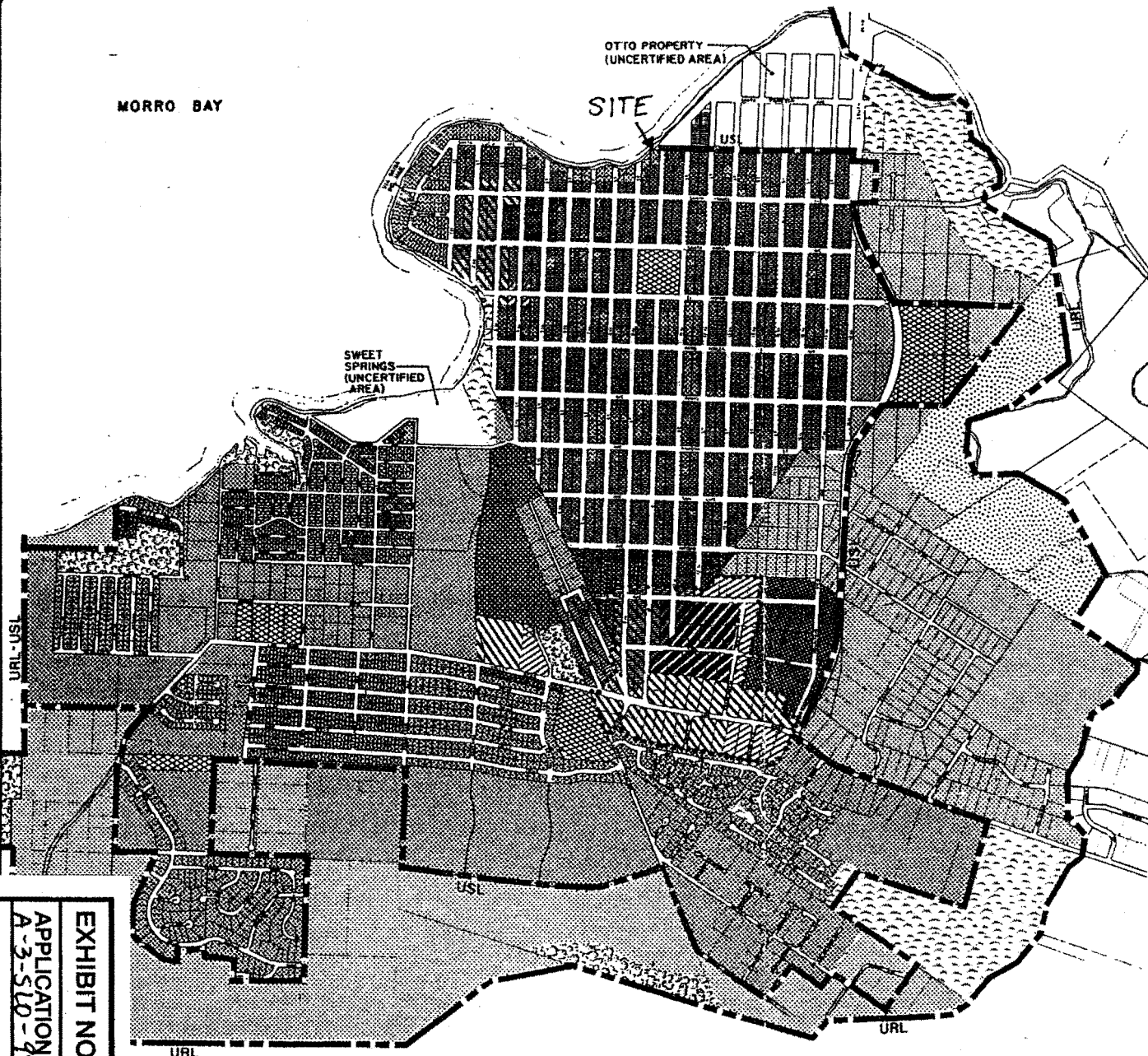
Project Approved by  
 Planning Commission

MORRO BAY

OTTO PROPERTY  
(UNCERTIFIED AREA)

SITE

SWEET  
SPRINGS  
(UNCERTIFIED AREA)



## LEGEND

### LAND USE CATEGORIES

- AGRICULTURE
- RURAL LANDS
- RECREATION
- RESIDENTIAL RURAL
- RESIDENTIAL SUBURBAN
- RESIDENTIAL SINGLE FAMILY
- RESIDENTIAL MULTIPLE FAMILY
- OFFICE & PROFESSIONAL
- COMMERCIAL RETAIL
- COMMERCIAL SERVICE
- INDUSTRIAL
- PUBLIC FACILITIES
- OPEN SPACE

### BOUNDARIES

- URBAN RESERVE LINE (URL)
- URBAN SERVICES LINE (USL)
- VILLAGE RESERVE LINE (VRL)
- PLANNING AREA
- CENTRAL BUSINESS DISTRICT

SCALE

NORTH



### NOTE:

This map is for reference purposes only. Official maps, showing precise property lines and land use category boundaries, are on file in the Planning Department.

## SOUTH BAY

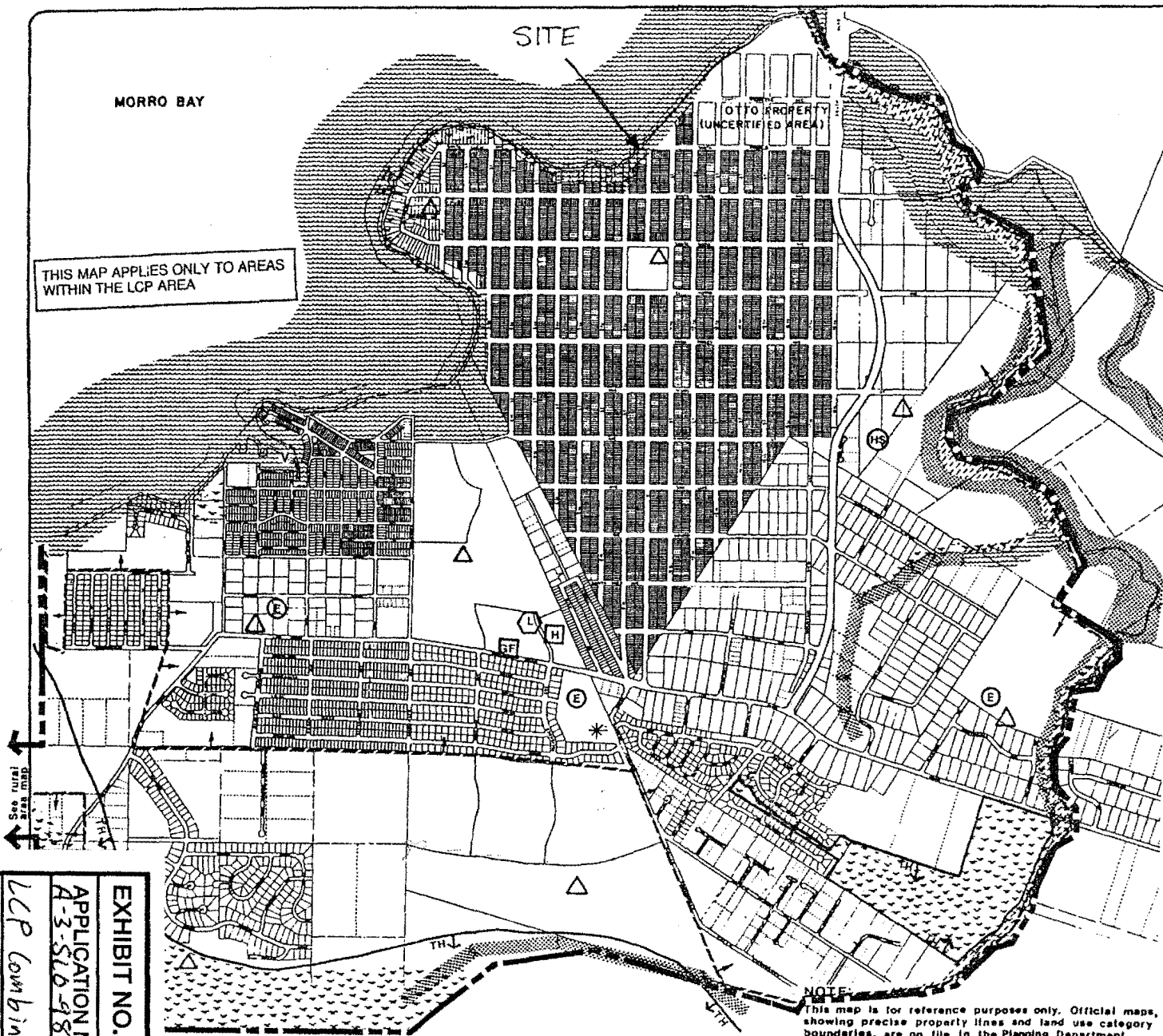
### LAND USE CATEGORIES

San Luis Obispo County Planning Department  
Revised: 1-75

EXHIBIT NO. 5

APPLICATION NO.  
A-3-SLD-98-061

LCP Land Use  
Map



## LEGEND

### COMBINING DESIGNATIONS

	AR	AIRPORT REVIEW
	ARCH-SEN	ARCHAEOLOGICALLY SENSITIVE AREAS
	GS	GEOLOGIC STUDY AREA
	FH	FLOOD HAZARD
	H	HISTORIC
	EX	ENERGY & EXTRACTIVE AREA
	LCP	LOCAL COASTAL PLAN
	V	VISITOR SERVING AREA
	SRA	SENSITIVE RESOURCE AREA

### PROPOSED PUBLIC FACILITIES

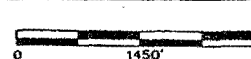
	HS	HIGH SCHOOL
	JHS	JR. HIGH SCHOOL
	E	ELEMENTARY SCHOOL
	P	PARK
	PS	POLICE OR PUBLIC SAFETY FACILITY STATION
	WT	WATER TREATMENT FACILITIES
	ST	SEWAGE TREATMENT FACILITIES
	SW	SOLID WASTE FACILITIES
	GF	GOVERNMENT FACILITY
	L	LIBRARY

### SENSITIVE RESOURCE AREAS THAT ARE ALSO ENVIRONMENTALLY SENSITIVE HABITATS

	TH	TERRESTRIAL HABITATS
	CSRV	COASTAL STREAMS AND RIPARIAN VEGETATION
	W	WETLANDS
	M	MARINE HABITAT

SCALE

NORTH



## SOUTH BAY

### COMBINING DESIGNATIONS

San Luis Obispo County Planning Department  
Revised: 1-6-89

EXHIBIT NO. 6

APPLICATION NO.  
A-3-SLB-98-061

LCP Combining

Designation Map



THIS MAP APPLIES ONLY TO AREAS WITHIN THE LCP AREA

EXHIBIT  
APPLICANT  
A-3-SLD

EXHIBIT NO. 7
APPLICATION NO. A-3-510-78-061
LCP South Bay
Circulation Map

## CIRCULATION

EXISTING	PROPOSED
----------	----------

PRINCIPAL ARTERIAL

ARTERIAL

COLLECTOR

  **INTERCHANGE**

### SCALE

**NORTH**



**NOTE:**

This map is for reference purposes only. Official maps, showing precise property lines and land use category boundaries, are on file in the Planning Department.

### COASTAL ACCESS

**EXISTING**

**VERTICAL ACCESS**



SHORELINE LATERAL ACCESS



### BLUFFTOP LATERAL ACCESS

VP

**VISTA POINT****PROPOSED**

VERTICAL ACCESS



## SHOWLINE LATERAL ACCESS



### BLUFFTOP LATERAL ACCESS



**VISTA POINT**

**NOTE:**

Arrows are for planning purposes only and do not mean that legal or physical access exists.

## SOUTH BAY

## CIRCULATION

San Luis Obispo County Planning Department  
Revised: 8-12-87



APPENDIX A:

LCP POLICIES, STANDARDS, AND  
ORDINANCES REFERENCED BY  
APPEALS A-3-SLO-98-061

(FARBSTEIN, LOS OSOS, SAN  
LUIS OBISPO COUNTY)

*referenced portions indicated by \**

This policy provides protection for the possible existence of public prescriptive rights as required by Coastal Act Policies 30211 and 30000.5. The establishment of prescriptive rights can be resolved between the property owners and interested individuals or groups. However, where this cannot be resolved, the government or an individual or group may bring suit on behalf of the public to confirm that the prescriptive rights of use exist. The Local Coastal Plan identifies areas where prescriptive rights may exist, and sets standards and programs (such as public acquisition) for new development regarding these potential public access rights. Development which incorporates these standards would not interfere with the possible existence of prescriptive rights and thus would be permitted. However, the Local Coastal Plan may not have identified all areas where prescriptive rights exist and for such areas the appropriate amount of public use should be established through the review process at the time of development.

Procedures for ensuring public input on existing prescriptive rights that may exist on projects between the first public road and the shoreline are included in the Coastal Zone Land Use Ordinance.

COASTAL  
ACCESS

## **Policy 2: \* New Development**

Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 a. AND c. OF THE CZLUO.]

Lateral accessways must be a minimum of 25 feet wide of dry sandy beach wherever possible. Where topography limits the sandy beach to less than 25 feet, the lateral access will extend from mean high tide to the toe of the bluff. More than 25 feet may be required to ensure that the public may use the sandy beach at all times.

Wherever possible, the accessway should be measured and established from a fixed line landward of and parallel to the mean high tide line, such as a parcel boundary. To assure that the public will have the ability to use some dry sandy beach at all times of the year, site review should consider: 1) variations of the high water line during the year, 2) topography of the site, 3) the location of other lateral accessways on neighboring or adjacent property, and 4) the privacy needs of the property owner.

Vertical accessways will be required at the time of new development when adequate vertical access is not available within a reasonable distance of (one-quarter mile within urban areas and one mile in rural areas) and where prescriptive rights may exist. The vertical accessways should

usually be sited along the borders of the project site and should extend from the road to the shoreline (or bluff edge if access is required to reach a bluff top viewing area).

The size and location of vertical accessways should be based upon the level and intensity of proposed or existing access. Site review shall consider: safety hazards; adequate parking provisions; privacy needs of adjacent residential property owners; provisions for requiring adequate public notification of accessway; and levels of improvements or facilities necessary to provide for existing level of access.

A vertical accessway in existing subdivided areas should be a minimum of five feet and should be sited no closer than five feet to an existing or proposed residential structure. In unsubdivided areas, vertical accessways should normally be a minimum of 10 feet. Vertical bluff top access between residential structures shall be limited to pass and repass use of the accessway. This provides for public access along the shoreline but would not allow for any additional use of the vertical accessway. Access activities on these accessways are limited to walking to pass through. Pass and repass right of access is usually applied to areas where topographic constraints make use of the beach dangerous, where habitat values of the shoreline would be adversely impacted by public use of the shoreline or where the accessway may encroach closer than 20 feet to a residential structure.

In some areas of the county, access may need to be limited and controlled such that adequate protection is given to agricultural uses and sensitive habitat areas. The level and intensity of access should be consistent with the following considerations:

Within agricultural holdings, new vertical access shall be required only where the access can be sited along a property boundary (to minimize impacts on the agricultural operation) unless a more appropriate location exists.

Maximum access within new development may be inconsistent with the protection of sensitive habitats. To optimize public access while protecting resources and land uses, limited forms of access and mitigation methods should be considered. Such mitigation methods may include establishment of a monitoring and maintenance program to assess the impacts of public use and to propose protection limitations. For example, access near a sensitive habitat may be restricted to a particular time of year to avoid conflicts with nesting seasons or other seasonal conditions. In other areas, such as Dune Lakes, this may require limitation on access to scientific or educational study, at the discretion and with the permission of the property owner.

In some areas it may be appropriate to require no new vertical access. This may be where adequate access exists nearby, or where adequate mitigation cannot be given to protect agricultural operations or sensitive habitat areas.

**Erosion Control.** Uncontrolled erosion through natural or development activities can threaten the stability of an environmentally sensitive area. Specific recommendations for erosion control are discussed in the Watershed chapter.

Other habitat types pose individualized needs and demand special management strategies. Coastal streams that serve as anadromous fish habitats are susceptible to impacts from surrounding properties. In-stream alterations, riparian vegetation removal, water diversions and pollution contribute to the need to protect streams that provide fish and other habitat values.

A second unique concern is the impact of off-road vehicles on habitat areas. Uncontrolled ORV use of bayfront areas and the coastal dunes can damage the habitat of a variety of species. Where this access is appropriate, it must be provided at a level which is consistent with the carrying-capacity of the area.

The recommendations of the Local Coastal Program address these concerns by ensuring protection of environmentally sensitive habitat areas, by establishing programs, policies, standards and ordinances.

## **POLICIES FOR ENVIRONMENTALLY SENSITIVE HABITATS**

### **A. SENSITIVE HABITATS**

Environmentally sensitive habitat areas are settings in which plant or animal life (or their habitats) are rare or especially valuable due to their special role in an ecosystem. Designation of environmentally sensitive habitats include but are not limited to: 1) wetlands and marshes; 2) coastal streams and adjacent riparian areas; 3) habitats containing or supporting rare and endangered or threatened species; 4) marine habitats containing breeding and/or nesting sites and coastal areas used by migratory and permanent birds for resting and feeding. The Coastal Act provides protection for these areas and permits only resource-dependent uses within the habitat area. Development adjacent must be sited to avoid impacts. While each of these habitat types is discussed in greater detail, general policies for protection of habitats are as follows:

#### **Policy 1:<sup>\*</sup> Land Uses Within or Adjacent to Environmentally Sensitive Habitats**

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

## **Policy 2:<sup>\*</sup> Permit Requirement**

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

## **Policy 3: Habitat Restoration**

The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible. Detailed wetlands restoration criteria are discussed in Policy 11. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

## **Policy 4: No Land Divisions in Association with Environmentally Sensitive Habitats**

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

## **B. WETLANDS**

Coastal wetlands, tidal marshes, mudflats, freshwater marshes and related bodies of water are a dynamic, fragile link between oceanic and terrestrial ecosystems. Wetlands help improve the quality and quantity of water, as well as providing important wildlife habitats. By slowing run-off water, wetland vegetation causes silt to settle out, improving water quality. By retaining water during dry periods and holding it back during floods, wetlands will keep the water table high and relatively stable. By providing nesting, breeding and feeding grounds, wetlands support the diversity as well as health of wildlife. Several rare and/or endangered species are found within local coastal wetlands, including the California Brown Pelican and the California Least Tern.

The Coastal Act identifies wetlands and estuaries as environmentally sensitive habitats and requires that the biological productivity and the quality of such areas be maintained and, where feasible, restored. The special value of wetlands and estuaries is further recognized in Section

**Policy 5:\***      **Protection of Environmentally Sensitive Habitats**

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

**Policy 6:\***      **Principally Permitted Use**

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

**Policy 7:**      **Public Acquisition**

The California Department of Parks and Recreation, the California Department of Fish and Game and other public and private sources should be encouraged to acquire or accept offers-to-dedicate coastal wetlands wherever possible.

Priorities for acquisition should be:

- . Sweet Springs Marsh
- . Santa Maria River mouth
- . Villa Creek Lagoon
- . Properties surrounding Morro Bay which include wetland habitat.

[THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 8:**      **Open Space Easements and Williamson Act Contracts**

San Luis Obispo County shall continue to encourage the use of open space easements or Williamson Act contracts to ensure preservation of coastal wetlands. The county will develop guidelines to facilitate use of open space easements to include requirements for length of dedication (i.e., perpetuity or 10 years), appropriate management responsibility, etc. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 9:**      **Regional Water Quality Control Board "208" Program**

California Regional Water Quality Control Board shall administer programs identified through the "208" nonpoint source studies to ensure protection of coastal wetlands and water quality. (The county has incorporated the Basin Plan Amendment requirements into the COASTAL

ZONE Land Use Ordinance.) [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 10:** <sup>\*</sup> **State Department of Fish and Game Review**

The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 11: Diking, Dredging or Filling of Wetlands**

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

- a. New or expanded port, energy, and coastal dependent industrial facilities, including commercial fishing facilities.
- b. Maintenance dredging of existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- c. In wetlands areas only, entrance channels for new or expanded boating facilities, and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigational channels, and any necessary support service facilities be greater than 25 percent of the total wetland area to be restored.
- d. In open coastal waters, other than wetlands, including streams, estuaries and lakes, new or expanded boating facilities.
- e. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

productivity or opening up equivalent areas to tidal action; provided however, that if no appropriate restoration site is available an in-lieu fee sufficient to provide an area of equivalent productive value or surface area shall be dedicated to an appropriate public agency or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

#### **Policy 12: Mosquito Abatement Practices**

Mosquito abatement practices shall be limited to the minimum necessary to protect health and prevent damage to natural resources. Biological control measures are encouraged. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

#### **Policy 13: Vehicle Traffic in Wetlands**

No vehicle traffic shall be permitted in wetlands. This shall not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland. Pedestrian traffic shall be regulated and incidental to the permitted uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

#### **Policy 14: \*** Adjacent Development

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

#### **Policy 15: \*** Wetland Buffer

In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are



infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted.

The minimum buffer strip may be adjusted by the county if the minimum setback standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

### **Policy 16:<sup>\*</sup> Wetland Buffers Less than 100 Feet**

For buffers less than 100 feet as established consistent with Policy 15 (above) mitigation measures to ensure wetland protection shall be required, and shall include (where applicable) vegetative screening, landscaping with native vegetation, drainage controls and other such measures.

When the minimum buffer strip is adjusted by the county, it shall be done on a case-by-case basis only after the investigation of the following factors:

- a. Soil type and stability of development site, including susceptibility to erosion.
- b. Slope of land adjacent to the wetland and the ability to use natural topographic features to locate development.
- c. Types and amount of vegetation and its value as wildlife habitat including: 1) the biological significance of the adjacent lands in maintaining the functional capacity of the wetland, and 2) the sensitivity of the species to disturbance.
- d. Type and intensity of proposed uses.
- e. Lot size and configuration, and the location of existing development.

[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

## **Policy 24: \* Riparian Vegetation**

Cutting or alteration of naturally occurring vegetation that protects riparian habitat is not permitted except for permitted streambed alterations (defined in Policy 23) and where no feasible alternative exists or an issue of public safety exists. This policy does not apply to agricultural use of land where expanding vegetation is encroaching on established agricultural uses. Minor incidental public works project may also be permitted where no feasible alternative exists including but not limited to utility lines, pipelines, driveways and roads. Riparian vegetation shall not be removed to increase agricultural acreage unless it is demonstrated that no impairment of the functional capacity of the habitat will occur. Where permitted, such actions must not cause significant stream bank erosion, have a detrimental effect on water quality or quantity, or impair the wildlife habitat values of the area. This must be in accordance with the necessary permits required by Sections 1601 and 1603 of the California Fish and Game Code. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

## **Policy 25: Stream Diversion Structures**

Stream diversion structures on streams appearing as dotted or dash lines on the largest scale U.S.G.S. quadrangle maps shall be sited and designed to not impede up and downstream movement of native fish or to reduce stream flows to a level which would significantly affect the biological productivity of the fish and other stream organisms. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

## **Policy 26: Buffer Zone for Riparian Habitats**

In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from

identifying adjoining properties where development could adversely impact their holdings. For San Luis Obispo County, this specifically pertained to holdings of the State Department of Parks and Recreation and the Department of Fish and Game. Though this section of the Coastal Act was subsequently amended, the conversations between the appropriate staffs and the Local Coastal Program staff has served to bring to the county's attention the agency's concerns.

The following policies related to protection of identified terrestrial habitats within the coastal zone:

**Policy 27:<sup>\*</sup>      Protection of Terrestrial Habitats**

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

**Policy 28:<sup>\*</sup>      Protection of Native Vegetation**

Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

**Policy 29:      Design of Trails In and Adjoining Sensitive Habitats**

San Luis Obispo County, or the appropriate public agency, shall ensure that the design of trails in and adjoining sensitive habitat areas shall minimize adverse impact on these areas. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 30:      Public Acquisition**

The California Department of Parks and Recreation, Department of Fish and Game and other public and private organizations should continue to acquire or accept offers-to-dedicate for sensitive resource areas wherever possible. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 31:      Agriculture and Open Space Preserves**

The county should encourage the uses of Agriculture Preserves or Open Space Preserves to protect sensitive habitat areas where public acquisition is not feasible. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT AS A PROGRAM.]

**Policy 32:      Rare and Endangered Species Survey**

The State Department of Fish and Game should continue to identify rare or endangered plant and animal species within the county. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 33:<sup>\*</sup>      Protection of Vegetation**

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

**Policy 34:      Protection of Dune Vegetation**

Disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible.

Revegetation with California native plant species propagated from the disturbed sites or from the same species at adjacent sites shall be necessary for all projects. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 35:      Recreational Off-Road Vehicle Use of Nipomo Dunes**

Within designated dune habitats, recreational off-road vehicle traffic shall only be allowed in areas identified appropriate for this use. Detailed recommendations concerning protection of the dune habitat within Pismo State Beach and Pismo Vehicular Recreation area are found in the chapter regarding Recreation and Visitor-Serving Facilities. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

The Resource Management System of the Land Use Element provides a framework for implementing this policy and an interim alert process for timely identification of potential resource deficiencies, so that sufficient lead time is allowed for correcting or avoiding a problem. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

### **Policy 6: Priority for Agriculture Expansion**

Agriculture shall be given priority over other land uses to ensure that existing and potential agricultural viability is preserved, consistent with protection of aquatic habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

### **Policy 7: <sup>\*</sup>Siting of New Development**

Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent except:

Existing lots of record in the Residential Single-Family category and where a residence cannot be feasibly sited on a slope less than 20 percent;

When grading of an access road or driveway is necessary to provide access to an area of less than 20 percent slope where development is intended to occur, and where there is no less environmentally damaging alternative;

The county may approved grading and siting of development on slopes between 20 percent and 30 percent through Minor Use Permit, or Development Plan approval, if otherwise required by the Coastal Zone Land Use Ordinance. Also in review of proposed land divisions, each new parcel shall locate the building envelope and access road on slopes of less than 20 percent. In allowing grading on slopes between 20 percent and 30 percent the county shall consider the specific characteristics of the site and surrounding area that include but are not limited to: the proximity of nearby streams or wetlands, the erosion potential and slope stability of the site, the amount of grading necessary, neighborhood drainage characteristics and measures proposed by the applicant to reduce potential erosion and sedimentation. The county may also consider approving grading on slopes between 20 percent and 30 percent where it has been demonstrated that there is no other feasible method of establishing an allowable use on the site without grading. Grading and erosion control plans shall be prepared by a registered civil engineer and accompany any request to allow grading on slopes between 20 percent and 30 percent. It shall also be demonstrated that the proposed grading is sensitive to the natural landform of the site and surrounding area.

In all cases, siting of development and grading shall not occur within 100 feet of any environmentally sensitive habitat. In urban areas as defined by the Urban Services Line, grading may encroach within the 100 foot setback when locating or siting a principally permitted

development, if application of the 100 foot setback renders the parcel physically unusable for the principally permitted use. Secondly, the 100 foot setback shall only be reduced to a point at which the principally permitted use, as modified as much as practical from a design standpoint, can be accomplished to no point less than the setback allowed by the planning area standard or 50 feet whichever is the greater distance. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO COASTAL ZONE LAND USE ORDINANCE SECTIONS: 23.05.034 (GRADING) AND 23.04.021 (LAND DIVISIONS).]

### **Policy 8: Timing of Construction and Grading**

Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

### **Policy 9: Techniques for Minimizing Sedimentation**

Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

### **Policy 10: \* Drainage Provisions**

Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

## **POLICIES FOR VISUAL AND SCENIC RESOURCES**

### **Policy 1:<sup>\*</sup> Protection of Visual and Scenic Resources**

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

### **Policy 2: Site Selection for New Development**

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

### **Policy 3: Stringline Method for Siting New Development**

In a developed area where new construction is generally infilling and is otherwise consistent with Local Coastal Plan policies, no part of a proposed new structure, including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjoining structures; except where the shoreline has substantial variations in landform between adjacent lots in which case the average setback of the adjoining lots shall be used. At all times, this setback must be adequate to ensure geologic stability in accordance with the policies of the Hazards chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.118 OF THE CZLUO.]

### **Policy 4: New Development in Rural Areas**

New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.021 OF THE CZLUO.]

## C. SOUTH BAY URBAN AREA STANDARDS

The following standards apply within the South Bay Urban Reserve Line to the land use categories or specific areas listed.

**COMMUNITYWIDE:** The following standards apply to all land uses within the South Bay Urban Reserve Line.

1. \* **Septic Tank Requirements.** New development shall meet the septic tank requirements of the Regional Water Quality Control Board. Current WQCB standards specify that depth to bedrock or other impervious material should be greater than eight feet and depth to groundwater should be greater than 10 feet at all times. Separation between the bottom of the disposal field and the groundwater level shall be a minimum of five feet. In those areas of the community with known high water levels, a piezometer reading should be completed indicating that an adequate separation between the bottom of the disposal field excavation and the groundwater will be maintained at all times.
2. **Interim Service Capacity Allocation.** Prior to completion of a Resource Capacity Study, the following priorities for water use shall be established, which shall be implemented through the review and approval of subdivision and development plan proposals.
  - a. Reservation of 800 acre-feet per year (consumptive use) for agricultural use to protect existing and projected agricultural water needs in accordance with the Brown and Caldwell study (1974).
  - b. Projected infill of residential, commercial, and visitor-serving uses on existing subdivided lots.
  - c. Extend services to areas where services will correct existing or potential problems (e.g., areas with high nitrate readings) where individual wells are now in use.
  - d. Additional land division will be permitted within substantially subdivided areas in accordance with lot sizes permitted in the Land Use Element and Coastal Zone Land Use Ordinance. Findings must be made that resources are adequate to serve the previously identified higher priorities uses in addition to proposed lots.
  - e. Additional divisions would be permitted within the urban service line boundary only where adequate additional capacity is identified and it can be demonstrated



that the proposed development would not jeopardize the availability of resources available to higher priority proposed uses.

- f. Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and one-half acres.

**South Bay Lowland Areas.** Standard 3 applies only to areas designated in Figure 8-3.

3. \* **Drainage Plan Requirement.** All land use permit applications for new structures or additions to the ground floor of existing structures shall require drainage plan approval pursuant to Coastal Zone Land Use Ordinance Sections 23.05.040 et seq. if the project is located within the area shown on Figure 8-3, unless the County Engineer determines that the individual project site is not subject to or will not create drainage problems.

### **Circulation**

4. **Third Street.** Road alignment and siting shall incorporate mitigation measures to protect the adjacent wetland and preservation of the cathedral stands. The site shall be surveyed by a qualified biologist to determine the necessary mitigation measures to protect the Sweet Springs area and surrounding wetlands. Drainage shall be designed to protect the marsh from road surface pollutants.

### **Bayfront Development**

5. \* **Height.** Proposed structures are limited to the maximum heights shown on Figure 8-4.
6. **Fences.** Fences shall not be constructed that would restrict public views of the bay from public roads or preclude lateral public access.
7. \* **Vegetation Protection.** On-site vegetation shall be preserved whenever possible. Grading shall be minimized and limited to the building pad and driveway, road and other required improvements.

**Morro Palisades.** Standard 8 applies only to the Morro Palisades area (see Figure 8-2).

8. **Planned Development.** The portion of the property north of Los Osos Valley Road shall be developed as a planned development to allow for a variety of housing types and densities, commercial, public facilities, office and professional uses to be located in the least sensitive portions of the site and the most sensitive portions retained as open space/recreation use as determined by the planned development review. The adopted Development Plan shall be revised to incorporate the provisions of the LUE.

- b. Trails designed to preclude access within identified wetland areas. (Whitehole)
5. **Pecho Road.** New development between Pecho Road and Butte Drive shall provide an offer to dedicate a lateral easement. An improved lateral pedestrian trail and signs are to be provided at a level consistent with protection of the wetland habitat and existing prescriptive rights.

### **Sensitive Resource Area (SRA) - Combining Designation Standards**

1. \* **Site Planning - Development Plan Projects.** Projects requiring Development Plan approval are to concentrate proposed uses in the buildable least sensitive portions of properties. Native vegetation is to be retained as much as possible.

**NOTE:** THE SWEET SPRINGS AREA HAS BEEN "WHITEHOLED" BY ACTION OF THE COASTAL COMMISSION AND THE COUNTY. THIS MEANS THAT THE DEVELOPMENT STANDARDS HAVE BEEN HELD IN ABEYANCE UNTIL THE COUNTY SUBMITS REVISIONS TO THE LOCAL COASTAL PLAN. THE STANDARDS IN EFFECT FOR THIS AREA ARE CONTAINED IN THE LAND USE ELEMENT OF THE COUNTY GENERAL PLAN (SEE APPENDIX A FOLLOWING THIS PLAN).

### **Sweet Springs and Cuesta-by-the-Sea Marsh (SRA)**

2. **Wetland Setback.** If acquisition is not completed, a buffer area to be determined by the detail survey of the property by a qualified biologist will be required to be retained in a natural condition. This should be dedicated to the appropriate public agency or secured through open space easements. Development shall be clustered to minimize impacts on the surrounding wetland. (Whitehole)
3. **Runoff.** Upland development will be required to provide measures to handle runoff on-site.

### **Morro Bay (SRA)**

4. **Permit Requirement.** Where government acquisition of privately owned parcels within or adjacent to the bay is not feasible, development proposals for unsubdivided areas are to cluster uses in the least sensitive portions of properties and preserve the remainder for open space. Site design shall include a survey of the property by a qualified biologist to determine the extent of the wetland and other habitat values of the site. Mitigation measures to include setbacks, shall be incorporated in site design. Density shall be computed on the gross site area excluding the portion that is identified as wetland. The cluster division or planned development process should be used to allow

- f. Notice to county of appeal to Coastal Commission.** An appellant shall notify the county when appealing to the Coastal Commission by providing the county a copy of the information required in Section 13111 of Title 14 of the California Administrative Code.

### **23.01.044 - Adjustment:**

- a. When allowed:** When a standard of Chapter 23.04, 23.05 or 23.08, or a planning area standard of the Land Use Element identifies specific circumstances under which reduction of the standard is appropriate, an applicant may request an adjustment to the standard. (For example, Section 23.04.108a(3) provides that a required front setback may be reduced to a minimum of five feet through the adjustment process when the elevation of the lot is seven feet above or below the street centerline at 50 feet from the centerline.)
- b. Application filing and processing:** An adjustment request is to be filed with the Planning Department in the form of an attachment to the project application, with appropriate supporting materials. The request is to specify the Coastal Zone Land Use Ordinance standard requested for adjustment, and document the manner in which the proposed project qualifies for the adjustment. A request for adjustment shall not be accepted for processing by the Planning Department unless the request is within the range of adjustments prescribed in the standard. A request for adjustment shall be approved by the Planning Director when the director finds that the criteria for adjustment specified in the subject standard are satisfied.

### **\* 23.01.045 - Variance:**

A variance from the strict application of the requirements of this title may be requested as provided by this section. For the purposes of this title, a variance is a land use permit.

- a. Limitations on the use of a variance.** A variance shall not be used to:
- (1)** Reduce the minimum parcel size required for a new land division by Chapters 23.04 or 23.08 of this title below the range of parcel sizes specified by Chapter 6, Part I of the Land Use Element for the land use category in which the subject site is located; or

23.01.045

- (2) Authorize land uses other than those normally identified as allowable in a particular land use category by Coastal Table O, Part I of the Land Use Element, planning area standards of the Land Use Element, Chapter 22.08 or other chapter of this title, pursuant to Government Code Section 65906.
- b. **Application:** A written application for variance shall be filed with the Planning Department on the form provided, accompanied by all graphic information required for Plot Plans by Section 23.02.030b (Plot Plan Content), and any additional information necessary to explain the request. Acceptance of the application is subject to Section 23.01.033a (Consistency with the Land Use Element Required), and 23.02.022 (Determination of Completeness).
- c. **Notice and hearing.** After acceptance of a variance application and completion of a staff report, the Planning Commission will conduct a public hearing on the variance request. The notice and scheduling of the hearing shall be pursuant to Section 23.01.060 (Public Hearing).
- d. **Action on a variance.** The Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection. Such decision may be appealed to the Board of Supervisors as set forth in Section 23.01.042 (Appeal).
- (1) **Findings.** Approval or conditional approval may be granted only when the Planning Commission first determines that the variance satisfies the criteria set forth in Government Code Section 65906 by finding that:
- (i) The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situation; and
  - (ii) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
  - (iii) The variance does not authorize a use that is not otherwise authorized in the land use category; and
  - (iv) The variance is consistent with the provisions of the Local Coastal Program; and

- (v) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
- (2) **Conditions of approval.** In approving an application for variance, such conditions shall be adopted as are deemed necessary to enable making the findings set forth in Section 23.01.045d(1).
- (3) **Notice of Final Action.** Where the variance request is appealable to the Coastal Commission pursuant to Section 23.01.043, a Notice of Final Action on the variance shall be provided as set forth in Section 23.02.036d.
- e. **Effective date of variance.** Except where otherwise provided by Section 23.01.043c for projects that may be appealed to the Coastal Commission, an approved variance shall become effective for the purposes of construction permit issuance or establishment of a non-structural use, on the 15th day after the act of Planning Commission approval; unless an appeal to the Board of Supervisors is filed as set forth in Section 23.01.042.
- f. **Time limits and extensions.** An approved variance is subject to the time limits, extension criteria and other provisions of Sections 23.02.040 through 23.02.052 of this title.

[Amended 1995, Ord. 2715]

### **23.01.050 - Amendment:**

The Local Coastal Program (including this title) may be amended whenever the Board of Supervisors deems that public necessity, convenience, or welfare require, pursuant to the procedures set forth in this section.

- a. **Initiation of amendment.** Amendments may be initiated by the Board of Supervisors upon its own motion; or by the Board of Supervisors upon acceptance of a petition from any interested party, including the Planning Director and/or Planning Commission. Petitions shall include a description of the benefit to be derived as a result of the amendment. The Board of Supervisors may refer a proposed amendment to the Planning Director and/or Planning Commission for response before deciding whether to initiate the amendment.

### \* 23.04.048 - Lot Consolidation.

In any residential or Rural Lands land use category, any single ownership of two or more adjoining vacant lots with continuous frontage, shall be considered a single parcel of real property and a single building site, except as otherwise provided by this section. No sale, transfer, division or development of less than all of such single parcel shall occur unless the portion or portions of the single parcel to be sold, transferred, divided or developed are in conformity with the provisions of this title as modified by this section.

- (1) Where sewage disposal is by community sewage system:
  - (i) **Minimum lot size:** 3,500 square feet.
  - (ii) **Minimum lot width:** 40 feet, measured along the front setback line (Section 23.04.108).
- (2) Where sewage disposal is by individual sewage disposal system:
  - (i) **Minimum lot size:** 6,000 square feet where served by community water; one acre where served by a domestic well.
  - (ii) **Minimum lot width:** 50 feet, measured along the front setback line (Section 23.04.108).

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

This section establishes permit requirements and standards for non-agricultural uses in the Agriculture category consistent with Local Coastal Plan Agricultural policies 3, 4, and 5.

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

#### 23.04.104 - 108

- d.** Areas where an official plan line for road right-of-way has been established, in which case the front or street-side setbacks required by this title shall be measured from the plan line instead of from the property line that would otherwise be the basis for setback measurement.

[Amended 1995, Ord. 2715]

#### 23.04.106 - Use of Setbacks.

Required setback areas shall be landscaped when required by Section 23.04.180 et seq. (Landscape), and shall be unobstructed by any building or structure with a height greater than three feet, except where otherwise provided by Sections 23.04.110c, 112a, 116, 190c or 310. The use of setbacks for parking is subject to Section 23.04.163 (Location of Parking on a Site). [Amended 1992, Ord. 2570; 1993, Ord. 2649]

#### \* 23.04.108 - Front Setbacks:

All structures with a height greater than three feet shall be setback a minimum of 25 feet from the nearest point on the front property line; except where this section establishes other requirements or where otherwise provided by Section 23.04.310 (Sign Design Standards) or Section 23.04.190 (Fencing and Screening). The front setback is established parallel or concentric to the front property line. Front setback landscape and fencing standards are in Sections 23.04.180 et seq. and 23.04.190, respectively. [Amended 1992, Ord. 2570; Amended 1993, Ord. 2649]

- a. Residential uses:** All residential uses except for second-story dwellings over a commercial or office use are to have a minimum front setback of 25 feet, except as follows:

- (1) **Shallow lots:** The front setback is to be a minimum of 20 feet for any legally-created lot with an average depth less than 90 feet.
- (2) **Sloping lot adjustment:** In any case where the elevation of the natural grade on a lot at a point 50 feet from the centerline of the adjacent street right-of-way is seven feet above or below the elevation of the centerline, required parking (including a private garage) may be located, at the discretion of the applicant, as close as five feet to the street property line, pursuant to Section 23.01.044 (Adjustment), provided that portions of the dwelling other than the garage are to be established at the setback otherwise required.

- (3) **Variable setback block:** Where a residential block is partially developed with single-family dwellings having less than the required front setbacks, and no uniform front setback is established by a planning area standard, the front setback may be adjusted (Section 23.01.044) at the option of the applicant, as follows:
- (i) **Prerequisites for adjustment:** Adjustment may be granted only when 25% of the lots on the block with the same frontage are developed, and the entire block is within a single land use category.
  - (ii) **Allowed adjustment:** The normally required minimum front setback is to be reduced to the average of the front setbacks of the existing dwellings (which include attached garages but not detached garages), to a minimum of 10 feet.
- (4) **Planned development or cluster division.** Where a new residential land division is proposed as a planned development, condominium or cluster division (Section 23.04.036), front setbacks may be determined through Development Plan approval, provided that in no case shall setbacks be allowed that are less than the minimum required by the Uniform Building Code.
- b. **Commercial and office categories:** No front setbacks are required within a central business district; a 10-foot front setback is required in Commercial and Office categories elsewhere. Ground floor residential uses in Commercial and Office categories are subject to the setback requirements of subsection a of this section.
- c. **Industrial category:** A minimum 25-foot front setback is required except on interior and flag lots, where the front setback shall be the same as that required for side setbacks by Section 23.04.110d.
- d. **Recreation category:** A minimum 10-foot front setback is required, provided that residential uses are subject to the set-back requirements of subsection a of this section.
- e. **Double frontage lots:**
- (1) **Selecting the setback location:** Where double frontage setback locations are not specified by subdivision requirements or other applicable regulations, the applicant may, except as otherwise provided in this section, select the front setback street unless 50% of the lots on a double frontage block are developed with the same front yard orientation. In that case all remaining lots are to orient their front setbacks with the majority.



- (2) **Double frontage setback requirements:** A full front setback is to be provided adjacent to one frontage, and a setback of one-half the required front setback depth adjacent to the other frontage; except that where the site of a proposed multiple-residence project includes an entire block, the project shall be designed to provide required front setbacks on the two longest street frontages.

- f. **Flag lots and easement access:** The front setback for a lot with no street frontage other than a fee ownership access strip or an access easement extending from a public street to the buildable area of the lot is to be measured from the point where the access strip or easement meets the bulk of the lot, to establish a building line parallel to the lot line nearest to the public street.

### 23.04.110 - Side Setbacks:

The side setback is measured at right angles to the side property line to form a setback line parallel to the side property line, which extends between the front and rear setback areas. The minimum side setback is to be as follows, except where otherwise provided by Sections 23.07.172 and 23.07.174 for sites adjacent to streams or wetlands, or by Section 23.04.118 for sites adjacent to the coastline:

- a. **General side setback requirements:** These requirements apply except where otherwise provided by subsections b through f of this section. See Section 23.04.116 (Projections into Required Setbacks) for additional applicable standards. The required general side setback is measured at the front setback line as follows:

- (1) **Within urban and village areas.** 10 percent of the lot width, to a maximum of five feet on sites less than one acre in net area, but not less than three feet, and a minimum of 30 feet on sites of one acre or larger in net area. For sites of one acre or larger, a smaller setback may be granted using the adjustment provided in Section 23.05.104f. The adjustment shall consider the ultimate division of the property into the minimum parcel size as allowed by Section 23.04.025 et seq. applicable to the land use category in which the site is located, or as set by planning area standard.
- (2) **Within rural areas.** 10 percent of the lot width to a maximum of 25 feet, but not less than three feet, on sites of less than one acre in net area and a minimum of 30 feet on sites of one acre or larger in net area. For sites of one acre or larger, a smaller setback may be granted using the adjustment provided in Section 23.05.104f.

## \* 23.04.420 - Coastal Access Required.

Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act.

### a. Access defined:

- (1) **Lateral access:** Provides for public access and use along the shoreline.
- (2) **Vertical access:** Provides access from the first public road to the shore, or perpendicular to the shore.
- (3) **Pass and repass:** The right of the public to move on foot along the shoreline.

### b. Protection of existing coastal access.

Development shall not interfere with public rights of access to the sea where such rights were acquired through use or legislative authorization. Public access rights may include but are not limited to the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

### c. When new access is required.

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
- (2) The site already satisfies the provisions of subsection d of this section; or
- (3) Agriculture would be adversely affected; or
- (4) The proposed new development is any of the following:
  - (i) Replacement of any structure pursuant to the provisions of Section 30610(g) of the California Coastal Act.

- (ii) The demolition and reconstruction of a single-family residence; provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure. As used in this subsection, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.
- (iii) Improvements to any structure that do not change the intensity of its use, or increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede public access and do not result in additional seaward encroachment by the structure. As used in this subsection, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.
- (iv) The reconstruction or repair of any seawall; provided that the reconstructed or repaired seawall is not seaward of the location of the former structure.
- (v) Any repair or maintenance activity excluded from obtaining a land use permit by this title, except where the Planning Director determines that the use or activity will have an adverse effect on lateral public access along the beach.
- (vi) Nothing in this subsection shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

**d. Type of access required:**

**(1) Vertical Access:**

- (i) **Within urban and village areas:** Within an urban or village area where no dedicated or public access exists within one-quarter mile of the site, or if the site has more than one-quarter mile of coastal frontage, an accessway shall be provided for each quarter mile of frontage.
- (ii) **In rural areas:** In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, an accessway shall be provided for each mile of frontage.

- (iii) **Prescriptive rights:** An accessway shall be provided on any site where prescriptive rights of public access have been determined by a court to exist.
  - (iv) **Additional accessways:** The applicable approval body may require accessways in addition to those required by this section where the approval body finds that a proposed development would, at the time of approval or at a future date, increase pedestrian use of any adjacent accessway beyond its capacity.
- (2) **Vertical access dedication.** Accessways shall be a minimum width of five feet in urban areas and 10 feet in rural areas.
  - (3) **Lateral access dedication:** All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff.
- e. **Timing of access requirements.** The type and extent of access to be dedicated, and/or constructed and maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of land use permit approval, as provided by this section.
- (1) **Dedication:** Shall occur before issuance of construction permits or the start of any construction activity not requiring a permit.
  - (2) **Construction of improvements:** Shall occur at the same time as construction of the approved development, unless another time is established through conditions of land use permit approval.
  - (3) **Opening access for public use.** No new coastal access required by this section shall be opened or otherwise made available for public use until a public agency or private association approved by the county agrees to accept responsibility for maintenance of the accessway and any liability resulting from public use of the accessway.
  - (4) **Interference with public use prohibited.** Following an offer to dedicate public access pursuant to subsection e(1) of this section, the property owner shall not interfere with use by the public of the areas subject to the offer before acceptance by the responsible entity.

**f. Permit requirement.** Except as otherwise provided by this subsection, Minor Use Permit approval is required before issuance of any construction permit for an accessway, or the start of any access construction not requiring a permit, unless the details of the required access are approved as part of another Minor Use Permit or Development Plan for the principal use. The permit requirement of this subsection applies to the construction of a new accessway, or alteration, major restoration, transfer of maintenance responsibility or abandonment of an existing accessway. No land use permit is required for:

- (1) The offer of dedication, grant of easement or other conveyance of title for future accessway construction where no public use exists or is proposed at the time of conveyance; or
- (2) Normal maintenance or minor improvements, where the total valuation of work does not exceed \$1500 as determined by the County Fee Ordinance.

**g. Access title and guarantee:** Where public coastal accessways are required by this section, approval of a land division, or land use permit for new development shall require guarantee of such access through deed restriction, or dedication of right-of-way or easement. Before approval of a land use permit or land division, the method and form of such access guarantee shall be approved by County Counsel, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access. The method of access guarantee shall be chosen according to the following criteria:

- (1) **Deed restriction.** Shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the public access area, subject to approval by the Planning Director.
- (2) **Grant of fee interest or easement:** Shall be used when a public agency or private organization approved by the Planning Director is willing to assume ownership, maintenance and liability for the access.
- (3) **Offer of dedication:** Shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for accessway maintenance and liability. Such offers shall not be accepted until maintenance responsibility and liability is established.

**(4) Procedures for open space easements and public access documents.**

Pursuant to Section 13574 of Title 14 of the California Administrative Code, all land use permits and tentative subdivision maps subject to conditions of approval pertaining to public access, open space, agricultural or conservation easements shall be subject to the following procedures:

- (i) All legal documents shall be forwarded to the executive director of the Coastal Commission for review and approval as to the legal adequacy and consistency with the requirements of potential accepting agencies;
- (ii) The executive director of the Coastal Commission shall have 15 working days from the receipt of the documents in which to complete the review and to notify the applicant and the county of recommended revisions, if any;
- (iii) If the executive director of the Coastal Commission has recommended revisions to the applicant, the land use permit shall not become effective pursuant to Section 23.02.034d of this title until the deficiencies have been resolved to the satisfaction of the executive director;
- (iv) The land use permit may become effective (Section 23.02.034d) upon expiration of the 15 working day period if the Coastal Commission has not notified the applicant and the county that the documents are not acceptable.

**h. Requirements for access improvements and support facilities.** Coastal accessways required by this section or by planning area standards of the Land Use Element shall be physically improved as provided by this subsection. The need for improvements to any accessway shall be considered as part of land use permit approval, and responsibility for constructing the improvement shall be borne by the developer or consenting public agency. After construction, maintenance and repair may be accomplished by a public agency or by a private entity approved by the applicable review body taking action on the project land use permit.

- (1) Typical improvements that may be required.** The extent and type of improvements and support facilities that may be required may include but are not limited to drainage and erosion control measures, planting, surfacing, structures such as steps, stairways, handrails, barriers, fences or walls, benches, tables, lighting, parking spaces for the disabled, safety vehicles or general public use, as well as structures such as restrooms or overlooks.

- (2) **Type and extent of improvements - required findings.** The improvements described in subsection h(1) of this section shall be required to an extent where such improvements:

- (i) Are necessary to either assure reasonable public access, protect the health and safety of access users, assure and provide for proper long-term maintenance of the accessway, or protect the privacy of adjacent residents.
- (ii) Are adequate to accommodate the expected level and intensity of public use that may occur;
- (iii) Can be properly maintained by the approved maintenance entity;
- (iv) Incorporate adequate measures to protect the privacy and property rights of adjoining property owners and residents.

- i. **Accessway signing.** Where required through land use permit or tentative subdivision map approval, signs installed in conjunction with accessways shall conform to the following standards:

- (1) **Sign design.** Accessway signs shall use white letters on a brown background. The number and dimensions of signs are to be determined through land use permit review.
- (2) **Identification Signs:** Shall contain the words "COASTAL ACCESS" in three-inch letters at the top of the sign, as well as the name of the accessway, if any, and indicate if there are any hazards or rare or endangered species.
- (3) **No Trespass Signs:** Shall contain the words "RESPECT PRIVATE PROPERTY - NO TRESPASSING".
- (4) **Hazard Signs:** Shall be located at the tops of bluffs or cliffs.
- (5) **Parking area signing:** Each parking area shall be posted in a location visible from the public road with a sign that is between two and four square feet in area, stating: "PARKING FOR PUBLIC COASTAL ACCESS". Lettering shall be a minimum of two inches high and clearly legible.

- j. Restoration of degraded access areas.** Existing coastal access areas that have been degraded through intense use shall be restored along with construction of new development on the site to the maximum extent feasible. Restoration techniques shall be established through landscaping plan review and approval, and may include trail consolidation and revegetation using native plant species, as well as controlling public access. Restoration shall be required as a condition of land use permit approval, subject to the criteria of this subsection. Restoration of an accessway by a public agency shall require Minor Use Permit approval. The following standards shall apply in addition to any other access improvements required as part of Minor Use Permit review:
- (1) Areas of the site where native vegetation has been destroyed, that are not proposed to be improved with structures, paved areas or landscaping, shall be revegetated with indigenous plants. Prior to revegetation, a landscape plan shall be prepared, reviewed and approved pursuant to Section 23.04.180 et seq. (Landscape) for the areas of revegetation.
  - (2) The use of motor vehicles on the accessway, other than maintenance, emergency and agricultural vehicles, shall be prevented by physical barriers for areas other than designated parking.
  - (3) Installation of a physical barrier may be required through Minor Use Permit or Development Plan approval to restrict access to degraded areas.
  - (4) Public access may be restricted if it is determined that the area is extremely degraded and time is needed to allow recovery of vegetation. Access may be restricted by temporary barriers such as fencing, with signs explaining the restriction. The degree of access and restrictions will be determined by the Planning Director after consultation with the property owner and affected public agencies. At the time of such restriction a date shall be set for removal of such barriers and signs. On or before that date, the Planning Director shall review the progress of recovery and may extend the restriction.
- k. Sighting criteria for coastal accessway.** In reviewing a proposed accessway, the applicable review body shall consider the effects that a public accessway may have on adjoining land uses in the location and design of the accessway. When new development is proposed, it shall be located so as not to restrict access or to create possible privacy problems. Where feasible, the following general criteria shall be used in reviewing new access locations, or the location of new development where coastal access considerations are involved:



**23.04.420**

- (1)** Accessway locations and routes should avoid agricultural areas, sensitive habitats and existing or proposed residential areas by locating near the edge of project sites;
- (2)** The size and location of vertical accessways should be based upon the level and intensity of existing and proposed access;
- (3)** Review of the accessway shall consider: safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvements necessary to provide for access;
- (4)** Limiting access to pass and repass should be considered where there are nearby residences, where topographic constraints make the use of the beach dangerous, where there are habitat values that can be disturbed by active use.

[Amended 1995, Ord. 2715]

**23.05.022 - Grading Regulations Adopted:**

All grading activities shall occur pursuant to the provisions of Chapter 70 of the Uniform Building Code, 1985 edition, which is hereby adopted and incorporated into this title by reference as though it were fully set forth here. In the event of any conflict between the provisions of this chapter and Chapter 70 of the Uniform Building Code, this chapter shall prevail.

**\* 23.05.024 - Grading Plan:**

- a. When required:** In any case where a proposed project requiring land use permit approval involves 50 or more cubic yards of earth moving, the land use permit application shall include a grading plan containing the information specified by subsection b of this section.
- b. Grading plan content:** A grading plan shall be neatly and accurately drawn to scale, including the following information:
  - (i)** Existing ground contours or elevations of the site at five foot intervals.
  - (ii)** Contours or site elevations after grading is completed, including any modifications to drainage channels.
  - (iii)** Any required retaining walls or other means of retaining cuts or fills.
  - (iv)** Elevations of the edge of the pavement or road at driveway entrance.
  - (v)** Elevation of the finish floor of the garage or other parking area.
  - (vi)** Elevations at the base of building corners.
  - (vii)** An estimate of the volume of earth to be moved, expressed in cubic yards.

Where a grading permit is required by Section 23.05.025 (Grading Permit Required), the grading plan shall also include all information required by Section 23.05.028 (Grading Permit - Application Content).

### 23.05.030 - 034

- (2) Where grading has been commenced within 120 days of permit issuance, grading operations are to be completed within 120 days from the date of commencement of grading unless an extension has been granted (subsection f), or the initial approval specifies a longer term for completion.

- g. **Extension of grading permit:** Any permittee holding an unexpired grading permit may apply for an extension of the time within which grading operations are to be begun or completed, pursuant to Section 19.04.034 of the Building and Construction Ordinance, Title 19 of this code.

### 23.05.032 - Commencement and Completion of Grading:

All grading operations for which a permit is required are subject to inspection by the Building Official, and are to be completed in accordance with the following provisions:

- a. **Inspection:** Where required by the Building Official, grading operations are to be conducted only while under the inspection of the Building Official, as set forth in Section 7014 of the Uniform Building Code, provided the Building Official may waive this requirement where inspection is conducted by another public agency or where the Building Official determines the nature and extent of proposed grading does not need continuous inspection.
- b. **Independent testing:** The Building Official may require inspection and testing by an approved testing agency, and is responsible for coordination of the parties to all grading activities, including the civil engineer, soils engineer, and engineering geologist (where required), the grading contractor and the testing agency.
- c. **Bonding:** Guarantees of performance may be required by the Building Official as set forth in Section 7008 of the Uniform Building Code and Section 23.02.060 of this title.
- d. **Completion of work:** Completion of grading operations is to occur in accordance with Section 7015 of the Uniform Building Code.

### \* 23.05.034 - Grading Standards:

All excavations and fills, whether or not subject to the permit requirements of this title, shall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building Code, and the following standards:

- a. **Area of cuts and fills:** Cuts and fills shall be limited to the minimum amount necessary to provide stable embankments for required parking areas or street rights-of-way, structural foundations, and adequate residential yard area or outdoor storage or sales area incidental to a non-residential use.
- b. **Grading for siting of new development.** Grading for the purpose of creating a site for a structure or other development shall be limited to slopes less than 20% except:
  - (1) Existing lots in the Residential Single-Family category, if a residence cannot feasibly be sited on a slope less than 20%; and
  - (2) When grading of an access road or driveway is necessary to provide access to building site with less than 20% slope, and where there is no less environmentally damaging alternative; and
  - (3) **Grading adjustment.** Grading on slopes between 20% and 30% may occur by Minor Use Permit or Development Plan approval subject to the following:
    - (i) The applicable review body has considered the specific characteristics of the site and surrounding area including: the proximity of nearby streams or wetlands, erosion potential, slope stability, amount of grading necessary, neighborhood drainage characteristics, and measures proposed by the applicant to reduce potential erosion and sedimentation.
    - (ii) Grading and erosion control plans have been prepared by a registered civil engineer and accompany the request to allow the grading adjustment.
    - (iii) It has been demonstrated that the proposed grading is sensitive to the natural landform of the site and surrounding area.
    - (iv) It has been found that there is no other feasible method of establishing an allowable use on the site without grading on slopes between 20% and 30%.
- c. **Grading adjacent to Environmentally Sensitive Habitats.** Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat as shown in the Land Use Element except:
  - (1) Where a setback adjustment has been granted as set forth in Sections 23.07.172d(2) (Wetlands) or 23.07.174d(2) (Streams and Riparian Vegetation) of this title; or

- (2) Within an urban service line when grading is necessary to locate a principally permitted use and where the approval body can find that the application of the 100-foot setback would render the site physically unsuitable for a principally permitted use. In such cases, the 100-foot setback shall only be reduced to a point where the principally-permitted use, as modified as much as practical from a design standpoint, can be located on the site. In no case shall grading occur closer than 50 feet from the Environmentally Sensitive Habitat or as allowed by planning area standard, whichever is greater.

**d. Landform alterations within public view corridors.** Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.

**e. Final contours:** Contours, elevations and shapes of finished surfaces are to be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Border of cut slopes and fills are to be rounded off to a minimum radius of five feet to blend with the natural terrain.

**f. Grading near watercourses:** Grading, dredging or diking (consistent with Section 23.07.174) shall not alter any intermittent or perennial stream, or natural body of water shown on any USGS 7-1/2 minute map, except as permitted through approval of a county drainage plan and a streambed alteration permit from the California Department of Fish and Game issued under Sections 1601 or 1602 of the Fish and Game Code. (Additional standards are contained in Sections 23.07.172 through 174 of this title.) Watercourses shall be protected as follows:

- (1) Watercourses shall not be obstructed unless an alternate drainage facility is approved.
- (2) Fills placed within watercourses shall have suitable protection against erosion during flooding.
- (3) Grading equipment shall not cross or disturb channels containing live streams without siltation control measures approved by the County Engineer in place.
- (4) Excavated materials shall not be deposited or stored in or alongside a watercourse where the materials can be washed away by high water or storm runoff.

- g. Revegetation:** Where natural vegetation has been removed through grading in areas not affected by the landscape requirements (Section 23.04.180 et seq. - Landscape, Screening and Fencing), and that are not to be occupied by structures, such areas are to be replanted as set forth in this subsection to prevent erosion after construction activities are completed. [Amended 1993, Ord. 2649]
- (1) **Preparation for revegetation:** Topsoil removed from the surface in preparation for grading and construction is to be stored on or near the site and protected from erosion while grading operations are underway, provided that such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved. After completion of such grading, topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.
  - (2) **Methods of revegetation:** Acceptable methods of revegetation include hydro-mulching, or the planting of rye grass, barley or other seed with equivalent germination rates. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area. Other revegetation methods offering equivalent protection may be approved by the Building Official. Plant materials shall be watered at intervals sufficient to assure survival and growth. Native plant materials are encouraged to reduce irrigation demands. Where riparian vegetation has been removed, riparian plant species shall be used for revegetation.
  - (3) **Timing of revegetation measures:** Permanent revegetation or landscaping should begin on the construction site as soon as practical and shall begin no later than six months after achieving final grades and utility emplacements.

## \* 23.05.036 - Sedimentation and Erosion Control:

- a. Sedimentation and erosion control plan required:** Submittal of a sedimentation and erosion control plan for review and approval by the County Engineer is required when:
- (1) Grading requiring a permit is proposed to be conducted or left in an unfinished state during the period from October 15 through April 15; or
  - (2) Land disturbance activities, including the removal of more than one-half acre of native vegetation are conducted in geologically unstable areas, on slopes in excess of 30%, on soils rated as having severe erosion hazard, or within 100 feet of any water course shown on the most current 7-1/2 minute USGS quadrangle map.

#### 23.05.044 - 050

- (5) Location and design of any proposed facilities for storage or for conveyance of runoff into indicated drainage channels, including sumps, basins, channels, culverts, ponds, storm drains, and drop inlets.
- (6) Estimates of existing and increased runoff resulting from the proposed improvements.
- (7) Proposed erosion and sedimentation control measures.
- (8) Proposed flood-proofing measures where determined to be necessary by the County Engineer.

b. **Engineered plan content:** Engineered drainage plans are to include an evaluation of the effects of projected runoff on adjacent properties and existing drainage facilities and systems in addition to the information required by subsection a of this section.

#### \* 23.05.046 - Drainage Plan Review and Approval:

All drainage plans are to be submitted to the County Engineer for review, and are subject to the approval of the County Engineer, prior to issuance of a land use or construction permit, as applicable. Actions of the County Engineer on drainage plans may be appealed to the Board of Supervisors in accordance with the procedure set forth in Section 21.01.042a of this title; except that where the site is within a Flood Hazard combining designation, the procedure described in Section 23.07.066d shall be used.

#### 23.05.048 - Plan Check, Inspection and Completion:

Where required by the County Engineer, a plan check and inspection agreement is to be entered into and the drainage facilities inspected and approved before a certificate of occupancy is issued.

#### 23.05.050 - Drainage Standards:

a. **Design and construction.** Drainage systems and facilities subject to drainage plan review and approval that are to be located in existing or future public rights-of-way are to be designed and constructed as set forth in the county Engineering Department

- c. Application content.** Land use permit applications that propose tree removal are to include all information specified by Section 23.02.030b (Plot Plan Content) OR 23.02.033 (Minor Use Permit) where applicable, and the following:
- (1) The size, species and condition (e.g., diseased, healthy, etc.) of each tree proposed for removal.
  - (2) The purpose of removal.
  - (3) The size and species of any trees proposed to replace those intended for removal.

### \* 23.05.064 - Tree Removal Standards.

Applications for tree removal in accordance with Section 23.05.062 are to be approved only when the following conditions are satisfied:

- a. Tagging required.** Trees proposed for removal shall be identified for field inspection by means of flagging, staking, paint spotting or other means readily visible but not detrimental to a healthy tree.
- b. Removal criteria.** A tree may be removed only when the tree is any of the following:
  - (1) Dead, diseased beyond reclamation, or hazardous;
  - (2) Crowded, with good horticultural practices dictating thinning;
  - (3) Interfering with existing utilities, structures or right-of-way improvements;
  - (4) Obstructing existing or proposed improvements that cannot be reasonably designed to avoid the need for tree removal;
  - (5) Inhibiting sunlight needed for either active or passive solar heating or cooling, and the building or solar collectors cannot be oriented to collect sufficient sunlight without total removal of the tree;
  - (6) In conflict with an approved fire safety plan where required by Section 23.05.080;



23.05.064

- (7) To be replaced by a tree that will provide equal or better shade, screening, solar efficiency or visual amenity within a 10-year period, as verified in writing by a registered landscape architect, licensed landscaping contractor or certified nurseryman.

- c. **Replacement.** Any tree removed to accommodate new development or because it is a safety hazard shall be replaced, in a location on the site and with a species common to the community, as approved by the Planning Director.
- d. **Tree removal within public view corridors.** Tree removal within public view corridors (areas visible from collector or arterial roads) shall be minimized in accordance with Visual and Scenic Resources Policy 5.
- e. **Preservation of trees and natural vegetation.** New development shall incorporate design techniques and methods that minimize the need for tree removal.

knowledgeable in Chumash Indian culture and approved by the Environmental Coordinator. The purpose of the preliminary site survey is to examine existing records and to conduct a preliminary surface check of the site to determine the likelihood of the existence of resources. The report of the archaeologist shall be submitted to the Planning Department and considered in the evaluation of the development request by the applicable approval body.

- c. **When a mitigation plan is required.** If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the applicable approval body.
- d. **Required finding.** A land use or construction permit may be approved for a project within an archaeologically sensitive area only where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant archeological resources.
- e. **Archeological resources discovery.** In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply.

[Amended 1995, Ord. 2715]

### **23.07.120 - Local Coastal Program Area (LCP):**

The Local Coastal Program combining designation identifies areas of San Luis Obispo County that are within the California Coastal Zone as determined by the California Coastal Act of 1976. The provisions of this title apply to all unincorporated portions of the county located within the Coastal Zone, and do not apply to any areas outside of the LCP combining designation.

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### **23.07.160 - Sensitive Resource Area (SRA):**

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these

## 23.07.160 - 164

combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:

23.07.162	Applicability of Standards
23.07.164	SRA Permit and Processing Requirements
23.07.166	Minimum Site Design and Development Standards
23.07.170	Environmentally Sensitive Habitats
23.07.172	Wetlands
23.07.174	Streams and Riparian Vegetation
23.07.176	Terrestrial Habitat Protection
23.07.178	Marine Habitats

### 23.07.162 - Applicability of Standards:

The standards of Sections 23.07.160 through 23.07.166 apply to all uses requiring a land use permit that are located within a Sensitive Resource Area combining designation.

### \* 23.07.164 - SRA Permit and Processing Requirements:

The land use permit requirements established by Chapters 23.03 (Permit Requirements), and 23.08 (Special Uses), are modified for the SRA combining designation as follows:

- a. **Initial submittal:** The type of land use permit application to be submitted is to be as required by Chapter 23.03 (Permit Requirements), Chapter 23.08 (Special Uses), or by planning area standards. That application will be used as the basis for an environmental determination as set forth in subsection c of this section, and depending on the result of the environmental determination, the applicant may be required to amend the application to a Development Plan application as a condition of further processing of the request (see subsection d).
- b. **Application content:** Land use permit applications for projects within a Sensitive Resource Area shall include a description of measures proposed to protect the resource identified by the Land Use Element (Part II) area plan.

**c. Environmental determination:**

- (1) When a land use permit application has been accepted for processing as set forth in Section 23.02.022 (Determination of Completeness), it shall be transmitted to the Environmental Coordinator for completion of an environmental determination pursuant to the California Environmental Quality Act (CEQA).
- (2) The initial study of the environmental determination is to evaluate the potential effect of the proposed project upon the particular features of the site or vicinity that are identified by the Land Use Element as the reason for the sensitive resource designation.
- (3) Following transmittal of an application to the Environmental Coordinator, the Planning Department shall not further process the application until it is:
  - (i) Returned with a statement by the environmental coordinator that the project is exempt from the provisions of CEQA; or
  - (ii) Returned to the Planning Department accompanied by a duly issued and effective negative declaration which finds that the proposed project will create no significant effect upon the identified sensitive resource; or
  - (iii) Returned to the Planning Department accompanied by a final environmental impact report approved by the Environmental Coordinator.

**d. Final permit requirement and processing:**

- (1) If an environmental determination results in the issuance of a proposed negative declaration, the land use permit requirement shall remain as established for the initial submittal.
- (2) If an environmental impact report is required, the project shall be processed and authorized only through Development Plan approval (Section 23.02.034).

**e. Required findings:** Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.
- (2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.
- (3) Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- (4) The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.

[Amended 1995, Ord. 2715]

### **23.07.166 - Minimum Site Design and Development Standards:**

All uses within a Sensitive Resource Area shall conform to the following standards:

- a. Surface mining is not permitted except in areas also included in an Energy and Extractive Resource Area combining designation by the Land Use Element. Where the dual designation exists, surface mining is allowed only after approval of surface mining permit and reclamation plan, approved in accordance with Section 23.08.180.
- b. Shoreline areas shall not be altered by grading, paving, or other development of impervious surfaces for a distance of 100 feet from the mean high tide line, 75 feet from any lakeshore, or 50 feet from any streambank, except where authorized through Development Plan approval. Where the requirements of the California Department of

Fish and Game or other public agency having jurisdiction are different, the more restrictive regulations shall apply. Special requirements for setbacks from wetlands, streams, and the coastline are established by Sections 23.07.172 through 23.07.178.

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

- d. Where an SRA is applied because of prominent geological features visible from off-site (such as rock outcrops), those features are to be protected and remain undisturbed by grading or development activities.
- e. Where an SRA is applied because of specified species of trees, plants or other vegetation, such species shall not be disturbed by construction activities or subsequent operation of the use, except where authorized by Development Plan approval.

### \* 23.07.170 - Environmentally Sensitive Habitats:

The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.

- a. **Application content.** A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
  - (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.
  - (2) Recommends conditions of approval for the restoration of damaged habitats, where feasible.
  - (3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.
  - (4) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.
- b. **Required findings:** Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:

**23.07.170 - 172**

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

**c. Land divisions:** No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.

**d. Development standards for environmentally sensitive habitats:**

- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
- (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.
- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4) Development shall be consistent with the biological continuance of the habitat.
- (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards.)

**\* 23.07.172 - Wetlands.**

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

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

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

- c. **Department of Fish and Game review.** The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design.
- d. **Wetland setbacks:** New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.
- (1) **Permitted uses within wetland setbacks:** Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that:
- (i) Alternative routes are infeasible or more environmentally damaging.
  - (ii) Adverse environmental effects are mitigated to the maximum extent feasible.
- (2) **Wetland setback adjustment:** The minimum wetland setback may be adjusted through Minor Use Permit approval (but in no case shall be less than 25 feet), provided that the following findings can be made:
- (i) The site would be physically unusable for the principal permitted use unless the setback is reduced.
  - (ii) The reduction is the minimum that would enable a principal permitted use to be established on the site after all practical design modifications have been considered.
  - (iii) That the adjustment would not allow the proposed development to locate closer to the wetland than allowed by using the stringline setback method pursuant to Section 23.04.118a of this title.



- (3) **Requirements for wetland setback adjustment:** Setbacks established that are less than 100 feet consistent with this section shall include mitigation measures to ensure wetland protection. Where applicable, they shall include landscaping, screening with native vegetation and drainage controls. The adjustment shall not be approved until the approval body considers the following:

- (i) Site soil types and their susceptibility to erosion.
- (ii) A review of the topographic features of the site to determine if the project design and site location has taken full advantage of natural terrain features to minimize impacts on the wetland.
- (iii) The biologists report required by Section 23.07.170 shall evaluate the setback reduction request and identify the types and amount of vegetation on the site and its value as wildlife habitat in maintaining the functional capacity of the wetland.
- (iv) Type and intensity of proposed development.
- (v) Lot size and configuration and location of existing development.

e. **Site development standards:**

- (1) **Diking, dredging or filling of wetlands:** Diking, dredging or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 11 of the Local Coastal Plan and shall not be conducted without the property owner first securing approval of all permits required by this title.
- (2) **Vehicle traffic:** Vehicle traffic from public roads shall be prevented from entering wetlands by vehicular barriers, except where a coastal accessway is constructed and designated parking and travel lanes are provided consistent with this title. The type of barrier and its proposed location shall be identified in the materials accompanying an application for a land use permit and must be approved by the Planning Director before permit issuance to insure that it will not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland.

- (3) **Open space easement required:** A land use or construction permit for a structure larger than 1000 square feet in floor area shall not be approved on a parcel of one acre or larger that contains a wetland, unless the property owner first grants the county or an approved land trust an open space easement or fee title dedication of all portions of the site not proposed for development, as well as the entire wetland.

### \* 23.07.174 - Streams and Riparian Vegetation:

Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.

- a. **Development adjacent to a coastal stream.** Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.
- b. **Limitation on streambed alteration:** Channelization, dams or other substantial alteration of stream channels are limited to:
  - (1) Water supply projects, provided that quantity and quality of water from streams shall be maintained at levels necessary to sustain functional capacity of streams, wetlands, estuaries and lakes.
  - (2) Flood control projects, where such protection is necessary for public safety or to protect existing commercial or residential structures, when no feasible alternative to streambed alteration is available;
  - (3) Construction of improvements to fish and wildlife habitat;
  - (4) Maintenance of existing flood control channels.

Streambed alterations shall not be conducted unless all applicable provisions of this title are met and if applicable, permit approval from the California Department of Fish and Game, the U.S. Army Corps of Engineers, and California State Water Resources Control Board.

- c. **Stream diversion structures:** Structures that divert all or a portion of streamflow for any purpose, except for agricultural stock ponds with a capacity less than 10 acre-feet, shall be designed and located to not impede the movement of native fish or to reduce streamflow to a level that would significantly affect the production of fish and other stream organisms.
- d. **Riparian setbacks:** New development shall be setback from the upland edge of riparian vegetation a minimum of 50 feet within urban areas (inside the USL) and 100 feet in rural areas (outside the USL), except as provided in subsection b. of this section, and as follows:
- (1) **Permitted uses within the setback:** Permitted uses are limited to those specified in Section 23.07.172d(1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.
  - (2) **Riparian habitat setback adjustment:** The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:
    - (i) Alternative locations and routes are infeasible or more environmentally damaging; and
    - (ii) Adverse environmental effects are mitigated to the maximum extent feasible; and
    - (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and
    - (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.
- e. **Alteration of riparian vegetation:** Cutting or alteration of natural vegetation that protects a riparian habitat shall not be permitted except:
- (1) For streambed alterations allowed by subsections a and b above;
  - (2) Where no feasible alternative exists;

- (3) Where an issue of public safety exists;
- (4) Where expanding vegetation is encroaching on established agricultural uses;
- (5) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the Planning Director determines no feasible alternative exists;
- (6) To increase agricultural acreage provided that such vegetation clearance will:
  - (i) Not impair the functional capacity of the habitat;
  - (ii) Not cause significant streambank erosion;
  - (iii) Not have a detrimental effect on water quality or quantity;
  - (iv) Be in accordance with applicable permits required by the Department of Fish and Game.
- (7) To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174b can be made.

### \* 23.07.176 - Terrestrial Habitat Protection:

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

- a. **Protection of vegetation.** Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.
- b. **Terrestrial habitat development standards:**
  - (1) **Revegetation.** Native plants shall be used where vegetation is removed.

- (2) **Area of disturbance.** The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.
- (3) **Trails.** Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.

### \* 23.07.178 - Marine Habitats:

The provisions of this section are intended to preserve and protect habitats for marine fish, mammals and birds. Development within or adjacent to marine habitats is subject to the provisions of this section.

- a. **Protection of kelp beds, offshore rocks, reefs and intertidal areas.** Development shall be sited and designed to mitigate impacts that may have adverse effects upon the habitat, or that would be incompatible with the continuance of such habitat areas.
- b. **Siting of shoreline structures.** Shoreline structures, including piers, groins, breakwaters, seawalls and pipelines shall be designed or sited to avoid and to minimize impacts on marine habitats.
- c. **Coastal access.** Coastal access shall be monitored and regulated to minimize impacts on marine resources. If negative impacts are demonstrated, then the appropriate agency shall take steps to mitigate these impacts, including limitations of the use of the coastal access.

