

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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**Tu 18b&c**

A-3-SLO-99-014 Filed:	02/24/99
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Staff:	SM-SC
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Hearing Date:	06/08/99
Commission Action:	
A-3-SLO-99-014 Opened and Continued	
04/14/99	

**COMBINED STAFF REPORT:
 APPEALS A-3-SLO-99-014 and A-3-SLO-99-032
 SUBSTANTIAL ISSUE DETERMINATIONS**

LOCAL GOVERNMENT: San Luis Obispo County

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

APPEAL NOs: A-3-SLO-99-014 & A-3-SLO-99-032

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

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

PROJECT LOCATION: West of Highway One, approximately ¾ of a mile north of Villa Creek Road and 3 miles south of Harmony, in the North Coast Planning Area of San Luis Obispo County (APNs 046-082-013 thru 046-082-022)

DESCRIPTIONS: A-3-SLO-99-032 involves the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 10 parcels ranging in size from 20.9 acres to 243.8 acres, in the Agriculture land use

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

category. A-3-SLO-99-014 involves the grading and construction of approximately 18 miles of access roads to serve the adjusted lots, as well as the relocation of two designated building sites identified as part of the lot line adjustment.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Final Local Action Notices -SLO-99-011 and 3-SLO-99-046

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that **substantial issue exists** with respect to the grounds on which the appeals have been filed. The proposed lot line adjustment is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) protecting agricultural resources because it will result in the conversion of agricultural land to residential use, in a manner that jeopardizes the agricultural viability of the site and surrounding area. There are alternative lot configurations that would reduce the amount of land converted to non-agricultural (residential) use and minimize direct and cumulative impacts on agricultural resources. In addition, the on-site water supply and wastewater disposal capacities needed to serve the future residential development proposed as part of the lot line adjustment have not been established, inconsistent with the LCP requirement that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Future residential development associated with the lot line adjustment, which will occur along coastal ridge tops, may also conflict with the LCP's prohibition of new land divisions where the only feasible building site would be on a slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road.

The same substantial issues are raised with respect to the roadway construction project, given its purpose of serving future residential development on the adjusted lots. Furthermore, even if the lot line adjustment complied with LCP requirements, the proposed roadways would unnecessarily be located within 100 feet of a wetland, inconsistent with LCP wetland setback requirements. Additionally, the extent of roadway construction exceeds that which is necessary to adequately serve the proposed residential use, inconsistent with LCP grading standards.

Staff recommends that after determining that the appeals raise a substantial issue, the Commission continue the De Novo hearing in order to provide additional time for staff to work with the applicant to develop alternative lot configurations that would more effectively protect agricultural resources, and address other coastal resource constraints associated

with roadway and residential development (e.g., wetlands, views, water supply, wastewater treatment, and coastal access).

I. SUMMARY OF APPELLANTS' CONTENTIONS

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

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

The roadway project was appealed by Commissioners Wan and Nava, based on contentions that the proposed roadway development will result in greater site disturbance than necessary to accommodate the proposed use of the site, and that portions of the proposed roadways will be located within 100 feet of an existing wetland. As a result, the appeal alleges that the project is inconsistent with sections 23.05.030e.1 and 23.07.172a of the CZLUO.

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

II. LOCAL GOVERNMENT ACTION

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

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

III. STANDARD OF REVIEW FOR APPEALS

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

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

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeals have been filed, because the County has approved the projects in a manner that is inconsistent with the certified Local Coastal Program.

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

*I move that the Commission determine that Appeals No. A-3-SLO-99-014 and A-3-SLO-99-032 raise **NO** substantial issue with respect to the grounds on which the appeals have been filed.*

Staff recommends a **NO** vote, which would result in a finding of substantial issue and bring the projects under the jurisdiction of the Commission for hearing and action. To pass the motion, a majority of the Commissioners present is required.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Descriptions

The two appealed projects include a 10-parcel lot line adjustment, and a grading/roadway project intended to serve future residential development on the adjusted parcels, on a 740 acre agricultural site. The grading/roadway project also includes relocation of two building envelopes previously identified by the lot line adjustment.

The lot line adjustment involves the reconfiguration of 10 parcels that range in size from 1.39 acres to 318.42 acres, into 10 parcels that range in size from 20.9 acres to 243.8 acres, and designates residential building sites of approximately 2 acres on each of the reconfigured lots. Existing lot configurations are shown by Exhibit 5, while the proposed reconfiguration is shown by Exhibit 6. The following table compares the existing and proposed sizes of each lot:

Parcel #	Existing Acreage	Proposed Acreage
Parcel #1	318.42	37.4
Parcel #2	8.76	29.7
Parcel #3	67.72	27.1
Parcel #4	168.02	22.8

Parcel #5	61.02	20.9
Parcel #6	59.80	29.7
Parcel #7	19.59	47.6
Parcel #8	7.76	54.9
Parcel #9	1.39	243.8
Parcel #10	2.80	226.4
Total	740.3	

As recorded by the County, lots 9 and 10 have since been consolidated into a single agricultural lot (assumed to be approximately 470 acres in size based on the combined acreage of lots 9 and 10 proposed by the lot line adjustment). The conditions of the County's approval of the lot line adjustment are attached as Exhibit 2, and required, amongst other things, that the applicant enter into an "Environmental Mitigation Agreement" with the County intended to address the environmental constraints of the site related to future residential development. While it is recognized that this Environmental Mitigation Agreement attempts to address environmental issues associated with future residential development, including the protection of views, marine resource, and the avoidance of hazards, the mitigation agreement does not resolve fundamental concerns regarding the size and configuration of the residential lots, and their impact upon agriculture in the region.

The roadway/grading project involves the construction of roadways intended to serve future residential development on the reconfigured lots. Construction of the roadways and associated drainage facilities will disturb approximately 18 acres of the entire site². The locally approved permit for the roadway project also included a modification to the residential building envelopes designated by the lot line adjustment on lots 1, 2, and 9.

B. Project Location

The projects are located west of Highway One, on an agricultural site of approximately 740 acres, approximately $\frac{3}{4}$ of a mile north of Villa Creek Road and 3 miles south of Harmony, in the North Coast Planning Area of San Luis Obispo County (please see Exhibit 3). This site, also known as "Middle Ranch", is used for cattle grazing, and is adjacent to "North

² While the record for the lot line adjustment indicates that the total project area is 740 acres, the record for the roadway project indicates a total area of 716 acres.

Ranch" and "South Ranch", which are used for grazing. A large stock pond, also considered a wetland, exists on the site, as does an old farm house and unpaved road. As observed by Commission staff on a recent site visit, other wetland areas, in addition to the stock pond, may exist on the site. Ellysy creek runs through the site at its eastern boundary with Highway One.

Site topography is bowl like, with hills and the coastal ridge surrounding the valley in the center of the property where the stock pond is located. Spectacular views of the coastline and inland areas are available from the top of these hills, as shown in the photographs attached as Exhibit 8. In recognition of the natural and scenic values of this section of coastline, the LCP designates the western portion of the site as a Sensitive Resource Area (please see Exhibit 4).

C. Agricultural Resources

Appellants have challenged the consistency of the projects with the following Agriculture Policies of the LCP (see Exhibit 1).

1. Applicable Policies:

LCP Policy 1 for Agriculture states:

Policy 1: Maintaining Agricultural Lands

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

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

LCP Policy 2 for Agriculture provides:

Policy 2: Divisions of Land

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

- a. The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy would not be diminished.
- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.

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

CZLUO Section 23.04.024b states:

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

(1) Crop production: ...

... Grazing

320 acres

CZLUO Section 23.04.024e(f) provides:

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

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

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

Section 23.04.050 of the CZLUO states, in relevant part:

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

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

2. Analysis:

LCP Policy 1 for Agriculture requires that lands suitable for agriculture be maintained in, or available for, agricultural production unless, among other reasons, the permitted conversion will not adversely affect surrounding agricultural uses. This policy also requires that non-agricultural uses convert the least amount of agricultural land possible. The proposed lot line adjustment is inconsistent with these requirements because it will convert more agricultural land than is necessary to accommodate residential development. As approved by the County, residential lots will range in size from 21 to 55 acres each, which is clearly more than what is required to accommodate residential development. By reducing the size of each residential parcel, and clustering them in a consolidated area rather than spreading them across the coastal ridgeline, the conversion of agricultural land would be reduced, and the adverse impact of residential development on agricultural production would be minimized.

LCP Policy 2 prohibits land divisions in agricultural areas that would limit existing or potential agricultural capability. Due to the excessive conversion of agricultural land described above, the proposed residential lots will substantially limit existing and potential agricultural capability of the site. In addition, the large residential lots proposed by the lot

line adjustment would set a precedent for the creation of similar residential lots within surrounding agricultural lands, thereby potentially reducing the agricultural viability of the entire San Luis Obispo County North Coast Planning Area.

Section 23.04.024b of the Coastal Zone Land Use Ordinance (CZLUO) establishes a minimum parcel size of 320 acres for land divisions on parcels where there is an existing agricultural use of grazing. The eight residential parcels ranging in size from 21 to 55 acres, and the two agricultural parcels for grazing of 245 and 227 acres, do not comply with this minimum parcel size. While it is recognized that the number and size of existing lots on the site may preclude strict compliance with minimum parcel size requirements, there are alternative lot configurations that would better meet the direction and intent of this policy. Such alternatives involve increasing the area designated for agricultural use and reducing the area designated for residential use.

CZLUO Section 23.04.024e(f) requires that approval of land divisions on non-prime agricultural soils include a finding that the division will maintain or enhance the agricultural viability of the site. Similarly, Section 23.04.050(a) requires that single family dwellings and accessory buildings be sited to avoid prime soils and reduce negative impacts on agricultural uses. The lot line adjustment attempts to address this requirement by locating the lots designated for future residential development in areas of the site that are less agriculturally productive than other areas of the site. The local approval finds that the lot line adjustment is a betterment of the existing situation because smaller parcels will be enlarged and agricultural uses are consolidated. However, as described above, negative impacts to agricultural uses resulting from the residential development accommodated by the lot line adjustment could be further minimized by reducing the extent of area designated for residential use, clustering residential development in a consolidated area, and increasing the amount of acreage preserved for agricultural use.

3. Conclusion:

Due to the excessive conversion of agricultural land proposed by the lot line adjustment, and the adverse impact this will have on the agricultural viability of the site and in surrounding areas, appeal A-3-SLO-99-032 raises a clear substantial issue regarding the project's compliance with agricultural resource protection requirements of the LCP. Correspondingly, appeal A-3-SLO-99-014 also raises a substantial issue because the proposed roadways are intended to serve future residential development of the adjusted parcels. Furthermore, as discussed below, the extent of grading associated with the roadway construction exceeds that which is necessary to accommodate residential development, and therefore does not comply with LCP Policy 1 for agriculture requiring the conversion of agricultural land to be kept to a minimum.

D. Grading

Appellants contend that the projects are inconsistent with the following LCP Grading standards.

1. Applicable Policies:

CZLUO Section 23.05.030e.1 states:

e. Criteria for approval: A grading permit may be issued only where the Building Official first finds, where applicable, that:

- (1) The extent and nature of proposed grading is appropriate to the use proposed, and will not create site disturbance to an extent greater than that required for the use;

2. Analysis:

Section 23.05.030e.1 of the Coastal Zone Land Use Ordinance (CZLUO) requires that grading may only be approved where the extent of grading is appropriate to the use proposed and will not create site disturbance greater than that required for the use. Inconsistent with this, requirement, the proposed roadway development will result in greater site disturbance than is necessary to accommodate the proposed use of the site for numerous reasons

First, the number of roadways proposed to serve the residential development (illustrated by Exhibit 7) goes beyond that which is necessary to serve the proposed residential parcels. For example, the portion of the proposed Back Bay Drive east of its connection with the road leading to lots 1 and 2, or the portion of Sea West Road between its intersections with Back Bay Drive, could be eliminated without adversely affecting access to the created lots.

Second, there may be alternative roadway alignments, or opportunities to consolidate driveways, in a manner that would reduce land disturbance and the conversion of agricultural lands associated with roadway development. For example, it may be possible for lots 3, 4, 5, and 6 to share a single access road, rather than constructing 4 separate roads.

Third, the roadways will be constructed before the permits required for the residential development that will be served by the roadways are obtained. The future reviews and approvals required for residential development may revise or reduce the location and number of residential building envelopes in a manner that will eliminate the need for some of the roadways currently proposed, or alter their alignment.

Finally, as previously discussed, the proposed lot line adjustment does not comply with the agricultural resource protection policies of the LCP, and alternative lot configurations must be considered. Furthermore, as discussed below, there are unresolved issues regarding the site's ability to provide adequate water and wastewater treatment capacities to serve the proposed residential development. Until the ultimate lot configuration and the location and intensity of residential development is determined, it is impossible to conclude that the proposed grading and roadway construction is appropriate or approvable under the County's LCP.

3. Conclusion:

As a result of the excessive number of roadways proposed, their questionable alignments, and outstanding issues regarding the final extent and location of the residential development, the appeals raise a substantial issue regarding compliance with CZLUO Section 23.05.030e.1.

E. Sensitive Resources

The appeal of the roadway project contends that the project is inconsistent with LCP standards protecting sensitive resources.

1. Applicable Policies:

CZLUO Section 23.07.172 provides, in relevant part:

23.07.172 – Wetlands.

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

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

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

insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.

2. Analysis:

Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development shall be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use.

Portions of the proposed roadways will be located within 100 feet of an existing wetland. It would be feasible to construct these improvements outside of the 100-foot setback required by the LCP without causing additional environmental impacts. Thus, the roadway project is also inconsistent with CZLUO Sections 23.07.172a and d, and thereby raises a substantial issue.

F. Visual Resources

The appeals contend that the projects are inconsistent with the following LCP Policy protecting visual resources.

1. Applicable Policies:

CZLUO Section 23.04.021c states:

23.04.021(c) – Overriding Land Division Requirements

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

2. Analysis:

Section 23.04.021c of the CZLUO establishes overriding land division requirements. Among these requirements, part 6 of this section prohibits new land divisions where the only feasible building site would be on slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road.

While the building envelopes designated by the lot line adjustment have been designed to minimize visibility from Highway One, their ridgetop locations may be visible from Highway 46, especially in the morning hours when the sun would be reflected off of the future residences. Thus, the lot line adjustment is potentially inconsistent with CZLUO Section 23.04.021c, and therefore raises a substantial issue.

G. Infrastructure

Appellants have challenged the consistency of the projects with the following LCP Policy regarding water and sewage disposal.

1. Applicable Policies:

CZLUO Section 23.04.430b

23.04.430 – Availability of Water Supply and Sewage Disposal Services.

- b. Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

2. Analysis:

CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Water to serve future residential development will be obtained from an on-site well, and wastewater treatment will be provided by on-site septic systems. The County's approval of this lot line adjustment does not contain the information necessary to determine if the on-site water supply is adequate to serve future residential development, or if the designated building sites contain soils suitable for septic system use. As a result, a substantial issue is raised because the lot line adjustment's designation of residential building sites has not met the requirements of Section 23.04.430b.

H. Public Access and Recreation

The appeals also question the projects' consistency with coastal public access and recreation requirements.

1. Applicable Policies:

CZLUO Section 23.04.420 states, in relevant part:

23.04.420 – Coastal Access Required.

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

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

d. **Type of access required:**

(1) **Vertical Access:**

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

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

Coastal Act Section 30210 requires:

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

Coastal Act Section 30212 states in part::

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby, or,
 - (2) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

2. Analysis:

CZLUO Section 23.04.420 requires the provision of both vertical and lateral coastal access, except where, among other reasons, such access would be inconsistent with public safety, the protection of fragile resources or would adversely affect agriculture.

The County did not require either vertical or lateral access, citing each of the following reasons: the coastal bluff is approximately 1.4 miles from the entrance to the site using the existing ranch roads; the bluff is too high to allow for safe public access without substantial improvement which is discouraged by other coastal policies; public coastal access under the current circumstances would likely result in conflicts with agricultural use of proposed parcels 9 and 10; and because increased human contact near marine mammal habitat areas would result in conflicts with coastal policies requiring protection of coastal resources.

Notwithstanding the County's findings, it may be possible to provide and manage public coastal access to and along the shoreline areas of the site in a manner that would be consistent with each of these public safety, agriculture, and coastal resource considerations. At the same time, requiring public access improvements as part of the proposed lot line adjustment and/or roadway construction may conflict with legal precedents under which a nexus between the impact of the project and the required mitigation must be established. Further consideration of this issue is needed to determine whether requiring public access is appropriate in this case. In light of this need, and the potential for providing managed coastal access consistent with other LCP policies, a substantial issue exists regarding the project's consistency with LCP and Coastal Act access and recreation requirements. Further analysis of the appropriate application of these policies to the projects will take place as part of the De Novo review of these permits.

Issue	Synopsis of LCP/Coastal Act Requirements	Project Inconsistencies
Extent of Grading	Section 23.05.030e.1 of the Coastal Zone Land Use Ordinance (CZLUO) requires that grading may only be approved where the extent of grading is appropriate to the use proposed and will not create site disturbance greater than that required for the use.	The proposed roadway development will result in greater site disturbance than is necessary to accommodate the proposed use of the site. In addition, due to unresolved issues regarding the specific parameters of the proposed future use (residential development), it is not clear that the extent of grading is appropriate to the use.
Wetlands	Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development shall be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use.	Portions of the proposed roadways will be located within 100 feet of an existing wetland. It would be feasible to construct these improvements outside of the 100-foot setback required by the LCP without causing additional environmental impacts.

*Appeal by
 Commissioners
 Man and Nava
 of roadway
 project.*

EXHIBIT NO.	1, p. 1
APPLICATION NO.	A-3-510-99-14 + A-3-510-99-32
Appeals	

February 12, 1999

CALIFORNIA COASTAL COMMISSION
Central Coast Area Office
725 Front Street, Ste. 300
Santa Cruz, CA 95603

RE: appeal of Morro Bay Limited/Garing & Taylor Proposed Development
Plan and Coastal Development Permit D970195D

Mr. Ormsby, and associates, have every right to develop parcels for sale from their coastal property, and I do not wish to unduly delay their plans. Therefore, I would request that Coastal Commission staff quickly review my concerns. If staff does not find that my objections are warranted then I shall withdraw my appeal at once.

Briefly, I believe that the proposed development does not conform to Local Coastal Area Planning Standards, nor to the Coastal Act, for two principal reasons. First, the designated ridgetop building sites are visible to the public and require development upon some of the steepest and most fragile areas of the property. Second, these development plans have been offered in a piecemeal fashion, avoiding the next obvious issues of constructing multiple driveways and other infrastructure upon steep and erosive slopes. It is not reasonable or fair to defer consideration of these problems to the Minor Use Permit process for each individual future lot owner.

My concerns are offered with greater detail in the enclosed letters of September 8, 1998, and September 17, 1998 to San Luis Obispo County officials.

Thank you for your consideration, respectfully,

DL McBride

David L. McBride
(805) 927-5292
fax: (805) 927-0354

*Appeal by David McBride
of roadway project*

*A-3-SLO-99-014
A-3-SLO-99-032
Exhibit 1, p. 2*

September 17, 1998

Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, California, 93408

SUBJECT: Morro Bay Limited/Garing & Taylor Proposed Development Plan
and Coastal Development Permit D970195D

I urge you to review and to deny this plan in its current form. Attached is my letter of 9-8-98 to the Planning Commission prior to their public hearing. This letter more briefly, and I hope more clearly, expresses my concerns.

The current proposal, as noted in the letter from the Department of Fish and Game of 8-27-98, "does not meet the requirements of CEQA". "... (T)he environmental impacts of this project are neither disclosed nor mitigated..." Most obvious to me is that the access roads traverse at least four "blue line" streambeds per US GEO maps which are entirely ignored by the staff report.

The previous apparent approval by the Planning Commission in 1995 of building envelopes should be reevaluated for several reasons. First, the issue of amending their locations is raised by the developers themselves as they seek to improve ocean views. Secondly, the 1995 apparent approval appears invalid because of failure to properly notify interested parties, including myself, of the public hearing at that time. Furthermore, the approval of coastal ridgetop building envelopes in this case was not consistent with Coastal Act or with Planning Area standards.

The current proposal would create saleable parcels with county-approved homesites and county-approved access roads up to the perimeter of the parcels. Considerable problems associated with the required driveways and other infrastructure (incompletely identified and never resolved by the Geological Impact reports) would never have been addressed. This piecemeal planning would directly result in buyers of these parcels expecting and likely legally demanding approval of driveways, septic systems, and home placements which conflict with Planning Area standards and the California Coastal Act.

Respectfully,



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September 8, 1998

County of San Luis Obispo
Department of Planning & Building
County Government Center
San Luis Obispo, CA 93408

SUBJECT: MORRO BAY LIMITED/GARING & TAYLOR Proposed Development Plan and
Coastal Development Permit

I strongly urge you to deny this proposal in its current form! I believe that approval would represent very poor planning and irreversibly destructive development within a Coastal and Sensitive Resource Area.

I will acknowledge outright some personal bias in that the proposed development of roadways and homesites would occur directly in my view, along with the views of two current and some 4 or 5 already approved homesites. However, I have other substantial concerns after personally reviewing this development plan and spending considerable time gazing directly at the subject property. Since I am self-employed and unable to attend the public hearing this Thursday, I request that you consider the following points:

- 1) I was not properly noticed of the public hearings which apparently took place in 1995 approving homesites perched on top of the coastal ridge. I would certainly have pointed out that approving such building envelopes would guarantee a series of fragmented proposals for associated development upon the very steepest, geologically perilous, and environmentally sensitive areas of the entire property. Similarly, while at first glance the content of the current proposal might seem rather innocuous, it is both necessary and appropriate to consider the next logical steps in development.
- 2) While the views of Highway 1 motorists and hauled-out mammals have been addressed, it is reasonable to look at other viewpoints. No concern has been shown to the thousands of people, including myself, who primarily enjoy our coastline from seaward. Other than the old Airforce station, I know of no other such intrusions upon the pristine coastal ridges as seen from the ocean along this area of the coast. I also believe it is indeed appropriate to consider the viewshed of other property owners, a consideration I am told is fundamental in other planning commissions. Further, the principal of "out of sight, out of mind" does not adequately address the issue of preservation of Sensitive Resource Areas any more than the narrow greenbelt corridors along some northern California highways addressed poor forest management evident from the air.
- 3) The supplemental Geological Impact report presented for this hearing appears cursory and little more than a near verbatim repetition of the earlier report. While briefly and generally identifying obvious extensive hazards of soil erosion and slides, it offers nothing more illuminating as to the methods, scope, and likelihood of failure than the often repeated "drainage and control methods... should reduce the problem". There are several other noteworthy problems which are not addressed. Page III 4 notes "adequate area on the ridgetop to place a residence", yet the map on page III 2 indicates the majority of Lot 7 building envelope to overlie a landslide area. Page III 6 describes, and page III 2 depicts actual driveway placements up to each building site, yet does not specify the grades involved which appear to be far in excess of CDF standards.

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4) The revised road layout map provided by the staff depicting the scope of the current proposal does not show driveways beyond the proximal boundaries of the individual parcels. The 1995 public hearings, of which I was not noticed, apparently approved coastal ridgetop homesites. The approval of the current development plan, without addressing the implausible construction of driveways ascending sliding, erosion prone, severe slopes will effectively result in saleable homesites which may be inaccessible. Buyers might reasonably expect, and legally challenge the Planning Department to approve some sort of access short of helicopters.

5) The proposed plan specifies that sewage will be treated with septic tanks, but the enclosed reports point out that most parcels will require waste water disposal outside the limited building envelopes. That leads to a conclusion that either all raw sewage will be piped down unstable slopes to the waterlogged valley floor, or that leach fields will be placed on impractical steep ocean ridge slopes.

6) Planning Area Standards require that "new development shall be located so that no portion of a structure extends above the highest horizontal line of ridgelines seen from Highway 1". I interpret that to exclude rooftops 22' above the grade at the currently proposed building sites whether or not the actual homes are visible from Highway 1.

7) Staff report indicates that the "primary purpose of lot line adjustment was to provide ocean views", referring to the 1995 approved plan which also allowed redistribution of acreage from parcels with as few as 8 acres to create minimum parcel sizes of 20+, and therefore buildable acreages. Further, staff contends that the current, relatively minor adjustments are consistent with that purpose. I believe strongly in the property rights of the owner, and expect that some profit from the subdivision of the historically troubled middle ranch project is entirely reasonable. However, I believe that the Planning Department is charged with quite different goals on behalf of the public as delegated by the Coastal Commission and as specified by the Planning Area Standards.

8) For the staff to maintain that this project satisfies all applicable provisions of Title 23 because "the proposed access roads limit grading and site disturbance and avoid steep areas of the site to the extent feasible" seems to me, at best, to be remarkably shortsighted. This project, after all, is to develop homesites and roads upon the very steepest, and unstable, and sensitive areas available! This proposal would provide for saleable parcels with county approved building sites and county approved access roads to the boundary of the parcel, but no environmentally sensible, or CDF approved means of reaching the building envelopes. That seems to me like approving homesites on top of Pikes Peak, and highways across Nebraska, without addressing the minor details inbetween.

9) I would invite anyone who concurs with the staff observation that "the development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area Development Plan..." to view the site from a more lofty perspective. In this case aerial viewing might provide the viewer with a better understanding of the very unique, and very fragile site, and the irreversible impact the proposed development would create. This might be the last real opportunity for the Planning Department, and the owners, to improve the project to everyone's satisfaction. Please take the time.

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I recognize, and appreciate, the training, experience, and hours of hard work devoted to this development proposal by the Planning Department staff. I very strongly disagree, however, with their conclusions and recommendations. The many problems associated with this plan are clearly secondary to the selection of ridgetop homesite building envelopes. In order to avoid the degradation of this unique area, and protracted adversarial confrontations for the County and for my future neighbors, I request that the Planning Department decline to approve this incomplete proposal until the many obvious unanswered questions are addressed.

Respectfully,



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Reasons Supporting this Appeal

1. LCP Policy 1 for Agriculture requires that lands suitable for agriculture be maintained in or available for agricultural production unless, among other reasons, that the permitted conversion will not adversely affect surrounding agricultural uses. Allowable non-agricultural uses on agricultural lands may only be permitted where the least amount of agricultural land is converted. LCP Policy 2 prohibits land divisions in agricultural areas that would limit existing or potential agricultural capability. The proposed lot line adjustment is inconsistent with these requirements because it will convert more agricultural land than is necessary to accommodate allowable residential development. Due to the excessive conversion of agricultural land for non-agricultural purposes, the agricultural capability of the site will be reduced, and surrounding agricultural lands will be adversely affected by increased development pressures.
2. Section 23.04.024b of the Coastal Zone Land Use Ordinance (CZLUO) establishes a minimum parcel size of 320 acres for land divisions on parcels where there is an existing agricultural use of grazing. The lot line adjustment approved by the County established 8 lots for residential use, ranging from 21 to 55 acres each, and 2 parcels for grazing of approximately 245 and 227 acres each, all of which are inconsistent with the 320 acre minimum parcel size requirement. While it is recognized that the number and size of existing lots on the site may preclude strict compliance with minimum parcel size requirements, there are alternative lot configurations that would better meet the intent of this policy. Such alternatives involve increasing the area designated for agricultural use and reducing the area designated for residential use.
3. CZLUO Section 23.04.024e(f) requires that approval of land divisions on non-prime agricultural soils include a finding that the division will maintain or enhance the agricultural viability of the site. The County's approval of the lot line adjustment intended to address this requirement by locating the lots designated for future residential development in areas of the site that are less agriculturally productive than other areas of the site. The local approval finds that the lot line adjustment is a betterment of the existing situation because smaller parcels will be enlarged and agricultural uses are consolidated. However, an alternative that would better maintain and enhance the agricultural viability of the site would cluster and reduce the size of the residential parcels, while increasing the size of the remaining agricultural parcel(s).
4. Section 23.04.021c of the CZLUO establishes overriding land division requirements. Among these requirements, part 6 of this section prohibits new land divisions where the only feasible building site would be on slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road. While the building envelopes designated by the lot line adjustment have been designed to minimize visibility from Highway One, their ridgetop locations may be visible from Highway 46, especially in the morning hours when the sun would be reflected off of the future residences.
5. Section 23.04.050 of the CZLUO establishes permit requirements and standards for non-agricultural uses within the agricultural land use category, such as for the residential use intended to be accommodated by the lot line adjustment. Part (a) of this ordinance requires that single family dwellings and accessory buildings be sited to avoid prime soils and reduce

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Wan and Potter of
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negative impacts on agricultural uses. The project attempts to comply with this requirement by locating residential building envelopes on the crest of existing hills on the western portion of the property that are purportedly less suitable for grazing (the slope of the hills, however, are not so steep as to be unsuitable for grazing). Negative impacts to agricultural uses could be reduced to a greater degree by reducing the extent of area designated for residential use, and increasing the amount of acreage preserved for agricultural use.

6. CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Water to serve future residential development will be obtained from an on-site well, and wastewater treatment will be provided by on-site septic systems. The County's approval of this lot line adjustment does not contain the information necessary to determine if the on-site water supply is adequate to serve future residential development, or if the designated building sites contain soils suitable for septic system use.
7. CZLUO Section 23.04.420 requires the provision of both vertical and lateral access, except where, among other reasons, such access would be inconsistent with public safety, the protection of fragile resources or would adversely affect agriculture. The County did not require either vertical or lateral access, citing each of the following reasons: the coastal bluff is approximately 1.4 miles from the entrance to the site using the existing ranch roads; the bluff is too high to allow for safe public access without substantial improvement which is discouraged by other coastal policies; public coastal access under the current circumstances would likely result in conflicts with agricultural use of proposed parcels 9 and 10; and because increased human contact near marine mammal habitat areas would result in conflicts with coastal policies requiring protection of coastal resources. Contrary to these findings, it would be possible to provide and manage public coastal access to and along the shoreline areas of the site in a manner that would be consistent with each of these public safety, agriculture, and coastal resource considerations.

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EXHIBIT B

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

Lot Line Adjustment

EXHIBIT NO. <i>2, p. 1</i>
APPLICATION NO. <i>A-3-SLO-99-14, A-3-SLO-99-32</i>
<i>Local Conditions of Approval</i>

ENVIRONMENTAL MITIGATION

Implementation

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

Agreements

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

CC&Rs

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

Fencing

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

Landscaping

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

Wetlands

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

Scenic Preservation Agreement

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

EXHIBIT B (Continued)

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

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

Environmental Mitigations Agreement

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

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

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

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

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EXHIBIT B (Continued)

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MORRO BAY LIMITED/EDA

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

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

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

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EXHIBIT B (Continued)

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

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

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EXHIBIT B (Continued)

CONDITIONS OF APPROVAL -- COAL 94-130
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1. Ellylsly Creek Entrance Crossing. The applicant shall retain a qualified expert acceptable to the Department of Planning and Building to determine any impacts on the tidewater goby and recommend mitigation measures, if necessary. A copy of the report shall be submitted to the Department of Planning and Building for review and approval.
- m. Revegetation of Cuts and Fills. A landscape plan shall be submitted in conformity with County requirements for all road cuts and fills. The applicant shall insure that the proposed planting will mature in two to three years and that the planting will be maintained until established (a minimum of three years).
- n. Alternative Building Envelopes and Exclusion Areas. The applicant shall show on the ECM the location of the building envelopes outside the exclusion line shown on Exhibit #1 attached to the developer's statement.
- o. Architectural Requirements for Parcels #1 and 2. For Parcels #1 and 2, the applicant shall demonstrate the following:
 - 1) The roofline shall not exceed 10 feet above the grade of the saddle.
 - 2) Architecture roof form be shaped similarly to that of the hill.
 - 3) Colors shall be limited to earthen tones--that blend with the natural landscape.
 - 4) Landscaping shall be planted to obscure the roof form but be kept low.
 - 5) Final design for the structures shall be prepared by a design professional and a follow up visual analysis shall be done to insure that the design does not intrude on the view.
 - 6) All development shall be consistent with North Coast Planning Area standard #6. Site Selection (visual mitigation).
- p. Landscaping Requirements for Parcel #10. A screen of low trees and native shrubs shall be planted parallel to Highway 1 on Parcel #10, as shown on Exhibit #1. The planting scheme shall be reviewed by a landscape architect, horticulturist or landscape planner to ensure that the grouping of the vegetation is arranged in a natural fashion and blends in with existing vegetation along Highway 1. The planting shall occur prior to development of roads or residences if not previously established.
- q. Architectural Requirements for Parcels #9 and 10. For Parcels #9 and 10, the applicant shall demonstrate the following:
 - 1) The roofline shall not exceed 10 feet above the grade of the saddle.
 - 2) Architectural roof form be shaped similarly to that of the hill.
 - 3) Colors shall be limited to earthen tones--that blend with the natural landscape.
 - 4) Landscaping shall be planted to obscure the roof form but be kept low.
 - 5) Final design for the structures shall be prepared by a design professional.
 - 6) A visual analysis shall be done to insure that the structures are not visible from Highway 1.

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

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EXHIBIT B (Continued)

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

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

Disclosure

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

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EXHIBIT B (Continued)

**CONDITIONS OF APPROVAL -- COAL 94-130
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CONDITIONS FOR RECORDATION

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

Covenants, Conditions, and Restrictions

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

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EXHIBIT B (Continued)

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

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

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

Landscaping Plan

14. Prior to finaling the lot line adjustment the applicant shall submit landscape, irrigation and landscape maintenance plans as required by Section 23.04.180 of the Coastal Zone Land Use Ordinance to the Development Review Section of the Department of Planning and Building for review and approval. Plan to include:
 - a) All landscaping provisions referenced in the environmental mitigation agreement.

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

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EXHIBIT B (Continued)

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

Revegetation Plan

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

Fencing Plan

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

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Roadway Project

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

Approved Use/Project Description

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

Effective Time Period

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

Grading

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

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

Agency Review

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

Amended Agreement for Environmental Mitigations

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

Archaeological Resources

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

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

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Exhibit 2, p.12

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

Drainage, Erosion and Sedimentation

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

Biological Resources

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

Visual Resources

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

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1, the following requirements apply:

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

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

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

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

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

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Exhibit 2, p. 14

forms, etc.).

I. The following requirements apply to development within "revised building envelope (5/98) for Parcel 9:

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

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

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

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

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

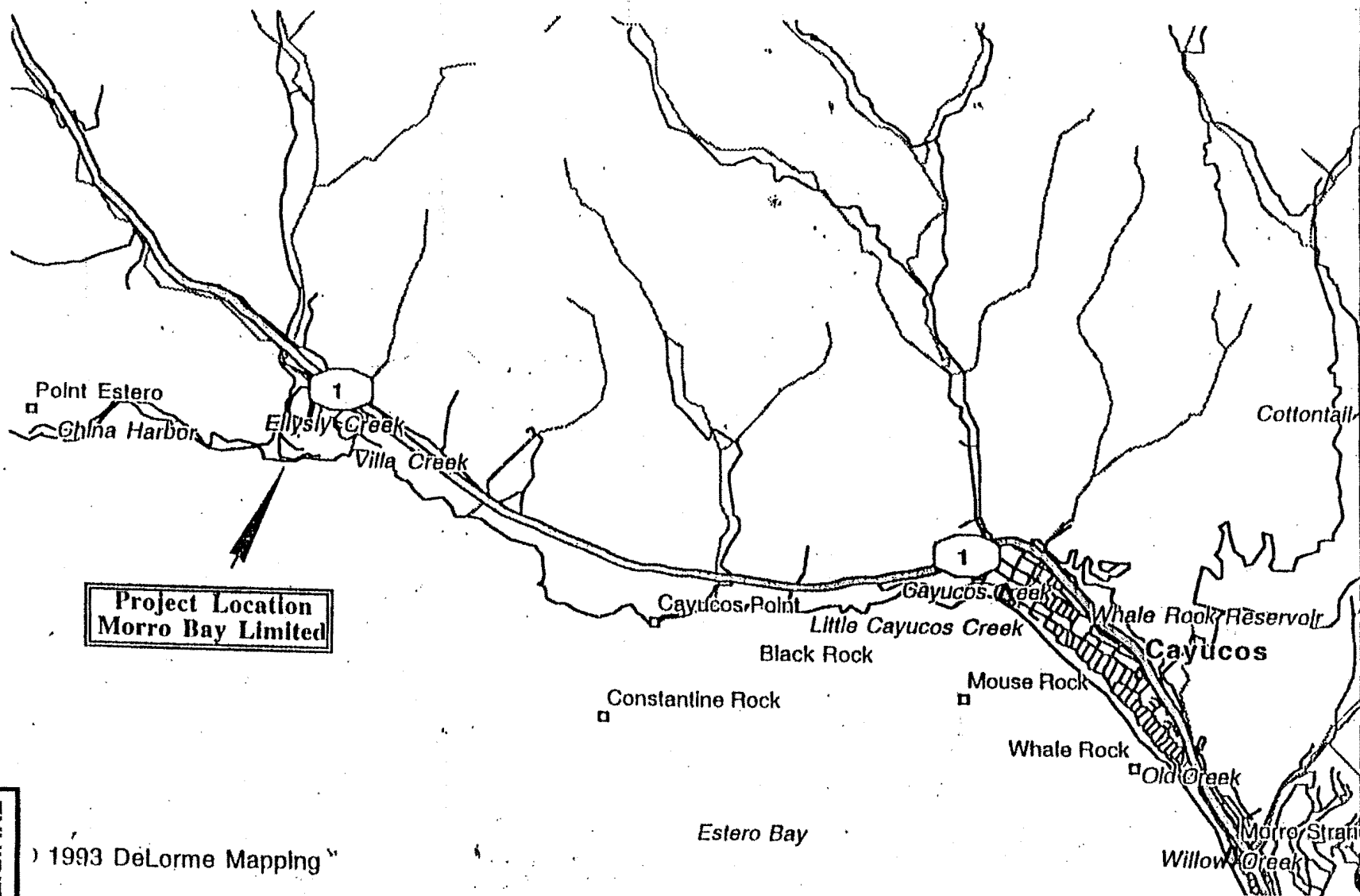
Security lighting shall be shielded so as not to create glare when viewed from Highway 1.

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Wetlands

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

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Exhibit 2, p. 15



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Figure 1
Project Location
Morro Bay, Ltd.

PROJECT
MORRO BAY LTD.
0970195D



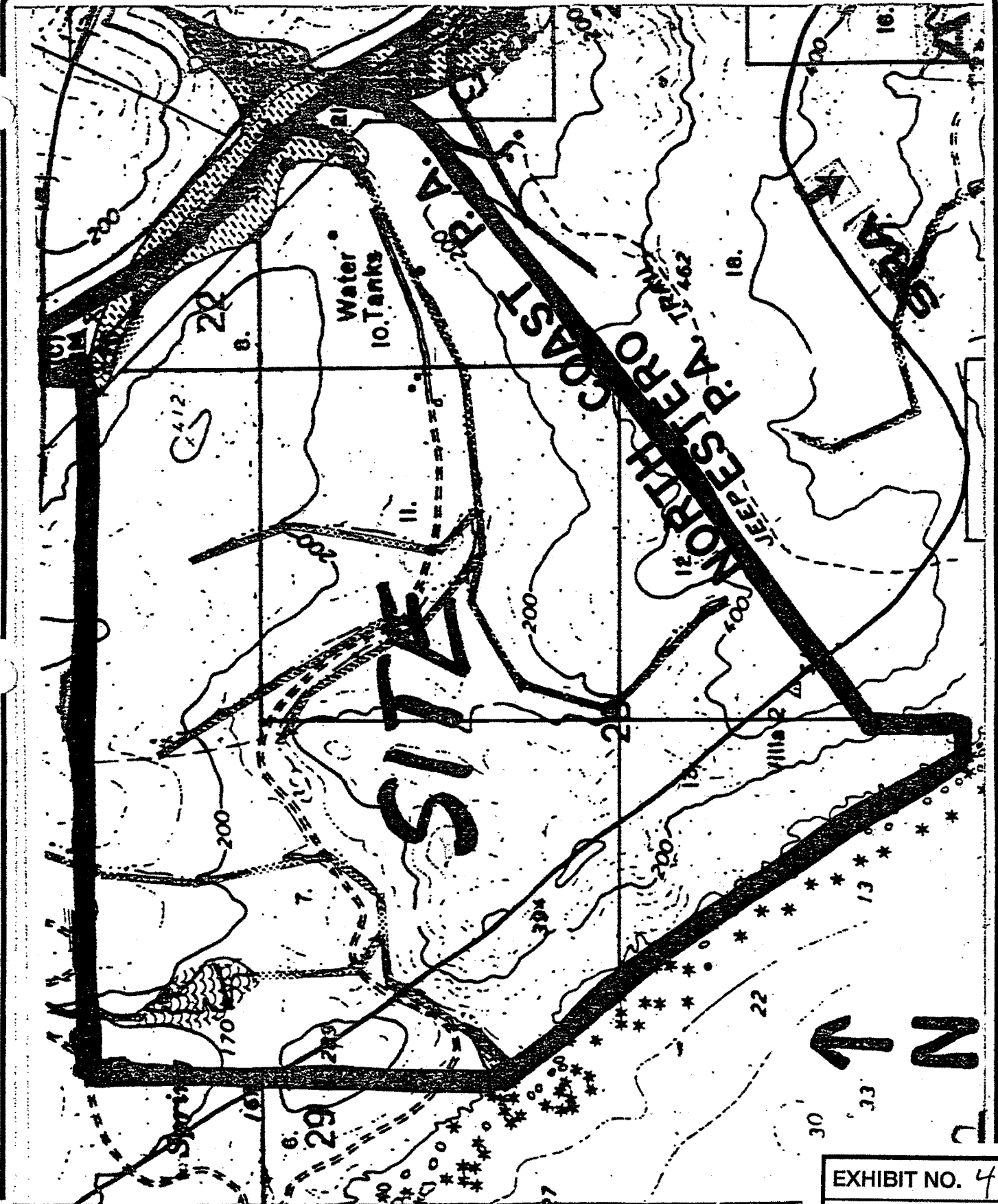
EXHIBIT
VICINITY A.

EXHIBIT NO. 3

APPLICATION NO.
A-3-510-99-14 + A-3-510-99-32

Project
Location

6-14



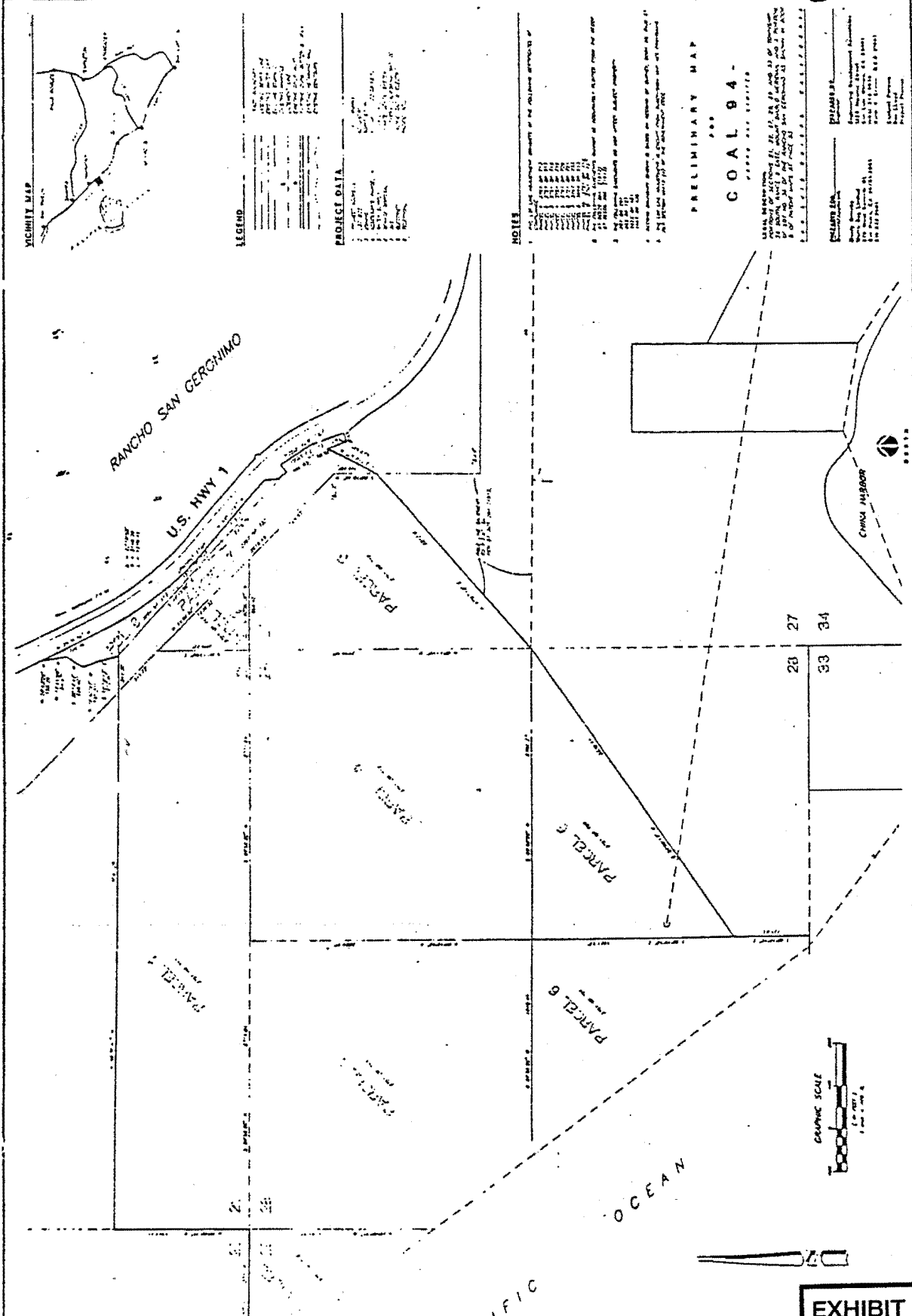
PROJECT
MORRO BAY LTD
D970195D



EXHIBIT
LAND USE CAT

EXHIBIT NO. **4**
 APPLICATION NO.
A-3-SLO-99-14 & A-3-SLO-99
LUP Map

8-7-19



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



EXHIBIT
EXISTING &
CONFIGUR.

EXHIBIT NO. 5
APPLICATION NO.
 A-3-560-99-14 + A-3-560-99-32
 Existing Parcel
 Configuration



EXHIBIT NO. 8
APPLICATION NO. A-3-SLO-99-14 + A-3-SLO-99-32
Views of and from Project Site