

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

SANTA BARBARA, CA 93001

(805) 641-0142



M10b

Filed: 1/7/99
Staff: M. Capelli *MC*
Staff Report: 5/19/99
Hearing Date: 6/7-11/99
Commission Action:

STAFF REPORT: PERMIT EXTENSION REQUEST**APPLICATION NO.: A-4-STB-93-154-E1****APPLICANT: Dos Pueblos Associates (formerly ARCO Oil and Gas Company)****PROJECT LOCATION: 1.5 miles west of Winchester Canyon & Highway 101, Santa Barbara County**

PROJECT DESCRIPTION: Removal of existing oil and gas production facilities; construction of a public 18-hole and 9-hole golf course with appurtenant facilities; approximately 154,000 cubic yards of grading; extension of an eight inch water line approximately 5,200 feet from the unincorporated community of Goleta; construction and maintenance of various access improvements, including lateral access trail and two vertical access ways; landscaping; and merger of 23 lots into two parcels.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit A-4-STB-93-154; County of Santa Barbara Local Coastal Program; U.S. Fish and Wildlife Letters dated February 25, 1999 and March 16, 1999; Final FEIR for Arco Dos Pueblos Golf Links Project and Appendices 92-FEIR-16 (March 1993); Biological Monitoring of Eagle Canyon Creek, Goleta, CA prepared by Leticia Gallardo (February 3, 1999); Coastal Commission Letter dated March 11, 1999.

STAFF RECOMMENDATION:

Staff recommends that the extension be denied for the following reason: The discovery of the California red-legged frog at the project site and the frog's federal listing as a threatened species, both of which have occurred since the Commission's approval of the subject development, together constitute changed circumstances such that the proposed development may not be consistent with the Coastal Act.

PROCEDURAL NOTE

The Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or

2) Objection is made to the Executive Director's determination of consistency with the Coastal Act (14 C.C.R. Section 13169).

If three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act due to changed circumstances, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

The Commission finds, as described in detail below, that there are changed circumstances pursuant to 14 California Code of Regulations Section 13169(a)(2), due to the discovery of the California red-legged frog's presence at the project site and its recent federal listing as a threatened species, such that the proposed development may not be consistent with the Coastal Act.

STAFF NOTE

There are four items on the Commission's June hearing agenda that relate to Coastal Development Permit No. A-4-93-154 (Arco Oil and Gas Company) (Dos Pueblo Golf Links), approved by the Commission on November 16, 1994: (1) Arco's Request for Permit Extension (A-4-93-154-E1); (2) Arco's Application for a Permit Amendment (A-4-93-154-A2); (3) Appeal by Santa Barbara Urban Creeks Council, Nathan Post, Bob Keats and Tom Phillips (Appeal No. A-4-98-321); and (4) Appeal by Nathan Post, Bob Keats and Tom Phillips (Appeal No. A-4-98-332). In the staff report prepared for Arco's Request for Permit Extension, Commission staff has recommended that the Commission object to the request, thereby denying the extension. If the Commission denies the extension request, Arco's permit application would be set for a full hearing as though it were a new application, pursuant to 14 C.C.R. section 13169(a)(2). The hearing on the amendment request and the two related appeals would then no longer be considered on the Commission's June Hearing Agenda.

LOCAL APPROVALS RECEIVED: Santa Barbara County Permits 91-CP-085; 91-085-SCO5

FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Location

Original Project Approved by the Commission (November 16, 1994): Removal of existing oil and gas production facilities; construction of a public 18-hole and 9-hole golf course with appurtenant facilities; ± 154,000 cubic yards of grading; extension of an eight inch water line ± 5,200 feet from Goleta to the site; construction of a 4 acre-foot pond; and dedication, construction, operation and maintenance of various access improvements, landscaping and merger of all 23 lots into two parcels.

Amended Project Approved by the County (December 4, 1998): The original project has been modified by the County under the locally issued Coastal Development Permit No.98-CDP-274. Additionally, the applicant has applied for an amendment to the Commission's originally issued Coastal Development Permit (A-4-STB-93-154) in order to conform both permits. This amendment (A-4-STB-93-154-A2) is the subject of a separate staff report and recommendation scheduled for the current Commission Hearing Agenda. These project changes in this

amendment are proposed to modify a number of elements of the golf course previously approved as part of the Commission's original Coastal Development Permit, including layout of fairways, putting greens and driving range, tees, cart paths, vehicular entrances, location of water storage lake, architectural design of buildings, drainage design, future horse tie-up/bicycle rack; location and number of bridges; add a pump house, and a six-acre parcel to the project site; and concrete terminus to the vertical access west of Tomate Canyon; and revise the project description to reflect proposed changes and to conform to previously included elements in the project.

The project site is located on a coastal marine terrace approximately 1.5 miles west of the intersection of Winchester Canyon and U.S. Highway 101 on the Gaviota Coast of Santa Barbara County. (See Exhibits 1 and 2.)

B. Permit History and Background

Historically, half of the proposed golf course site has been used for dry farming and grazing, while the other half has been most recently used for oil and gas production. The site was originally zoned Coastal Dependent Industry (M-CD) under the County's certified Local Coastal Program (adopted in 1982). However, the remaining on-site petroleum production facilities were deemed non-conforming with the adoption of the County South Coast Consolidation Planning Area Policy in 1990. The site was subsequently rezoned Agriculture (AG-II-100) in 1991 through a Local Coastal Program Amendment.

Subsequently, the applicant applied for a Conditional Use Permit (CUP/Coastal Development Permit (CDP) to abandon the remaining oil and gas facilities and construct a golf course. This Conditional Use Permit was appealed to the Coastal Commission by the Surfrider Foundation in 1993. At the November 17, 1993 hearing the Commission determined that the appeal raised a substantial issue with respect to conformity with the County of Santa Barbara's Local Coastal Program and asserted coastal development permitting jurisdiction over the project. On April 13, 1994 the Commission conducted a de novo public hearing on the merits of the appeal and denied the project. Shortly thereafter, the applicant requested a reconsideration of the Commission's action, and the Commission on July 3, 1994 voted to grant reconsideration of the previous denial.

On November 16, 1994 the Coastal Commission voted to approve an amended project (A-STB-93-154) with special conditions. The two-year time limit on the original Coastal Development Permit issued for this project was tolled as a result of a suit brought against the Commission, the County of Santa Barbara, and the applicant. Consequently, the original two-year time limit was extended until January 28, 1999. The Commission adopted revised findings on February 8, 1995 for the golf course as originally approved in 1994. (The adopted revised findings are attached as Exhibit 10.)

On November 9, 1998 the applicant applied for an amendment to the Coastal Development Permit (A-4-STB-93-154-A-2) to modify a number of elements of the golf course previously approved as part of the Commission's original Coastal Development. On May 19, 1999, the applicant revised the original amendment request to further address concerns regarding environmentally sensitive habitats and species. This revised amendment is the subject of a separate staff report and recommendation, which is also scheduled for consideration at the Commission's June 1999 hearing. If the Commission denies the time extension request, Arco's permit application would be set for a full hearing as though it were a new application, pursuant to 14 C.C.R. section 13169(a)(2). The hearing on the related amendment request and two

related appeals would then no longer be considered on the Commission's June Hearing Agenda.

On January 7, 1999, prior to the scheduled expiration on January 28, 1999 of the original Coastal Development Permit time-limit, the applicant timely applied for a one-year time extension of Coastal Development Permit A-4-STB-93-154 (as previously amended). To date, the Coastal Development Permit has not been issued, and was set to expire on January 28, 1999, unless extended. However, pursuant to Commission regulations, 14 .C.C.R. Section 13169(a)(2), the applicant's timely submittal of the existing request automatically extended the expiration date of the permit until such time as the Commission acts upon the extension request. Therefore, the permit did not expire on January 28, 1999. (See Exhibit 9.)

C. Analysis

1. California Red-legged frog

Since the Commission's original review and approval of this project in November 1994, the California Red-legged frog (a federally listed threatened species) has been reported on portions of the project site based on a field survey of portions of the project site conducted in 1999. The following discussion describes what was known about the presence of the California red-legged frog on the project site at the time of the approval of the original Coastal Development Permit and what is known presently known about the status of the species on the project site.

Information About the Frog At Time of Permit Approval.

Staff has reviewed the administrative record for the original permit proceedings, which is comprised of over 5260 pages in 31 volumes. This staff review disclosed only one document in which the California red-legged frog was referenced. The document in the record for the original permit proceedings where the potential issue of the California red-legged frog was discussed was in the "Final Environmental Impact Report for the Arco Dos Pueblos Golf Links Project, 92-FEIR-16" (FEIR) dated March 1993 (Administrative Record, 000280 et seq.). The FEIR, prepared for the County of Santa Barbara's Resource Management Department, discussed and considered impacts to Biological Resources in section 5.1, commencing on p. 5.1-1. In that section, the red-legged frog was mentioned briefly in two places. First, the frog was included within a list of "federal- and/or state-listed endangered species which may occur at the project site", as follows:

"Red-legged frog. The California red-legged frog (Rana aurora) is a California Species of Special Concern and a candidate for Federal listing as endangered or threatened. The red-legged frog occurs west of the Sierra-Cascade crest from southwest British Columbia to northwestern Baja California (Stebbins, 1985). This species has declined rapidly and repeated searches in southern California have not found this species south of the Ventura River. This species is generally found in near-permanent ponds and streams with good water quality. Due to poor water quality associated with the existing stock ponds and the lack of sufficient surface water in the drainages, the potential for this species to occur on the project site is low, and impacts are not anticipated. (FEIR, p. 5.1-17, emphasis added.)"

Second, the California red-legged frog was mentioned within a discussion of potential project-related impacts to wildlife, as follows:

"Reptiles and Amphibians. Because of their relative inability to disperse quickly, reptiles and amphibians would be subject to direct mortality from grading and construction operations. Small populations of amphibians and reptiles may survive in habitat patches outside of the proposed disturbance area, but these populations are likely to be genetically isolated from adjacent habitat patches. Because the grassland area has been extensively disturbed by mowing and grazing for several decades, most reptile and amphibian populations on the site are associated with the drainage courses. *Sensitive amphibians and aquatic reptiles known to occur in the project vicinity (red-legged frog, two-striped garter snake, and southwestern pond turtle) are not expected to inhabit the drainages onsite due to the lack of sufficient surface water (though southwestern pond turtles have been reported at the site; see comment letter from Chris Crabtree in Appendix A). Portions of the drainages would be disturbed by construction and maintenance of siltation basins and other modifications, and this long-term impact to reptile and amphibian populations (which may include sensitive red-legged frog and two-striped garter snake) is considered to be a potentially significant, but mitigatable, impact (Class II).* (FEIR, p. 5.1-37, emphasis added.)

Thus, the FEIR concluded in the first reference, as described above, that there was a low potential for the presence of red-legged frogs at the project site, due to both the poor quality of water in the stock ponds as well as the insufficient surface water in the drainages. The lack of surface water in the drainages was considered in the second reference in the FEIR to be a reason that the frogs were not expected to inhabit the drainages onsite. The actual presence of the red-legged frog at the project site and the drainages was, therefore, not documented or discussed in the FEIR. The County's conditional use permit contained a number of conditions designed to protect coastal resources, including conditions regarding riparian vegetation, riverine wetlands, harbor seals, Monarch butterflies and pond turtles, but contained no reference to the red-legged frog. As the FEIR and, in fact, the entire record are devoid of concrete evidence indicating the actual presence of the frog at the project site, the frog's actual presence at the site is an issue newly-discovered since the original approval.

The California Red-legged frog is one of two subspecies of the Red-legged frogs (*Rana aurora spp*) found on the Pacific Coast. Its original range was throughout California from the vicinity of Pont Reyes National Seashore, Marin County, and inland from the vicinity of Redding, Shasta County, southward to northwest Baja California, Mexico. The subspecies *Rana aurora draytonii* was first listed by the U.S. Fish and Wildlife Service as a Threatened Species on May 23, 1996 which was subsequent to the Commission's approval of the subject permit. (Code of Federal Regulations 50 CFR Part 17, May 23, 1996)

The California red-legged frog has been extirpated from 70 percent of its former range in California, and is currently found primarily in wetland and streams in coastal drainages of Central California. The species is threatened within its remaining range by a wide variety of human impacts, including urban encroachment, construction of water supply facilities, introduction of exotic predators, and habitat fragmentation. California Red-legged frogs breed from November through March, with earlier breeding records occurring in southern localities. California Red-legged frogs found in coastal drainages are rarely inactive, whereas those found in interior sites may hibernate. The California Red-legged frog occupies habitats combining both specific aquatic and riparian components. California red-legged frogs disperse upstream and downstream from their breeding habitat to forage and seek hibernating habitats. Hibernating habitat is essential for the survival of the California Red-legged frog within a watershed.

Hibernation habitats and the ability to reach hibernating habitat can be limiting factors in California Red-legged frog population numbers and effect long-term survival. At the time of the Red-legged frogs' listing in 1996, the species was known from only five locations south of the Tehachapi Mountain compared to 80 historic location records from the region, a reduction of 94 percent. (Code of Federal Regulations 50 CFR Part 17, May 23, 1996)

New Information About California Red-legged frog.

Gallardo Report. In February 1999 the Commission staff received, in connection with the Commission hearing on this item, a report prepared by Leticia Gallardo, a consultant biologist retained by project opponents (Surfrider Foundation and the Gaviota Coast Conservancy) reporting the results of a investigation carried out by Leticia Gallardo at the west end of the project site entitled "Biological Monitoring of Eagle Canyon Creek, Goleta, CA" (February 3, 1999). The report summarized the results of two nights of monitoring of the mouth of Eagle Canyon Creek, which resulted in the identification of several individual Reg-legged frogs. (See Exhibit 3.)

Letters from the U.S. Fish and Wildlife Service. Subsequently, the Commission staff received a copy of a letter from the U.S. Fish and Wildlife Service to the County of Santa Barbara dated February 25, 1999. (See Exhibit 4.) This letter stated that the Service:

"had been informed that the federally threatened Reg-legged frog (*Rana aurora draytonii*) occurred in Eagle Canyon Creek, as well as several other streams in the vicinity of the project site."

The Service's letter also stated:

"As California red-legged frogs are known to travel up to two miles from riparian habitat, they likely use upland habitat in the project area as well. Therefore, we believe that activities in the creek or surrounding upland habitat could result in the take of California red-legged frogs."

Because of the information in the first letter indicating the frog's presence, Commission staff wrote a letter on March 11, 1999 to the U.S. Fish and Wildlife Service requesting additional information on the presence and status of the Reg-legged frog on the project site. (See Exhibit 5.)

On March 16, 1999, the U.S. Fish and Wildlife Service wrote a letter responding to the Commission staff's inquiry. (See Exhibit 7.) This letter definitively confirmed the presence of the California red-legged frog on the project site, and confirmed that:

"California red-legged frogs are known to use upland areas within a mile of streams."

The Service concluded that:

"Consequently, grading of the site could kill or injure dispersing individuals. California red-legged frogs may be attracted to the golf course, once in operation, because of its water features and irrigation. Therefore, routine operation of the golf course is likely to cause mortality of California red-legged frog as a result of vehicle use, maintenance of playing areas, and other related activities."

The Service also noted that:

"The construction of the proposed public access footpath through Eagle Canyon Creek and the resulting increase in human activity in the immediate vicinity of habitat of California red-legged frog are likely to result in the take of California red-legged frogs."

In summary the two letters from the U.S. Fish and Wildlife Service confirm the presence of the California red-legged frog on the site and its potential use of upland areas, and state that both the construction and the operation of the proposed Dos Pueblos Golf Course could result in adverse impacts to the frogs' habitat and injury to or death of individual frogs.

As a result of the above circumstances, the U.S. Fish and Wildlife Service has advised the applicant to apply for a Section 7 Incidental Take Permit from the U.S. Army Corps of Engineers for the proposed waterline crossing at Eagle Canyon Creek, and for a Section 10 Incidental Take Permit to deal with the potential take stemming from activities in the upland portions of the project site. To date, the applicant has not secured either type of Incidental Take Permits. (See Exhibit 4.)

The evidence of the presence of the California red-legged frog has been confirmed through the two letters from the U.S. Fish and Wildlife Service. Because of the potential use of upland areas by the frog (which may be increased as the result of the recent emergence and discovery of additional wetland habitat in the upland areas), the construction of the proposed Dos Pueblos Golf Course could result in adverse impacts to the frogs through, among other means, conversion of existing open-space upland habitat to accommodate golfing fairways, greens, and sand-traps, as well as physical structures. Further, injury or death of individual frogs may result as a result of on-going maintenance operations such as fertilizing, lawn grooming or mowing. Consequently, the presence of the previously undetected California red-legged frog and the recent listing of the species as threatened species under the U.S. Endangered Species Act subsequent to the Commission's original approval of the subject project constitutes changed circumstances pursuant to Section 13169 of the Commission's Administrative Regulations.

2. Other Issues Asserted to be "Changed Circumstances" in Objections to Extension Request

On January 7, 1999, the Coastal Commission received this coastal permit extension request. The above information concerning the California red-legged frog was not available at that time. Staff therefore reviewed the request and initially determined that, based upon information available at that time, there were no changed circumstances that might affect the project's consistency with the Coastal Act. Pursuant to Section 13169 of the Commission's regulations, notice of this determination was given to all property owners within 100' of the property, from a list supplied by the applicant, and to all known interested parties, and the project site was posted. A number of written objections to this determination or requests for a public hearing were received during the public noticing period from January 7, 1999 through January 17, 1999 (A representative sample of these letters that indicate the different bases for the objections received, is included in Exhibit 7.).

In summary, in addition to citing the issue of the newly-discovered California red-legged frog, the objection letters set forth a total of three other issues that the authors assert constitute changed circumstances: (a) new siting of the Western snowy plover (a federally listed threatened species) on the project site; (b) new use of the site by Monarch butterfly for overwintering; and (c) discovery of additional wetlands on the project site.

Commission staff has carefully reviewed these additional issues. The Commission finds that for the reasons detailed below there is no evidence indicating that any of these additional issues constitutes changed circumstances pursuant to Section 13169 of the Commission's Administrative Regulations.

a. Western snowy plover

Some of the objections assert that the previously undetected Western snowy plover (a federally listed threatened species) is present on the project site. However, no evidence has been submitted to the Commission to support this assertion regarding the occurrence of the Western snowy plover on the project site, nor has staff review disclosed any such evidence. Information available to the Commission indicates that Western snowy plover use wide sandy beaches and associated sand dune areas. Such habitat is extremely limited at the project site (with no sand dunes) because of the precipitous nature of the coastal bluffs formed by the uplifted marine terrace forming the site. The FEIR prepared for the project site did not include the Western snowy plover in a discussion of sensitive bird species. (FEIR, p. 5.1-16 through 18.) While Western snowy plover may occasionally utilize virtually any site along the California coast, because of the lack of suitable sandy habitat, and the precipitous nature of the bluffs, any occasional use by this species would not be materially affected by the project.

The Commission therefore finds that there is no basis at this time to find there are changed circumstances based upon the asserted presence of the Western snowy plover on the project site.

b. Monarch butterfly

Some of the objections assert that there is now previously undetected overwintering of Monarch butterflies at the mouth of Eagle Canyon on the project site. However, no evidence has been submitted to the Commission to support this assertion regarding the overwintering of Monarch Butterflies at the project site, nor has staff review disclosed any such evidence. The FEIR for the project, noted that "Eagle Canyon is a small monarch aggregation site that is abandoned early in the season by monarchs searching for higher quality wintering site (Calvert, 1991) (FEIR, p. 5.1-19.) However, the County recognized that the Eagle Canyon site was used by the Monarch butterfly for autumnal roosting, and therefore required limiting pipeline re-construction activity within 50 feet of the existing waterline in Eagle Canyon to the period between October 1 and January 31. While it is possible that some Monarch butterflies may overwinter at the site, the proposed golf course does not encroach on the roosting trees at the mouth of Eagle Canyon because all course facilities (with the exception of the existing water line and vertical public access stairway) are located on the elevated marine terrace. As noted above, the only development through the roosting trees is the reconstruction of the existing aboveground waterline over Eagle Canyon Creek along its existing route. As a result, this species would not be materially affected by the project.

The Commission therefore finds that there is no basis at this time to find that there are changed circumstances based upon the asserted presence of the Monarch butterfly on the project site.

c. Coastal Wetlands

Some of the objections assert that there are previously undetected wetlands on the project site. The project site is an elevated marine terrace, which is vegetated primarily by, introduced annual grasses (with a few scattered small patches of native grasses). There are also several areas containing other native plant species. These include the riparian habitats along Tomato Canyon and Eagle Canyon. There is also a vernal pool located in the southeastern portion of the property midway between the railroad tracks and the edge of the coastal bluff. The project as originally approved by the Commission did not infringe upon any identified environmentally sensitive habitats.

After the Commission's approval of the original Coastal Development Permit for the project (November 1994) and during the course of developing a soil remediation plan for the abandonment of the oil and gas facilities on the project site (1998), additional wetlands were identified on the site which were located where development approved as part of the original Coastal Development Permit had been proposed. The total acreage of newly discovered wetland is approximately 0.6 of an acre. These wetlands are scattered throughout portions of the site, are generally small (a few hundred square feet) and appear to be seasonal in nature. Based upon previous surveys of the site, it is believed by the applicant's consultants and the County of Santa Barbara that these wetlands have developed in response to the unusually heavy rainfall during 1998, and may not persist in normal or drought years. (See Exhibit 8.)

However, the proposed amendment (A-4-STB-93-154-A-2), as explained in detail in a separate staff report and recommendation scheduled for this hearing, modifies the layout of the golf courses and appurtenant facilities to avoid these newly identified wetlands.

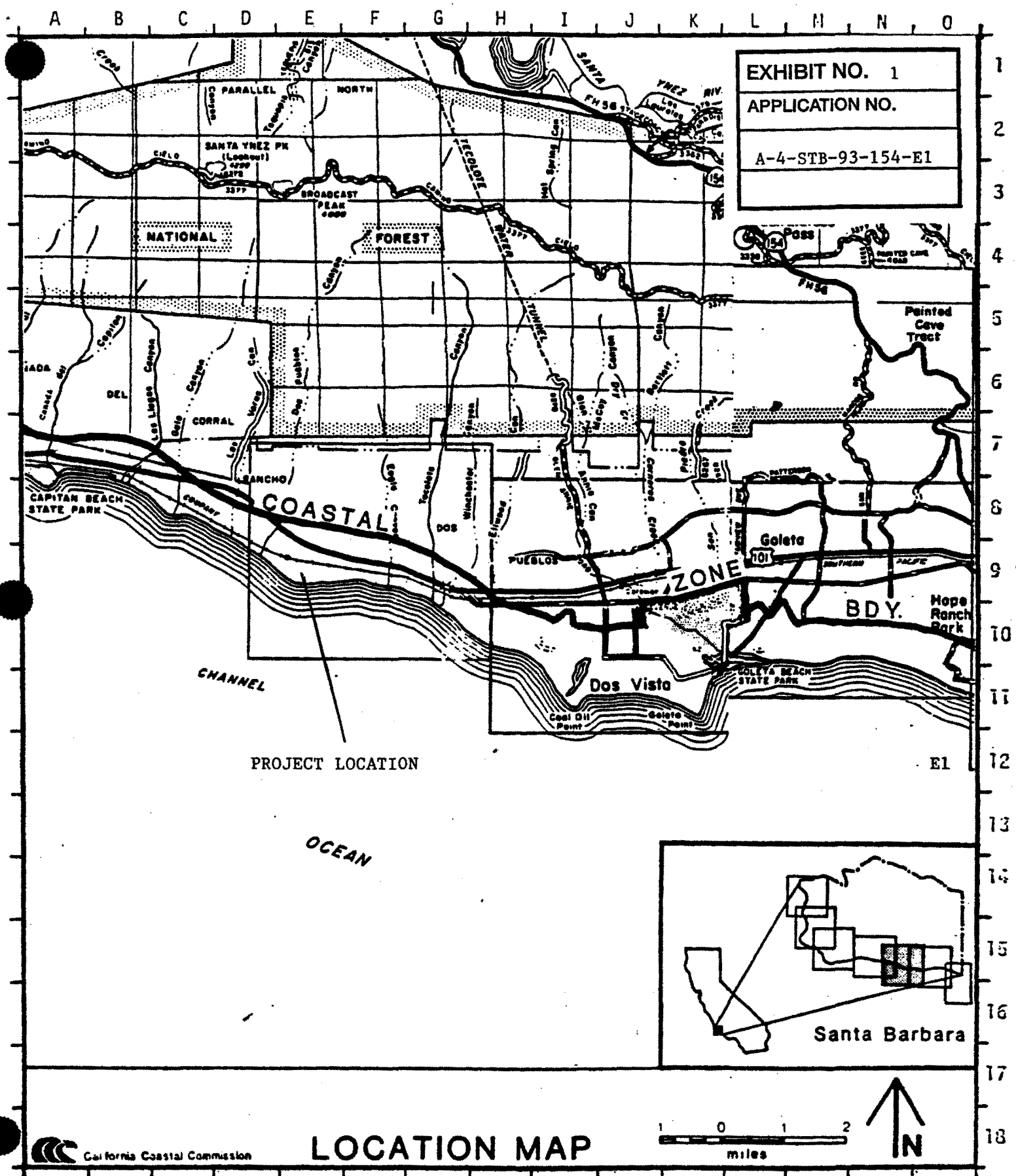
The proposed amendment, with respect to the portion which addresses the newly discovered wetlands, would not result in any additional adverse impacts to any of the previously identified environmentally sensitive habitats, or to the recently emerged seasonal wetland habitats now scattered throughout portions of the project site.

The proposed changes to the project plans and project description encompassed within the proposed amendment have been designed to avoid new or previously existing wetland resources. Specifically, the relocated cart barn, water storage lake, horse-tie-up/bicycle rack, bridges, tunnels, driving range, and the deleted desiltation basin will avoid being located within any newly developed seasonal wetland areas. Hole #11 is relocated to the west to drainage #7 to avoid being located in one of the newly emerged wetland, as well as the 100 foot buffer. A new Hole #8 has been modified to avoid the 100-foot buffer around a newly emerged wetland. Part of the fairway for Hole #4 would be removed pursuant to the amendment to avoid filling a drainage swale. The fairway for Hole #16 would be relocated to avoid the 100-foot wetland buffer. The green for Hole #18 would be relocated to avoid the 100-foot buffer around the vernal pool. (Where any wetlands are unavoidably disturbed by the related abandonment and soil remediation program, which is the subject of a separate Coastal Development Permit, they will be either allowed to regenerate naturally or be off-set by wetland restoration or enhancement activities on-site.)

Therefore, although additional wetlands have been identified since the project was approved, this discovery does not constitute a change circumstance which may affect the project's consistency with the Coastal Act due to steps taken by the applicant to revise the project plans through the amendment application to avoid impacts to the newly-discovered wetlands.

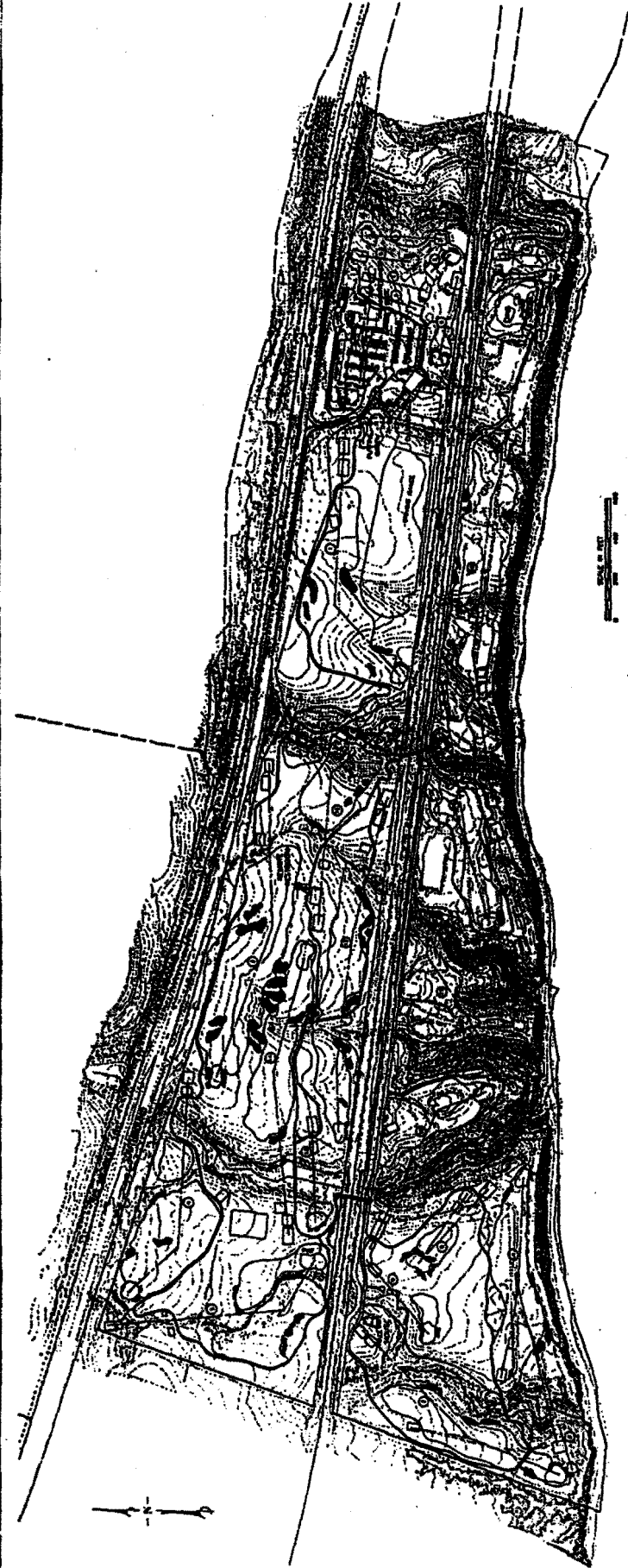
D. Conclusion

Staff recommends that the time extension be denied because the discovery of the California red-legged frog at the project site and the frog's federal listing as a threatened species, both of which have occurred since the Commission's approval of the subject development, together constitute changed circumstances such that the proposed development may not be consistent with the Coastal Act.



California Coastal Commission
 County of Santa Barbara

EXHIBIT NO. 2
APPLICATION NO.
A-4-STB-93-154-E1



RECEIVE

MAY 19 1999

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PROJECT NO.	
PROJECT NAME	
DATE OF APPLICATION	
APPLICANT	
PLANNING BOARD	
DATE OF PLANNING BOARD MEETING	
PLANNING BOARD ACTION	
COMMISSION MEETING	
COMMISSION ACTION	
DATE OF COMMISSION MEETING	
COMMISSION ACTION	
DATE OF COMMISSION ACTION	

EXHIBIT NO. 3
APPLICATION NO.
A-4-STB-93-154-E1



Photo by Crissy Slaughter

Biological Monitoring of Eagle Canyon Creek, Goleta, CA

Leticia Gallardo

February 3, 1999

Introduction

The following survey was commissioned to determine if Eagle Canyon Creek supports a California Red legged frog, *Rana aurora draytonii*, population. Distribution of the California Red legged frog extends from Shasta County south to Northern Baja California. Santa Barbara County is known to support various populations of *Rana aurora draytonii* throughout its waterways. Populations of Red legged frogs are known to occur in the creeks adjacent to Eagle Canyon Creek at distances of a minimum of three-quarters of a mile away. Given that this is a feasible distance for dispersal movements of this species (Gallardo, 1998), the likelihood of its presence in Eagle Canyon was high, thus the following survey was undertaken to determine if *Rana aurora draytonii* inhabits Eagle Canyon Creek.

Survey Site

Survey area consisted of the mouth of Eagle Canyon Creek upstream approximately 150 meters to the point where the creek meets the 101 freeway. The creek consists of riparian vegetation such as *Salix sp.*, *Plantanus racemosa*, *Artemisia douglasiana*, and *Rubus ursinus*, surrounded by an adjacent Eucalyptus forest. The creek empties into a lagoon formed where it drains into the ocean. This area contains typical brackish water vegetation such as *Typha sp.*, *Carex sp.*, and *Grenedia sp.*

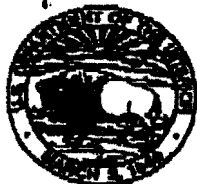
Methods

Both day and nighttime surveying was performed. Day surveys consisted of an analysis of the area for ideal frog habitat, which was based on the presence of appropriate vegetation, cover, and water depth. Night surveying began after dark and covered areas identified as ideal frog habitat. Two nights of surveying were performed. Appropriate areas were surveyed from the water using Koehler Wheat Cap Lights, model #2200-G1, to locate eyeshine. Search distance was approximately 5-15ft from the bank and in appropriate vegetation. Individuals were identified visually or by capture.

Results & Discussion

Daylight analysis of Eagle Canyon Creek found that appropriate vegetation, cover, and water depths were present and sufficient to maintain a *Rana aurora draytonii* population. Night surveys conducted in this area confirmed that *Rana aurora draytonii* does indeed inhabit the Eagle Canyon Creek. Despite adverse conditions such as low air and water temperatures, a low rainfall year, few survey events, as well as pre-breeding season when frog abundance and visibility is low, several individuals were located and identified. The number of frogs located in this area can be expected to increase as temperatures rise and as the breeding season progresses.

Further survey work is recommended to determine the size and distribution of this population. This is particularly important since the configuration of the lagoon region of the creek provides ideal conditions for a *Rana aurora draytonii* breeding site. The potential for this site as an important breeding pond was confirmed by the presence of calling male *Rana aurora draytonii*. It should also be noted at this point that in this species it is common that males move into the breeding site to establish territories well before the females arrive. Thus the low number of individuals found at this time may be partially explained by this migration pattern.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

EXHIBIT NO. 4
APPLICATION NO.
A-4-STB-93-154-E1

February 25, 1999

RECEIVED
COUNTY OF SANTA BARBARA

FEB 26 1999

Amy Sabbadini
Planning and Development Department
County of Santa Barbara
1226 Anacapa Street
Santa Barbara, California 93101-2010

PLANNING AND DEVELOPMENT
DEPARTMENT ENERGY DIVISION

Subject: Proposed Dos Pueblos Golf Course, Santa Barbara County, California

Dear Ms. Sabbadini:

In a letter dated November 2, 1998, the U.S. Fish and Wildlife Service (Service) provided comments to the County of Santa Barbara (County) regarding wetland mitigation activities proposed by ARCO Petroleum Company (ARCO) at the Dos Pueblos project site, south of Highway 101, approximately five miles west of the community of Goleta. Since then, the Service has been informed that the federally threatened California red-legged frog (*Rana aurora draytonii*) occurs on the site in Eagle Canyon Creek, as well as several other streams in the vicinity of the project site. As California red-legged frogs are known to travel up to two miles from riparian habitat, they likely use upland habitats in the project area as well. Therefore, we believe that activities in the creek or surrounding upland habitat could result in the take of California red-legged frogs.

Section 9 of the Endangered Species Act of 1973, as amended (Act), prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." Harassment is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Exemptions to the prohibitions against take may be obtained from the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7 or

Amy Sabbadini

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through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act. If a proposed project is to be authorized, funded, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7 of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act. When ARCO or the County are able to provide us with additional details regarding the potential for federal involvement with your proposed action, we will provide you with more specific information on the section 7 or 10(a)(1)(B) processes.

We are available to meet with you and the project proponent to discuss any potential impacts to listed species and the need for compliance with the Endangered Species Act. If you have any questions regarding this matter, please contact Bridget Fahey of my staff at (805) 644-1766.

Sincerely,



Diane K. Noda
Field Supervisor

cc: Jim Mace, U.S. Army Corps of Engineers
Sherri Miller, Dudak & Associates, Inc.
Morgan Wehtje, California Department of Fish and Game
Ellison Folk, Shurtz, Mihaly, & Weinberger

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

EXHIBIT NO. 5

APPLICATION NO.

A-4-STB-93-154-E1



March 11, 1999

Diane K. Noda
Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Dear Ms Noda:


RE: Proposed Dos Pueblos Golf Course, Santa Barbara County, California

We recently received a copy of your letter dated February 25, 1999 to the County of Santa Barbara regarding presence of California Red-legged frog (*Rana aurora drytonii*) on the project site at the mouth of Eagle Canyon Creek. Your letter indicated that the U.S. Fish and Wildlife Service had been informed that the species occurs on the site, but did not indicate the source of this information, or whether the U.S. Fish and Wildlife Service has independently confirmed the presence of this species.

The Commission is currently considering several actions (including an amendment, two appeals, and a time extension) regarding this project. Information regarding the status of the Red-legged frog would be germane to the Commission deliberations. We are therefore requesting that the U.S. Fish and Wildlife Service provide the Commission with any information that they may have regarding this species on the Dos Pueblos Golf Course site, including any specific information which the U.S. Fish and Wildlife Service relied upon in determining the presence of the species on the site.

If possible, we would appreciate receiving this information before March 25th, the completion date for the staff reports for the Commission's April meeting.

Thank you for your assistance in this matter.

Sincerely,

Chuck Damm
Senior Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

EXHIBIT NO. 6

APPLICATION NO.

A-4-STB-93-154-E1

Page 1 of 2
March 16, 1999

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Chuck Damm, Senior Deputy Director
California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001

Subject: Proposed Dos Pueblos Golf Course, Santa Barbara County, California

Dear Mr. Damm:

This letter is in response to your faxed request, dated March 11, 1999, for further clarification on our letter, dated February 22, 1999, stating that the U.S. Fish and Wildlife Service (Service) had been informed that the federally threatened California red-legged frog (*Rana aurora draytonii*) occurred in Eagle Canyon Creek on site of the proposed Dos Pueblos Golf Course. Specifically, you requested that the Service provide the Coastal Commission with any further information that we might have, including the specific information that we used to make this determination.

On February 4, 1999, we received a faxed copy of a survey report written by Leticia Gallardo indicating that she heard and saw California red-legged frogs in the mouth of Eagle Canyon Creek. In a telephone conversation with Bridget Fahey of my staff on March 5, Ms. Gallardo reported that she heard and saw a minimum of two male California red-legged frogs during January of this year. We consider Ms. Gallardo to be a credible source of information, as she has experience surveying for California red-legged frogs and currently possesses a recovery permit, issued by the Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Since then, the presence of the California red-legged frog in Eagle Canyon Creek has been confirmed by Dr. Rosemary Thompson of Science Application International Corporation, a consultant for the project applicant. The Service considers Dr. Thompson to be a credible source of information as well.

The project, as proposed, could result in direct and indirect impacts to the California red-legged frog. California red-legged frogs are known to use upland areas within a mile of streams. Consequently, grading of the site could kill or injure dispersing individuals. California red-legged frogs may be attracted to the golf course, once in operation, because of its water features and irrigation. Therefore, routine operation of the golf course is likely to cause mortality of California red-legged frogs as a result of vehicle use, maintenance of playing areas, and other

Chuck Damm

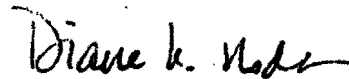
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related activities. The construction of the proposed public access footpath through Eagle Canyon Creek and the resulting increase in human activity in the immediate vicinity of habitat of California red-legged frogs are likely to result in the take of California red-legged frogs.

Our letter to the County of Santa Barbara provided information regarding the prohibitions against take contained in section 9 of the Act. Because the operation of the golf course and the use of the proposed footpath would likely cause take of California red-legged frogs, we strongly recommend that the project proponent apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

We hope that this information is useful to you. If you have further questions, please contact Bridget Fahey of my staff at: (805) 644-1766.

Sincerely,



Diane K. Noda
Field Supervisor

E. CLEMENT SHUTE, JR.
MARK I. WEINBERGER
MARC B. MIHALY, P. C.
FRAN M. LAYTON
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EXHIBIT NO. 7
APPLICATION NO.
A-4-STB-93-154-E1

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January 28, 1999

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 South California Street
Suite 200
Ventura, CA 93001-2801

Re: Consideration of Permit Application No. A-4-STB-93-154-A2;
Appeal Nos. A-4-98-321, A-4-98-332; Permit Extension No. A-4-
93-154-E

Dear Commissioners:

This firm represents the Surfrider Foundation and the Gaviota Coast Conservancy on their appeal of the coastal development permits issued for construction of the ARCO golf course and soil remediation projects in Santa Barbara County.

The Commission has before it four separate items related to the ARCO golf course. Two matters involve appeals by Surfrider Foundation and the Gaviota Coast Conservancy regarding the substantial conformity determinations issued by Santa Barbara County with respect to modifications to the golf course project (91-CP-085(SC05)) and a permit for a soil remediation project that is part of the golf course project. ARCO has also submitted a request for modification of its coastal development permit to the Commission; this amendment application involves the same issues as the appeal of the substantial conformity determination for the golf course modifications. Finally, ARCO has requested an extension of its coastal development permit for development of the golf course project in its entirety.

This letter will address all of the matters before the Commission. As set forth below, the proposed soil remediation project and golf course modifications are not consistent with the Coastal Act or provisions of the Santa Barbara Local Coastal Plan. In particular, these actions will disturb or fill .25 acres of wetlands and will result in the

California Coastal Commission

January 28, 1999

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encroachment into setbacks for other wetlands on the project site. The project does not meet the criteria for filling of wetlands set forth under the Coastal Act and, even if it did, the proposed mitigation for these impacts is inadequate. Finally, neither Santa Barbara County nor the Coastal Commission has conducted any environmental review in connection with the site modifications and soil remediation plan.

With respect to the extension of the permit for construction of the golf course, the Commission staff report notes that as a result of changes in circumstances since the original project approval, wetlands have emerged throughout the project site. In addition, it has been recently discovered that the site provides habitat for the red-legged frog and the snowy plover; moreover, the loss of Monarch Butterfly habitat at the adjacent Hyatt site has increased the importance of the ARCO site as overwintering habitat for the Monarch Butterfly. The Coastal Commission's regulations provide that where changes in circumstances indicate that a project may not be consistent with the Coastal Act, an extension should not be issued until the project as a whole is reviewed by the Commission. 14 Cal. Code of Regs. § 13169. Impacts to environmentally sensitive habitat areas are a basis for finding that a project may be inconsistent with the Coastal Act. However, no environmental review has been conducted to determine how the proposed project will impact these sensitive resources. Because changed circumstances indicate that the project may not be consistent with the Coastal Act, the matter should be set for a full hearing "as though it were a new application" as provided by section 13169 of the Commission's regulations.

I. Project History

The ARCO golf course project is proposed to be constructed on land that is zoned for agricultural use (AG-II-100). Santa Barbara County's Local Coastal Plan and Coastal Zoning Ordinance identify permitted uses for agricultural lands; golf courses are not an identified use. CZO § 35-69.3. Although certain low intensity recreational uses, such as campgrounds, are permitted, these uses must be consistent with the rural character of an area and they must not interfere with agricultural production on the site.

When the golf course project originally came before the Commission on appeal of Santa Barbara County's issuance of a conditional use permit, Commission staff recommended denial of the project. In particular, staff objected that the project would result in the conversion of all of the agricultural lands on site to non-agricultural uses and was likely to result in the permanent loss of this land to non-agricultural uses. Furthermore, staff determined that the project could not meet the standards of the Coastal Act, Public Resources Code § 30241, for conversion of agricultural land. Although

California Coastal Commission

January 28, 1999

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Santa Barbara County reasoned that the project would not interfere with the long-term use of the site for agriculture because the prime soils would remain on site, Commission staff noted that this was akin to arguing that development of the Santa Clara Valley had not disturbed the long term viability of that area for agricultural use because the agricultural soils remained in place.

In view of its patent inconsistency with the Coastal Act policies for protection of agricultural lands, in addition to impacts to public access and expansion of urban facilities, staff recommended denial of the project. On April 13 1994, the Commission in fact did deny the project. Four months later on July 13, 1994, the Commission voted to reconsider the application, and on November 16, 1994, the Commission voted to approve the project with conditions. Other than some changes to the public access component of the project, it is unclear what had changed about the project or the project site between April and November, 1994. ARCO's permit is set to expire on January 28, 1999.

II. Appeals of the Golf Course Modification and Soil Remediation

Because many of the issues related to the golf course modifications and soil remediation overlap, they will be addressed together where appropriate. In addition, the application for amendment to the existing permit for the golf course addresses the same issues as the appeal of the golf course modifications; therefore, any issues related to the permit amendment application will also be addressed below.

A. Impacts to Wetlands

Public Resources Code section 30233 prohibits the filling or disturbance of wetlands in the coastal zone. Policy 9-6 of the Santa Barbara LCP incorporates the restrictions of Public Resources Code section 30233. Policy 9-14 of the Santa Barbara LCP further requires that "new development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction of the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants), noise, thermal pollution, or other disturbances." Finally, policy 9-9 of the LCP provides that "a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands." As set forth below, both the modifications to the golf course and the soil

remediation are inconsistent with these policies.¹

In the present case, the documents reveal that at least .25 acres of wetlands will be filled or disturbed by for the golf course project. The staff report indicates that 0.08 acres of a wetland will be filled as a direct result of the golf course project. 12/14/98 Staff report at p. 10.² In addition, approximately 0.18 acres of wetlands will be disturbed through the soil remediation project, which is required as a condition of approval for the golf course. The project proponent does not intend to restore the wetlands that will be disturbed from the soil remediation project. Rather these disturbed wetlands will be left as a buffer zone for other wetlands in the vicinity. Substantial Conformity Determination 91-CP-085 (SC04) at p. 9. The reason for this is obvious. If the project applicant were to restore the disturbed wetlands the buffer zone would further encroach into the golf course. By failing to restore the wetlands in place and using it as a buffer zone, the applicant has in fact used the wetlands as part of its golf course project.

The Coastal Act, however, prohibits any dredging or filling of wetlands unless the project meets one of eight exceptions. Pub. Res. Code §30233. Although the project applicants have characterized the fill as a "restoration project," a golf course project is not a restoration project. Moreover, the site has not been classified by the Department of Fish and Game as a severely degraded wetland; indeed only 5 sites in the state have been classified by the Department of Fish and Game as severely degraded. Thus, the site does not qualify for the exemption under Public Resources Code section

¹ The staff report for the soil remediation does not address the disturbance or filling of wetlands on the grounds that the appeals did not address this issue. However, the Surfrider appeal explicitly addressed the issue of impacts to wetlands in its appeal and expressed concern that the wetlands were "extremely important to wildlife" and that it was "unclear what effect ARCO's activities would have on this important resource." The letter went on to cite several provisions of the Santa Barbara LCP that were implicated by the proposed project, including section 9-14, 2-11, and 3-19 all of which address impacts to wetlands as a result of development.

² At first, the staff report implies that this fill will result from the soil remediation project, and not as a result of the golf course. However, the description of soil remediation program reveals that although the soil remediation would disturb those wetlands, the filling would result from "non-permitted uses", i.e., the golf course. See Substantial Conformity Determination 91-CP-085 at p. 9. The staff report later indicates that the filling would be for the "previously approved golf course." Staff Report at 10.

30411.

Even if the Commission were to allow disturbance and fill of the wetlands on the project site, the proposed restoration plan does not adequately compensate for lost wetlands. It is my understanding that the Commission has required as much as a 4:1 wetlands replacement ratio, for other projects, although 3:1 may be a more common requirement; certainly 1.5:1 is not sufficient to meet Commission standards. Moreover, there is no information in the record about the adequacy of the proposed restoration plan. From the substantial conformity determination for the soil remediation, it appears that the project applicant plans to remove non-native vegetation from existing wetlands in Tomato Canyon and reseed with native species. Substantial Conformity Determination 91-CP-085 at p. 6. The project will be monitored only for two years with a possible extension to three years.

However, it is unclear that the applicant is being required to do anything more than required under the previous permit approvals. A comparison of Figure 1 of the Staff Report to Figure 3.3-10 of the final environmental impact report ("EIR") for the project indicates that a native vegetation rehabilitation area in Tomato Canyon was already planned as part of the original project approval. In any event, simply replanting an existing wetland should not count as adequate mitigation for wetlands that have been filled -- especially when the disturbance occurs in connection with a non-permitted use under the Act.

Finally, elements of the modified golf course will result in encroachment into the wetland buffers. First, the storage lake will be placed within the 100 foot buffer of a newly created wetland on site. Golf Course Substantial Conformity Determination, at p. 8. It appears that the pump house to be built on the south west corner of the storage lake will also encroach into the buffer for the newly emerged wetland. Ibid. at 3 (discussing newly emerged wetlands to the south and west of the lake and identifying the location of pump house as "southwest" of the lake). In addition, the County's Substantial Conformity Determination notes that service roads and cart paths will be located within the 100 foot buffers for wetlands. Ibid. Although the County asserts that these structures are minor, they do not fall within the type of "minor" uses, such as fences, identified in the LCP. Indeed, on a golf course anticipating 60,000 rounds of golf per year, cart paths will see significant human and vehicular activity that is not compatible with protecting the wetlands resources on site. Similarly, service roads will bring trucks and other vehicles in close proximity to the wetlands. Roads are not a minor use that is consistent with protection of the wetlands.

Therefore, the proposed soil remediation and golf course modifications are not consistent with policies in the Coastal Act to protect wetlands and these projects should be denied as submitted.

B. Need for Further Environmental Review

The changes on the project site are not only inconsistent with the Coastal Act and LCP, changes on the project site that will result in the disturbance of .25 acres of wetlands require further environmental review. As set forth in Mira Monte Homeowners Ass'n v. County of Ventura, 165 Cal.App.3d 357 (1985), the discovery that a project will result in new impacts to .25 acres of wetlands is substantial evidence of a significant new project impact. Thus, in the Mira Monte case, the California Court of Appeal ordered that an EIR that failed to take into account impacts to these wetlands be revised and recirculated. Mira Monte, 165 Cal.App.3d at 364. So too in the present case, further environmental review should be conducted to ensure that new filling of wetlands and intrusions into wetlands buffers will not result in significant environmental impacts and are appropriately mitigated.

Moreover, because the golf course modifications and soil remediation plan are so closely related (and in fact are part of the same project), the impacts of these projects should be evaluated together. CEQA Guidelines §15378(a) (Project is defined to mean "the whole of an action, which has the potential for resulting in a physical change in the environment, directly or indirectly . . ."). Courts have repeatedly held that an agency may not avoid the requirement to prepare an EIR by segmenting a project into stages of approval, without considering the entirety of the project. Bozung v. LAFCO, 13 Cal.3d 263, 283-284 (1975). In approving the amendments to the previously issued permit for the golf course, the Coastal Commission is acting as a lead agency under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, et. seq. As such, the Commission must evaluate the impacts of the golf course modifications prior to their approval. Pub. Res. Code §21166.

C. Grading In Excess of County Standards

Santa Barbara County's Coastal Zoning Ordinance establishes the criteria by which a request for a substantial conformity determination must be made. See Article II, Appendix B. Among these criteria is the requirement that the project not result in more than 50 cubic yards of cut and fill. Article II, Appendix B, 4 (j); Remediation SCD at p. 11. The first phase of the soil remediation project will result in the removal of 520 cubic yards of soil from the project site. Remediation SCD at p. 11. Subsequent phases

will require the removal of at least 5000 cubic yards of contaminated soil. 5/15/98 Letter from ENSR to Kate Sulka, Santa Barbara County at p. 3-2. No environmental review has been conducted of the impacts of this soil removal.

Clearly 520 cubic yards for just the first phase of the soil remediation project exceeds the County's 50 cubic yard criteria for granting a substantial conformity determination. The project applicant has asserted that the 520 cubic yards to be removed was contemplated as part of the original cut and fill for the golf course project, which was estimated at 154,470 cubic yards. Remediation SCD at 11. This statement does not appear to be accurate. First, the EIR and conditions of approval for the golf course made no indication that the 154,470 cut and fill estimate included the soil remediation project. See Exhibit 9 to Staff Report at p. 4; see also, EIR at 3-26 - 3-21. Furthermore, the cut and fill estimate of 154,470 cubic yards assumed that the cut and fill would be balanced on site. Exhibit 9 to Staff Report at p. 4; see also, 1994 Commission Staff Report at p. 6. In other words, soil would not be exported off-site. It is hard to believe that a balanced cut and fill estimate would include a soil remediation project because a balanced project requires that the "cut" contaminated soils remain on-site and be used as "fill." In fact, condition 40 for the project approval states, "if site remediation is required, it could increase the extent of excavation currently proposed for the project." Staff Report, Exhibit 9 at p. 24.

Because the grading for the soil remediation exceeds the standards established in the County's Coastal Zoning Ordinance, which is part of the local coastal program, the project, as approved, is inconsistent with local coastal program and must be denied.

D. Soil Remediation During the Rainy Season

The County's substantial conformity determination for the soil remediation project would have allowed construction to begin on December 1, 1998. As discussed in the letter from the Urban Creeks Council, allowing soil remediation during the rainy season could result in substantial environmental impacts. Recent experience in Santa Barbara County at the immediately adjacent Hyatt site, indicates that grading during the rainy season is not consistent with the provisions of Coastal Act and the Local Coastal Plan which require protection of environmentally sensitive habitat areas, such as wetlands and drainages on site. For example, potential impacts from runoff and sedimentation would be inconsistent with LCP Policy 9-14, which prohibits development that could "result in a reduction of the biological productivity or water quality of the wetland due to runoff. . . ." As such, the soil remediation project as approved is inconsistent with the

Local Coastal Plan and must be denied.

Moreover, it appears that the start date for the soil remediation project was designed not to protect coastal resources, but to allow ARCO to exercise its coastal development permit prior to expiration in February. As set forth in a letter from Lucast and Associates to Chuck Damm, ARCO asserts that had it not been for the appeals, it would have started construction and therefore would not need an extension of its previously issued permit. Although ARCO claims that its permit should be tolled during the time of the appeals, an appeal to the Commission is part of the process of issuing a coastal development permit by a local agency. By delaying action on its permit, ARCO took the risk that it would expire prior to the time that construction had begun.

III. Permit Extension

A. Relevant Standards

Section 13169 of the California Code of Regulations provides that before a permit may be extended, the executive director "shall determine whether or not there are changed circumstances that may affect the consistency with the Coastal Act of 1976." If at a hearing on the application for extension of a coastal permit, three commissioners determine that the proposed development "may not be consistent with the California Coastal Act of 1976, the application shall be set for a full hearing of the Commission as though it were a new application." The project applicant has requested a public hearing be set on the request for an extension.

The Commission staff report on the extension focuses only on whether there have been changes in the project. Looking solely to the permit amendment request, staff concludes that the project has not changed sufficiently to call into question the former determination of consistency with the Coastal Act. As a result, the staff report for the permit extension does not address the key relevant issue: whether there are "changes in circumstances that may affected the consistency with the Coastal Act." The regulations set a low standard for reconsideration of a permit; they do not require that changes in circumstances indicate that a project will be inconsistent with the Coastal Act, only that it "may" be inconsistent with the Act. As set forth below, changes in circumstances include the discovery of red-legged frogs at the project site, the expansion of wetlands throughout the project site, and the discovery that the Eagle Canyon area is now used as an overwintering site for the Monarch Butterfly. Each of these circumstances indicates that the project may not be consistent with the Coastal Act. Therefore, the Commission should set the project for hearing as if it were a new

application.

B. Discovery of Rare or Endangered Species on Site

1. Red-Legged Frogs

The EIR concluded that the red-legged frog was not "expected to inhabit the drainages onsite due to the lack of sufficient surface water." EIR at 5.1-37. Given that the EIR was completed after five years of drought, it is not surprising that the EIR reached this conclusion. Although pesticide use and grading and improvements in and around the drainages will adversely impact the red-legged frog, no mitigation for impacts to the red-legged frog is proposed in the EIR or as part of the project approval. Surveys prior to grading have not even been required.

In the past year, graduate students at UC Santa Barbara have documented the presence of red-legged frogs in the drainages for the project site, including Eagle Canyon. Furthermore, given the presence of wetlands throughout the project site and increased surface water, the potential for red-legged frogs to be present at the project site has increased dramatically. In view of the Coastal Act policies to protect environmentally sensitive habitat areas (not to mention the requirements of the state and federal Endangered Species Act), the golf course project as approved may be inconsistent with the Coastal Act and should be reevaluated.

2. Snowy Plover

The snowy plover is a federally-listed threatened species. The EIR makes no mention of the snowy plover. Again, graduate students at UC Santa Barbara have documented the presence of the snowy plover at the project site. Inasmuch as the EIR failed to even mention the snowy plover, the newly discovered presence of a threatened species on the project site constitutes changes in circumstances indicating that the project as approved may be inconsistent with the Coastal Act.

3. Monarch Butterflies

The EIR concluded that Eagle Canyon was an area of the site used by Monarch Butterflies. However, the EIR also determined that Eagle Canyon did not provide overwintering habitat for Monarch Butterflies and thus was not protected by LCP policies 9-22 and 9-23, which prohibit development within 50 feet of Monarch trees. EIR

at 5.1-19. As a result, the project calls for construction of the pipeline for reclaimed water through Eagle Canyon. Mitigation for Monarchs provides only that construction of the pipeline not occur within 50 feet of the roosting trees in Eagle Canyon between October 1 and January 31

Since approval of the project, the development of the Hyatt hotel and the loss of several trees that were actively used by Monarchs for overwintering has increased the importance of the ARCO site as an overwintering area for the Monarch Butterfly. In fact, visitors to the site have witnessed Monarchs there at all times of the year, and the site appears to be used for overwintering and not just for autumnal roosts as discussed in the EIR. Policies 9-22 and 9-23 of the Santa Barbara LCP prohibit the removal of Monarch trees and construction within 50 feet of Monarch trees. Given that the butterflies may now utilize Eagle Canyon as an overwintering site, the construction of a pipeline through this area is prohibited by Policies 9-22 and 9-23 of the Local Coastal Plan. Thus, the project as proposed is inconsistent with the Coastal Act, which requires project to be consistent with a certified LCP. Pub. Res. Code § 30600.5 (c).

C. Expansion of Wetlands

The expansion of wetland areas on the project site indicate that the ARCO golf course may not be consistent with the Coastal Act. First, as recognized by staff, "since the original approval of the golf course by the County and the Commission, the physical circumstances on the site have changed. In particular, the past exceptionally wet season has fostered the development of seasonal wetland areas on the project site which had not been previously identified." Amendment Staff Report at p. 10. Although the EIR reported that all wetlands were located within the drainages located on site, the staff report now indicates that wetlands are "scattered throughout portions of the project site." Amendment Staff Report at 10. The EIR's analysis was based on a 1992 preliminary wetlands survey that was conducted after 5 years of drought.

The Coastal Act requires, among other things, that "development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuances of such habitat areas." In view of the fact that no new review has been conducted of how the golf course project will impact new wetlands and species that might be found there, the project may be inconsistent with the Coastal Act.

California Coastal Commission
January 28, 1999
Page - 11 -

In view of the foregoing, appellants respectfully request that their appeals be granted and that ARCO's applications for permit modification and extension be denied.

Very Truly Yours,

SHUTE, MIHALY & WEINBERGER



ELLISON FOLK

EF:swb

cc: Chuck Damm
Bob Keats

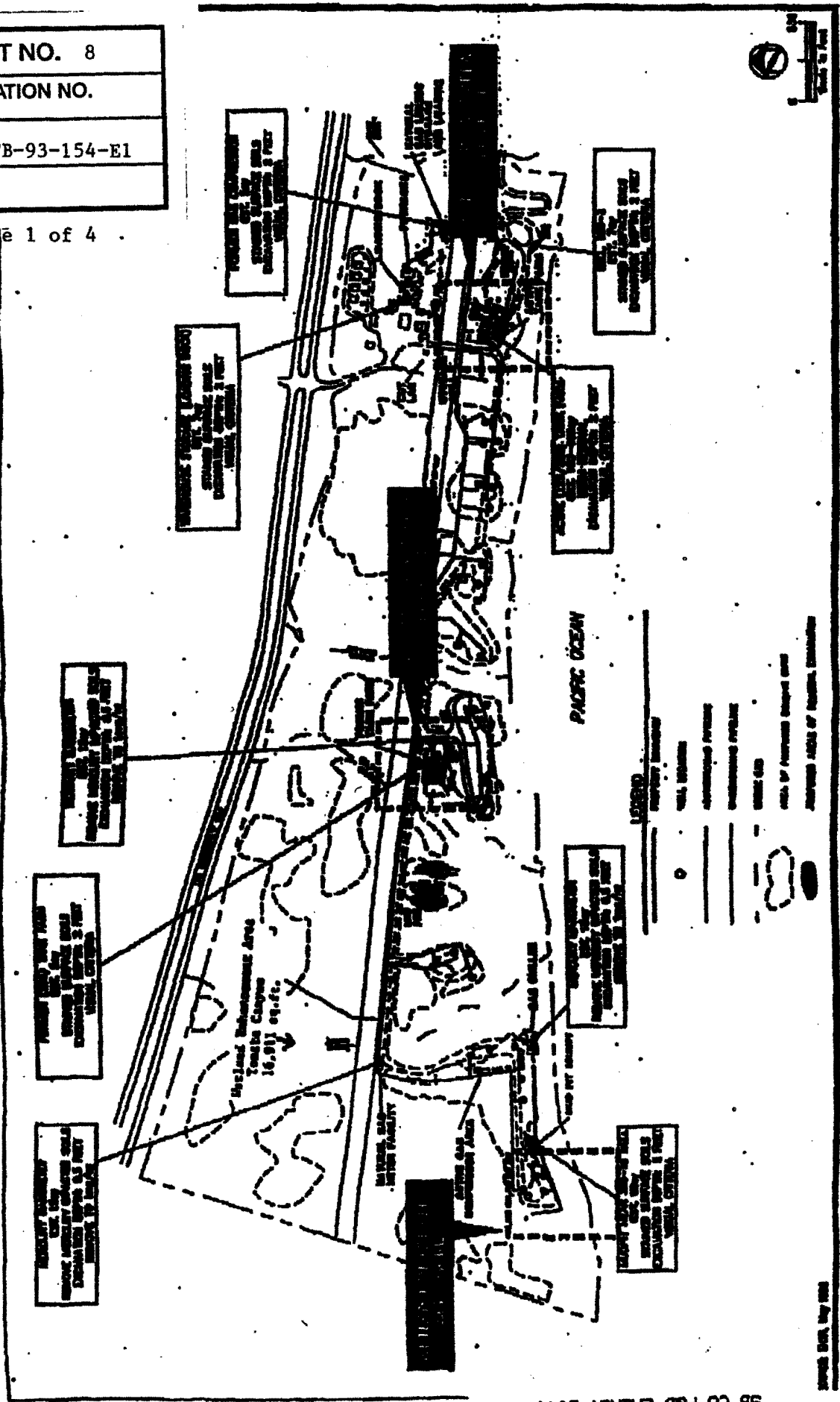
EXHIBIT NO. 8

APPLICATION NO.

A-4-STB-93-154-E1

Page 1 of 4

GENERAL WETLANDS LOCATION MAP
(See Pages 2 through 4 of Exhibit)

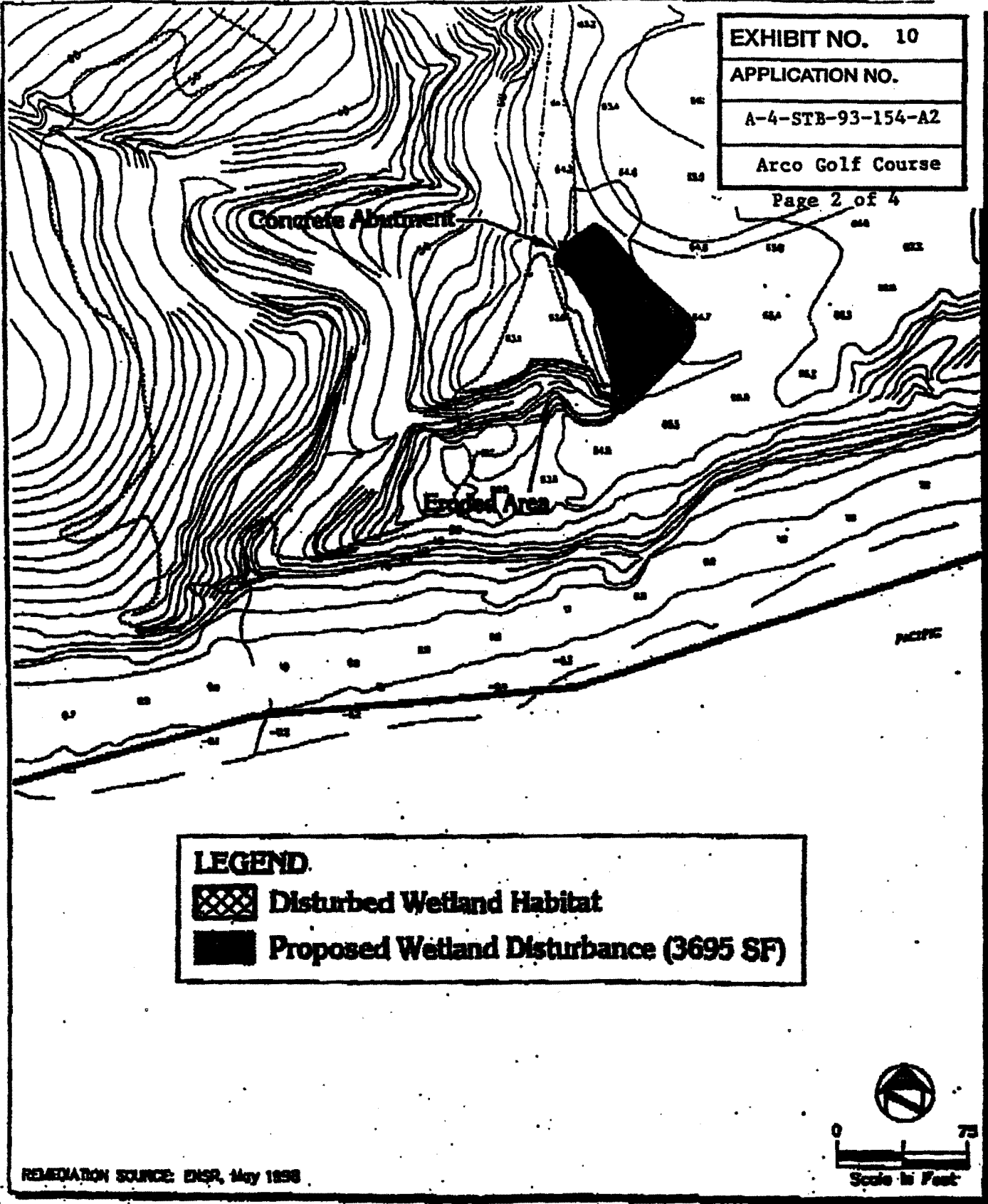


San Pedro Gulf Course Remediation Action Plan Wetland Permitting
Area of Proposed Remedial Excavation

Page 1

EXHIBIT NO. 10
APPLICATION NO.
A-4-STB-93-154-A2
Arco Golf Course

Page 2 of 4



REMEDATION SOURCE: ENSR, May 1998

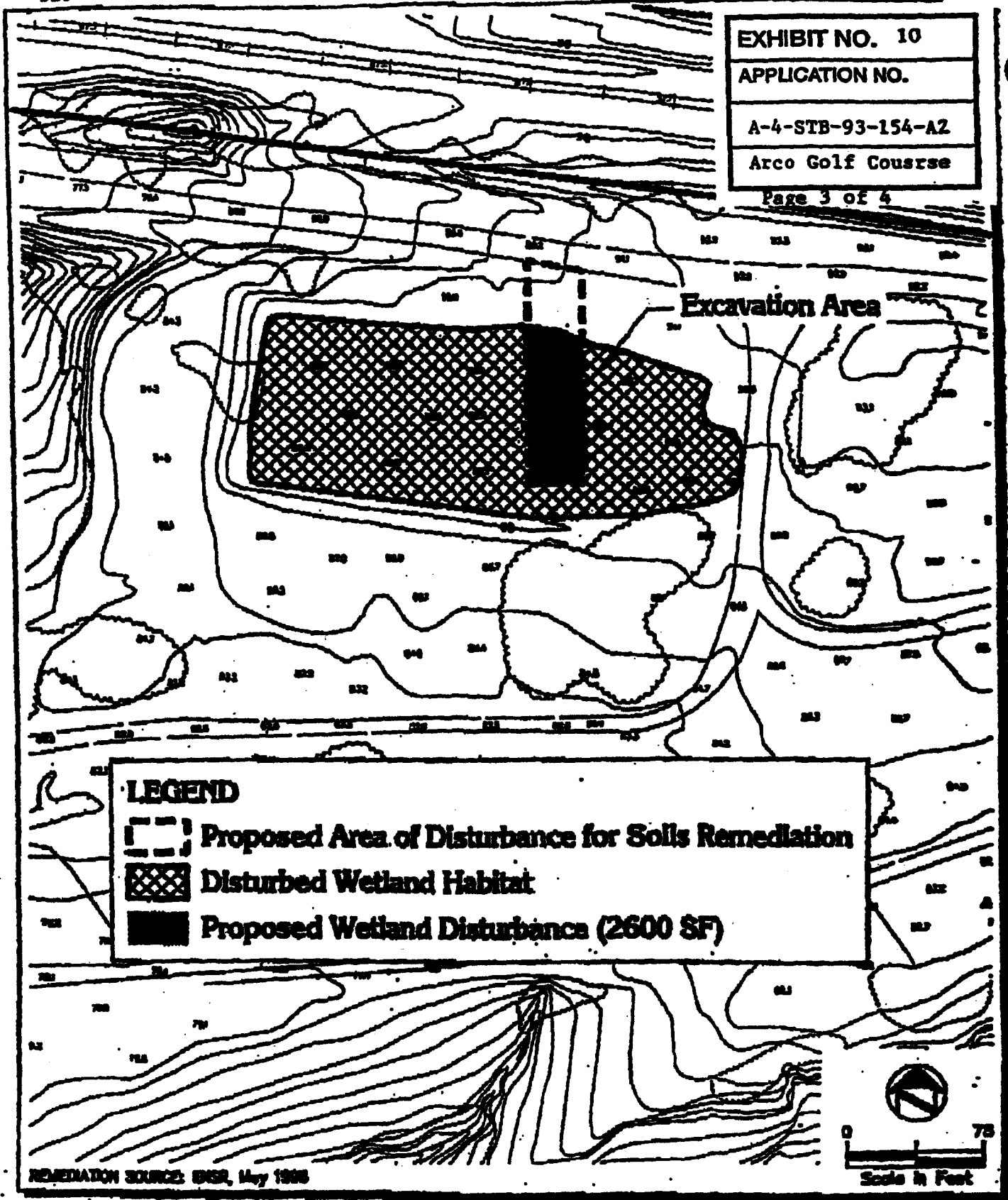


Dos Pueblos Golf Course - Remediation Action Plan Wetland Permitting
Wetland Impacts for Proposed Concrete Abutment Removal & Erosion Control

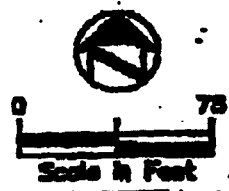
FIGURE
2

EXHIBIT NO. 10
APPLICATION NO.
A-4-STB-93-154-A2
Arco Golf Course

Page 3 of 4



REMEDIATION SOURCE: EPCR, May 1998

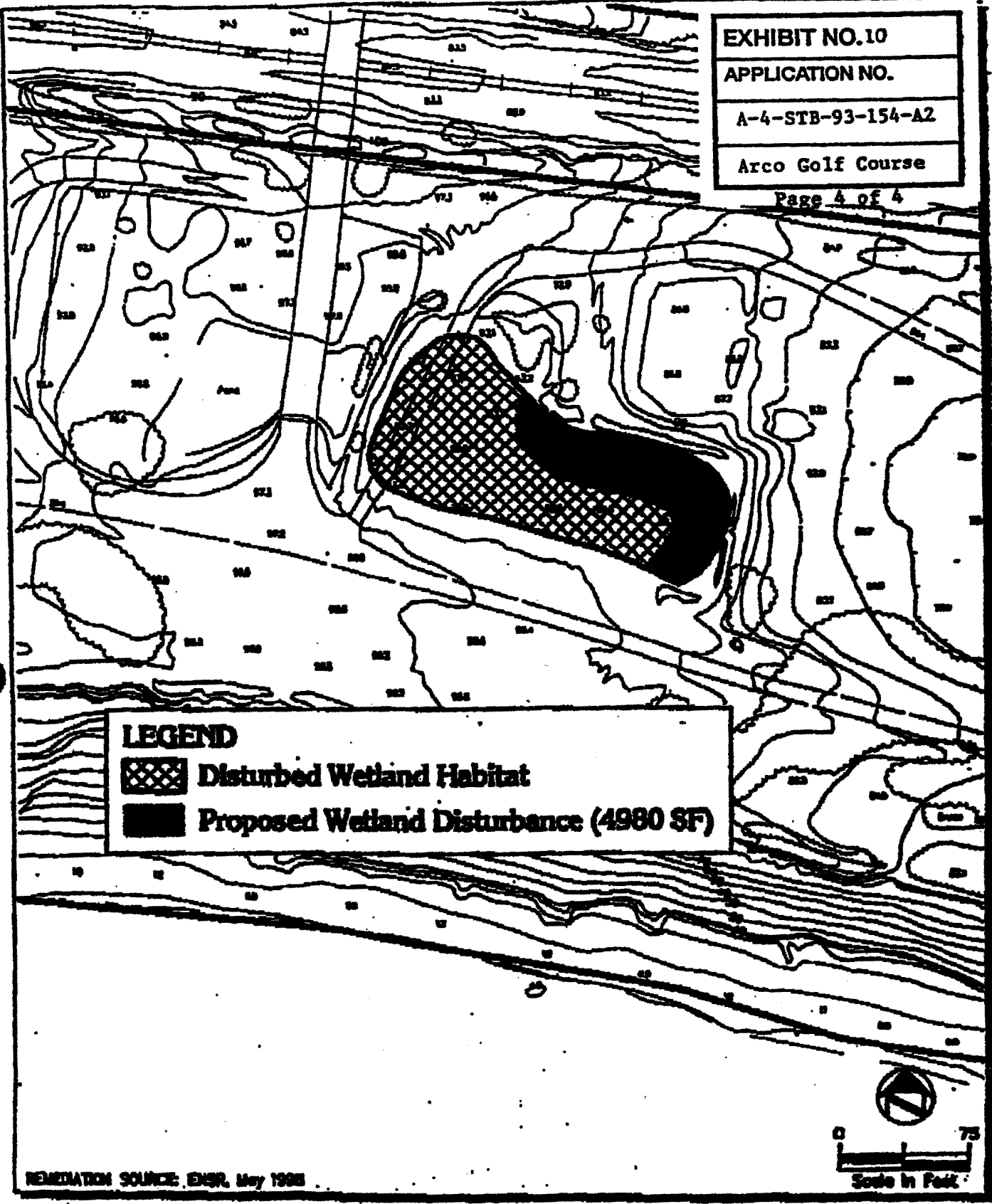


Dos Pueblos Golf Course - Remediation Action Plan Wetland Permitting
Wetland Impacts for Proposed Soils Remediation at Former Tank Farm


FIGURE
3


EXHIBIT NO.10
APPLICATION NO.
A-4-STB-93-154-A2
Arco Golf Course

Page 4 of 4




LEGEND

 **Disturbed Wetland Habitat**

 **Proposed Wetland Disturbance (4980 SF)**

REMEDIATION SOURCE: ENSR, May 1998





Scale in Feet

Dos Pueblos Golf Course - Remediation Action Plan Wetland Permitting
Wetland Impacts for Proposed Soils Remediation at Active Tank Farm

FIGURE
4

RECEIVED

EXHIBIT NO. 9
APPLICATION NO.
A-4-STB-93-154-1

STATE OF CALIFORNIA—THE RESOURCES AGENCY

JAN 07 1999

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPLICATION FOR EXTENSION OF PERMIT NO. A-4STB-93-154

NOTE TO APPLICANTS:

1. Filing. Application for extension of a permit for a period not to exceed one year where construction is not expected to commence prior to the expiration date of the permit may be made by submitting this form completed and signed, together with the applicable filing fee, to the Commission Area Office. Such applications will not be accepted more than 90 days prior to the expiration date of the permit.

Extensions must be applied for prior to the expiration date of the permit, but filing of an application for extension will automatically extend the expiration date of the permit until the final action of the Commission on the request. Construction may not be commenced during this period of automatic extension. 14 Cal. Admin. Code Section 13169(a)(2).

2. Procedures. The Commission regulations require the Executive Director to follow the following procedures (Cal. Admin. Code Title 14, Section 13169): If the Executive Director determines that there are no changed circumstances that may affect the consistency of the proposed development with the Coastal Act of 1976, notice of such determination shall be posted at the project site and mailed to all parties who may be interested in the application. The necessary forms are available from the Area office. If no written objection is received at the Area office within 10 working days of publishing notice, the determination of no changed circumstances is conclusive and the extension will be granted. If the Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or if objection is made to the determination of consistency, a report shall be made to the Commission. If three Commissioners object to the extension, the application shall be set for a full hearing as though it were a new application.

SECTION 1. APPLICANT

1. Name, address and telephone number of applicant:
CPHPAH Dos Pueblos Associates, LLC Attn R.W. Hollis, Jr., President,
211 W. Canon Perdido, Santa Barbara 93101 (805) 962-0262
(Zip) (Area Code) (Telephone No.)

2. Name, address and telephone number of applicant's representative, if any:
R.W. Hollis, Jr. AND Nancy Lucret - (819) 793-6020
Address Same As Above
(Zip) (Area Code) (Telephone No.)

TO BE COMPLETED BY COMMISSION:

Date Received: 1-7-99 Application Fee: \$ 400.00
Date Filed: _____ Date Paid: 1-7-99

-2-

SECTION II. INFORMATION REQUIRED

1. Date of issuance and number of permit: November 16, 1994 A-4-STB-93-154
2. Is this a land division? No
3. Attachments. The following documents must be enclosed with this application form completed to ensure prompt processing of your application:
 - a. Documentation evidencing permit holder's continued legal interest in the property. See Attachment A.
 - b. Copy of original permit showing that it has not expired. See Attachment D. Documentation of expiration submitted under separate cover.
 - c. Documentation of completed or proposed satisfaction of permit conditions, if any. See Attachment C.
 - d. List of names and addresses for all known interested parties and property owners/tenants within 100 feet of project site, plus one stamped, addressed envelope for each person on the list. See Attachment D.

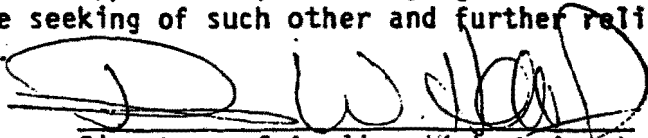
SECTION III. FILING FEE

This application will not be deemed filed until payment of a filing fee of \$200.00 for single-family houses and \$400.00 for all other developments. 14 Cal. Admin. Code 13169(a).

SECTION IV. CERTIFICATION

1. I hereby certify that I or my authorized representative will complete and post the "Notice of Extension Request" form furnished me by the Commission in a conspicuous place on the development property upon receipt of said notice from the Commission.

2. I hereby certify that to the best of my knowledge, the information in this application and all attached exhibits is full, complete, and correct, and I understand that any failure to provide information requested or any misstatement in the information submitted in support of the application may be grounds for either non-acceptance of the application, for denying the application for extension, or for the seeking of such other and further relief as may seem proper to the Commission.

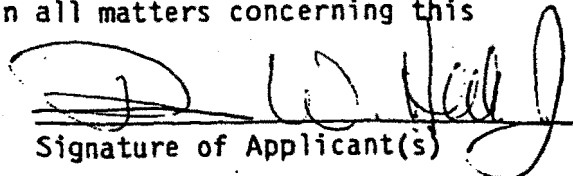


Signature of Applicant(s) or Agent

NOTE: If signed by Agent, Applicant must sign below.

SECTION V. AUTHORIZATION OF AGENT

I hereby authorize Nancy Luquest to act as my (our) representative and bind me (us) in all matters concerning this application.



Signature of Applicant(s)



LUCAST CONSULTING
Coastal Land Use Planning & Advocacy
12760 High Street Drive, Suite 260
San Diego, California 92130
TEL: (619) 793-6070 FAX: (619) 793-0395

January 7, 1999

VIA FACSIMILE AND US MAIL
Enclosures via Hand Delivery and US Mail

Mr. Chuck Damm
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

RECEIVED

JAN 12 1999

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**Re: 4-STB-93-154 (Dos Pueblos Golf Links)
Application for Extension of Coastal Development Permit**

Dear Chuck:

Thank you for meeting with us yesterday regarding the two appeals of the "ministerial" local CDPs issued by Santa Barbara County for the soil remediation and golf course construction phases of the Dos Pueblos Golf Links project. As you know, we believe these second appeals of this project put the applicant in a "double jeopardy" situation and are invalid for several reasons. (Please see letters to you from David C. Fainer dated December 17, 1998 and from me dated December 3, 1998 and December 21, 1998.) At best, the appeals are completely without merit as they do not take issue with the County's actions on condition compliance, the only question that could arguably be subject to review by the Commission on appeal at this point. Nonetheless, we understand that you have filed the appeals and that they will be scheduled for public hearing at the Commission's February, 1999 meeting.


The Coastal Commission-approved CDP for the Golf Links project, unless tolled, expires January 28, 1999. (Please see September 9, 1997 letter from Steven H. Kaufmann to Diane Landry and attachments.) Unfortunately, because the Commission will not decide the current appeals before January 28th, we are prevented from exercising our permit by commencing construction before the Commission-approved CDP expires.

As you have advised, we are submitting with this letter a completed application for extension of CDP 4-STB-93-154. Because of the peculiar perception that the County's LCP permits a double appeal, we feel we must reserve the argument that the CDP expiration date has been equitably tolled since, but for the appeals and the resulting lack of incentive for staff to complete review and execution of all the materials we have submitted in fulfillment of the terms and conditions of the permit, we could and would begin construction prior to January 28th, thus vesting our permit and eliminating the necessity for seeking an extension.

January 7, 1999
Mr. Chuck Damm
California Coastal Commission
Page 2 of 2

Although we may disagree on the decision to accept the appeals for filing, we understand how it was reached, and we continue to be strongly committed to working cooperatively with you on both the appeals and our application for extension.

Very truly yours,



Nancy A. Lucast

- enclosures (1) September 9, 1997 letter from Steven H. Kaufmann to Diane Landry, Esq., with attachments (via mail)
(2) Completed Application for Extension, with attachments (hand delivered)

cc w/o encls: Ralph Faust, Esq.
Jamee Jordan Patterson, Esq.
Dianne Meester
Alan Seltzer, Esq.
R.W. Hollis, Jr.
Steven H. Kaufmann, Esq.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 S. CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
(805) 641-0142

Filed: 09/30/93
Staff: DSL/cm
Staff Report: 01/11/95
Revised Report: 02/06/95
Hearing Date: 11/16/94
Hearing Date for
Revised Findings: 02/08/95
Final Staff Report
with Revised Findings
of 2/8/95 Comm. Mtg. 2/22/95 1679P
Comm. Action: Approval with Conditions

*Admitted
2/8/95
Willy*

FINAL REVISED FINDINGS

LOCAL GOVERNMENT: County of Santa Barbara
DECISION: Approval
APPEAL NO.: A-4-STB-93-154
APPLICANT: ARCO Oil and Gas Company AGENT: R.W. Hollis, Jr.
PROJECT LOCATION: Naples Area, ± three miles west of Goleta, Route 1,
Box 275, Goleta
PROJECT DESCRIPTION: Removal of existing oil and gas production facilities,
public 18-hole and 9-hole golf course and appurtenant
facilities; ±154,000 cubic yards of grading; extension of
an eight inch water line ±5,200 feet from Goleta to the
site; construction of a 4 acre-foot pond; and dedication,
construction, operation and maintenance of various
access improvements, landscaping and merger of
all 23 lots into two parcels.
APPELLANTS: Surfrider Foundation

COMMISSIONERS ELIGIBLE TO VOTE: Calcagno, Cervantes, Doo, Flemming,
Moulton-Patterson, Malcolm, Wright, Williams

SUBSTANTIVE FILE DOCUMENTS: Conditional Use Permit 91-CP-85; Final Environmental
Impact Report for ARCO Dos Pueblos Golf Links Project, March 1993 (92-EIR); Santa
Barbara County Local Coastal Program, Adopted Findings for denial of A-4-93-154
(April 1, 1994) and associated administrative record; ARCO Oil and Gas Company
Request for Reconsideration; amendments to project description by applicant dated
October 23, 1994 and November 14, 1994.

EXHIBIT NO. 10
APPLICATION NO.
A-4-STB-93-154-E1

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EXECUTIVE SUMMARY

PROJECT AND SETTING

This appeal involves the proposal by the ARCO Oil & Gas Company to replace oil and gas facilities with two golf courses, appurtenant facilities and public access amenities on a 200 acre bluff top, ocean fronting site situated along the rural, agricultural Gaviota Coast in Santa Barbara County. The site is currently zoned AG-II. All of the soils are classified as either prime agricultural soil, or non-prime based upon the County and the Commission's soil classification. Most of the surrounding parcels are large agriculturally zoned parcels supporting a variety of farming activities, including cattle grazing, hay, and avocados on the steeper slopes.

Approximately half of the parcel has been used in the past for oil extraction and processing facilities, while the other half has remained in open space or used periodically for (dry farming and cattle grazing). The historic oil extraction and processing facilities remain largely in place. Oil production continued until 1993 and was suspended following County approval of the project. The oil and gas facilities remain operable. According to the State of California, Division of Oil and Gas Records, the site produced an average of 6,000 barrels of oil a month in 1993.

The project description has been amended by the applicant to include significant beneficial modifications to the access and habitat protection provisions originally approved by the County and to provide for the merger of the 23 parcels which make up the ±200 acre site. These modifications are responsive to the analysis which formed a part of the basis of the Commission's previous denial of the project.

BASIS OF APPEAL

The project was originally appealed by the Surfrider Foundation on the grounds that the project was inconsistent with the County's agricultural zoning requirements and agricultural protection policies, as well as the County's policies providing for the protection and provision of public coastal access, habitat protection and other issues.

STANDARD OF REVIEW

The standard of review for this appeal are the existing provisions of the County's certified Local Coastal Program, including the County's zoning requirements, and pertinent resource protection policies. Additionally, because the proposed golf course would be situated between the first road paralleling the sea and the shoreline, the project must conform with the public access and recreation policies of the Coastal Act. (Public Resources Code Section 30603 and 30604(c)).

LCP POLICIES AND ORDINANCES

The County Local Program designates the site as AG II, a designation used to protect agricultural lands and promote agricultural uses. Permitted uses in the AG II zone district are low intensity and predominantly agriculturally related. Non-agricultural uses are conditionally allowed under the major conditional use permit provision in the AG-II zone, but must not adversely affect neighboring or on site agricultural use or require the expansion of urban services.

County zoning does, however, include a separate ordinance which allows for a variety of uses, including golf courses, to be located in any zone district provided the appropriate findings can be made. This Major Conditional Use procedure was the one used by the County to approve this project. In order to approve this project, the findings which must be made include 1) the project is not inconsistent with the purpose of the zone district in which it will be located and 2) the project is consistent with all applicable LCP provisions.

HISTORY OF THE COMMISSION'S REVIEW OF THE PROJECT

This appeal was filed on September 17, 1993. The public hearing was opened and continued at the October 13, 1993 Commission meeting to allow adequate time to review the file materials and prepare a staff report and recommendation regarding the question of whether any substantial issues were raised by the appeal. Substantial Issue was determined by the Commission at its November 17, 1993 meeting, and the Commission took jurisdiction over the project. The de novo public hearing was continued to the next available Commission meeting. The hearing was subsequently continued at the request of the applicant to allow additional time to respond to the Commission staff's report and recommendation. On April 13, 1994, the Commission conducted a public hearing on the appeal and voted to deny the project. Subsequently, the applicant requested a reconsideration of the Commission's action, and the Commission, on July 13, 1994, voted to reconsider their previous denial. The item was re-filed and scheduled for the November hearing in San Diego. On October 14, 1994, the applicant formally amended the project to include a variety of access and habitat improvements and dedications. The project now before the Commission, therefore, includes the proposed access and habitat improvements and the findings are based on this amended version. Prior to the November 16, 1994 hearing, the applicant also amended the project description to include the merger of the twenty three lot, including 21 Naples lots, which make up the ±200 acre site. The applicant further indicated that a deed restriction to preclude future subdivision of the merged parcel would be an acceptable condition.

I. APPEAL HEARING PROCEDURES

Section 30603 (b) and 30604(c) of the Coastal Act and California Administrative Code Section 13115 provide the standard of review for projects which have been appealed and found to present a substantial issue. Section 30603(b) and 30604(c) requires consistency with the certified Local Coastal

Program (LCP), and also requires that any development located between the first public road and the sea or the shoreline of any body of water located within the Coastal Zone must conform with the public access and recreation policies of the Coastal Act.

II. STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, adopt the following resolution:

Approval with Conditions.

The Commission hereby grants a permit for the proposed development on the grounds that the development will be in conformity with the provisions of the certified Santa Barbara County Local Coastal Program, is in conformance with the public access policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

MOTION

I move that the Commission approve the revised findings for the project (A-4-STB-93-154) as approved by the County of Santa Barbara, and as subsequently amended by the applicant on October 14, 1994 and November 14, 1994.

III. CONDITIONS

Standard Conditions. See Exhibit 7.

Special Conditions.

1. The project shall be subject to all conditions attached to County approval (91-CP-085) except as specifically modified by subsequent amendments to the project description. Any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Permit is required.
2. The applicant shall submit a deed restriction to the Executive Director for review and approval which irrevocably precludes the re-subdivision of the lots merged as proposed in the amended project description (amendment dated November 14, 1994). The approved deed restriction shall be recorded within sixty days of recordation of the lot merger.

The document shall run with the land, binding all successors and assigns and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION

The project as approved and conditioned by the County will be located on ± 101 acres of a 202 acre bluff-top site on the Gaviota Coast approximately 3 miles west of the community of Goleta. The project consists of two golf courses; an 18-hole public course encompassing 72.4 acres; and a 9-hole course on 8 acres. The 18-hole course would have a concrete cart path servicing the entire course. An existing service road located south of the railroad right-of way bisecting the property, in addition six, short bridges would provide access throughout the parcel (Exhibit 1).

The two golf courses would be supported by the following appurtenant facilities: driving range (9.5 acres), club house, including pro shop and grill, administrative offices, meeting rooms and restrooms (9,290 square feet), a cart barn (8,012 square feet), maintenance building (7,974 square feet), service building (800 square feet), turf farm (± 3 acres), half-way house, including snack bar (700 square feet), a 275 car parking area (6.8 acres), and several restrooms and shelters along the course routes. The maximum height of any building is 22 feet above finished grade. The layout of the golf courses would require crossing the Southern Pacific Railroad right-of-way three times; this will be accomplished using an existing wooden bridge, and two new tunnel crossings. All structural developments will be set back a minimum of 55 feet from the bluff edge, and except for public access trails, all other non-structural development (greens, fairways, tee-boxes), a minimum of 30 feet from the bluff edge. The entire parcel will be fenced to control access to and from the property.

The project includes a landscaping plan (in addition to installation of turf) which involves the removal of most non-native species of trees and extensive replanting with native species. All facilities are set back the required 100 feet distance from environmentally sensitive habitats, including the one stream on the east side of the property (Eagle Creek), a drainage swale on the west side of the property (Tomate Canyon), and a vernal pool.

The project requires 154,470 cubic yards of cut and and fill, over approximately 57% of the site; the cut and fill is to be balanced on site. The maximum elevation changes will occur near hole number seven and will increase the existing elevation from 50 to 75 feet; this change in elevation is the result of filling in an erosional feature on the southern side of the Southern Pacific Railroad line to accommodate the fairway for hole number seven.

In the intervening period since the project was approved by the County, the applicant has amended their proposal to include the improvement, maintenance and operation of substantial public access facilities and a program to protect

and monitor a seal haulout and rookery located on the western portion of the site. The applicant has also amended the application to provide for the merger of the twenty-three individual parcels that comprise the site.

The applicant has indicated that reclaimed water purchased from the Goleta Water District will be used to irrigate the golf courses, turf farm and for all other uses where non-potable water is acceptable. The golf courses will require ± 221 acre feet of irrigation water annually. This water will be delivered to the site via a $\pm 5,200$ foot extension of an 8 inch water line from Goleta. Potable water to serve the clubhouse needs will, according to the applicant, be provided by the Goleta Water District.

Construction of the golf facilities will require the removal of the remaining, substantial oil and gas facilities which include five single family homes, 19 other buildings, 23 wells, two large tanks and miles of oil and gas pipelines. These oil and gas production facilities are located mainly on a portion of the site south of the Southern Pacific Railroad tracks. The removal of this development and any necessary clean-up will be addressed in a separate locally issued coastal permit to be processed by the County's energy division.

The golf course will be operated as a public facility from 350 to 360 days per year, and is expected to accommodate 50,000 to 60,000 rounds of golf per year on the 18-hole course, and 20,000 rounds on the 9-hole course. The County and the amended project require that conversion of any portion of the golf facilities to private or restricted use would entail additional discretionary review and approval. Approximately 32 full-time employees will be required for golf course operation and maintenance.

B. PROJECT SITE HISTORY

The project site has been in continuous use for oil and gas production for the last ± 50 years. The principal oil and gas facilities are located on the south half of the project site, (seaward of the Southern Pacific Railroad lines). Most of these facilities remain on-site and operable. In the last decade a limited amount of cattle grazing has been undertaken on a seasonal basis on the property, principally as a grass/weed control measure and in conjunction with neighboring agricultural uses but has been discontinued. The site has never been a "stand alone" farm. Aerial photographs and field observation indicate that its occasional use for dry farming (hay) and grazing has always been as an adjunct to the neighboring ranch.

The site was originally given a Coastal Dependent Industry (M-CD) land use and zoning designation in the Santa Barbara County LCP, which was certified in 1982. This designation was largely based upon the existing industrial facilities on the site, and the long-standing use for oil and gas production dating from the mid-1940's. In 1991, however, the site was redesignated and re-zoned Agriculture II (AG-II) at the County's request as part of major Amendment 3-90 which consolidated oil and gas facilities sites to other

locations within the South Coast Consolidation Planning Area. This redesignation and re-zone to Agriculture was precipitated by the County's desire to consolidate the energy facilities along the Gaviota coast into two sites over time.

The County considered several possible land use designations, including, Recreation (REC), Rural Residential (RR), Resort/Visitor Serving Commercial (C-V), and Resource Management (RES). The EIR prepared for the energy facilities consolidation amendments identified Resource Management as the designation most protective of coastal resources, but also identified numerous trade-offs between the various potential land-use/zoning designations. In an attempt to balance these trade-offs, the EIR proposed a split between AG-II and REC which would provide a balance between these uses. Ultimately, the County choose to designate/rezone the entire parcel as AG-II, and the Commission certified the designation as consistent with the agricultural protection policies of the Coastal Act.

At the time the Commission considered Amendment 3-90, the ARCO representatives indicated to the Commission that it was their intention to develop the site, once its oil and gas operations had ceased, as a golf course, and expressed an interest in having the property designated Recreation (REC) to accommodate such a use. The EIR for the 1990 re-zone and LCP amendment had recommended a split Recreation/Agriculture re-zone for the subject parcel. The County, however, did not support the Recreational designation at that time because of the wide range of recreational uses allowed under a Recreational designation, and the potentially greater impacts (e.g., traffic, etc.) which might be generated by a high intensity recreational use, such as a recreational vehicle park, under the County's existing LCP Land Use Plan Recreational designation.

At the time the Commission re-zoned the subject parcel from M-CD to Agriculture, the County did, however indicate that it was not their intent to preclude some future non-agricultural use of the site. Specifically, the County indicated that an evaluation of a future golf course project "should be based on its own merits at the time of proposal." It should be emphasized that the County itself recognized that a non-agricultural use of the site must be evaluated on a case by case basis for conformity with the applicable provision of the County's certified Local Coastal Program.

At the time the Commission considered Amendment 3-90, no specific proposal for a golf course had been developed that would allow either the County or the Commission to evaluate the specific relative impacts of a golf course versus agricultural uses, or other recreational uses. However, in certifying the Agricultural land-use and zoning designation for the property the Commission acknowledged the intent of ARCO to develop a golf facility on the site, and specifically indicated that its action to redesignate the land as Agriculture was not meant to preclude the possible future use of the site for a golf facility as described in the following excerpt from the findings prepared for the amendment.

"It should be noted that ARCO has discussed with the County a proposal for the construction of a golf course as part of the Dos Pueblos site. At this time, that proposal has been discussed in concept only and no specific detailed golf course project has been submitted to the County for review. The County's decision to change the land use designation to Agriculture II, versus the split designation of Recreation/Agriculture II, is not intended to bias any future specific golf course project which ARCO may propose for this site, even if it requires a change in the land use designation. Rather, the County believed it was premature, at this time, to make the decision that a Recreation land use designation was the most appropriate designation for the site without having the specific merits of the proposed golf course project and its potential impacts to the site to fully evaluate. It should also be noted that a golf course is a conditionally permitted use in the County's LCP in the AG-II zone ..."

C. LOCAL GOVERNMENT ACTION

In August 17, 1993, the County Board of Supervisors issued a Conditional Use Permit (#93-CP-85) for the two 18 and 9 hole golf courses and appurtenant facilities as described above. The Conditional Use Permit contained a number of Special Conditions. Those relating to the issues raised in this appeal include: (a) a Biological Enhancement Plan to address specific environmental resources on the site (e.g., Harbor seals, Monarch Butterfly, vernal pools, and riparian tree species); (b) Restricted Access Implementation Plan for the protection of a Harbor seal haul-out site adjacent to the project site; (c) an Access Plan that requires offers-to-dedicate both lateral and vertical access trails and initial trail improvements; (d) a Landscaping Plan to replace loss of existing trees; and (e) an Integrated Pest Management Plan to control the use of pesticides and herbicides. (Please see Exhibit 2, County Permit conditions.)

D. LCP PROCEDURAL REQUIREMENTS

The County has essentially three options for permitting a major golf course proposal on an agriculturally zoned parcel: (1) rezone the parcel from AG-II to Recreation (or create a new zone to accommodate golf courses or other similar recreational uses) and, following certification of the rezone amendment, process an application for a Coastal Development Permit; (2) modify the existing permitting requirements under the Major Conditional Use Permit process in (Sec. 35.69.4 of the certified LCP) to remove some of the procedural requirements, and following certification of these amendments, process an application for a Coastal Development Permit; or (3) retain the present AG-II land use and zone designation, and process an application for a Coastal Development Permit for the proposed golf course using the Major Conditional Use Permit process which provides for the consideration of a variety of uses in all zone districts (Sec. 35.172.5), and make all of the findings required under this provision.

In this case, the County chose to process the application according to scenario three described in the previous paragraph, rather than rezoning the parcel to either an existing, or newly created non-agricultural zone designation, or modifying current permitting requirements by Amendment to the LCP.

The County processed the application for a Major Conditional Use Permit under the provisions of Section 35-172.5.2 of the County's LCP Zoning Ordinance. Section 35-172.5 of the County's LCP provides for a variety of institutional, public service and recreational uses that may be permitted in any zone district subject to a use permit.

The following uses may be permitted in any district that they are not otherwise permitted, with a Major Conditional Use Permit:

- a. Airstrip - temporary
- b. Animals, use of property for animals different in kind or greater in number than otherwise permitted in this Article
- c. Cemetery
- d. Church
- e. Drive-through facilities for a use otherwise permitted in the zone district subject to the provisions of Sec. 35-172.11
- f. Educational facilities, including nursery schools and day nurseries
- g. Electrical substations subject to the district requirements of the Public Utilities District, Sec. 35.88
- h. Electrical transmission lines, except in areas with the View Corridor Overlay subject to the provisions of Sec. 35-172.11
- i. Eleemosynary and philanthropic institutions (except when human beings are housed under restraint)
- j. Extraction, processing, storage, bottling, selling and shipping of natural waters.
- k. Fairgrounds
- l. Golf courses and driving ranges
- m. Helistops
- n. Master television antennae system subject to the provisions of Sec. 35-172.11
- o. Mining, extraction and quarrying of natural resources, except gas, oil and other hydrocarbons subject to the provisions of Sec. 35-177 (Reclamation Plans)
- p. Polo fields and playing fields for outdoor sports
- q. Rodeo
- r. Sea walls, revetments, groins and other shoreline structures subject to the provisions of Sec. 35-172.11
- s. Stable, commercial (including riding and boarding)

Most zoning ordinances contain comparable provisions to maximize opportunities for siting these types of uses. The fact that they are allowed for consideration as a use in all zone districts does not, however, mean that they are exempt from the requirements of the particular zone district in which a

project proponent may wish to locate a development, or that all of the uses are appropriate in all zone districts. As an example, a cemetery may be a completely compatible use in a rural residential area on a large parcel of land, but would not be appropriate on a half-city block site in a downtown location.

Among the enumerated findings required by Section 35.172.8 are two which are critical to a review of the proposed golf facilities in this location:

6. That the project is in conformance with the applicable provisions and policies of this Article [LCP Zoning & Implementation Ordinance/ and the Coastal Land Use Plan].

9. That the proposed use is not inconsistent with the intent of the zone district.

As detailed in the following section, the Commission finds that the proposed project, as approved by the County and subsequently amended by the applicant, is consistent with these requirements. In addition, the County has adopted findings which address the remaining items found in Sec. 35.172.8 as well as other provisions of the LCP not specifically discussed in these findings. To the extent that the County's findings and conditions do not conflict with the Commission's, they are adopted as further support for the Commission's decision. (Please see Exhibit 9)

E. COASTAL AGRICULTURE

1. INTRODUCTION

The project site is located between Highway 101 and the sea on the eastern end of the Gaviota coast approximately ± 2400 feet from the western/urban rural boundary along the south coast of Santa Barbara beyond the unincorporated town of Goleta. The site is comprised of twenty-three lots which range in size from 1/4th acre to 78 acres. For the past ± 50 years, the ± 200 acre site has been used for gas and oil production. Most of the structures and wells associated with this use remain, but will be removed to accommodate the project. The Southern Pacific Railroad bisects the site from east to west.

Soils on the site include ± 60 acres of Class II Diablo Clay as well as non-prime agricultural soil. The Class II prime soils, however, occur in 16 disjunct patches located on various individual parcels and separated by drainage swales, slopes, environmentally sensitive habitats, railroad tracks and oil facilities. These isolated patches of prime soil vary in size from ± 17 acres to ± 8000 square feet with most areas under 2 acres.

Although there has been past agricultural use of portions of the site (dry farming and cattle grazing), it has been very sporadic and conducted in conjunction with the larger, on-going farming operation on the neighboring

Rancho Dos Pueblos. (Please see Exhibit 3 for past agricultural history of the site). As an added constraint, this site, unlike neighboring agricultural operations, does not have any on-site water for irrigation.

Land uses in the vicinity of the project site include grazing lands to the north and west and orchards (avocado and citrus) approximately 3/4 mile to the northwest, inland of Highway 101. An undeveloped 40 acre rural residential parcel subdivision (40 ac. minimum lot size) bounds the site on the east. The Hyatt Hotel site lies further to the east towards Goleta and marks the urban/rural boundary in this area. The undeveloped Naples area occupies a portion of the site and extends west and north of the site.

2. LCP SUBSTANTIVE REQUIREMENTS

In order to find that the proposed project is consistent with the relevant agriculture policies and implementing ordinances of the LCP, the following standards must be met:

- 1) The project is not inconsistent with the intent of the underlying Zone District (Section 35.172.8.9, Zoning Ordinance).
- 2) The project is in conformance with the applicable provisions of the LCP (policies and zoning) (Section 35.172.8.6, Zoning Ordinance).

The following analysis discusses why the proposed project can be found to be not inconsistent with the intent of the Agricultural Zone District in which it will be located and with the applicable agricultural protection policies and ordinances of the certified LCP.

THE PROJECT IS "NOT INCONSISTENT" WITH THE PURPOSE OF THE AG II ZONE DISTRICT

The underlying zone district of the project parcels is AG II. The purpose of the zone district, as stated in the ordinance, is two-fold.

- 1) To establish agricultural use for large parcels with prime and non-prime land.
- 2) To preserve prime and non-prime soils for long term agricultural use.

The first purpose of the AG II District as stated in the ordinance is to establish agricultural uses on large parcels which contain prime and non-prime agricultural soils. ARCO has proposed to merge the 23 lots which comprise the ±200 acre site. The proposed merger of the 23 lots on the site into two parcels of roughly 100 acres each will serve to support the underlying intent of the AG II zone by consolidating small holdings into parcels compatible with

an agricultural use. At present the developability of the 23 lots is uncertain. Without the merger, according to the certified LCP, if each of these lots could be developed with a single-family home, a residential density for the site of one dwelling unit per 10 acres could result. The proposed non-agricultural use is not inconsistent with the intent of the ordinance to establish agricultural uses on the large holdings more typical of the Gaviota Coast.

The Commission further notes that the establishment of an agricultural use or uses would be very difficult because of existing conditions such as the scattered distribution of prime soils, lack of water for irrigation and the inherent conflicts due to the permitted residential density if each parcel was developed with a single family home.

The proposed project is also not inconsistent with the second goal of the AG II District, which is to preserve prime and non-prime soils for long term agricultural use. Golf courses, unlike most non-agricultural development, result in minimal site coverage (in this case only 4 1/2 acres of the land will be built on or paved*) and need good soil to operate. The applicant indicates that all prime soils will be stockpiled during the initial grading process. These soils will be amended to improve fertility and re-distributed on the site to serve as the growing medium for the course turf. Because healthy turf is essential to a golf course, the soils will be maintained in proper condition and irrigated. Furthermore, a pest management plan will be prepared and implemented to assure the proper use of pesticides, herbicides and fertilizers. Thus, although the use will not be agricultural, the agricultural soils on the site, with the exception of the minimal areas covered by buildings and paving will be retained and possibly enhanced consistent with potential agricultural uses.

In the alternative, the site could be returned to oil and gas production without any additional permits or potentially developed with twenty-three single family homes and attendant road improvements. Under either of these scenarios, greater site coverage would occur and there would be no inducement to maintain or improve the existing agricultural soils found on the site. The proposed project is, therefore, not inconsistent with the goal to preserve prime and non-prime soils.

* This coverage includes all buildings, parking lot, access trails and cartpaths.

THE PROJECT IS IN CONFORMANCE
WITH ALL APPLICABLE LCP PROVISIONS

LUP POLICY 8-2 This policy is applicable to the project because it directly addresses the issue of conversion of land designated for agricultural use posed by the development.

POLICY 8-2: If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area, and shall be consistent with Section 30241 and 30242 of the Coastal Act.

This policy allows the conversion of agricultural land if the following three criteria can be met:

- 1) The replacement use must be a priority use under the Coastal Act.
- 2) The conversion must not conflict with nearby agricultural uses in the area.
- 3) The conversion must meet the criteria of PRC 30241 (prime soils) and 30242 (non-prime soils)

THE PROJECT PROVIDES FOR TWO COASTAL ACT PRIORITY USES

According to PRC Section 30001.5(c), and 30210, public access to and along the shoreline is one of the highest priorities of the Coastal Act. Likewise, the preservation and protection of environmentally sensitive habitats receives a high ranking (PRC 30240). Although the protection of coastal agricultural lands is an important Coastal Act goal as evidenced by the strong resource protection policies of PRC Sections 30241 and 30242, this land use may, in this case, according to the LCP, be displaced by public access to the shoreline or the need to preserve an environmentally sensitive habitat. As discussed in detail in the respective findings on Environmentally Sensitive Habitats and Public Access, the project as amended by the applicant, includes significant access and habitat protection components of a magnitude sufficient to allow for the development of the proposed non-agricultural use on half of the site.

THERE ARE NO CONFLICTS WITH
CONTIGUOUS AGRICULTURAL OPERATIONS

To the east, the project site borders the Eagle Canyon Ranch, which has an LUP designation of rural residential with 40-acre minimum parcel sizes. The closest operating ranch is within 1/4 mile to the west of the project site. The Commission finds that because the maintenance activities proposed in

connection with the golf course are similar to those of agriculture, no operational conflicts will occur with respect to the neighboring cattle operation west of the site.

An important issue raised by the application is whether approval of the project will create an adverse precedent or threat to agricultural lands on the Gaviota coast. The Commission finds that, as conditioned, this particular golf course project will create no such adverse precedent or threat because no site on the Gaviota coast shares all the same characteristics of the applicant's property.

The site has been an operating oil field for the past 50 years. It was rezoned from Coastal Dependent Industry to AG-II only recently, with the understanding that a golf course use was being proposed for the property. The property contains 23 Naples lots totalling 65 acres, or approximately 1/3 of the project site, the development potential of which would be extinguished by the project. The project would replace the existing oil and gas facilities with a public golf course, substantial public beach access and a coastal trail system. The Class II Diablo Clay soils on site are located in small isolated pockets, separated by site features such as railroad tracks, vegetated drainages, environmentally sensitive habitat areas and grassland. The property has never been a "stand alone" agricultural operation, has no commercial agricultural irrigation water supply, and would utilize reclaimed water under a County condition which prohibits any water service from the reclaimed water line to any parcel other than the project site. The Commission further notes that the project is located at the extreme southernmost end of the Gaviota Coast, within approximately 2000 feet of a Commission-approved resort hotel, the Hyatt, and within 1/3 mile of the urban/rural boundary.

THE PROJECT IS CONSISTENT WITH THE
STANDARDS OF PRC 30241 AND 30242

The proposed use must, however, also comply with the standards found in PRC Sections 30241 and 30242 if these are found applicable to the project. These criteria are as follows:

Section 30241.

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242.

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

PRC Code 30241 requires that the maximum amount of prime agricultural land shall be maintained in agricultural production. The purpose of this policy is clearly to preserve and maintain valuable, prime agricultural holdings in order to avoid the wholesale loss of an area's agricultural economy through attrition. The statute does not require that the holding be continuously in production, but must have the potential to be feasibly farmed. While prime soils are certainly a factor in making the determination regarding the farmability of agricultural land, other, site specific criteria must also be considered.

In the case of the proposed project, the ±200 a.c. site does contain ±60 acres of prime Diablo Clay soils. An initial analysis would indicate that a 200 acre site which is 30% prime soil would generally be of an adequate size to be

productively farmed if the owner chose to do so. This initial analysis is supported by the fact that land adjacent to the ARCO site on the west end, which contains similar soils, is in agricultural production.

Although concerns were expressed by project opponents that the land was farmable, a closer look at the facts of the subject site distinguishes its agricultural potential from that of neighboring ranches. The prime soils on this site are located in sixteen separate areas. The largest single aggregation of prime soil is ±17 acres with most patches being under ±2 acres in size. In addition there is no on site water for irrigation. Given these facts, it is apparent that the site for the proposed golf course does not have the potential to be farmed commercially and thus the requirements of PRC Section 30241 do not apply to this project.

PRC Section 30242 protects non-prime agricultural land by limiting the conversion of such lands and requiring that any permitted conversions not interfere with surrounding agricultural uses. Applying the same analysis as previously set forth in the discussion regarding PRC 30241, it is apparent that the lot and development uncertainties inherent in this site could result in parcels that are simply too small to be farmed.

The Commission notes, however, that the proposed project will not adversely affect neighboring agricultural uses and may provide some modest benefits. Golf courses are more compatible with agriculture than many other types of non-agricultural land uses because they are low in intensity, need minimal site coverage and require proper soil maintenance using practices similar to those used by commercial ranchers and growers. This particular golf course may provide some specific benefits to agriculture in the area because its development and lot merger will preclude the development of a twenty-three unit residential enclave adjacent to existing agricultural uses. As conditioned to require a deed restriction to preclude future subdivision and thus ensure that the benefit of the merger will be retained, the project is consistent with the LUP requirement to avoid adverse impacts on surrounding agricultural land. The project will also free up the rights to 40 acre feet of water for the neighboring Rancho dos Pueblo. Currently, the site is entitled to a maximum of 40 acre feet of water per year from this adjoining ranch. According to information submitted by the applicant, this entitlement cannot be used for the project, but can only be used to support the industrial development which will be replaced. (Please see Exhibit 4 letter of Nov. 2, 1994 from William D. Herz to David Fainer). Presumably, this water will then be available to support agricultural activities elsewhere on the Gaviota coast. Finally, it should be noted that development of the project will not displace an existing, agricultural use. The project will, however, result in the conversion of an industrial use, oil and gas production to a recreational land use.

Therefore, in conclusion, the proposed project is consistent with County requirements to protect land designated for Agriculture because the conversion for access and habitat protection is permitted by the LCP, the lack of water,

the existing lot pattern coupled with the inability to unilaterally merge the parcels results in a lot size and development potential which would make farming very difficult and the project will not adversely affect surrounding agricultural lands.

F. PUBLIC ACCESS

1. INTRODUCTION

The proposed project will be located on a blufftop site with ± 1.5 miles of ocean frontage. This section of the coast is bounded on the landward side by sheer bluffs approximately 100' in height bordered by short, narrow pocket beaches. The closest existing public access points are ± 3 miles up-coast at El Capitan Beach State Park and ± 6 miles downcoast at Isla Vista.

A primary benefit of the project is a comprehensive access program which will give the public undisputed use of the shoreline and also provide a trail system. The access provided by this project is particularly important because, although the Gaviota Coast offers many areas suitable for public, coastal recreation, much of the shoreline is unavailable to the public due to large, private holdings between the highway and the sea. Most of the large holdings are fenced and beach-goers attempting to cross the sites are viewed as trespassers by the property owners. The project also ensures that all golf facilities will be open to the public. The golf courses are expected to provide approximately 80,000 rounds of golf per year, thus giving golfers as well as beach visitors, hikers and surfers access to and along the shoreline.

Even though the ARCO site has been fenced, there is however, historic evidence that surfing enthusiasts in particular have used this site to gain access to two, well known surf breaks known as "Naples" and "Naples Reef." The appellants of this project have provided copies of the 1963 Surfers Guide to Southern California as evidence of the public's long term use of trails across the site to gain access to these surfing areas. In addition to surfers, there is also evidence of the use of the trails by hikers and beach visitors.

Trails across the parcel are visible in the aerial photos taken in April of 1986 and March of 1987 and on file in the Commission's Ventura office. The use of these surfing destinations also was observed by County staff during site visits conducted as part of the County's review of the project. Further evidence of historic and current use of the site to gain access to the adjoining beaches is indicated by the existence of worn trails to the beaches observed by the Commission staff during its analysis of the appeal. The County's administrative record for this project also includes testimony on the part of the appellants of the use of the property to gain access to the beaches along this section of the coast.

In opposition to the appellants contention that historic public access has, and continues to occur on the site, the applicant has offered affidavits from oil company personnel for the period from the mid-1940's to the present which

indicate that a continuous and effective effort has been made over the years to exclude trespassers from the site. Evidence supplied by the applicant also shows that the site has been fenced and signed for "No Trespassing" during this same fifty year period.

It is thus unknown whether the historic public use has been sufficient to override the property owner's efforts to exclude the public, therefore giving rise to a prescriptive right of access or, conversely, if the owner's security program has effectively stymied the perfection of such a right. In any event, the Commission is not required to resolve this issue because the project description has been amended to provide extensive public access through the site to and along the shoreline. The access component provides for physical improvements, operation and maintenance as described in the following section.

2. PROPOSED REVISED ACCESS PROGRAM

The original access provisions approved by the County as part of the Conditional Use permit for this project have been modified by the applicant to address the access issues identified in the original staff recommendation for denial of the project. The principal change in the proposed access program is the applicant's offer to construct, operate and maintain the public accessways on a permanent basis, concurrently with the operation of the golf facilities.

The project now includes a significant access component in addition to the requirements contained in the County's Conditional Use Permit. The following items (1-5) constitute the applicant's proposal for the establishment and maintenance of public access on the site.

1. Agree to Improve, Operate and Maintain Public Access Facilities

Prior to the issuance of a coastal development permit, the applicant shall enter into an agreement with the Coastal Commission and the County of Santa Barbara, or other public or non-profit entity acceptable to the Executive Director, wherein the applicant agrees to irrevocably offer to dedicate, improve, operate and maintain all public access features of the development. The agreement shall be in the form and content acceptable to the Executive Director and shall include the following provisions:

- a. Prior to issuance of the coastal development permit, the applicant shall comply with all requirements for dedication of public accessways contained within conditions 7, 8 and 16 of the County of Santa Barbara's conditional use permit No. 91-CP-085, approved August 17, 1993. All offers of dedication required therein shall be in the form of grants or access easements in favor of the People of the State of California and shall include legal descriptions of both the entire parcel and the easement areas.

b. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, detailed plans for construction of the public access improvements required by conditions 7, 8, and 16 of the County Santa Barbara conditional use permit No. 91-CP-085, approved August 17, 1993. Any deviation from the Executive Director-approved plans shall be reported to the Executive Director. Any changes that the Executive Director determines to be substantial shall require an amendment to the coastal development permit.

c. The applicant shall be financially responsible for completion and construction of all public access improvements required by conditions 7, 8, and 16 of the County of Santa Barbara conditional use permit No. 91-CP-085, approved August 17, 1993.

d. Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, in consultation with the California Department of Fish and Game, and the National Marine Fisheries Service, a Restricted Access Implementation Plan for the purpose of ensuring protection of the on-site harbor seal haul-out. The plan shall include the following provisions:

1. During the seal pupping/breeding season (February 1 to May 31):
(a) access to the beach at the vertical coastal access point at Eagle Canyon shall be prohibited, and (b) access eastward along the beach from the vertical coastal access point west of Tomate Canyon shall be prohibited.
2. Locking gates shall be installed at the vertical access trails to implement any restrictions on access to the beach under the Restricted Access Implementation Plan.
3. No dogs shall be allowed on the vertical access trails or on the beach.
4. Signs informing users of access restrictions and relevant Marine Mammal Protection requirements shall be posted at the golf course parking lot, at the bridge stairway to the coastal access trail, at the terminus of the trail at Eagle Canyon, at the terminus of the vertical access trail west of Tomate Canyon and, if allowable, on the beach bluff east and west of the haul-out area. Interpretive signing shall also be provided at these locations. The content of the interpretive signs shall be subject to the review and approval of the Executive Director.

Signs informing users of alternative access locations during restricted access periods shall be posted at the golf course parking lot and at the bridge stairway to the lateral access. The content of such signs shall be subject to the review and approval of the Executive Director.

5. The Restricted Access Implementation Plan shall include a monitoring component (such as provision of an on-site monitor/course steward) to assure that the above restrictions are enforced and that the seals are not being harassed.
 6. The Restricted Access Implementation Plan shall include provisions for the harbor seal haul-out to be monitored by the National Marine Fisheries Service (NMFS) and/or the California Department of Fish and Game (DFG) for the purpose of determining the effect of use of the public access features of the development on the seals. If NMFS or DFG determines that the harbor seals are being detrimentally affected by users of the vertical accessways, the applicant shall see an emergency coastal development permit from the California Coastal Commission to further regulate use of the vertical accessways to avoid jeopardizing the harbor sea. Approval of such additional access regulation shall be consistent with all applicable provisions of the certified County of Santa Barbara Local Coastal Program, the California Coastal Act, and the Federal Marine Mammal Protection Act.
- e. Construction of all public access features required by conditions 7, 8, and 16 of County of Santa Barbara conditional use permit No. 91-CP-085, approved August 17, 1993, shall be completed prior to issuance of an occupancy permit from the County of Santa Barbara, except that completion of lateral trail improvements west of the Tomate Canyon vertical accessway may be deferred until final alignment of the Coastal Trail has been established by the County of Santa Barbara.
- f. The applicant shall provide for the permanent operation and maintenance of all public access improvements required under conditions 7, 8 and 16 of County of Santa Barbara conditional use permit No. 91-CP-085, approved August 17, 1993, including the on-site public access monitor/course steward required to enforce access regulations of the Restricted Access Implementation Plan required above.

The agreement shall include a legal description of the affected property and shall be recorded free of prior liens and any other encumbrances which may affect the terms of the agreement. The agreement shall run with the land for the benefit of the People of the State of California, binding all successors and assignees for the life of the golf facility approved in the coastal development permit.

2. Compliance with County of Santa Barbara's Conditions of Approval

Except as explicitly modified by the terms of the coastal development permit, all development shall comply with the conditions of the County of Santa Barbara conditional use permit No. 91-CP-085, approved August 17, 1993. Any deviations or conflicts shall be reviewed by the Executive Director of the Commission to determine whether an amendment to the coastal development is required as a result.

3. Public Rights

By acceptance of a coastal development permit, the applicant acknowledges, on behalf of itself and its successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or be construed to interfere with any public prescriptive or public trust rights that may exist on the property.

4. Assumption of Risk

Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and of content acceptable to the Executive Director, which shall provide that: (a) the applicant understand that the site may be subject to extraordinary hazard from storm waves, and (b) the applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

5. Public Availability of Facilities

Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which provides: (1) that all recreational golf facilities, including the clubhouse, will be open to the general public; (2) that, except for occasional tournament play, no club arrangement that would restrict use of the golf course by the general public shall be permitted; and (3) that conversion of any portion of the facilities to private or members-only use, or the implementation of any program to allow extended or exclusive use or occupancy of the facilities by an individual or limited group or segment of the public is specifically not authorized and would require an amendment to the coastal development permit or a new permit and/or amendment to the certified LCP in order to be effective. The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The deed restriction shall run with the land in favor of the People of the State of California, binding all successors and assigns, for the life of the facility approved in the coastal development permits.

3. LCP AND COASTAL ACT SUBSTANTIVE REQUIREMENTS

The standard of review for projects, such as this one, located between the first public road and the sea, is in conformance with both the certified LCP and the public access and recreation policies of the Coastal Act. For the reasons detailed in the following sections, the Commission finds that the project, as amended by the applicant on October 14, 1994, is consistent with the public access and recreation requirements of both the Certified Santa Barbara County LCP and the relevant access policies of the Coastal Act.

ACCESS PROVISIONS ARE CONSISTENT WITH THE POLICIES AND IMPLEMENTING ORDINANCES OF THE LCP

The Certified LCP contains the following access policies and implementing ordinance applicable to the ARCO project:

Policy 7-1 stipulates that:

The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. At a minimum, County actions shall include:

- a) Initiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds.
- b) Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the County's ability to assume liability and maintenance costs.
- c) Actively seeking other public or private agencies to accept offers of dedications, having them assume liability and maintenance responsibilities, and allowing such agencies to initiate legal action to pursue beach access.

Policy 7-2 stipulates that:

For all development* between the first public road and the ocean granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a) Another more suitable public access corridor is available or proposed by the Land Use Plan within a reasonable distance of the site measured along the shoreline, or
- b) Access at the site would result in unmitigatable adverse impacts on areas designed as "Habitat Areas" by the Land Use Plan, or

- c) Findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or
- d) The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. In no case, however, shall development interfere with the public's right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed.

The County may also require the applicant to improve the access corridor and provide bike racks, signs, parking, etc.

Policy 7-3 stipulates, in part, that:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated.

Policy 7-25 stipulates that:

Easements for [coastal] trails shall be required as a condition of project approval for that portion of the trail crossing the parcel upon which the project is proposed.

Section 35-63 of the County's LCP Zoning Ordinance stipulates that:

Easements for trails shown on the Santa Barbara County Comprehensive Plan Parks, Recreation Trails (non-motorized) maps, shall be required as a condition of project approval for that portion of the trail crossing the lot upon which the project is proposed.

The Commission notes that LCP Policy 7.1(a) is not applicable to this project because, as discussed in the preceding paragraphs, it is unclear whether public prescriptive rights to access through the site exist due to conflicting evidence on the issue. In any event, only a court can establish prescriptive rights although the Commission does, if necessary, have an obligation under Section 30211 of the Coastal Act to ensure that new development does not interfere with whatever rights to access the public may have at a given site. Finally, it is not necessary to reach this issue because the amended project provides adequate public access.

The proposed project is consistent with LUP Policy 7.1(b) because it includes an offer to dedicate all designated public accessways (vertical trails, all beach/shoreline area between the mean high tide and the base of the bluffs, etc.) in favor of the people of California. This offer may be accepted on behalf of the people of the County of Santa Barbara or another governmental or

non-profit entity acceptable to the Executive Director. The proposal is consistent with LUP Policy 7.1(c) because it provides for liability and maintenance of the access by the applicant.

LUP Policy 7.2 requires that new shoreline development, with few exceptions, shall provide a vertical trail from the nearest public road to the sea. The policy further indicates that additional access improvements such as parking, signs and bike racks may also be required. The proposed project includes a two-pronged vertical access trail through the site. (Please see Exhibit 5). Given the site's remote location and lack of safe parking (Caltrans letter, Exhibit 6), additional access support improvements are necessary in this case. These improvements are provided and include a 15 space parking area, bike rack and horse tie-up. Signs directing the public to trails and parking are also proposed. All improvements will be constructed and open for public use prior to occupancy of the golf course. The project, therefore, as amended by the applicant is consistent with LUP policy 7.2.

Policy 7.3 requires that new development between the first public road and the sea offer lateral easements for public access for shoreline areas seaward of the base of a coastal bluff. As proposed, the project provides for an offer to dedicate the entire shoreline area of the site to the public and thus complies with this policy.

Both LUP Policy 7.25 and Section 3.5-63 of the Certified Implementation Plan require that new development provide easements for coastal trails identified in the LCP. The LCP shows a lateral trail alignment across this property. Although the draft "Santa Barbara Comprehensive Access Plan" indicates a continuous trail westward (up-coast) from the site, the County's access planning efforts have not yet established the specific preferred alignment of the Santa Barbara County Coastal Trail in this area. The proposed project, however, provides for the trail alignment through the site and for the connecting alignment up-coast to be constructed consistent with the future approved route. The Commission notes that the trail route has been reviewed and accepted by County Planning staff, Parks and Recreation staff, the Planning Commission and the Board of Supervisors.

ACCESS PROVISIONS ARE CONSISTENT WITH THE
ACCESS AND RECREATION POLICIES OF THE COASTAL ACT

A primary goal of the Coastal Act is to preserve and enhance access opportunities for the public to and along the California coast. In order to implement this goal, the statute provides several access and recreation policies, which are relevant to this project.

Coastal Act Section 30210.

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

Coastal Act Section 30211.

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a).

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section 30213.

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Coastal Act Section 30220.

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221.

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The proposed project is consistent with the foregoing policies because of the substantial commitment made to public use by the applicant's access component as previously indicated. The proposed project offers a comprehensive access program which will provide trail access through the length of the site, vertical access to the shoreline, dedication of the entire shoreline to the public and critical support facilities -- parking, signs, bike racks, etc., in addition to the recreation/access opportunities provided by the golf courses. These access improvements will be constructed, operated and maintained by the applicant. Finally, all access facilities will be completed and open for public use at the same time the golf course opens. The public will be able to use the access anytime the golf course is open, which is anticipated to be ±360 days out of the year. The proposed program maximizes the access opportunities on this site by ensuring that the public will be able to reach the beaches and surfing areas and view the entire shoreline from the trails and vista points.

The proposal is also consistent with the portion of PRC 30210 which requires that access be safe and that natural areas shall be protected from over-use. As proposed, the access component provides for a 15 space parking area adjacent to the clubhouse and bike racks and horse tie-ups. These improvements are necessary because the only available existing parking is located on the shoulder of Highway 101. Caltrans has indicated that this practice is not only illegal but dangerous. Although only a few cars park along the Highway currently, once the access on this site is opened, an increase in beachgoers can be expected and parking difficulties exacerbated. In order to avoid this potential problem and safely accommodate beachgoers, the parking area on site is an important component of the access program.

The site also contains a natural area which requires protection from over-use. Near the west end of the sites' shoreline there is a small beach used as a haul-out and rookery by harbor seals. Access to this area will be restricted and interpretive signs placed at appropriate points to advise the public of the nature of the habitat. The access facilities will also be supervised by the applicant to ensure that the seals are not disturbed. Under the Restricted Access Implementation Plan, if the National Marine Fisheries

Service and/or the Department of Fish and Game determines that the harbor seals are being detrimentally affected by users of the vertical accessways, the applicant may seek an emergency coastal development permit from the Commission to further regulate the use of the vertical accessways to avoid jeopardizing the harbor seal. As proposed, however, the Commission is not bound to issue an emergency permit and follow-up permits but, depending on the situation could require a regular coastal permit. In either event, such a request would require a further public hearing to address appropriate measures to regulate impacts to the haulout area, and would have to be consistent with the County's certified LCP, the Coastal Act, and Federal Marine Mammal Protection Act.

In conclusion, the Commission finds that the proposed access program complies with the relevant access and recreation policies of the Coastal Act and the LCP. Furthermore, because of the scope of the access improvements coupled with the extensive measures taken to protect environmentally sensitive habitats on the site, the project is also consistent with LUP policy 8-2 which permits non-agricultural development of land designated for agriculture if the conversion supports a coastal priority use. In this case, two Coastal Act priority uses are supported, substantial access opportunities and, as detailed in the Finding on Environmentally Sensitive Habitats, significant habitat protection.

G. DEVELOPMENT

1. INTRODUCTION

The existing oil and gas facility has historically obtained potable water from two sources — the Goleta Water District and the Dos Pueblos Ranch. The proposed golf course and turf farm will require ± 221 acre feet of water for irrigation per year and ± 5 acre feet of potable water to serve the Clubhouse needs. (An acre foot is equivalent to 326,000 gallons of water.) As there is no on-site water, the applicant plans to purchase reclaimed water from the Goleta Water District to serve the irrigation needs of the project. This water will be delivered via a new eight inch line to be constructed between the Sandpiper Golf Course and the site, a distance of \pm one mile. Potable water will also be supplied by the Goleta Water District. As of this date, the applicant has no binding commitment from the water district, but is confident that the necessary water will be obtained.

2. LCP SUBSTANTIVE REQUIREMENTS

The Certified LCP includes the following policies relevant to the proposal to extend a waterline to the site:

Coastal Act Section 30241(a):

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

POLICY 2-6: Prior to the issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

The first policy, PRC 30241(a), is directed at maintaining a stable urban boundary by limiting the extension of urban services into rural areas. A stable urban boundary is critical to the achievement of two important goals of the Coastal Act; 1) the avoidance of urban sprawl by the concentration of development in urban areas, and 2) the protection of agricultural areas by prohibiting the extension of urban services thus reducing the pressure to convert to urban uses.

LUP Policy 2-6 is more project specific in scope and is directed to simply ensure that any given development will have adequate public or private utility services to support it (water, sewer, etc.).

**THE PROPOSED PROJECT IS
CONSISTENT WITH LCP REQUIREMENTS**

Although the project requires the extension of an eight inch water line ± 2400 feet beyond the urban boundary, it is not inconsistent with PRC 30241(a) because it will not destabilize the existing boundary. The proposed line is sized only to serve the project and will carry only reclaimed water. Reclaimed water cannot be used to serve most types of urban development because it is not potable and is only suitable for irrigation. In this case, the water will be used to irrigate the golf course, turf farm and on-site small nursery. Reclaimed water could, as is the case in other areas, be used to irrigate agricultural crops, thus the extension of this particular "urban service", a reclaimed water line does not place pressure on agricultural lands, like those adjacent to the golf course site, to develop with more intensive land uses. In addition, the reclaimed water line could not be converted to carry potable water because that would violate the County permit and is not allowed by the water district. The proposed line extension is therefore consistent with the policy direction of PRC 30241(a) to preserve stable urban boundaries.

The project is also conditioned to be consistent with LUP policy 2-6. This policy requires that before a coastal permit will be issued to allow construction, the applicant must demonstrate that all required public or private utility services are available and adequate to serve the needs of the project. The County has conditioned their permit to this effect and will not issue the coastal permit until adequate services are demonstrated.

In conclusion, the Commission finds that the proposed project is consistent with the relevant development policies which require the preservation of stable urban boundaries and ensure that any new development will have adequate utility services.

H. ENVIRONMENTALLY SENSITIVE HABITATS

1. INTRODUCTION

The golf course site has been disturbed by oil and gas production over the years, but does include a variety of environmentally sensitive habitats (ESH). Two areas of riparian habitat are found on the site in Tomate Canyon and Eagle Canyon. Both of these canyons are designated ESH in the County LCP. Tomate Canyon is located in the western portion of the site and contains an intermittent stream and associated riparian vegetation. Eagle Canyon lies along the eastern boundary of the site and contains a blue line stream — Eagle Canyon Creek — and associated riparian habitat. A vernal pond is located in the south-eastern part of the property midway between the railroad tracks and the edge of the coastal bluff. The site also includes small, scattered patches of native bunch grass. Native grasslands are considered to be environmentally sensitive in this area because they are becoming increasingly rare.

The site also contains an environmentally sensitive marine habitat. A well established harbor seal haul-out and rookery (pupping area/nursery) is located on the beach, at the base of the steep bluffs on the west end of the site. This habitat qualifies as ESH because harbor seals have been designated as a "protected species" under the Federal Marine Mammal Act.

2. LCP AND COASTAL ACT SUBSTANTIVE REQUIREMENTS

The standard of review for this project is conformance with both the policies and ordinances of the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. For the reasons discussed in the following paragraphs, the Commission finds that the project, as conditioned by the County and subsequently amended by the applicant is consistent with both the County LCP and the public access and recreation policies of the Coastal Act.

PROJECT IS CONSISTENT WITH
THE POLICIES AND IMPLEMENTING
ORDINANCES OF THE LCP

The Santa Barbara County LCP includes numerous policies relevant to the protection of Environmentally Sensitive Habitats. Due to the number and length of the ESH policies, they are attached as Exhibit 8.

Riparian Areas

The ESH policies relevant to the protection of riparian habitat are PRC 30231, 30240, 2-11, 9-1, 9-9, 9-37, 9-38, 9-40, 9-41 and 9-42. The site contains two riparian areas -- Tomate Canyon, an intermittent drainage area, and Eagle Canyon Creek which is defined as a major stream in the certified LCP. The proposed project as conditioned by the County is consistent with the applicable policies because adequate buffers from the stream corridors are included in the project and the limited uses (public trails and drainage culverts) permitted within these corridors are consistent with LUP policy 9-38. The County has also required the preparation and implementation of an Integrated Pest Management Plan to ensure compliance with LUP policies which require that run-off from the proposed development and mosquito abatement practices will not degrade habitat values. Finally, all site grading near the stream corridors must be done using non-mechanical equipment and shall avoid disruption of the habitat. If any habitat is disturbed, the affected areas must be immediately replanted. A more detailed account of the mitigation measures required by the County are found on pages 30-37 of the County staff report for this project.

Wetlands

The site contains a vernal pool in the south-eastern corner of the site. Vernal pools are identified in the Certified LCP as wetlands and thus any development near them must observe the requirements of the LCP relevant to this habitat type.

The applicable LUP policies require that all development avoid vernal pools, that a 100' buffer area around the habitat be provided and that grass cutting shall be avoided in and immediately adjacent to these pools. These policies are specifically directed to the protection of vernal pools and are in addition to the more general policies which limit uses within habitat areas and prohibit run-off which could degrade environmentally sensitive natural features.

The project does not propose any development within the vernal pool and provides for a 100' buffer consistent with LUP policy 9-9. A cart path will, however, be located within the buffer as will a split-rail fence to discourage golfers from entering the habitat. These minimal uses are allowed by the terms of policy 9-9 which permits structures of a minor nature and those

needed to protect habitat values. The County has conditioned their permit to limit grass cutting in the vernal pond and buffer area. An integrated pest management plan is also required to ensure that run-off will not degrade the wetland. Finally, the project is consistent with LUP Policy 9-13 because neither vehicular or pedestrian access to the vernal pool will be allowed.

Native Grasslands

The site includes many small patches of native bunch grass. These patches are scattered throughout the entire site. According to a biological evaluation prepared for the project, the golf course development will displace several hundred square feet of native grassland. This vegetative community is considered to be an environmentally sensitive habitat according to the LCP because it is becoming increasingly rare in Santa Barbara County.

LUP policy 9-18 requires that new development shall be sited and designed to protect native grasslands. Although the project has been designed to avoid most of the native grassland, it will result in the loss of several hundred square feet of this habitat. Mitigation measures, however, require the restoration of a significantly greater area of the site to native grassland. The net result is that development of the project will result in a substantial enlargement of this habitat on the site and thus is consistent with LUP policy 9-18.

SEAL HAUL-OUT AND ROOKERY

A harbor seal haul-out and rookery is located on a narrow beach below the steep bluffs near the west end of the site. This well established habitat is used by the seals year round as a haul-out (resting) area. During the late winter and spring, the beach provides a sheltered location for mating, pupping and pup care. Harbor seals are a protected species under the terms of the Federal Marine Mammal Act and their terrestrial habitat is considered environmentally sensitive. The Marine Mammal Act prohibits any activities which kill or harass protected species such as the harbor seal.

The Certified LUP includes two policies directed to the protection of these animals and their habitat. Policy 9-24 indicates that recreational activity near haul-outs must be monitored to avoid disruption of the habitat by human activities. LUP Policy 9-25 requires that rookeries must not be disturbed by any type of development during the breeding season.

The proposed project is consistent with these policies because recreational activities will be well separated from the habitat and a monitoring program will be implemented concurrently with the opening of the golf course to ensure that the haul-out will not be disturbed by golfers or beach visitors. The golf course has been designed to ensure that golfers will not be visible to the seals and the incidence of errant golf balls landing on the beach is limited. Likewise, the proposed access trail closest to the habitat is routed

to avoid disruption and will be closed altogether during the pupping and breeding season (February 1 to May 31). An interpretive signing program is also proposed to advise all visitors of this habitat and its requirements. Finally, no grading within 300' of the bluff edge will be permitted during the breeding season.

In conclusion, the project as conditioned by the County and subsequently amended by the applicant is consistent with the numerous, stringent provisions in the LCP directed to protecting the various environmentally sensitive habitats found on this site.

**PROJECT IS CONSISTENT WITH
THE PUBLIC ACCESS POLICIES
OF THE COASTAL ACT**

The Coastal Act includes the following three policies relevant to the habitat preservation aspect of this project:

Section 30001.5(c)

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Section 30210.

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

Section 30212(a).

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

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

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

The thrust of these policies is to maximize public access to and along the California coast in a manner which ensures that natural resource areas, like the harbor seal haul-out/rookery, will not be overused or otherwise adversely affected. The proposed access program strikes this balance by siting the trails to adequately separate beach visitors from the seals, signing and supervising the trails to alert visitors to the needs of the habitat and limiting access during the critical mating/pupping period. The proposed program is therefore consistent with Coastal Act policies to provide access while respecting habitats.

I. LCP/CEQA

The proposed project site lies within the County of Santa Barbara. The Commission has certified a Local Coastal Program for the County of Santa Barbara (Land Use Plan and Implementation Ordinances) which contain policies for the Gaviota Planning Area. As conditioned by both the County and the Coastal Commission and amended by the applicant, the proposed development is consistent with the applicable policies of the County's certified Local Coastal Program and the Coastal Act, including those regarding the preservation of agricultural lands and public access facilities.

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. CEQA requires the consideration of less environmentally damaging alternatives and mitigation measures to lessen significant environmental impacts to a level of insignificance. This project was the subject of an environmental impact report at the County level. The EIR provided a thorough discussion of alternatives to the proposed project including a no project alternative, a reduced project alternative, and two alternative project locations (Naples site and Patterson site). (See County Revised Findings for Project Approval) In addition, the Commission has considered an on-site agricultural alternative which would convert the project site to an agricultural use. However, as previously stated, agricultural use of the site is presently not possible because the lot and development uncertainties inherent in the site could result in lots that are too small to be farmed and the site has no commercial agricultural irrigation water supply.

Based on the information submitted, the Commission finds that there is no alternative available that will further reduce any adverse environmental impacts created by the project. Further, there are no negative impacts caused by the project which have not been adequately mitigated. The County imposed 79 conditions in its approval of a Conditional Use Permit for the golf course project. As amended by the applicant and further conditioned by the Commission, the proposed development is therefore consistent with the provisions of CEQA, the certified LCP and the access and recreation policies of the Coastal Act.



Exhibit 1

Dos Pueblos US Hwy. 101 Exit / On Ramps

Private Road Terminus

West Property Boundary

West Tunnel

Lateral 24' Trail

Harbor Seal Habitat

West of Tomatis/Naples Beach Access Trail

EXHIBIT NO. 1

APPLICATION NO.
A 4-93-154

ARCO APPEAL

Revised Findings