

## CALIFORNIA COASTAL COMMISSION

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C.F.L.  
8/30/99



# W6b

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Commission Action:	
Open and Continue:	1/13/99
Substantial Issue:	3/11/99

## STAFF REPORT: REGULAR CALENDAR COASTAL DEVELOPMENT PERMIT

**APPLICATION NO.:** A-3-SLO-98-108, TRACT 1646

**APPLICANT:** Noel Rodman and Ron Holland

**PROJECT DESCRIPTION:** Extension of the coastal development permit for Tract 1646 for a period of five years; revisions to conditions imposed on the original permit relative to the provision of sewer and water to the 100-lot subdivision at the time the final map is presented for filing.

**PROJECT LOCATION:** Northerly side of Los Osos Valley Road, (19 acre site between Pecho Road and Monarch Lane), Los Osos, San Luis Obispo County.

**LOCAL APPROVALS:** Board of Supervisors Resolution to grant a five-year extension for the Tentative Map and coastal development permit for Tract 1646 and Board Minutes of August 25 and September 22, 1998 documenting the action to amend conditions attached to the original project.

**FILE DOCUMENTS:** San Luis Obispo Certified LCP, San Luis Obispo Board Resolution No. 98-336, Minutes of the Board of Supervisors hearing on the project on September 22 and August 25, 1998, Coastal Commission Appeal File A-4-SLO-91-2, San Luis Obispo County file on Tract 1031 and Tract 1646. Database entry items for San Luis Obispo and San Mateo County Notices of Final Local Action on Coastal development permits, Monterey County Certified LCP, Title 20, County Zoning Code, and Los Osos Sewer Appeal, A-3-SLO-97-40.

## PROCEDURAL NOTE

On March 11, 1999, the Coastal Commission determined that an appeal of the San Luis Obispo Board of Supervisors action to extend and amend the tentative map/coastal development permit for Tract 1646 raised a substantial issue with respect to the action's conformance with the County's certified Local Coastal Program. When the applicant objected at the March 11, 1999 hearing that the Commission had no jurisdiction under Public Resources Code section 30603, the Commission indicated that it would consider the applicant's jurisdictional argument at the time of the de novo hearing. On August 25, 1999 the superior court of San Luis Obispo County directed the Commission to consider the applicant's jurisdictional argument prior to its de novo review of the applicant's project. Accordingly, the Commission should review and decide the applicant's jurisdictional argument before commencing its de novo review required by section 13115(b) of Title 14 of the California Code of Regulations.

## SUMMARY OF STAFF RECOMMENDATION

**Jurisdiction.** The Commission has jurisdiction over this appeal under Public Resources Code section 30603. Section 30603 provides that the Commission has jurisdiction over "an action taken by a local government on a coastal development permit application" that fits into one of the categories enumerated in section 30603. The County's decision to extend the permit and amend permit conditions constitute "an action" under section 30603. Further, the Commission has jurisdiction over the County's action under subsection (a)(4) of section 30603 because the County's action involves a development (i.e., a subdivision) that is not listed as a principal permitted use in the County's LCP.

**De Novo Review.** The County of San Luis Obispo extended and amended a coastal development permit for a 100-lot subdivision in the community of Los Osos. Staff recommends that the Commission DENY the extension and the proposed amendments of the Coastal development permit on the grounds that they are inconsistent with the San Luis Obispo Certified LCP. First, the County procedures for considering an extension include an inquiry into whether there are any changed circumstances that would affect the project's consistency with the LCP. In this case, there are significant changed circumstances since the CDP was approved in 1990 that bring into question the project's compliance with the certified LCP. Most significant, the Morro Shoulderband Snail has been listed by the U.S. Fish and Wildlife Service as an endangered species. The County, in the Draft Estero Area Plan Update, has identified the project site as suitable habitat for the endangered snail. Thus, portions of the project site are most likely environmentally sensitive habitat. Under the LCP, land divisions cannot be approved in environmentally sensitive habitat. Moreover, even if the permit could be extended, the LCP only allows a maximum three-year extension of a CDP. The County extended the CDP for five years.

Second, the amendments to the conditions regarding sewer facilities and demonstration of water supply at the time the final map is presented for filing are inconsistent with LCP Public Works Policy 1. This policy requires that new development demonstrate "there are sufficient services to serve the proposed development given the outstanding commitment to existing lots within the urban

service for which services will be needed consistent with the Resource Management System where applicable.”

The conditions attached to the original approval of the project ensured that this policy would be met by requiring that a community waste water treatment facility serving all of Los Osos would be completed and available to accommodate the new development before the final map could be filed. Likewise, the original conditions required that the applicant demonstrate that there would be an adequate supply of water to serve the new lots at the time that the final map was presented for filing. The amendments to the project approved by the County do not provide any assurance that LCP Public Works Policy 1 will be met because they allow the applicant to construct sewer facilities for his site only and to rely on an outdated “will serve” letter from 1988 as evidence of an adequate water supply. Findings on sewer and water constraints in Los Osos and the LCP Policy requirements as they relate to this project detail the inconsistencies presented by the recent approval of these amendments.

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## **I. STAFF RECOMMENDATION**

### **A. APPELLATE JURISDICTION**

Staff recommends that the Commission adopt the following resolution in support of its appellate jurisdiction to review the County's action on the request to extend and amend the permit.

#### **Motion on the jurisdictional question:**

*I move that the Commission find that it has jurisdiction of this appeal under Public Resources Code section 30603 and that it adopt findings to support its jurisdiction that are set forth in the staff report.*

Staff recommends a **YES** vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution and to proceed to a de novo review. A majority of the Commissioners present is required to approve the motion.

#### **Resolution:**

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code section 30603(a)(4) and adopts findings to support its jurisdiction that are set forth in the staff report.

### **B. EXTENSION OF THE COASTAL PERMIT FOR TRACT 1646**

Staff recommends that the Commission adopt the following resolution for denial of the extension of the coastal development permit for Tract 1646:

#### **Motion on the extension of the coastal development permit:**

*I move that the Commission approve a three-year extension of the coastal development permit for Tract 1646.*

Staff recommends a **NO** vote on the motion. The effect of a no vote on the motion will be to adopt the following resolution and to deny the extension of the permit. A majority of the Commissioners present is required to approve the motion.

#### **Resolution:**

The Commission hereby denies the extension of coastal development permit A-3-SLO-98-108, for Tract 1646 on the ground that the extension is inconsistent with the San Luis Obispo Certified Local Coastal Program.

## C. AMENDMENTS TO TRACT 1646

Staff recommends that the Commission adopt the following resolution for denial of the amendments to the coastal development permit for Tract 1646.

### **Motion on the proposed amendments to the coastal development permit:**

*I move that the Commission approve the proposed amendments to Conditions One and Two to Coastal development permit Number A-3-SLO-98-108 for the Holland Subdivision, Tract 1646 project as approved by the County of San Luis Obispo.*

Staff recommends a **NO** vote on the motion. The effect of a no vote will be to adopt the following resolution and to retain Conditions One and Two as originally described in the 1990 approval of the project. A majority of the Commissioners present is required to pass the motion.

### **Resolution:**

The Commission hereby denies the proposed amendments to Conditions One and Two to Coastal Development Permit A-3-SLO-98-108, on the ground that the amendments are inconsistent with the San Luis Obispo Certified Local Coastal Program. Approval of the amendments would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the proposed revisions on the environment.

## II. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION, HISTORY OF LOCAL AND COASTAL COMMISSION ACTIONS

The project amended by the County in their September 22, 1998 action is a 100-lot subdivision of three parcels (APN 74-430-01,16 and 74-022-22) totaling 19.4 acres. The proposed lots range in size from 6,000 square feet to 11,600 square feet. Various subdivision improvements (roads, utilities and limited grading) are also part of the approved project. The project does not include the construction of any homes on the parcels and it is unknown if the developer will sell the lots to individuals or seek permits to construct homes himself after the final map for the subdivision is filed. The final map cannot be filed until a number of conditions attached to approval of the tentative map have been satisfied.

#### 1. Site Information

The site is in Los Osos-Baywood Park, an unincorporated area of San Luis Obispo County located along the lower reaches of Morro Bay that is partly developed with residential uses. (Please see Exhibit 1, Location Map.) Land uses surrounding the site include residential uses on lots of varying

size to the east, west and south. The Sea Pines Golf Course is nearby to the northwest. Vacant land lies between the site and Morro Bay, some 1,500 feet to the north. (Please see Exhibit 2, Land Use Map.) The three parcels that make up the site are zoned for single family residential use. The Certified LCP allows minimum parcel sizes of 6,000 square feet for this site if consistent with other plan policies. Currently the nearly flat site contains an older residence and a couple of outbuildings. Recent site inspections also revealed the presence of a golf driving range on the westerly half of the site, although the history of this development is as yet unclear.

Constraints on the site include its location within the "Prohibition Area" designated by the Regional Water Quality Control Board to prohibit the addition of any more septic systems into the area. A permit for a sewer plant to serve this area is currently under consideration by the Commission (Los Osos Wastewater Treatment Project, A-3-SLO-97-40). A Community Service District has been recently formed to carry through on development of a sewer project which will alleviate the impacts of the current method of sewage disposal and allow additional infill development in Los Osos.

## **2. History of the Project**

This project has a very lengthy history that began several years before the San Luis Obispo LCP was certified. The present project was finally approved by operation of law on January 5, 1991 even though it was the subject of a hearing and action before the Subdivision Review Board in November and a hearing before the Board of Supervisors in December 1990. At the December 1990 hearing, the Board agreed not to act on the project, which had been recommended for denial by the Subdivision Review Board, if the applicant would revise the project description to include various "project features" that addressed particular concerns of the Board. These "features" became what are now referred to as project conditions. A history of this project follows.

**Tract 1091:** Tract 1091 was the predecessor project to Tract 1646, which is the subject of this appeal. It is important to understand the history of Tract 1091 because the applicant's position is that Tract 1646 is an identical project.

Tract 1091 was submitted for county review in 1983 and proposed subdividing the 19.4 acre parcel into 76, 6,000 square foot lots for 38 duplexes and one 4.4 acre parcel to be developed as a small shopping center. Wastewater treatment was to be provided by an on-site "package plant." In November 1983, a Draft EIR was released for this project and noted that "the proposed method of effluent disposal will have significant deleterious effects on local ground water." In their response to the DEIR, the Regional Water Quality Control Board noted a number of concerns with the proposed wastewater treatment system and concluded "that seepage pits as designed may pose a health hazard."

After the DEIR was released, the project was revised to replace the commercial development and the duplex lots with a 100-lot subdivision for single family home development. Staff has not discovered any addendum or supplement to the 1983 DEIR that addresses the revised project. The 1983 DEIR did, however, include a brief discussion of use of the site for 57 single-family lots in the section on alternatives to the proposed project. The DEIR noted that this less intensive use of the site would have fewer impacts than the 76 duplex lot and commercial subdivision proposed by the applicant.

Tract 1091 was approved by the county in December 1985 as a 100-lot subdivision which would be served by an on-site wastewater "package plant" and would be provided water by the local water company. The applicant submitted the project to the Coastal Commission for review as the San Luis Obispo County LCP was not yet fully certified. Commission staff prepared a recommendation for denial of the subdivision citing wastewater treatment and potable water service as major issues. The applicant withdrew the application before the Commission could act on it. At the same time, the applicant was attempting to get Regional Board and County Health Department approval for a wastewater treatment system to serve the subdivision. By mid-1987, approval had still not been obtained, and the Regional Board stated that it could not prepare the wastewater discharge requirements until the applicant demonstrated that "the development is legally limited to 42 dwelling units" and that a public district had been formed to run the plant.

The record for Tract 1091 seems to end in mid-1987; however, a county staff report, prepared in November 1990 for Tract 1646, stated that the tentative map for Tract 1091 was still valid pursuant to Government Code Section 66452.6 (development moratorium).

*Tract 1646:* On March 31 1988, San Luis Obispo County assumed the authority to issue local CDPs under their now fully certified LCP. In September 1988, the applicant submitted an application for a vesting tentative map and a CDP for Tract 1646, a 100-lot subdivision substantially the same as Tract 1091. The application states that the project will rely on a community system for wastewater disposal and for water service. The proposed subdivision map, prepared by Westland Engineering, dated March 1989, shows a "package plant" on lot 95. An undated revision to this map shows 16 seepage pits/septic system on lots 45 and 46. It can thus be surmised that the applicant's interpretation of "community system" for waste water disposal did not encompass any greater area than their 19 acres. The County accepted the application for processing on June 25, 1989.

The record reflects that the County staff believed that circumstances in the Baywood Park- Los Osos area had changed since the EIR for Tract 1091 had been prepared and that a supplement to that EIR was required to address wastewater, water and traffic concerns. The applicant balked at this requirement and instead offered to submit additional information on these issues, particularly traffic. Activity on processing the application slowed pending receipt of the desired information and it appears the project languished for over a year. The traffic information, promised by the applicant, was finally received in November 1990, after notice by the project proponents that they would seek approval of the map and CDP by operation of law. Information regarding water and wastewater disposal was never received and a supplement to the old EIR was never prepared.

On November 5, 1990, the applicant provided the county with the appropriate notice under the Permit Streamlining Act (PSA) that Tract 1646 would be approved by operation of law unless the County acted on the proposal within 60 days (i.e., by January 4, 1991). The County prepared a staff report, recommending denial based on various inconsistencies with County planning and zoning standards and because the significant impacts of sewage disposal, traffic and water supply were unmitigated. The item was heard by the Subdivision Review Board at their November 30, 1990 meeting and was unanimously denied. The Subdivision Committee then referred the item to the Board of Supervisors with its recommendation that the Board deny it as well. The project was set for hearing before the Board of Supervisors on December 11, 1990.

**Project Revisions:** During the period between the filing of the PSA notice and the Board of Supervisors hearing, the applicant made a number of changes to the project in an attempt to avoid denial of the tentative map and coastal development permit. These revisions are documented in the following paragraphs:

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** This letter was from John Belsher, the applicant's legal representative to Terry Wahler, the planner handling the item for the County. In the letter, Mr. Belsher refers to an earlier conversation with Mr. Wahler regarding "clarifications" to features of the project. The letter then goes on to memorialize these "clarifications." Of most interest to the Commission are those which deal with sewer and water infrastructure. Regarding sewage disposal, Mr. Belsher clarifies that although the tract map shows certain lots "as set aside as sewage disposal pits . . . by this letter, the project contains only such sewer system as may be approved by the Regional Water Quality Control Board . . . . Accordingly, there is no need for designation of sewage disposal pits and the designations should be dropped from the map." Regarding the water service issue, Mr. Belsher states, "The applicant also agrees to abide by County requirements for water supply in effect at the time approval of the final map is sought."

Mr. Belsher also attached draft recommended Findings and Conditions to this letter for the County's use. His suggested Condition 1 states "This project shall connect to a sewer system approved by the RWQCB for the State of California, such that the present RWQCB moratorium on new construction is lifted." Suggested Condition 2 states "The applicant will be required to demonstrate an adequate water supply consistent with the County policy in effect at the time the final map is filed."

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** The contents of this letter are virtually identical to that of November 27, 1990 discussed above. In this letter, Mr. Belsher, wants the county to understand the exact status of the "clarifications" and proposed conditions contained in the November 27, 1990 letter. He therefore states "The following clarifications [described in the Nov. 27 letter] are intended to be incorporated into the project, in addition to having independent status as conditions. This approach is intended to address the concern that certain conditions may not be imposed as part of a vesting tentative map approval." The letter goes on to repeat the various clarifications and proposed conditions.
- **Letter, December 7, 1990, John Belsher to Evelyn Delany, Chair, and Members of the Board of Supervisors:** In this letter to the Board, Mr. Belsher explains that the "applicant has offered clarifications to his project and conditions to final map approval which alleviate central concerns expressed in the staff report". He goes on to say that these clarifications and conditions are set forth in his November 30, 1990 letter to Terry Wahler, a copy of which "is supposed to appear in your packets."
- **Letter, December 3, 1990, John Belsher to Nancy French:** This letter, to a Deputy County Counsel, was written in response to the concern that the County could not approve the project as modified by the applicant in the recent letters to Terry Wahler because of perceived inconsistencies with Map Act provisions regarding vesting tentative maps. Mr.

Belsher notes that the County seems particularly concerned with the modifications relevant to sewage disposal, traffic and water supply. As a preface to this lengthy letter, he states "The purpose of this letter is to demonstrate the legal authority of the Board to approve the application with said Modifications. Moreover, this letter will demonstrate that even if the project is approved by operation of law, the applicant will be bound by the Modifications."

- **SRB Meeting:** The Subdivision Review Board met on November 30, 1990 to hear the project and make a recommendation to the Board of Supervisors on it. The minutes of that meeting state that Mr. Belsher "submits a letter dated November 30, 1990 that contains modifications and conditions and would like the statement to reflect the changes in the project". Staff suggested that the applicant was proposing a revised project "since the applicant . . . desires to pursue hooking up to a community sewer system approved by the Regional Water Quality Control Board instead of the seepage pits shown on the map." At the conclusion of the hearing, the SRB voted 4-0 to deny the project.
- **1990 Board of Supervisors Hearing:** The project was then scheduled for a hearing before the Board of Supervisors. The staff report prepared for the SRB hearing was provided to the Board along with the SRB recommendation that the project be denied. This staff report, dated November 14, 1990, was prepared before the applicant offered his modifications and conditions to the project and thus it does not discuss the revisions. The report was up-dated by a cover letter to the Board that stated that "the applicant's representative has indicated a desire to propose a substantially different method of waste water disposal." A copy of John Belsher's letter laying out the various revisions was also provided to the Board.

The staff report was presented and a number of representatives from County agencies and members of the public spoke in support of the recommendation. Major issues were wastewater disposal, water service, traffic and the need for supplemental CEQA information to address these and other issues. The applicant's team, including his legal advisor, Mr. Belsher, presented the revisions to the project outlined in his November 30, 1990 letter to Terry Wahler and asked that the Board accept these "clarifications." After hearing from opponents and proponents, Supervisor Coy made a motion that Tract 1646 be "deemed approved" and that the applicant voluntarily incorporate a somewhat revised version of the "clarifications" or "proposed conditions" offered by Mr. Belsher in his November 30, 1990 letter. County Counsel advised that, before the Board acted, the revisions should be memorialized in writing. The item was then trailed to allow this to be accomplished. Later in the day, the hearing on Tract 1646 was resumed. Mr. Belsher brought back a document reflecting the Board's suggestions for revisions to the "clarifications" and "proposed conditions" outlined in the November 30th letter. Mr. Belsher proposed that the conditions of approval be retitled as "Additional Project Description." The Board then voted to recognize the project description as described by the applicant. In a subsequent vote, the Board voted to take no further action on the item. The project was approved by operation of law 25 days later on January 5, 1991, the termination of the 60 day notice period outlined in the Permit Streamlining Act. Relevant documents related to this action include the minutes of the December 11, 1990 Board meeting and the final revised "project description" containing 31 modifications submitted at that hearing. (Please see Exhibit 6.)

**1991 Commission Appeal:** The project was appealed to the Coastal Commission on January 11, 1991 by local appellants. The Commission did not appeal the item separately. A staff report was prepared recommending denial and was distributed to interested parties. One week before the item was scheduled for hearing by the Commission, the local appellants withdrew their appeal and the approval by operation of law stood. The County considers that the Tentative Map and CDP became effective on June 14, 1991 (the date the withdrawal of the appeal was apparently reported to the Commission).

**1993 Extension of Tract 1646:** On September 1, 1992, the applicant's representative wrote to the County requesting that the County concur with his opinion that provisions in the Subdivision Map Act provided for an automatic extension of up to five years for his map and CDP because there was a development moratorium in effect in Los Osos. (Government Code Section 66452.6(b)(1)). In the body of the letter, the applicant's representatives reiterated that Tract 1646 was bound by the conditions of approval to connect to a sewer system to be approved by the RWQCB. (Letter to Alex Hinds from Carol Florence.) In his November 2, 1991 response to Ms. Florence's letter, Mr. Hinds stated that the County position was that the cited section of the Map Act was not applicable to Tract 1646 because it extended only to those maps that were approved before a moratorium was established. The RWQCB moratorium was established on January 8, 1988, long before an application for Tract 1646 was submitted for county review and three years before Tract 1646 was approved. The letter went on to advise the applicant to apply for a time extension under County ordinance and noted that such an extension request could trigger the need for additional environmental work to comply with CEQA. The applicant (Jerry Holland to Alex Hinds, November 16, 1992) responded with a request for an appeal of the Planning Director's decision on the five-year automatic extension, and a promise to work on an EIR update for the project. Mr. Holland also implied that an application for an extension under County ordinances, as suggested in Mr. Hinds' letter, might be forthcoming. On December 18, 1992, this request for an extension was made for both Tract 1091 and Tract 1646. (Letter, Terence Orton to Pat Beck, SLO Planner.)

The initial hearing on the appeal of the Planning Director's determination was set for January 26, 1993. A staff report was prepared recommending denial of the appeal based on a detailed analysis of the pertinent Map Act sections. Finding #1 of this 1993 County staff report states that "connection to a community-wide system was included as part of the project description provided by the applicant." The hearing was continued to February 9, 1993, largely due to receipt of a lengthy analysis of the applicability of the Map Act provisions for extension prepared by the applicant's legal representative, Roger Lyon. This analysis concluded that the five-year extension was applicable to Tract 1646, not because of the RWQCB moratorium but because the County had failed to issue the bonds needed to fund the community sewer plant. This failure prevented recordation of the final map thus triggering the provisions of Government Code 66452.6(f) that allow for a five-year extension.

The Board considered the appeal again on February 9, 1993. The staff recommendation was revised to recommend approval based on Mr. Lyon's January 25th letter. In order to make the required CEQA Finding, the Board concluded that the 1984 EIR prepared for Tract 1091 was adequate to support the 1990 approval by law. The Finding identifying the project described it as a tract map/coastal development permit that included the conditions submitted in December 1990. Finding #18 advised the applicant that "If in the future, the project requires further discretionary action, the

project shall comply with all applicable laws, including the laws pertaining to further environmental review in effect at the time of the discretionary action." The approval extended Tract 1646/CDP until June 13, 1996 (unless sewer bonds were sold before that date, which they weren't). The findings then noted that the day after the development moratorium ends, the two-year period of time normally granted as part of Map/CDP approval will begin. Thus the project was valid through at least June 13, 1998.

**1998 Extension and Amendment of Tract 1646:** In November 1997, Ron Holland, the current applicant, requested a five-year time extension for Tract 1091/1646. (Letter, Ron Holland to Pat Beck.) At some point during this period, the applicant also requested a staff "interpretation" of some of the project conditions attached to the 1990 permit relevant to sewage disposal, water service and other issues. The Planning Commission heard the extension request and gave the applicant a three-year extension. The Planning Commission also upheld the staff interpretation of the project conditions that required the applicant to comply with water policies in effect at the time the final map was presented for recording and precluded recording of the final map until community-wide sewage treatment facilities were available for connections. Both of these Planning Commission decisions were appealed to the Board of Supervisors by the applicant.

A staff report was prepared for the August 25, 1998 Board hearing on the appeal of the staff interpretation of five project features and the extension of the tentative map and the CDP. (Please see Exhibit 3.) The Board held a hearing on the appeals on August 25, 1998 and, by a series of "tentative" motions, directed staff to return with language generally supportive of the applicant's request. The hearing was continued to September 22, 1998 at which time the Board affirmed its earlier decision to approve a five-year extension and most of the applicant's "interpretations" of project features.

Local residents and two Commissioners have appealed the Board's decision to grant the five-year extension and to allow amendments to the permit conditions.

## **B. THE COMMISSION'S APPELLATE JURISDICTION**

On March 11, 1999 the Commission determined that the County's action on Tract 1646 raised a substantial issue regarding conformity with the Certified San Luis Obispo LCP. It deferred consideration of the applicant's challenge to the Commission's jurisdiction under PRC section 30603 until the de novo hearing. The applicant has since filed suit, challenging the Commission's jurisdiction over this appeal. At a hearing on August 25, 1999 the San Luis Obispo County superior court did not address the applicant's argument that the Commission lacked jurisdiction under PRC section 30603. Instead, the Court directed the Commission to address the matter of its jurisdiction under section 30603 before conducting its de novo review of the project. The Commission now addresses the jurisdictional issues under section 30603.

### **Jurisdiction Under Public Resources Code Section 30603**

The staff report for the March 11, 1999 meeting contained proposed findings that were prepared in the event the Coastal Commission wanted to vote on the substantial issue question. The proposed findings were not adopted because the Commission did not formally vote on the issue. The Coastal

Act, in section 30625(b)(2), does not require a formal hearing and vote on the question of substantial issue. Indeed the statute says that the Commission "shall hear an appeal unless it determines that no substantial issue exists". Thus, the statute favors appeals. Once a matter within the Commission's appellate jurisdiction has been appealed to the Commission, the Commission must hear the matter de novo unless the Commission affirmatively finds that the matter does not raise a substantial issue and declines to hear the appeal.

The Commission's consideration of an appeal is conducted in the following manner. It is the practice of the Chairperson to inquire if any commissioners would like to discuss whether the appeal presents a substantial issue. If fewer than three commissioners raise a substantial issue question, the Commission proceeds to a hearing on the merits of the appeal without a formal hearing and vote on the substantial issue question. Any findings needed to support the Commission's appellate jurisdiction are then included in the findings on the merits of the Commission's de novo permit action.

Challenges to the Commission's jurisdiction under section 30603 are unusual and the Commission's regulations do not address when the Commission must address such a jurisdictional challenge. When the applicant at the March 11, 1999 hearing raised the question whether the Commission had jurisdiction under section 30603, the Commission deferred consideration of the applicant's argument until the de novo hearing. Consequently, even had the superior court not issued its order, the Commission would have considered the applicant's jurisdictional challenge before undertaking its de novo review of the matter under appeal.

Section 30603 provides in pertinent part:

*(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

*(1) Developments approved by the local government 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) Developments approved by the local government not included within paragraph (1) that are located 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) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*

*(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

*(5) Any development which constitutes a major public works project or a major energy facility.*

In this case, the issue of the Commission's jurisdiction raises two questions: (1) Is the decision of a local government to amend or extend a permit an appealable action under section 30603 and (2) if

so, does the County's action to extend and amend the applicant's coastal permit for a subdivision fall within one of the categories of appealable development contained in section 30603? (i.e. are subdivisions appealable?)

*The Decision of a Local Government To Amend or Extend a Permit Is An Action of Local Government That May Be Appealed Under Section 30603.* At the court hearing on August 25, 1999, the trial court raised an issue that the applicant had not raised before the Commission--whether the extension or amendment of a permit is the type of local government action that may be appealed under section 30603. The language, administrative practice and policy supporting the Coastal Act require that this question be answered in the affirmative.

First, the language of section 30603 includes the decision of a local government to amend or extend a permit. Section 30603 refers broadly to "an action taken by a local government on a coastal development permit application." A decision taken by a local government in response to an application to amend or extend a coastal development permit therefore readily meets the definition of "an action taken" by a local government (see also, LCP Ordinance 23.01.043(c) which also provides broadly for appeal of "decisions by the County on a permit application . . .").

Second, the Commission's longstanding administrative practice has treated appeals from decisions of local government to amend coastal development permits as appealable under section 30603. Examples of such appeals include A-3-MCO-98-109 (Leslie) and A-3-SCO-90-101 (City of Watsonville). This appears to be the first time that a local government decision to extend a permit has been appealed to the Commission, so there is no similar administrative practice with regard to permit extensions.

Third, there are strong policy considerations to support the Commission's conclusion that permit amendments or extensions are appealable, because any other construction of section 30603 would defeat the intent of the Coastal Act to secure Commission oversight of certain types of development. For example, assume that a County approved a CDP on the condition that the applicant mitigate project impacts by creating wetland habitat. Further assume that this action was therefore consistent with the LCP, and that therefore no appeal to the Commission was filed. Later, the County approved an amendment to the CDP deleting the mitigation program. If the Commission had no appeal jurisdiction over local government decisions to amend a permit, a local government could defeat the purpose of the LCP policies and implementing ordinances by simply approving an amendment to delete the condition originally needed for LCP consistency and consequently avoid an appeal. Similar reasons support appellate review of local government decisions to extend a permit in a situation where changed circumstances demand a reexamination of whether a previously issued permit still meets the policies of the LCP.

The Commission therefore finds that its decisions of local government to amend or extend a permit are within the scope of section 30603.

*The Commission has appellate jurisdiction under section 30603(a)(4).* The staff report for the March 11, 1999 hearing stated that the project was appealable for two reasons : (1) under Public Resources Code Section 30603(a)(1) because the site was located between the first public road and the sea and (2) under Section 30603(a)(4) because the project being extended and amended (a 100-

lot subdivision) was not listed as the principal permitted use for the zone district in which it is located.

The applicant and the County have submitted letters and graphics in support of their argument that the project site is no longer located between the first public road and the sea. (Please see Exhibits 7 and 8.) Commission staff has carefully reviewed these materials and determined that the adopted post-certification map for the project site is in error. Due to new road construction of Skyline Drive, the Holland site land is no longer within the geographic appeal area described in PRC Section 30603(A)(1). In 1991, Skyline Drive, pursuant to a valid CDP, was improved and accepted into the county road system. The geographic appeal area based on section 30603(a)(1) is now as shown on Exhibit 9 for the land in the immediate vicinity of the Holland parcel.

The County's action is appealable, however, under PRC Section 30603(a)(4). This subsection confers appellate jurisdiction over an action taken by a local government regarding:

*(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or the zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

The land use activity that is the subject of the County's action is a subdivision. A subdivision is "development" according to the definition of development found in Section 30106 of the Coastal Act. The question of whether a subdivision is the principal permitted use in a particular LCP is determined by the specific provisions in that LCP that define the LCP's principal permitted uses. Section 23.01.043(c)(4) of Title 23, Coastal Land Use Ordinance of the Certified San Luis Obispo LCP provides the regulations for the appeal of locally issued coastal development permits to the Coastal Commission. This section directly addresses the issue of appeals based on PRC Section 30603 (a) (4) by stating that "any approved development not listed in Coastal Table "O", Part I of the Land Use Element as a Principal Permitted (PP) Use" may be appealed to the Coastal Commission. (Emphasis added; Please see Exhibit 10, Table "O.")

Turning to Table "O", single family homes are listed as the principal permitted use for this site. The listing on Table "O" which describes the principal permitted and conditional uses allowed in this zone district does not include subdivisions of land as a principal permitted use. This matter is therefore within the Commission's appellate jurisdiction because it involves an action taken by a local government regarding a subdivision, which is development that has been approved by a County that is not listed as the principal permitted use in the County's LCP.

To attempt to "bootstrap" the initial subdivision of land, even if it is for ultimate residential use, into the category of a principal permitted use is an impermissible extension of the plain language of Table "O" and with PRC Section 30603(a) (4) which specifically provides for the appeal of all development that is not the principal permitted use in coastal counties, but not in cities. It is noteworthy that the statute extends greater appeal authority over coastal development permits issued by counties. The simple reason for this heightened level of oversight is because county coastal zones are much more likely to be rural or only partially developed in urban uses. Thus, in the counties, there are also more intact coastal natural resources to consider and, often, as the case here, less or inadequate infrastructure to support new development. Consistent with this policy to ensure a

greater level of oversight over development which can significantly affect resources, it is not surprising that subdivisions are not listed as the principal permitted use on Table "O" because of the impacts on coastal resources that may attend their creation.

A review of the Final Local Action Notices from 1988 and 1992 to the present for San Luis Obispo County reveals that all subdivisions, including this one, have been identified as appealable to the Coastal Commission by the County. Staff has also researched how subdivisions are handled in Mendocino, Monterey and San Mateo Counties for the purposes of PRC Section 30603(a)(4). The certified Implementation Plan for Mendocino County specifically states that "any approved division of land" is appealable to the Coastal Commission (Section 20.544.020B(3), County Zoning Code). In San Mateo County, all subdivisions have been treated as appealable. In Monterey County, they are also all appealable and listed specifically as "conditional" uses in each of the zone districts included in the LCP. (Title 20, Monterey County Code, Sections 20.10.050 Y, 20.12.050 X, 20.14.050 AA, 20.16.050 LL, 20.17.050 II, 20.18.060 NN, 20.21.060 D, 20.22.060 Y, 20.24.060 GG, 20.26.060 LL, 20.28.060 LL, 20.30.060 BB, 20.32.060 FF, 20.36.060 H, 20.38.060 I and 20.40.060 F.)

The Commission finds that it has jurisdiction under section 30603(a)(4) because the County's action involved a development that is not listed as one of the principal permitted uses in the County's LCP.

## **2. Substantial Issue**

Finally, the appeal raises substantial issues regarding the consistency of the County action with a number of LCP procedures and policies including the length and propriety of extending the coastal development permit for the subdivision and the consistency of the amendments with Public Works Policy 1. The Commission's findings, set forth below, explain how the county action conflicted with these important LCP policies and procedures and demonstrate the need for Commission review.

## **3. Conclusion**

Based on the preceding discussions of Public Resources Code 30603 and the fact that substantial issues are raised concerning the project's consistency with the LCP, the Commission finds that it has appellate jurisdiction over the applicant's request to extend and amend his CDP for the subdivision.

## C. COASTAL DEVELOPMENT PERMIT EXTENSION

As discussed, the San Luis Obispo County Board of Supervisors both extended and amended the coastal development permit for the Holland subdivision. Because the County action on the Holland subdivision CDP is now before the Commission in a de novo review, the Commission must address the appropriateness of both the CDP extension and the amendments.

### 1. The County's LCP allows only a three-year extension of a CDP for a tentative map.

#### LCP Requirements

As specified in Title 23 of the certified LCP, Title 21 of the San Luis Obispo County Code contains the "specific procedures and requirements for the land division process, *including compliance with coastal development permit requirements* [emphasis added]." (23.01.030(c)). Section 21.01.010 states that one purpose of Title 21 is to implement the certified local coastal program, and that approval of a tentative tract map "shall constitute approval of a coastal development permit . . . in accordance with the certified LCP and the California Coastal Act of 1976."

Concerning extensions of coastal development permits for tentative tract maps, LCP ordinance 21.06.010(a) specifies that an approved or conditionally approved tentative tract map "shall expire twenty-four months after its approval." Section 21.06.010(c) further specifies that upon application of the divider, filed with the planning department prior to expiration of the tentative tract map, that the subdivision committee or planning commission "may extend or conditionally extend the time at which [the] map expires for a period or periods not exceeding a total of three years." This section also states that the planning department shall make a written recommendation concerning extension requests, although no explicit criteria for approving extensions of tentative tract map CDP's are provided in the section. There is no LCP ordinance that provides for a five-year extension of a CDP for a tentative map. In general, then, the CDP extension procedures for tentative tract maps found in Title 21 mirror the generic CDP extension procedures found in Title 23 of the LCP, which allow for no more than three one-year extensions to what is initially required to be a two-year CDP, for a total maximum CDP life of five years (see Ordinances 23.02.040 and 23.02.050).

#### County Action

According to the local record, the applicant requested a five-year extension of Tract 1646 in November 1997. The Planning Commission granted the applicant a three-year extension. On appeal, the Board of Supervisors granted a five-year extension for "Tract 1646 (Holland)." Although the Board's minutes do not explicitly state the five-year extension applied to the CDP as well as the tentative map, the staff recommendation provided to the Board makes reference to "Tract Map 1646/CDP" in discussing the history of the subdivision, and it must be assumed that the applicant intended to seek an extension of both the tentative map and the CDP.

#### LCP Consistency

To the extent that the Board intended to extend the CDP for the Holland tentative tract map, this action to extend the CDP for five years is per se inconsistent with LCP ordinance 21.060.010(c), which allows a maximum extension of three years for subdivision CDPs. There is no evidence within the local record, and no citation to provisions in the LCP, that would justify a five-year

extension of the Tract 1646 CDP. Moreover, as mentioned above, there is also no other LCP provision that would provide for a five-year extension of a CDP for a tentative map. The County made no explicit findings concerning why a five-year extension is justified as opposed to the three-year extension allowed by the LCP, beyond a general reference to the extenuating circumstances surrounding the subdivision proposal. It may be that the Board was acting under Subdivision Map Act section 66452.6(e), which provides for discretionary five-year extension of tentative tract maps. However, this section is inapplicable to the CDP for the tract, which under the LCP is limited to a maximum extension of three years.

In sum, there is no authority in the LCP to extend the CDP for the Holland tentative tract map for a period of five years. The maximum time extension for the CDP for a tentative map is three years, according to LCP section 21.06.010(c).

## **2. The Extension Should Be Denied Because of Changed Circumstances.**

Because the Commission has taken jurisdiction over the extension and amendment of the Holland subdivision CDP, the Commission must now evaluate whether an extension of up to three years is appropriate under the LCP. As mentioned above, Title 21 of the LCP does not specify any substantive criteria for approving CDP extensions for subdivisions, although written findings are required. However, the Title 23 LCP extension provisions mirror the Coastal Act (see 14 Cal.Code Reg. § 13169) inasmuch as the planning director or the Planning Commission must make findings that there are no changed circumstances, including changes in basic service capacities available (sewer, water, roads, etc.), that would affect continuing compliance with the LCP. Inasmuch as one purpose of Title 21 is to implement the certified LCP and the California Coastal Act, the Commission finds that the appropriate standards for evaluating the appropriateness of a subdivision CDP extension are those specified in Title 23 of the LCP. Using these standards, there is at least one significant area of concern.

### **Environmentally Sensitive Habitat**

Since the 1990 approval of the Holland subdivision, the Morro Shoulderband snail has been listed by the U.S. Fish and Wildlife Service as an endangered species (January 17, 1995). Potential habitat for the species includes the sandy soils of coastal dune scrub and coastal sage scrub of Los Osos. The presence of Shoulderband snail habitat has been a primary concern of the Commission during its review of the Los Osos wastewater treatment plant. Although no specific surveys have been completed for the Holland site by the USFWS, the Service has indicated that there is a high probability that there are snails on the site. This assessment is based on the similarities between this site and other identified snail habitat in Los Osos. In addition, a representative for the project has previously contacted USFWS about initiating a Habitat Conservation Planning process to address the fact that the site provides snail habitat. (Personal Communication, Kate Symonds, USFWS Biologist to Steve Monowitz, 8/26/99.) More significant, the Public Review Draft of the County's Estero Plan Update identifies most of the Holland site, which falls into the category of parcels greater than an acre, as "Suitable Snail Habitat." (Figure 6-3; pg. 6-17 – see Exhibit II.) In support of this mapping, the text of the document summarizes:

**The County has conducted studies to identify snail habitat in Los Osos that may be developed in the future. Of 567 undeveloped parcels less than an acre in size, 172**

parcels contain suitable snail habitat. Of the 86 parcels greater than an acre in size, 38 parcels contain suitable snail habitat (6-16) [emphasis in original].

Thus, the County has itself indicated that the Holland parcel is suitable snail habitat, based on resource studies of Los Osos. The likely presence of these snails, in conjunction with the USFWS listing of this species as endangered, is a significant changed circumstance with respect to coastal resources.

In order to extend the CDP for the Holland subdivision, section 23.02.050(a)(2) requires the Commission to find that there are no changed circumstances that affect how the standards of the LCP apply to the project. Here, there is a definite changed circumstance concerning environmentally sensitive habitat that was not addressed at the time of the original CDP approval. Moreover, the LCP contains numerous policies that require the protection of sensitive habitat, including the following:

**Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats**

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

**Policy 2: Permit requirement**

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

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

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map.

Each of these policies have corresponding ordinances to implement the protection of sensitive habitats. In light of the significance of the changed circumstances with respect to the endangered shoulderband snail, it is clear that questions are raised concerning the consistency of the Holland subdivision with the certified LCP. This is particular true concerning Policy 4, which prohibits subdivisions that contain environmentally sensitive habitat. Therefore, the Commission concludes that findings necessary to extend the coastal development permit for Tract 1646 can not be made, and that the permit is thus not extended.

### **Adequate Water Supply**

As discussed in the water findings, there is no question that the availability of water for the project has deteriorated since the 1990 LCP evaluation of the subdivision. The overdraft situation in the Los Osos groundwater basin has not improved. There is also remains considerable uncertainty concerning the sustainable yield of the groundwater basin. It cannot reasonably be asserted that there is currently sufficient water to serve an additional 100 residential units. Nonetheless, because the original approval of the subdivision CDP was conditioned to required a showing of adequate water before the Final map could be filed, the uncertainty in future water availability has been taken into account.

### **3. The Expiration Date of the Permit**

The question that remains is whether the permit has now expired. The CDP for the subdivision was valid until at least June 14, 1998, which is the date that the two year life of the CDP would have ended following the expiration of the five-year moratorium extension that was granted by the County in 1993. Although the applicant's request for extension tolls the expiration of the permit until the request for an extension is decided, the Commission's decision to deny the permit extension means that the permit has now expired, and the applicant must reapply to the County for a new permit for the proposed subdivision.

The County's findings suggest that two state legislative automatic extensions of all tentative tract maps (2 years in 1993, and 1 year in 1996) add an additional three years to the life of tract map which, if true, would have extended the life of the permit until June 2001 (with the five-year extension of the tract map this would extend the map until June of 2006). This may be the case for the tentative tract map, but according to the relevant sections of the Subdivision Map Act, these legislative extensions extended only tentative subdivision maps and any other "legislative, administrative, or other approval by any agency of the State of California" that pertains to development included in the map (Govt. Code 66452.11(c); 66452.13(c)). As Daniel Curtin and Robert Merritt explain, "Cities or counties are not agencies of the state, and related approvals issued by them are not extended." Thus, to the extent that the County's action purported to extend the permit an additional three years by its interpretation of the Map Act, the County's action was ineffective once the Commission accepted this appeal.

### **4. Conclusion**

After reviewing the San Luis Obispo County LCP, the action of the Board of the Supervisors concerning the extension of the Holland subdivision CDP, and the current resource circumstances of the subdivision, the Commission finds: (1) the County approval of a five-year extension of Holland CDP is inconsistent with the certified LCP, which only allows for a maximum three-year extension of CDPs for subdivision tract maps (total allowable CDP life of five years); (2) there is no basis in the County record for approving more than a three-year extension of the Holland tentative tract map CDP; (3) the appropriate standards for evaluating whether to grant a subdivision CDP extension are those specified in Title 23 of the LCP namely, whether there are changed circumstances that would affect continuing compliance with the LCP; (4) that there are changed circumstances related to the U.S. Fish and Wildlife Service listing of the Morro Shoulderband Snail as an endangered species that raise serious concerns about the proposed subdivision's compliance

with the Environmentally Sensitive Habitat policies of the LCP; (5) that therefore the CDP for the Holland subdivision tract map cannot be extended; and (6) that, upon expiration of the permit, any future development proposals for the Holland site require a new coastal development permit from the County.

#### **D. COASTAL DEVELOPMENT PERMIT AMENDMENTS**

Initially, there is a question whether the action taken by the County in August and September 1998 constituted amendments to the applicant's CDP for the subdivision. The record shows that the action taken by the County constituted permit amendments, regardless of how the County characterized its actions.

##### **1. The County's Action Constituted the Approval of Amendments to the Original Permit**

On September 28, 1998, the San Luis Obispo Board of Supervisors extended the permits for this project for an additional five years and approved five changes to the terms of the original project. Three of the changes dealt with reductions in various fees that were originally required for the project. With the exception of a potential deletion of the sewer assessment for the site, these reductions do not appear to present LCP issues, and have not been appealed. A chart and county staff report describing these changes is attached as Exhibit 3. The Board of Supervisors characterized their action as an "interpretation" of the conditions originally approved as part of Tract 1646. The Board's action, however, resulted in substantive revisions to critical components of the subdivision approval and thus effectively amended the coastal development permit. A review of the substantive effect of the Board's action demonstrates that the revisions made to Conditions 1 and 2 of Tract 1646 in September go far beyond the insignificant adjustments that could be defined as interpretive guidance.

First, Condition 1 was originally approved as follows:

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

The Board revised this condition by qualifying that, "this condition can be met with either the Los Osos Community sewer project or some other project which meets the definition of community wide". The Board did not define the type of project, other than the current Los Osos Community sewer project, that would meet the requirements of a "community wide" project. The applicant, however, was clear that he was asking the Board to allow him to implement an alternative sewer project for his subdivision only, so that he could have the option of filing the final map before the Los Osos Community sewer facilities were approved or in place. (Please see Exhibit 4, Minutes of the August 25 and September 22, 1998 Board Hearings on this item.) The Board minutes reflect agreement with the applicant's position. (Applicant's representatives have since indicated to staff that a package plant for the subdivision would be used on an interim basis, until the community sewer system was available to serve the site.)

The appellants challenged the Board's characterization of this action to revise the terms of the project as an "interpretation." They contended that it was effectively an amendment to a condition of the original permit based on the LCP's provisions for authorizing changes to projects. Title 21 of the LCP does not address amendments to subdivision CDPs, but Title 23, regardless of whether it is binding in this situation, provides useful guidance as to the types of changes to a project that will trigger the need for an amendment to a permit. (Title 23, San Luis Obispo Coastal Zone Land Use Ordinance, Section 23.02.038 et seq.) These are summarized as follows:

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

The recent Board action to revise Condition 1 of Tract 1646 meets both of these criteria. The method of sewerage the project was specifically addressed by Condition 1 and was of particular concern to the Board as reflected in the Minutes of the December 11, 1990 hearing on this item. The on-site sewage treatment facilities originally proposed as part of the subdivision were specifically deleted from the project by the applicant in November 1990 in response to concerns expressed by the planning department. Although the Board in 1998 authorized the development of on-site waste water treatment facilities by permitting the amendment, the applicant did not provide construction plans or describe the size or location of proposed facilities for the Board's consideration.

The same issue is raised by the Board's action with regard to Condition 2. The provision of a domestic water supply was a significant issue when the Board discussed the original project in 1990 and Condition 2 was specifically developed to address their concern regarding water supply. The original provisions of Condition 2 are as follows:

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

In response to the applicant's request, the Board amended this condition to accept an existing 1988 "will serve" letter from the Southern California Water Company as an adequate demonstration of water availability for the filing of the Final map whenever that may be in the future. The "will serve" letter is quite brief and does not specify how long the company has committed to reserve connections for the project. (Please see Exhibit 5.) Therefore, a revision which allows reliance on an increasingly dated "will serve" letter is a substantial change from the original, prospective, condition which required up to date water information at the time, in the future, when the final map was presented for filing.

In addition, staff has contacted Warren Morgan, the Manager for the Southern California Water Company for the San Luis Obispo and Santa Barbara area. He states that "will serve" letters are valid only for one year and the applicant would need to get an updated "will serve" letter from the company. He stated that, at present, the company would likely give the applicant a new letter that

would be valid for one year. Commitments for service beyond this one year period would have to be secured on an annual basis.

A final problem with use of the 1988 letter is that the Southern California Water Company service area does not include the Holland site. The Holland site is, according to maps in the Draft Estero Area Plan Update, in the S and T Mutual Water Company service area. Discussions with S and T staff indicate that they do not have adequate capacity to serve the proposed subdivision, but that it was perhaps possible that service could be obtained from the neighboring purveyor, Southern California Water because neighboring water districts can serve across district boundaries. As discussed earlier, Southern California Water Company representatives have indicated that a new "will serve" letter may be issued.

The proposed change to Condition 2 also requires an amendment because the timing of the demonstration of water availability was specifically addressed by Condition 2 and was a specific concern of the Board of Supervisors as reflected in the minutes of the hearing on this item in 1990. For these reasons, the Commission finds that the Board's action constituted the approval of amendments to the conditions of the CDP, and is reviewable by the Commission on this appeal.

## **2. The Request to Amend the Original Permit Conditions Must Be Denied**

### **Condition 1, Sewage Treatment Facilities**

The County's action to amend the original permit conditions regarding sewer and water service is inconsistent with Public Works Policy 1 of the certified Land Use Element of the San Luis Obispo County LCP. This policy requires that new development demonstrate the following:

*"there are sufficient services to serve the proposed development given the outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable".*

The conditions attached to the original project ensured that this policy would be met by requiring that before the final map could be recorded, and development that would require these services could proceed, a community wide sewer facility would be in operation. (Please see Exhibit 6, Conditions of Approval, 1990.)

The amendments to the project approved by the County in September 1998 allow the applicant to file the final map on the basis of an alternative sewer treatment system to serve his proposed subdivision only. No plans for such a system (i.e. site plan, type of facility, elevation), however, were included with the applicant's requested amendment. The action of the Board is somewhat confusing because the minutes of the September 1998 meeting clearly state that the Board agreed with the applicant's proposition--to allow an alternative system for his subdivision only--but qualified the amendment by stating that the alternative would be "community wide." No definition of "community wide" was offered and based on the Board's agreement with the applicant's well-articulated position, the effect of the amendment is to allow the applicant to develop a "package" sewer plant on his site to serve the 100-lot subdivision only and thus, not a system that would serve

greater Los Osos. (Please See Exhibit 3, County Staff Reports.)

The Regional Water Quality Control Board has long been concerned about the impacts of individual and small package plants being used to treat wastewater in the Los Osos area because of the documented high levels of ground water contamination that continues to occur as a result. These problems are discussed in great detail in the staff report and supporting material developed as part of the Commission's continuing consideration of the Los Osos Wastewater Treatment Facilities appeal, A-3-SLO-97-40.

To briefly recap the current situation, the site of the subdivision is located in the "prohibition area" designated by the Regional Water Quality Control Board as an area where any additional septic systems are inappropriate. The area has also been under a moratorium on new sources of sewage discharge imposed by the Regional Water Quality Control Board since January 8, 1988. The effect of the moratorium is to preclude the installation and operation of any new or expanded sewage treatment systems that would degrade water quality either individually or cumulatively within the prohibition area unless an exception is granted by the RWQCB. During the eleven years the moratorium has been in effect, one exception has been granted by the RWQCB and, according to Board staff, this alternative system has not proved entirely successful. No new "package" sewage treatment plants to serve multi-unit projects have been approved since the imposition of the moratorium although a replacement plant was allowed to alleviate the discharge from the Sea Pines Golf Course and serve the Monarch Grove development. RWQCB staff state that any new "package" plants will be reviewed by the Board both for their ability to avoid any degradation of water quality and their effect of the ability of the community to continue to make progress on developing a truly community-wide wastewater treatment facility. Given this situation, it is obvious that adequate sewer facilities to serve the proposed subdivision do not exist and will not likely be available until a community-wide wastewater treatment facility for the community of Los Osos that complies with the RWQCB's requirements is constructed and operating.

Over the last few years, San Luis Obispo County and the Regional Board have been actively pursuing a permit for the construction of a sewage treatment facility to serve the area of Los Osos located within the "prohibition area." Realization of this community-wide sewage treatment facility, or one similar to it, will provide adequate sewage treatment facilities for not only this project but for the remainder of Los Osos, thus allowing compliance with LCP Public Works Policy 1. As discussed in the preceding paragraph, it is problematic at best if an alternative to the currently proposed Los Osos Wastewater Treatment Facility that would serve just this project could comply with the Regional Board's policy in this area. It is also unclear what effect the cumulative impact of exceptions to the Board's ruling could have on efforts to construct the needed community facility.

For all of these reasons, the applicant's request to modify the original condition significantly weakens the intent of the original condition and does not ensure that adequate sewer facilities will exist to serve the new development as required by LCP Public Works Policy 1. The requested amendment is therefore denied.

## **Condition 2, Water Service**

The same issue of consistency with LCP Public Works Policy 1 arises because of the amendment to Condition 2. This condition contains the following provisions:

*Condition 2. Prior to filing the Final Map, the applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the Final Map is filed.*

The amendment allows the map to be filed and county policy to be met anytime in the future based on a 1988 "will serve" letter. This "will serve" letter, as discussed on page \_\_\_ of this report, is no longer valid according to representatives of the water company. As originally written, Condition 2 was consistent with Public Works Policy 1 because it required an assessment of water availability at the time of filing of the final map. This would ensure that water service, consistent with the LCP policy, was available to serve the new parcels at the time when they could be sold and developed with residences that would need a water supply. The recent amendment is inconsistent because it assumes water will always be available to this project due to the old "will serve" letter no matter how circumstances or policies may have changed since 1988 or will continue to change before the final map for this subdivision is presented for filing. As discussed in the following paragraphs, changes in water availability have already occurred over the last nine years since this project was approved. The Commission notes that, notwithstanding the 1988 "will serve" letter, the adequacy of water was a central factor in the decision of the San Luis Obispo Subdivision Review Board denial of the project in 1990 and was a major issue in the staff recommendation on the 1991 appeal of this project that was never heard by the Commission.

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

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

The 1990 County staff report prepared for the Subdivision Review Board hearing on this project also expressed a concern regarding water availability for new development by stating that adequate water services were not insured for the project at that time for the following reason:

The evidence presented in the study prepared by the State of California Department of Water Resource' study entitled "Geohydrology and Management of Los Osos Valley Ground Water Basin, San Luis Obispo" which establishes that the water supply in the water basin from which this project would draw is limited without a community sewer system to increase recharge in the basin and will not be sufficient to serve additional residences which will result from the subdivision of this site. (County Staff Report, dated November 14, 1990.)

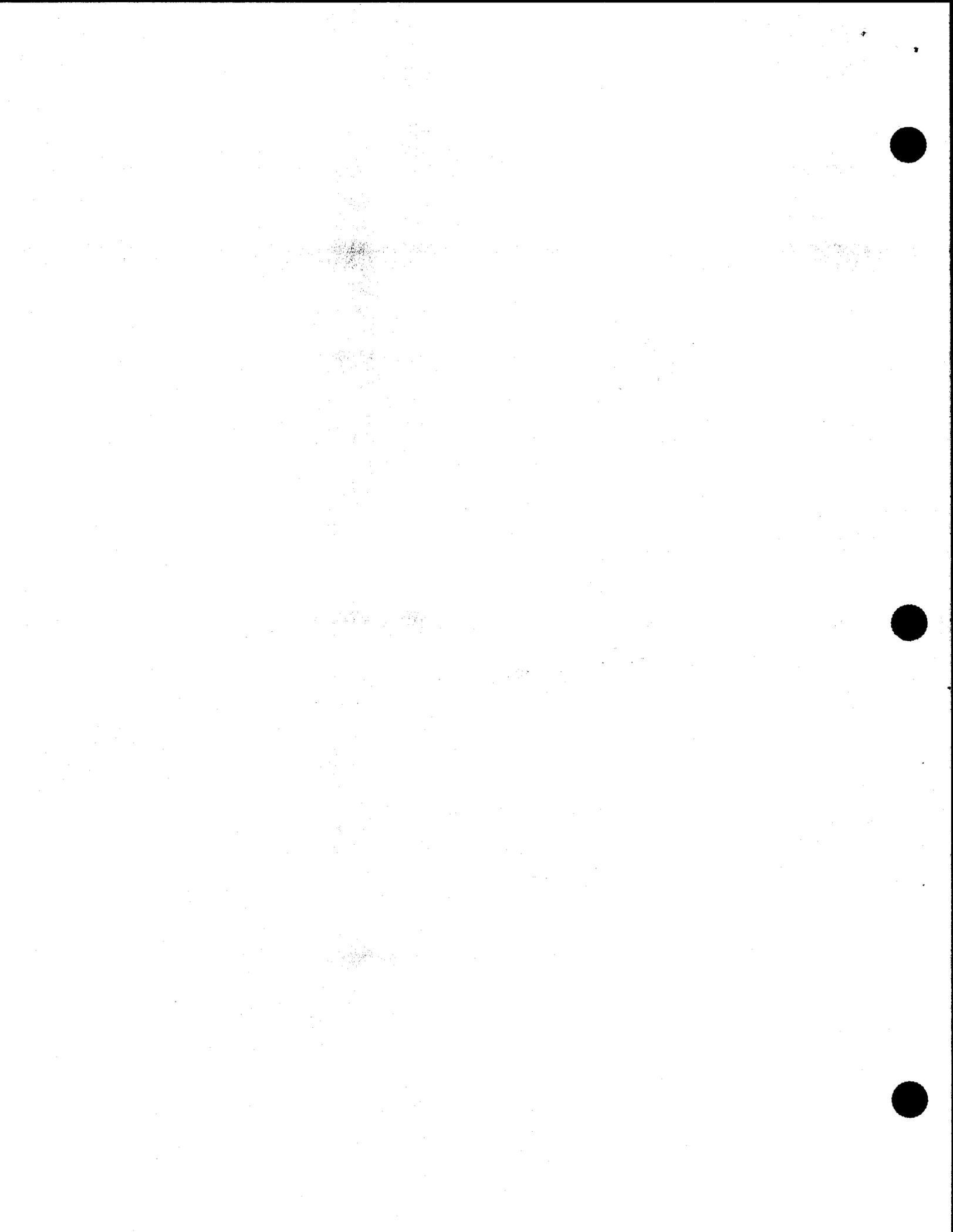
The water limitations and constraints identified in the Estero Area Plan and in the 1990 County staff report have not lessened over the intervening years. The Community Wastewater Treatment Facility planned to recharge the basin has yet to be constructed, no outside water sources have been tapped and additional development has claimed increments of the existing supply. The population has grown since 1990. According to the most current population figures for the area given in the Draft Estero Area Plan, the population of urban Los Osos is 14,568. It thus appears that the safe yield figures given in the currently certified Estero Plan (dated 1988) have been exceeded and, if coastal resources are to be protected consistent with the policies of the certified LCP, the Commission cannot find that there is an adequate water supply for new development at this time.

Future water availability is even less certain. The Draft Estero Area Plan (1999) includes an updated discussion of water supply for Los Osos which concludes that there is an existing overdraft of approximately 1,250 acre feet a year based on a safe yield figure of 2,200 acre feet a year for the basin. The report notes, however, "that DWR's [Department of Water Resources] estimate of the long term sustainable yield of the Los Osos groundwater basin is being questioned, and further study is needed to arrive at a more definitive figure".

The Estero Area Plan Update also states that "the estimate of future supply remains uncertain." Thus, reliance on an invalid 1988 "will serve" letter to allow the recordation of a final map for a 100-lot subdivision is inconsistent with LCP Public Works Policy No. 1 and the applicant's requested modification of this condition must be denied.

#### **E. California Environmental Quality Act (CEQA)**

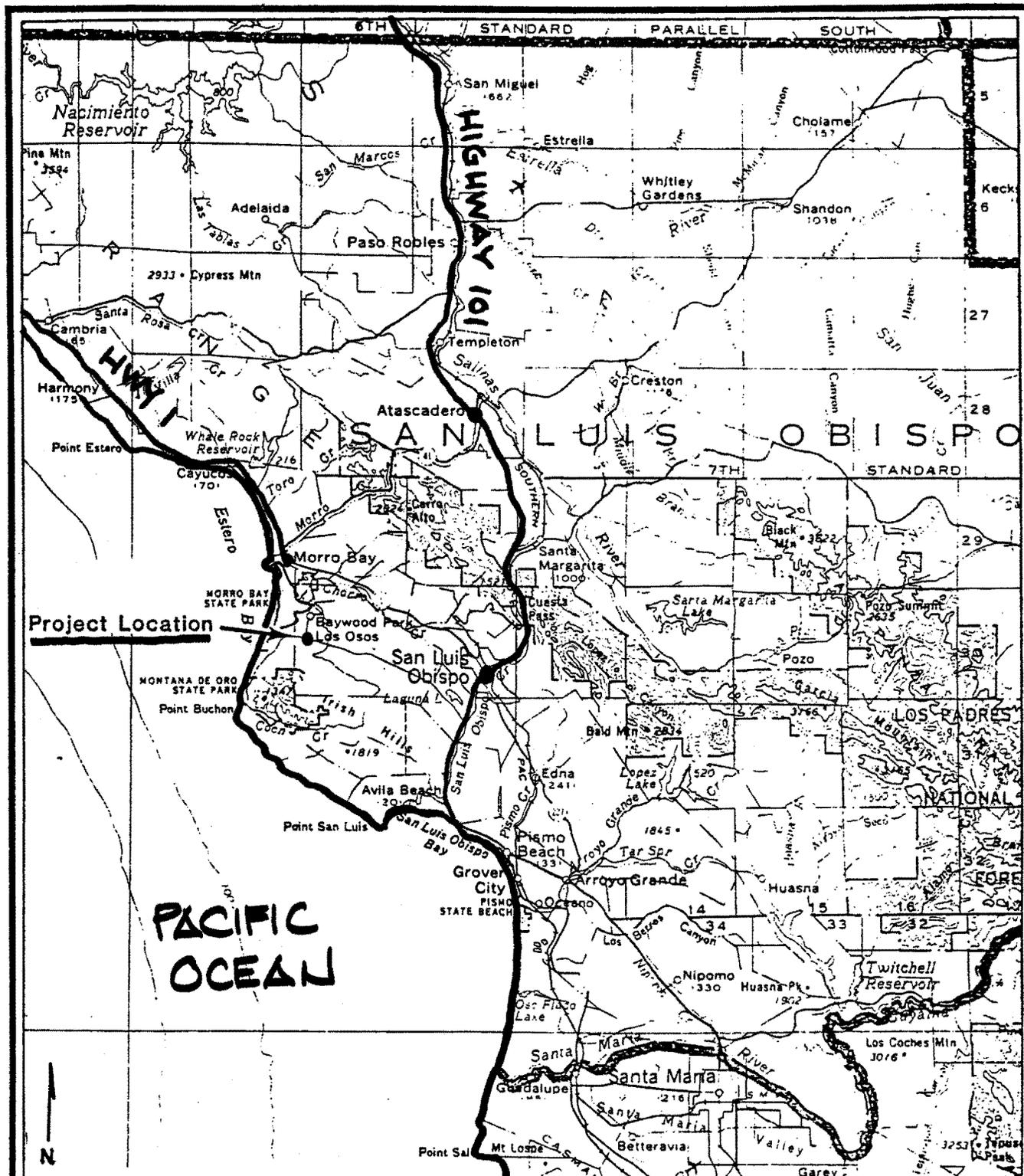
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. As discussed herein, the County's extension and amendment of the coastal development permit for the Holland tentative tract map cannot be approved because there are feasible, less environmentally-damaging alternatives.



## **HOLLAND EXHIBITS**

<b>Exhibit No.1</b>	<b>Location Map</b>
<b>Exhibit No. 2</b>	<b>Land Use and Site Plan</b>
<b>Exhibit No. 3</b>	<b>County Staff Reports</b>
<b>Exhibit No. 4</b>	<b>Board Minutes, Aug/Sept., 1998</b>
<b>Exhibit No. 5</b>	<b>Will Serve Letter</b>
<b>Exhibit No. 6</b>	<b>1990 County Action</b>
<b>Exhibit No. 7</b>	<b>Correspondence ... Applicant's Representative</b>
<b>Exhibit No. 8</b>	<b>Correspondence ... County Counsel</b>
<b>Exhibit No. 9</b>	<b>Updated Post Certification Map</b>
<b>Exhibit No. 10</b>	<b>Table "0" San Luis Obispo County LCP</b>
<b>Exhibit No. 11</b>	<b>Draft Estero Plan</b>

**A-3-SLO-98-108**

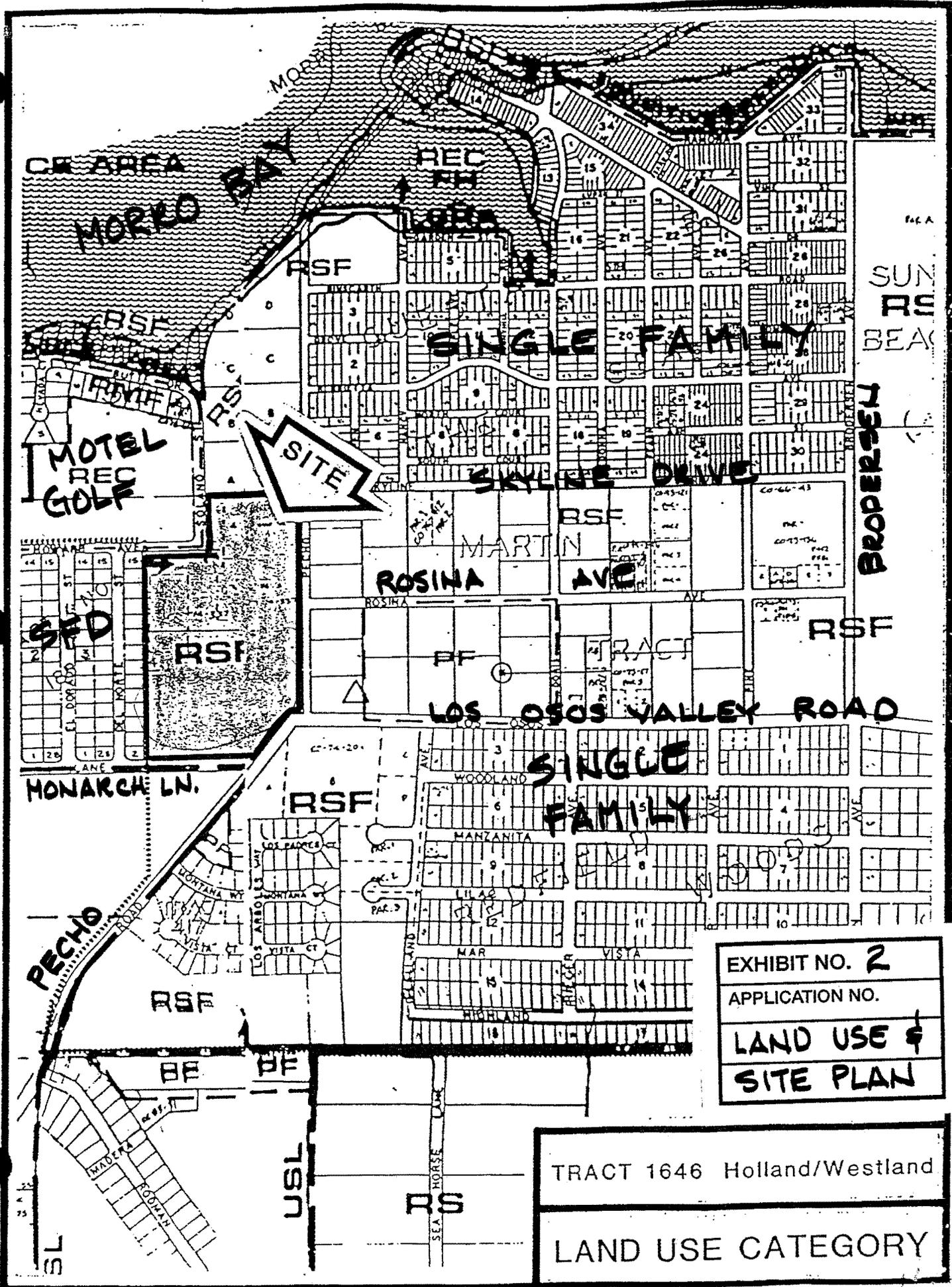


**Project Location**

**PACIFIC OCEAN**

<b>EXHIBIT NO. ONE</b>
APPLICATION NO.
<b>A-3-90-98-108</b>
<b>LOCATION</b>

**REGIONAL SETTING**

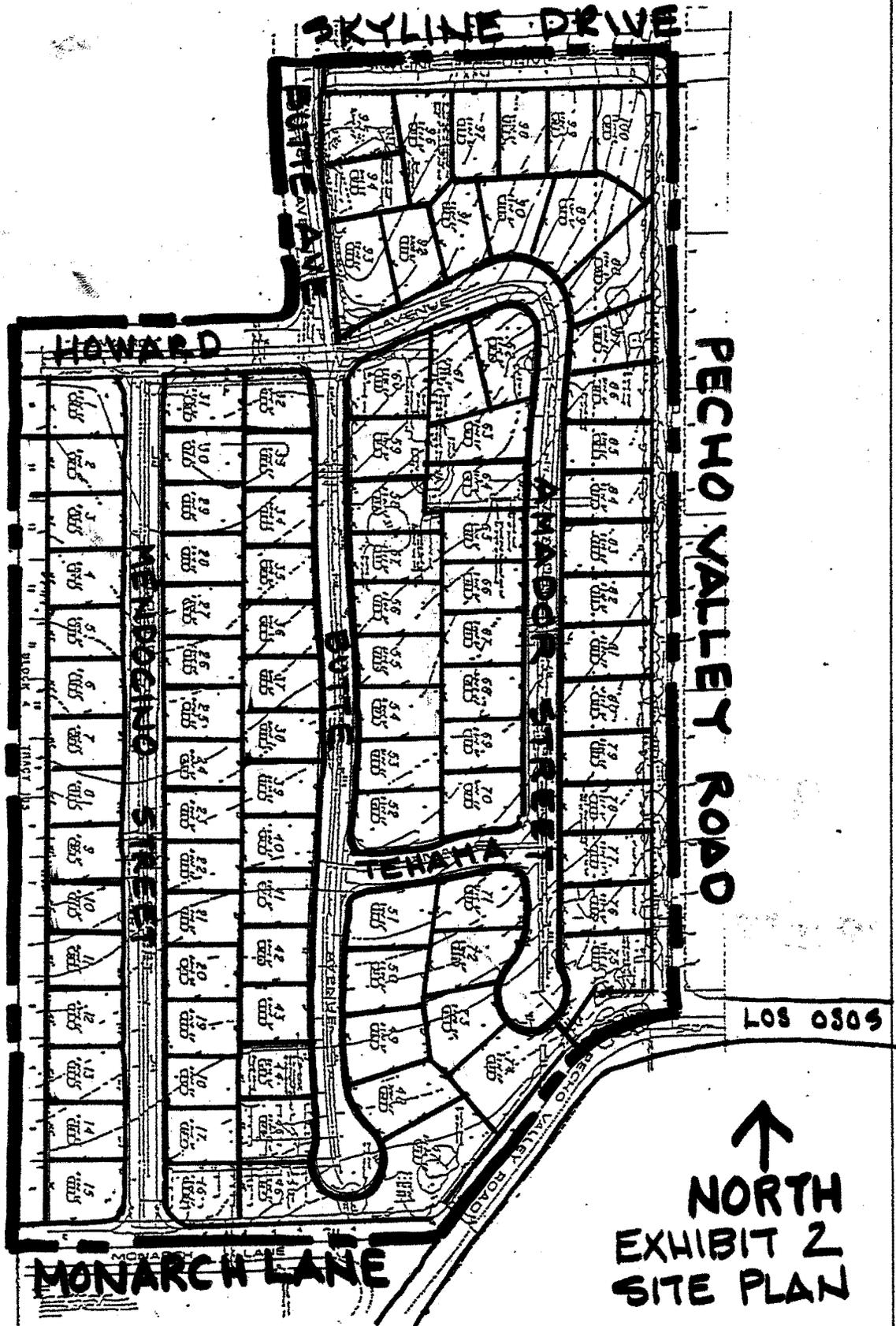


SUN  
RE  
BEAK

PROPOSED

EXHIBIT NO. 2  
APPLICATION NO.  
LAND USE &  
SITE PLAN

TRACT 1646 Holland/Westland  
LAND USE CATEGORY



ATTACHMENT 2—SITE PLAN  
TRACT 1646



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

<b>(1) Department</b> PLANNING AND BUILDING	<b>(2) Meeting Date</b> AUGUST 25, 1998	<b>(3) Contact</b> PAT BECK, PRINCIPAL PLANNER	<b>(4) Phone</b> 781-5981
<b>(5) Subject</b> APPEAL OF PLANNING COMMISSION DECISION TO GRANT A THREE YEAR EXTENSION - TRACT 1646 (LOS OSOS)		<b>(6) Supervisor District(s)</b> 2nd	<b>(7) Location Map</b> <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A
<b>(8) Summary of Request</b> APPLICANT IS APPEALING DECISION OF PLANNING COMMISSION TO GRANT A THREE YEAR EXTENSION OF TRACT 1646 RATHER THAN THE FIVE YEAR EXTENSION AS REQUESTED			
<b>(9) Recommended Action</b> DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION DECISION			
<b>(10) Administrative Office Review</b> <i>Concur</i>			
<b>(11) Funding Source(s)</b> FEE FOR APPEAL OF DECISION	<b>(12) Current Year Cost</b> \$474.00	<b>(13) Annual Cost</b> NA	<b>(14) Budgeted?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/> No
<b>(15) Will Request Require Additional Staff?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
<b>(16) Supportive Documents</b> PLANNING COMMISSION STAFF REPORT - JUNE 11, 1998		<b>(17) Past Actions on Item</b> APPROVAL UNDER OPERATION OF LAW - DECEMBER 12, 1990: PROJECT STAY 2/93	
<b>(18) Agenda Placement</b> <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. 30 Minutes) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			
<b>(19) Executed Documents</b> <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies)		<b>(20) Need Extra Executed Copies?</b> <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached	
<b>(21) Appropriation Transfer Required?</b> <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A			

EXHIBIT NO. <b>3</b>
APPLICATION NO.
<b>COUNTY STAFF</b>
<b>REPORTS</b>



SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

ALEX HINDS  
DIRECTOR

BRYCE TINGLE  
ASSISTANT DIRECTOR

ELLEN CARROLL  
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY  
CHIEF BUILDING OFFICIAL

**DATE:** AUGUST 25, 1998

**TO:** BOARD OF SUPERVISORS

**FROM:** PAT BECK, PRINCIPAL PLANNER

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

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

**ATTACHMENTS:**

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

**RECOMMENDATION**

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

**DISCUSSION**

**Background**

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

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

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

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

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

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

### Analysis

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

C-7  
M  
EX. 5

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

Relationship to Other Board Item

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

Other Agency Involvement

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

Financial Considerations

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

C-4  
4

EX 3

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

<b>(1) Department</b> Engineering	<b>(2) Meeting Date</b> August 25, 1998	<b>(3) Contact</b> Richard Marshall	<b>(4) Phone</b> (805) 781-5280
<b>(5) Subject</b> Consideration of an Appeal by T. Orton of the County staff's interpretation of the Conditions of Approval for Tract 1646		<b>(6) Supervisor District(s)</b> 2nd	
		<b>(7) Location Map</b> <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A	
<b>(8) Summary of Request</b> The developers of Tract 1646 in Los Osos requested that County staff provide their interpretation as to what would satisfy the conditions of approval of the subdivision. Following a consolidated response from Engineering, Planning and Environmental Health, Terence Orton of Westland Engineering has filed an appeal on behalf of his clients, Ron Holland and Noel Rodman, requesting that your Board overturn the staff interpretation on five of the thirty-one conditions.			
<b>(9) Recommended Action</b> It is our recommendation that your Board deny the appeal and uphold the staff interpretation of all conditions of approval of the subdivision.			
<b>(10) Administrative Office Review</b>			
<b>(11) Funding Source(s)</b> N/A	<b>(12) Current Year Cost</b> N/A	<b>(13) Annual Cost</b> N/A	<b>(14) Budgeted?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/> No
<b>(15) Will Request Require Additional Staff?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
<b>(16) Supportive Documents</b> None		<b>(17) Past Actions on Item</b> Tract 1646 was deemed approved by operation of law December 11, 1990.	
<b>(18) Agenda Placement</b> <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Board Business (Time Est. 15 minutes)			
<b>(19) Executed Documents</b> N/A <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies)		<b>(20) Need Extra Executed Copies?</b> N/A <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached	
		<b>(21) Appropriation Transfer Required?</b> <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	

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# SAN LUIS OBISPO COUNTY ENGINEERING DEPARTMENT



COUNTY GOVERNMENT CENTER • ROOM 207 • SAN LUIS OBISPO, CALIFORNIA 93408

TIMOTHY P. NANSON  
COUNTY ENGINEER  
GLEN L. PRIDDY  
DEPUTY COUNTY ENGINEER  
ENGINEERING SERVICES  
NOEL KING  
DEPUTY COUNTY ENGINEER  
ADMINISTRATION

PHONE (805) 781-5252 • FAX (805) 781-1229

ROADS  
SOLID WASTE  
FRANCHISE ADMINISTRATION  
WATER RESOURCES  
COUNTY SURVEYOR  
SPECIAL DISTRICTS

**TO:** Board of Supervisors

**FROM:** Richard Marshall, Development Services Engineer *REM*

**VIA:** Glen L. Priddy, Deputy County Engineer - Engineering Services *GP*

**DATE:** August 25, 1998

**SUBJECT:** Consideration of an appeal by T. Orton of the County staff's interpretation of the Conditions of Approval for Tract 1646

## Recommendation

It is our recommendation that your Board deny the appeal and uphold the staff interpretation of all conditions of approval of the subdivision.

## Discussion

Tract 1646 is a proposed 100-lot subdivision in the Residential Single Family land use category, located on the northerly side of Los Osos Valley Road, between Pecho Road and Monarch Lane, in Los Osos. Attached to this staff report are a location map and a site plan showing the layout of the subdivision. The tentative map of Tract 1646 was actually deemed approved by operation of law, under the requirements of the California Permit Streamlining Act. The conditions, in this case, are actually in the form of "Additional Project Descriptions," which were provided by the applicants at the December 11, 1990 hearing of the Board of Supervisors, at which time the Board was considering the matter. On February 9, 1993, the Board of Supervisors granted a "stay," under the provisions of the Government Code, effectively stopping the clock on the expiration of the original approval of the project due to the wastewater disposal moratorium in effect in the community. On June 3, 1997, Terence Orton of Westland Engineering submitted a request for County staff to review the conditions of approval and provide their interpretation as to what would be required to comply with each one. After researching the various aspects of the project, staff from Engineering, Planning & Building, and Environmental Health departments prepared a consolidated response to Mr. Orton on July 14, 1997. On August 13, 1997, the applicants appealed the staff interpretation five of the conditions, which are further discussed below. Since that time, staff members have been meeting with the applicants and their agent in an effort to resolve the differences of opinion. While much has been accomplished in terms of improved communication on the nature of the requirements, it finally has been concluded by all parties involved that the ultimate resolution rests with your Board. Following are the five points of the applicant's appeal:

EX. 3

**Condition 1. The project shall connect to a community-wide sewer system approved by the Regional Water Quality Control Board. The Applicant shall not file the final map unless and until a community-wide sewer system has been constructed and is available for the project to connect to.**

Applicant's response

*This condition can be met with either the Los Osos Community sewer project or some other project that meets the definition of "community-wide." The definition from the Land Use Ordinance for a Community Sewer System is a sewage effluent collection network, treatment and disposal facilities provided within a prescribed service boundary, which results in the primary, secondary or tertiary treatment of such effluent. The Regional Water Quality Control Board Basin Standard defines a community system as a residential wastewater treatment system for more than 5 units or more than 5 parcels. Therefore, based on the condition, a system that would be for more than 5 units and received a wastewater discharge permit from the Regional Water Quality Control Board would meet this requirement.*

Staff response

The concept of something other than the Los Osos Community Sewer System satisfying this condition has already been adjudicated by the Board of Supervisors. On April 25, 1995, your Board denied an appeal by Colmer Development Company (who was at the time considering acquiring the project) of the County Engineer's denial of the use of a private neighborhood sewage treatment facility. It continues to be the position of the County that a facility serving only this tract would not be in substantial conformance with the tentative map.

**Condition 2. Prior to filing the final map, the Applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the final map is filed.**

Applicant's response

*Currently we have a valid "Will Serve" letter from Southern California Water Company. This letter was updated and used to have the Improvement Plans signed by the County Engineering Department. This source of water is acceptable to the County Health Department and other County Departments. This valid "will serve" letter then completes this condition. The applicants do not want to be required to seek new approval from the water purveyor, possibly triggering additional capital improvement requirements.*

Staff response

An updated final "will serve" letter from Southern California Water Company, with the improvements either constructed or bonded for, is what is necessary to meet this condition. This is consistent with what is required of all new subdivisions in the County.

**Condition 13. If required, the drainage basin along with rights of ingress and egress be offered for dedication to the public by certificate on the map.**

Applicant's response

*This condition has been satisfied with the completion and approval of the Improvement Plans, which include a storm drain system and not a drainage basin.*

Staff response

Because of the approved use of a storm drain system rather than a drainage basin, there is no need for an offer of dedication; therefore, this condition may be considered satisfied. No other action is required to meet County requirements. County staff have informed the applicant that new environmental issues have arisen since the 1990 approval of the tract, which may affect the

release of storm water drainage into Morro Bay; and that even though they are not features of the Additional Project Description, any applicable federal or state regulations will need to be complied with.

**Condition 26.** The Applicant agrees to pay any fees applicable to the Tract Map 1646 hereinafter enacted by the Board of Supervisors upon completion of the South Bay Circulation Study pursuant to San Luis Obispo County Code Chapter 13.01.

Applicant's response

*It is the clients' position that the fees that were in place or were noticed for public hearing at the time the Tentative Map was submitted are the fees that they are responsible to pay, since this is a vesting tentative map. Therefore, since no fees were established, none would need to be paid.*

Staff response

The fact that the South Bay Circulation Study was pending, but not yet complete at the time the Board of Supervisors was considering the tentative tract map, is the reason that this "condition" was built into the project description by the applicant, in this form, as an element of the Additional Project Description. If an agreement to pay the road improvement fee, enacted by the Board of Supervisors pursuant to San Luis Obispo County Code chapter 13.01, is not entered into, we would not be able to find substantial conformance with the deemed approved tentative map and would not be able to record the final map.

**Condition 31.** The Applicant agrees to the payment of any fees adopted by the County and imposed on an area-wide basis for the Los Osos community, payable at the time of application for building permits.

Applicant's response

*It is understood, as with condition 26, that this is a vesting map, and the fees shall be those in place at the time of the submittal of the application for processing.*

Staff response

As with item 26, the language of this "condition" built into the project description by the applicant in this form would appear to vest this project **with** (not **without**) the obligation to pay the type of fees being discussed, which include Public Facilities Fees, Quimby (parks) Fees, and the Affordable Housing In-lieu Fees.

**Other Agency Involvement**

County staff responses to the applicants and their agent have been prepared by a cooperative effort of the Engineering, Planning & Building and Environmental Health departments and County Counsel.

## Financial Considerations

Many of the items being appealed have the potential to result in future lost revenue to various programs. The value of the potential lost revenue is summarized as follows:

Condition #	Item	\$/lot	100-lot Total \$
1	Los Osos Community Sewer Assessment <sup>1</sup>	\$6,210	\$621,000
26	Road Improvement Fee	\$2,002	\$200,200
31	Public Facilities Fee	\$3,172	\$317,200
31	Quimby (parks) Fee	\$1,708	\$170,800
31	Affordable Housing In-lieu Fee	\$111	\$11,100

There is no direct fiscal impact to County programs associated with conditions 2 or 13, dealing with the will-serve letter from Southern California Water Company, or the release of stormwater drainage into the bay.

Attachments:       1. Location map  
                      2. Site plan

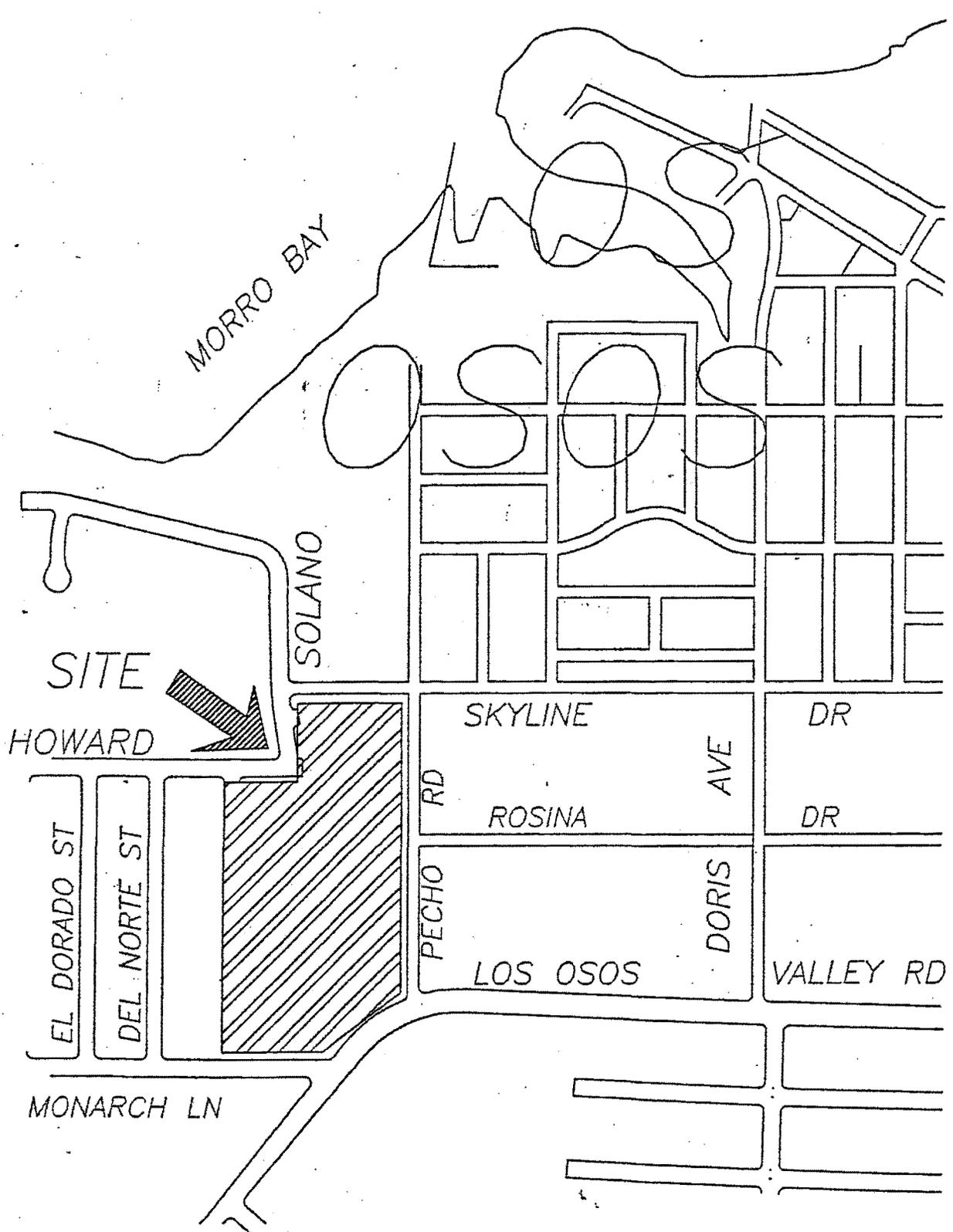
cc:   Pat Beck, Planning and Building Department  
      Richard Lichtenfels, Environmental Health  
      Terence Orton, Westland Engineering

File: Tract 1646

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<sup>1</sup>It is possible, since the Sewer Assessments have already been established, that the developers would still be obligated to pay the amount which has been determined for this property, even if your Board permitted the tract to move forward with a private neighborhood sewage treatment facility.



ATTACHMENT 1-LOCATION MAP  
TRACT 1646

11/17/97

Pat Beck  
San Luis Obispo County Planning

Dear Pat,

Per our discussion today, we are requesting a five year time extension on Tract 1646/1091.

Due to circumstances beyond our control, (ie the sewerage of Los Osos), we have already been granted a 5 year stay on this map. We have also received additional time as stated by your letter of October 8, 1997, due to special legislation which extends our tentative tract map to June 14, 2001.

We recognize that a single five year time extension is not normally given in this manner, but due to the unknown circumstance of not knowing when the Los Osos Sewer will be installed and online as well as planning financially for this project, we need to know we have the allowed five year extension provided by the California Subdivision Map Act. This would extend our map to June 14, 2006.

Please let us know what the filing fees are, if any and we will kindly remit.

Thank you for your consideration.

Sincerely,

**COPY**

Ron Holland  
Representative for Tract 1091/1646

**EX. 3**

# SAN LUIS OBISPO COUNTY ENGINEERING DEPARTMENT

COUNTY GOVERNMENT CENTER • ROOM 207 • SAN LUIS OBISPO, CALIFORNIA 93408

TIMOTHY P. NANSON  
COUNTY ENGINEER  
GLEN L. PRIDDY  
DEPUTY COUNTY ENGINEER  
ENGINEERING SERVICES  
NOEL KING  
DEPUTY COUNTY ENGINEER  
ADMINISTRATION

PHONE (805) 781-5252 • FAX (805) 781-1229



ROADS  
SOLID WASTE  
FRANCHISE ADMINISTRATION  
WATER RESOURCES  
COUNTY SURVEYOR  
SPECIAL DISTRICTS

July 14, 1997

Terence K. Orton  
Westland Engineering Company  
75 Zaca Lane, Suite 100  
San Luis Obispo CA 93401

Subject: Conditions of Approval for Tract 1646

Dear Mr. Orton:

Thank you for your letter of June 3, 1997, requesting clarification of the requirements associated with the final approval of this tract. Following receipt of payment of past-due invoices, I have consulted with Pat Beck and Terry Wahler of the Department of Planning and Building, and Richard Lichtenfels of the Environmental Health Department, who have provided information to assist me in formulating this, our consolidated response. Below are the responses to your evaluations of each "condition" of the approval of this tract.

Please bear in mind that as this map was actually deemed approved by operation of law under the California Permit Streamlining Act, the "conditions" are actually in the form of "Additional Project Descriptions" which were provided by the applicant at the Board of Supervisors' hearing of December 11, 1990. As I previously indicated in my April 16, 1997 letter, in addition to the following County requirements, there may be additional Federal or State requirements to respond to environmental issues which have arisen in the Los Osos area since 1990. Just because they are not features of the Additional Project Description, does not mean that these Federal and State requirements do not need to be met. We anticipate that you or your client will provide us with some sort of verification that these agencies' requirements have been satisfied prior to beginning construction on the site, otherwise County staff will seek such verification directly.

Responses to June 3, 1997 evaluation of conditions of approval, Tract 1646:

1. The concept of something other than the Los Osos Community Sewer System satisfying this condition has already been adjudicated by the Board of Supervisors. On April 25, 1995, they denied an appeal by Colmer Development Company of the County Engineer's denial of the use of a private neighborhood sewage treatment facility. It continues to be the position of the County that a facility serving only this tract would not be in substantial conformance with the tentative map.

EX. 3

2. An updated final "will serve" letter, from Southern California Water Company, with the improvements either constructed or bonded for, will be acceptable to meet this condition.
3. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the improvements is acceptable to meet this condition.
4. Los Osos is the only community in the unincorporated area which has mandatory garbage pickup. Therefore, we will not require a "will-serve" letter from the local solid waste collection service, and this condition may be considered satisfied.
5. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the improvements will satisfy this condition. Please note that revisions will be required along Monarch Lane to reflect the changed configuration of its intersection with Pecho Valley Road.
6. The offer of dedication on the final map is acceptable to meet this condition.
7. There is no condition 7.
8. The access denial on the final map is acceptable to meet this condition.
9. The pedestrian easement reserved on the final map, and constructed with the rest of the improvements, is acceptable to meet this condition.
10. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the storm drain improvements will satisfy this condition.
11. Drainage calculations were completed with the improvement plans, and therefore this condition is satisfied.
12. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the drainage improvements will satisfy this condition.
13. Improvement plans have been approved which utilize a storm drain system and not a drainage basin. As such, there is no need for an offer of dedication, and therefore this condition may be considered satisfied. Please be aware that the "new" environmental issues mentioned at the beginning of this letter include the impacts of releasing stormwater drainage into Morro Bay. Terry Wahler will be discussing this specific item with John McKenzie of the Environmental Division, and will be writing you directly with more information.
14. No basin is required, so formation of a zone of benefit is not required. Therefore, this condition may be considered satisfied.
15. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the utility improvements will satisfy this condition.

16. The tract improvement plans have been approved by the County Engineer. Bonding for or constructing the utility improvements will satisfy this condition.
17. Improvement plans were prepared and have been approved by the County Engineer. Therefore, this condition may be considered satisfied.
18. The "checking and inspection agreement" has been completed, and therefore this condition may be considered satisfied.
19. Certification of the improvements will occur at the completion of construction.
20. No basin is required, so landscaping it is not required. A landscaping plan will be required for the major cut/fill slopes per section (b). Terry Wahler will provide more information on the details of the landscaping required.
21. We concur with your assessment of this condition. Bonding for or installing the landscaping will satisfy this condition.
22. Codes, Covenants and Restrictions will need to be submitted to the Department of Planning and Building prior to recordation of the final map.
23. The formation of a Homeowners' Association will need to be submitted to the Department of Planning and Building prior to recordation of the final map.
24. Codes, Covenants and Restrictions will need to be submitted to the Department of Planning and Building prior to recordation of the final map.
25. The preliminary soils report must be submitted prior to recordation of the final map.
26. The fact that the South Bay Circulation Study was pending, but not yet complete at the time the Board of Supervisors was considering the tentative tract map, is the reason that this "condition" was volunteered by the applicant, in this form, as an element of the Additional Project Description. If an agreement to pay the road improvement fee, enacted by the Board of Supervisors pursuant to San Luis Obispo County Code chapter 13.01 is not entered into, we will not be able to find substantial conformance with the deemed approved tentative map, and will not be able to record the final map. An example format of said agreement is attached to this letter for your convenience.

27, 28, & 29

It is our conclusion that in order to satisfy these conditions, the applicant will need to enter into agreements with the County. Terry Wahler will be reviewing this matter with the office of County Counsel and will provide you with a recommended format for these agreements.

30. The stock conditions of approval will need to be complied with prior to recordation of the final map.

31. As with item 26, the language of this "condition," volunteered by the applicant in this form, would appear to vest this project **with** (not **without**) the obligation to pay the type of fees being discussed. Terry Wahler will also be discussing this item with County Counsel and will provide you with more information in his subsequent correspondence.

Thank you for taking the time to provide your evaluation of the conditions at this stage of the processing of the subdivision. I'm sure it will prove very helpful later in the process, that we resolve these issues at this time. We look forward to receipt of a submittal of the Final Map, so that we may begin review of its conformance with the Tentative Map and with the "conditions;" AKA Additional Project Descriptions. Please call me at 781-5280, Terry Wahler at 781-5600 or Richard Lichtenfels at 781-5544 if you need any additional information on any of these matters.

Sincerely,



RICHARD MARSHALL  
Development Services Engineer

Attachment

cc: Pat Beck, Planning and Building Department  
Richard Lichtenfels, Environmental Health

File: Tract 1646

T:\DEVELOP\REM\HOLLAND.RSP.LB

EX. 3

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

*XTRCA*

(1) Department Engineering	(2) Meeting Date September 22, 1998	(3) Contact Richard Marshall	(4) Phone (805) 781-5280
(5) Subject Consideration of an appeal by T. Orton of the County staff's interpretation of the Conditions of Approval for Tract 1646		(6) Supervisor District(s) 2nd	
		(7) Location Map <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A	
(8) Summary of Request At the meeting of August 25, 1998, the Board of Supervisors gave direction on five points of appeal on the requirements to comply with the "Project Features" of Tract 1646, a proposed 100-lot subdivision on Pecho Valley Road, Los Osos.			
(9) Recommended Action Affirm the tentative action taken August 25, 1998.			
(10) Administrative Office Review			
(11) Funding Source(s) N/A	(12) Current Year Cost N/A	(13) Annual Cost N/A	(14) Budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> N/A <input type="checkbox"/> No
(15) Will Request Require Additional Staff? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
(16) Supportive Documents None		(17) Past Actions on Item Tract 1646 was deemed approved by operation of law December 11, 1990.	
(18) Agenda Placement <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>20</u> ) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			
(19) Executed Documents <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies)		(20) Need Extra Executed Copies? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached	
		(21) Appropriation Transfer Required? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	

T:\DEVELOP\BOARD\CVR\TR1646.CVR

# SAN LUIS OBISPO COUNTY ENGINEERING DEPARTMENT

COUNTY GOVERNMENT CENTER • ROOM 207 • SAN LUIS OBISPO, CALIFORNIA 93408

TIMOTHY R. NANSON  
COUNTY ENGINEER  
GLEN L. PRIDDY  
DEPUTY COUNTY ENGINEER  
ENGINEERING SERVICES  
NOEL KING  
DEPUTY COUNTY ENGINEER  
ADMINISTRATION

PHONE (805) 781-5252 • FAX (805) 781-1229



ROADS  
SOLID WASTE  
FRANCHISE ADMINISTRATION  
WATER RESOURCES  
COUNTY SURVEYOR  
SPECIAL DISTRICTS

TO: Board of Supervisors

FROM: Richard Marshall, Development Services Engineer *REM*

VIA: Glen L. Priddy, Deputy County Engineer - Engineering Services *GP*

DATE: September 22, 1998

SUBJECT: Consideration of an Appeal by T. Orton of the County staff's Interpretation of the Conditions of Approval for Tract 1646

## Recommendation

It is our recommendation that your Board affirm the tentative action taken at your meeting of August 25, 1998.

## Discussion

At the meeting of August 25, 1998, your Board considered an appeal by Terence Orton of Westland Engineering, on behalf of his clients Ron Holland and Noel Rodman. The subject of the appeal was the County staff's interpretation of the requirements to satisfy five of the 31 "Additional Project Descriptions" associated with the vesting tentative map of Tract 1646. At that time, your Board took tentative action on each of the five issues, and directed that we return on this date for final action. Attached Exhibit A presents the proposed language to enact your Board's direction.

## Other Agency Involvement

County staff responses to the applicants and their agent have been prepared by a cooperative effort of the Engineering, Planning & Building and Environmental Health departments and the Office of the County Counsel.

EX. 3

## Financial Considerations

The results of your Board's direction are estimated to have the effect of lost revenue within several program areas, as follows:

Feature #	Item	Board Direction	\$/lot Dec. 11 '90	\$/lot 1st adopted	\$/lot current
31	Public Facilities Fee	Pay fee in effect December 11, 1990	\$0	\$2588 10/15/91	\$3219
31	Quimby (parks) Fee	Pay fee in effect December 11, 1990	\$0	\$1189 7/1/94	\$1708
31	Affordable Housing In-lieu Fee	Pay fee in effect December 11, 1990	\$0	\$91 10/15/91	\$111

In consideration of "project feature" number 1, your Board acted to give the developers the option to implement a private wastewater treatment system. Since the Sewer Assessments have already been established, the developers will still be obligated to pay the amount which has been determined for this property, unless they request a waiver by separate action of your Board.

There is no direct fiscal impact to County programs associated with features 2 or 13, dealing with the will-serve letter from Southern California Water Company, or the release of stormwater drainage into the bay.

In consideration of feature number 26, your Board acted to require the payment of the Road Improvement Fee which will be the current fee at the time building permits are issued. As such, there is no fiscal impact to County budgets different than what is already anticipated through that program.

Attachments:            Location map  
                              Site plan  
                              Exhibit A. Requirements to Satisfy Additional Project Descriptions

cc:    Pat Beck, Planning & Building  
       Richard Lichtenfels, Environmental Health  
       Terence Orton, Westland Engineering

File:    Tract 1646

L:\DEVELOP\SEP98\TR1646.MMO.LND.REM

*RM  
delete*

**EX. 3**

**Exhibit A  
Requirements to Satisfy  
Additional Project Descriptions  
Tract 1646**

---

1. The project shall connect to a community-wide sewer system approved by the Regional Water Quality Control Board. The Applicant shall not file the final map unless and until a community-wide sewer system has been constructed and is available for the project to connect to.

*Requirement: The project shall connect to the Los Osos Community Sewer if it is available prior to the time the applicant seeks to record the Final Map. If the Los Osos Community Sewer is not available at that time, the applicant shall prepare plans for, and shall construct, a residential wastewater treatment system, subject to the approval of a wastewater discharge permit from the Regional Water Quality Control Board.*

2. Prior to filing the final map, the Applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the final map is filed.

*Requirement: The "Will Serve" letter which has already been provided by Southern California Water Company, with no expiration date and no additional requirements, is sufficient. The applicants will be required to either construct or bond for the water system depicted in the approved Improvement Plans for Tract 1646.*

26. The Applicant agrees to pay any fees applicable to the Tract Map 1646 hereinafter enacted by the Board of Supervisors upon completion of the South Bay Circulation Study pursuant to San Luis Obispo County Code Chapter 13.01.

*Requirement: The applicant shall enter into an agreement with the County, to pay the South Bay Road Improvement Fee at the time of issuance of any building permit for the lots created by Tract 1646. The amount of the fee shall be the current amount at the time of issuance of the building permit.*

31. The Applicant agrees to the payment of any fees adopted by the County and imposed on an area-wide basis for the Los Osos community, payable at the time of application for building permits.

*Requirement: The applicant shall be required to pay those fees which were in effect on December 11, 1990, the date on which the tentative tract map was deemed approved by operation of law.*

T:\REM\TR1646.EXA

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

September 14, 1998

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

VIA HAND DELIVERY

Re: Tract 1646 (Holland) Appeal

Dear Mr. Marshall:

Pursuant to my telephone call earlier today, the applicants in the above matter requested that I provide you with the following comments to your September 22, 1998 draft Memorandum to the Board of Supervisors:

Page 2, second paragraph (i.e., the developers will still be required to pay sewer assessments):

The applicants should not be required to pay sewer assessments if the Los Osos Community sewer system is not available for hook-up at the time the map expires because the applicants could not have used the sewer anyway. We request that this language be slightly modified by adding the following: "However, the developers will not be required to pay any sewer assessments relative to the Los Osos Community sewer system if such sewer is not available for hook-up by the developers at the time their map expires or would have expired."

Exhibit "A", Item No. 1:

The applicants have and should retain the *option* of completing the project via an alternate sewer system. The existing language could be interpreted to require the applicants to complete the project even if it is not economically feasible. The term "requirement" in the second paragraph of this item should be replaced with the term "clarification". The term "shall" appearing twice in the second paragraph of this item should be replaced with the term "may".

Richard Marshall  
September 14, 1998  
Page 2

Furthermore, it should be made clear that the applicants may, but need not, hook into the Los Osos Community sewer system *after* they have elected to utilize an alternate sewer system. We request that this language be slightly modified by adding the following: "However, it is understood that once the developers submit plans to the County seeking to connect the project to a residential wastewater treatment system, the developers need not connect to the Los Osos Community sewer system if it thereafter becomes available."

Please contact me to discuss the foregoing once you have had an opportunity to review it.

Very truly yours,

  
ROY E. OGDEN

REO:kaw  
ltr\Holland & Rodman\R. Marshall.0914

cc: Clients

EXHIBIT NO. 4
APPLICATION NO.
BOARD MINUTES
AUG/SEPT 98

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

Tuesday, August 25, 1998

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

**ABSENT:** None

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

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

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

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

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

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

**(SUPERVISOR BRACKETT IS NOW ABSENT.)**

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

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

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

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

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

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

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

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

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

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

appeal for Condition No. 1, is discussed.

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

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

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

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

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

Supervisor Laurent: withdraws his second.

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

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

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

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

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



Planning

00001830  
TW/SM

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

Tues day September 22, 19 98

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

ABSENT: None

RESOLUTION NO. 98-336

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

The following resolution is now offered and read:

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

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

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

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

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be upheld and the decision of the Planning Commission should be overturned to allow for a five year time extension as requested by the applicant.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.

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

Upon motion of Supervisor Ovitt, seconded by Supervisor Brackett

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

AYES: Supervisors Ovitt, Brackett, Pinard, Chairperson Ryan

NOES: Supervisor Laurent

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

Michael P. Ryan

Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD

Clerk of the Board of Supervisors  
BY VICKI M. SHELBY  
Deputy Clerk

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By: [Signature]  
Deputy County Counsel

Date: 9.10.98

04CURRENTKINGRESO.

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, JULIE L. RODEWALD, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors this 10th day of September 19 98.

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

By [Signature]  
Deputy Clerk

004344

EX.4

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

Tuesday, September 22, 1998

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

**ABSENT:** None

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





SOUTHERN CALIFORNIA WATER COMPANY

3625 WEST SIXTH STREET • LOS ANGELES, CALIFORNIA 90076-0893 • TELEPHONE (213) 251-3600

December 29, 1988

County of San Luis Obispo  
Planning Department  
County Government Center  
San Luis Obispo, California 93408

Reference: Our Estimate No. 08398 - Los Osos

Gentlemen:

This is to inform you that upon completion of satisfactory financial arrangements we will be able to serve both potable domestic water and fire service to Tract 1646 in our Los Osos Service Area. We have sufficient water resource and system capacity to provide such service.

Very truly yours,

SOUTHERN CALIFORNIA WATER COMPANY

Emma E. Maxey  
New Business - Administrator  
(213) 251-3660

EM/cyp

cc: Westland Engineering Company  
1037 Mill Street  
San Luis Obispo, CA 93401

Attention: Terence K. Orton

cc: Law Office of  
Christopher W. Guenther  
1220 Marsh Street  
San Luis Obispo, CA 93401

M4/P

EXHIBIT NO. <b>5</b>
APPLICATION NO.
<b>WILL SERVE</b>
<b>LETTER</b>

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

Tues day December 11, 1990

PRESENT: Supervisors

Harry Ovitt, William B. Coy, James Johnson  
David Blakely and Chairperson Evelyn Delany

ABSENT:

None

In the matter of Tract 1646:

Tract 1646, a proposal by Holland/Westland Engineering for a vesting tentative tract map/coastal development permit to allow a subdivision of a 19.4 acre site into 100 lots ranging in size from 6,000 to 11,600 square feet each in the Residential Single Family land use category, located in the Coastal Zone at the northwest corner of Pecho Road and Los Osos Valley Road in the community of Los Osos, is presented for determination on consistency with the Local Coastal Program and the general plan. Mr. Terry Wahler, Planning, presents the staff report; speaks to the seepage pits/septic system; regarding the prior approval on this map; applicant has forced a hearing under the Permit Streamlining Act to have this matter heard before the concerns have been resolved. Mr. John McKenzie, Environmental Coordinators Office, addresses the wastewater disposal and traffic impacts if the tentative map is approved; feels that a Supplemental EIR is necessary due changed conditions and circumstances and changes in the population of the area; highlights their concerns to increased impacts on the traffic and need for further studies on this; and, cumulative impacts with respect to the sewage disposal system problems as they currently exist in the area. Supervisor Coy questions Mr. Wahler with response as to the resource capacity problem. Mr. John Hand, Planning, addresses the recharging figure. Mr. John Belsher, representing the applicant, makes opening comments. Mr. Jerry Holland, applicant, addresses the issue of "deemed approved"; concerns to the changes being suggested by staff on a document that was previously approved with an EIR that was certified; gives a brief history of the development in the area; comments to the concerns that were raised regarding traffic, water, parcel size and septic disposal; there is no septic system in the proposal today rather they are stating that they will do no building until the sewer system is completed; requests approval of their map. Mr. Gordie Holland, representing the applicant, states that they have met the requirements of the community. Thereafter, on motion of Supervisor Coy, seconded by Supervisor Johnson and unanimously carried, the Board agrees to continue the meeting past 5:00 o'clock p.m. Mr. G. Holland continues with his comments regarding sewage and schools. Mr. Terry Orton, representing the applicant, addresses

EXHIBIT NO.	6
APPLICATION NO.	
1990 COUNTY	
ACTION	

the environmental issues with respect to traffic, schools and sewage; comments to the focus in the prior EIR on this project as they relate to traffic and botanical; they submitted language yesterday with respect to the traffic issue; comments to the report done with respect to traffic by Jerry Skiles and presents a map on the overhead of the site. Mr. Jim Granflaten, Engineering, speaks to road approval for an unnamed road. Mr. T. Orton states further that the applicant would agree to participate in a fee when one is approved for the area with respect to traffic mitigation measures; they will be paying the school fees and they will wait to build until the sewer system goes in. Mr. Belsher presents letters for the record; cites various court cases that support their arguments; presents conditions on Tract 1348 as presented to the City of San Luis Obispo; feels they can agree to pay a future fee with respect to roads and asks that the clarifications be accepted and the project be approved. Mr. Richard Carl speaks in agreement to staff recommendations; addresses his concerns to the impacts on the schools in the area; feels there needs to be a new EIR on this before the project is approved. Mr. Tim Hochmuth addresses his concerns to the diminishing quality of life in Los Osos and the issues of traffic, water and sewage need to be reviewed. Mr. Bob Semonsen supports the staff position on this project. Ms. Gwynn Taylor addresses her concerns to the impacts in the community; concerns to sewage, water, traffic and schools. Mr. Al Switzer urges support of the project. Mr. Mark Hansen speaks to being new to the County and feeling very unwelcome; feels that the applicant has a right to develop. Mr. John Olejczak speaks to the need to maintain open space areas in Los Osos. Mr. Ernest Eddy asks that the project be held off. Mr. Belsher responds to comments made by the public. Supervisor Blakely speaks to vesting the map and single family residences. Supervisor Coy gives the history on this project; what he would like to see on the approval of the item; there is a current EIR on the project. Mr. James B. Lindholm, County Counsel, addresses the issues of vesting and requirements for same; explains further the options to the Board on this and that the Board has the option of taking no action. Supervisor Ovitt speaks to the need to have a definition of the project with Mr. Lindholm explaining the applicants requirements on this; further, explains that the original map - Tract 1091, is still in effect and that they are here for a Coastal Permit under the new map number. A motion by Supervisor Coy that the tentative map identified as Tract 1646 be "deemed approved" and the applicant voluntarily incorporate into their project the following: 1) that the project shall connect to a sewer system approved by the Regional Water Quality Control Board

for the State of California such that the present Regional Water Quality Control Board moratorium on new construction is lifted; 2) the applicant will be required to demonstrate an adequate water supply consistent with County policy in effect at the time the final map is filed; the conditions as presented by the applicant on B-8-83 through B-8-87 be recognized; add #27 regarding traffic mitigation fees being agreed to by the applicant pursuant to Ordinance No. 2379, Chapter 13.01 of the County Code; add #28 so that the developer is subject to the growth ordinance limiting the growth rate to 2.3% in the unincorporated area. Mr. Lindholm speaks to the need to have language in this document that releases the County of liability and that the map will expire in five years if the sewer is not in. Supervisor Coy adds to his motion the language that if the map expires by law the County will be released from any liability. Mr. Lindholm suggests that if the Board agrees to the outline of what they want the applicant to do, that before the Board takes final action that the Board get something from Mr. Belsher in writing, today, indicating what the project is and specifically putting language in. Supervisor Johnson questions, with Mr. Belsher responding, as to their opposition to removing the "vesting" from their map. Supervisor Coy adds to the motion #29: Before the filing of the final map the applicant shall enter into an agreement to provide 15 residential units for low and moderate income families as defined by Section 50093 of the Health and Safety Code as part of the proposed project or elsewhere in the community. The agreement with the County by the Developer will include acknowledgment that it is feasible to provide a level of affordable housing in conjunction with this project. If qualified buyers have not purchased any of the 15 units within 6 months of the units being available for sale and evidence shall be provided that shows a reasonable advertizing campaign was used to attract qualified buyers, the applicant may be relieved from the requirements to sell the units to qualified buyers.; add standard requirements as follows: this subdivision is also subject to the applicable standard conditions of approval for all subdivisions utilizing community water and sewer, and incorporated by reference herein as set forth in full; corrects #1 of the applicants conditions to add to the beginning of the condition the following language: Prior to the filing of the final map....; Condition #2 add: Prior to the filing of the final map....; add #31 to read: As part of the project the applicant agrees to release the County from any potential liability for a failure to act with respect to any of the things mentioned in the project including having a sewer. In addition, as a part of the project the applicant would agree to indemnify and hold harmless the County for any

occurrence arising out of the Boards action in not acting on the map and having it "deemed approved" by operation of law. Supervisor Coy agrees with all the added language to his motion. Supervisor Ovitt seconds the motion. Supervisor Johnson asks Mr. Belsher with response as to whether they are willing to pay for any future fees that may be imposed. Mr. Lindholm asks the Clerk to read back the motion with response. Supervisor Coy withdraws his motion with the concurrence of the second with the understanding that the applicant will bring back all these issues in writing for the Boards consideration. Said matter is continued to after Item C-1 on the agenda.

cc: Planning (2)  
12/31/90 vms

STATE OF CALIFORNIA, }  
County of San Luis Obispo, } ss.

I, FRANCIS M. COONEY, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this 31st  
day of December, 19 90

(SEAL)

FRANCIS M. COONEY

County Clerk and Ex-Officio Clerk of the Board  
of Supervisors

By

*Vicki M. Kelley*

Deputy Clerk.

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

Tues day December 11, 19 90

PRESENT: Supervisors

Harry Ovitt, William B. Coy, David Blakely  
and Chairperson Evelyn Delany

ABSENT:

Supervisor James Johnson

In the matter of Tract 1646:

Tract 1646 is brought back on for hearing. Supervisor Blakely questions what is the appropriate map for this project with Mr. Wahler identifying the one on the wall minus the references to the seepage pits. Supervisor Coy states that this is the same project as Tract 1091. Mr. John Belsher, representing the applicant, states what the project description based on the documents presented today and listing features 1 through 31, with the following changes: Conditions of Approval is retitled "Additional Project Description" The following items are additional features of the project incorporated at the request of the applicant. These items are in addition to the project description provided the project application and the vesting tentative Tract Map 1646.; #1 is deleted and reworded as follows: The project shall connect to a community-wide sewer system approved by the Regional Water Quality Control Board. The applicant shall not file the final map unless and until a community-wide sewer system has been constructed and is available for the project to connect to.; #26 is deleted and reworded to read: Applicant agrees to pay any fees applicable to the Tract Map 1646 hereinafter enacted by the Board of Supervisors upon completion of the South Bay Circulation study pursuant to San Luis Obispo County Code Chapter 13.01.; #28 is amended to add to the end of the first paragraph: To the extent this indemnity extends to causes of action related to construction of structures or improvements it shall be limited to causes of action which are not based upon indemnities' sole negligence or misconduct.; #28 second paragraph is amended to add to the eighth line after the words "... agreed to by the applicant." Specifically, any moratorium on land use and building permits imposed as result of the deemed approval of this application and specifically, the non-completion or untimely completion of the Los Osos Community sewer system. Thereafter, on motion of Supervisor Coy, seconded by Supervisor Ovitt and on the following roll call vote, to wit:

AYES: Supervisors Coy, Ovitt, Chairperson Delany

NOES: Supervisor Blakely

ABSENT: Supervisor Johnson

the Board recognizes the project description as outlined by the applicant as a project. Thereafter, on motion of Supervisor Coy,

seconded by Supervisor Ovitt and on the following roll call vote, to wit:

AYES: Supervisors Coy, Ovitt, Chairperson Delany  
NOES: Supervisor Blakely  
ABSENT: Supervisor Johnson

the Board takes no further action.

cc: Planning (2)  
Engineer  
Environmental Coordinator  
12/31/90 vms

STATE OF CALIFORNIA, }  
County of San Luis Obispo, } ss.  
FRANCIS M. COONEY

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

WITNESS my hand and the seal of said Board of Supervisors, affixed this \_\_\_\_\_ 31st  
December 90  
day of \_\_\_\_\_, 19\_\_\_\_\_

FRANCIS M. COONEY

County Clerk and Ex-Officio Clerk of the Board  
of Supervisors

(SEAL)

By Vicki M. Blakely Deputy Clerk.

000095

APPLICANT CORRESPONDENCE · ATTACHMENT D

EX. 6  
B-8  
79

ADDED 11/30/91

BRIEF HISTORY OF TRACT 1646

This 19.4 acre parcel was part of Sunset Terrace that was subdivided in 1959. At that time the parcel was zoned commercial and multi-family at the request of the Planning Department.

From 1959 to 1980 the County made 4 reviews of the zoning in Los Osos and each time the commercial and multi-family zoning remained unchanged.

In 1982 the present owners of the property began engineering and architectural planning to develop the property as zoned, and in February, 1983 they submitted a plan that consisted of 4.4 acres of commercial and 15 acres of multi-family residences. There was a great deal of protest to this plan by the residents of Sunset Terrace and the County initiated a downzoning and re-zoned the property R-1 in December, 1984.

Owners then changed their plan to comply with the new R-1 zoning and submitted tentative map 1091, a residential subdivision of 100 lots, with lot sizes from 6,000 to 11,000 square feet. The Board of Supervisors gave approval to this plan in December, 1985. This is the same plan that is now under consideration.

Owners then began working on the construction drawings and plans for an on-site package sewer treatment plant. Final construction plans were submitted to the County engineering staff and have been approved by the Engineering Department.

Owners did not at that time seek a Coastal permit because the County was in the process of taking over the duties of the Coastal Commission and would do so in a few months.

When San Luis Obispo County did finally assume the Coastal Permitting Process the owners found that the ordinance had been drawn in such a manner that it was necessary to submit a new tentative map and be assigned a new tentative map number (1646) even though an existing tentative map on this property (1091) had been approved and for that matter is still in existence. Owners then re-submitted the same map and the new number 1646 was assigned. 1091 and 1646 are identical maps. There has been no change in any of the lots or street design.

Based on prior approval of Tract 1091, the same layout on the same parcel, by the Board of Supervisors in 1985, we are asking that Tract 1646 tentative map be approved with construction to start after the Water Quality Control Board has approved the sewer system.

The owners are aware that the tentative map will be approved subject to the sewer and traffic fees in place for Los Osos at the time of approval of the final map.

EX. 6  
B-8  
B 80

WARREN A. SINSHEIMER III  
ROBERT K. SCHIEBELHUT  
K. ROBIN BAGGETT  
MARTIN J. TANGEMAN  
THOMAS M. DUGGAN  
MARTIN P. MOROSKI  
DAVID A. JUHNKE  
M. SUZANNE FRYER  
STEVEN J. ADAMSKI  
DIANE W. MOROSKI  
CYNTHIA CALDEIRA  
JALYNNE GILES  
JOHN W. BELSHER  
ROY E. OGDEN  
THOMAS J. MADDEN III

SINSHEIMER, SCHIEBELHUT & BAGGETT  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
POST OFFICE BOX 31  
SAN LUIS OBISPO, CALIFORNIA 93406-0031  
805-541-2800

STREET ADDRESS  
1010 PEACH STREET  
FACSIMILE  
805-541-2802

CLIENT 1032004

MATTER

OF COUNSEL  
D. JAN DUFFY

November 30, 1990

RECEIVED

HAND DELIVERED

Terry Wahler  
Senior Planner, Subdivision  
County Planning  
County Government Center  
San Luis Obispo, CA 93408  
S.L.O. COUNTY  
PLANNING DEPT.

Re: Tract 1646

Dear Terry:

Following my letter to you, dated November 27, 1990, a closer review of conditions of approval associated with Tract 1091 was made. Upon reflection, the applicant wishes to indicate to you revised clarifications of his project, including water, sewer and traffic conditions of approval. The following clarifications are intended to be incorporated into the project, in addition to having independent status as conditions. This approach is intended to address the concern that certain conditions may not be imposed as part of a vesting tentative map approval is alleviated. To assist in the Board's approval of the project, the applicant has prepared and attached proposed findings and conditions of approval. The applicant requests that these findings and conditions of approval be included in the materials presented to the Subdivision Review Board and to the Board of Supervisors.

1. Sewer -- Certain lots of the tentative tract map are designated as set aside as sewage disposal pits. The application at one time considered several means of sewage disposal, including disposal by septic. By this letter, the project contains only such sewer system as may be approved by the Regional Water Quality Control Board (RWQCB). See Applicant's Recommended Report for Tract 1646, Condition No. 1, attached hereto. Accordingly, there is no need for designation of sewage disposal pits and the designations should be dropped from the map.

2. Water -- The Coastal Plan for Los Osos allocates water based on use, "until completion of a resource capacity study." Estero Planning Area Plan, page 29. The Department of Water Resources published, in July 1989, a study of the water supply in Los Osos. The study concludes that there is sufficient water to

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EX  
B. S.  
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Terry Wahler  
November 30, 1990  
Page 2

cover build-out in Los Osos well into the 21st century, provided a sewer system is constructed. Because the study is completed, the priority allocation system is no longer in effect. The applicant has clarified the project to require a sewer system be approved by RWQCB before obtaining a final map. Under the State study, sufficient water will be available for the project. In addition, the applicant agrees to supply evidence of said availability to the County prior to obtaining final map approval. See Applicant's Recommended Report for Tract No. 1646, Condition No. 2, attached hereto. As stated in that condition, the applicant also agrees to abide by the County requirements for water supply in effect at the time approval of the final map is sought. Id.

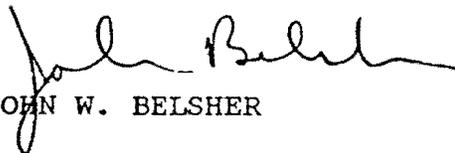
3. Traffic -- The County anticipates preparing a traffic analysis for Los Osos and adopting an assessment district to pay for traffic improvements. The applicant hereby includes, as part of the project, the obligation to participate in the assessment district on the same basis as other property owners in Los Osos. See Applicant's Recommended Report for Tract 1646, Condition No. 26, attached hereto.

Please include the above clarifications of the project in your analysis and recommendation to the Subdivision Review Board and to the Board of Supervisors.

We reserve the right to add further comments once we have reviewed the staff report for the project.

Sincerely,

SINSHEIMER, SCHIEBELHUT & BAGGETT

  
JOHN W. BELSHER

JWB:ehj  
13:Wahl1130.1tr  
Enclosure

cc: Earl Rodman  
Blackie Holland  
Terry Orton

000098

EX.6  
B-8  
82

APPLICANT'S RECOMMENDED REPORT  
FOR TRACT 1646

FINDINGS

Based on the final EIR, including Addendum, for Tract 1091 and Development Plan D830218:1, having been certified as adequate by the County, and based upon the record in the Consideration of Tract 1091, Development Plan D830218:1 and this Tract 1646, we assert the following:

1. That the proposed map is consistent with applicable County general plans in that the density and use conform to the applicable area plan and Land Use Ordinance;
2. That the design and improvement of the proposed subdivision are consistent with applicable County general plans in that the density, streets and improvements conform to the area plan standards, the Real Property Division Ordinance and the Land Use Ordinance;
3. That the site is physically suitable for the type of development proposed;
4. That the site is physically suitable for the proposed density of development proposed;
5. That based on the botanical study and EIR for the site, the design of subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
6. That the design of the subdivision or type of improvement will not conflict with easements acquired by the public at large for access through, or use of, property within the proposed subdivision; or that substantially equivalent alternate easements are provided;
7. That this project is consistent with the Estero Planning Area Plan and water policy in that applicant has producing wells sufficient to supply water needs for the project, and (1) because the California Department of Water Resources report, dated July 1989, satisfied the requirement that a resource capacity study be prepared; (2) because said report states that water reserves are adequate to serve this and other projects through the year 2000, provided a sewer system is constructed; (3) because the applicant has agreed to proceed only if a sewer system acceptable to the Regional Water Quality Control Board is approved and constructed; and (4) the applicant has agreed to demonstrate adequate water resources consistent with County policies in effect at the time the final map is approved;

EX. 1  
B-83

8. That the proposed subdivision complies with Section 66474.6 of the State Subdivision Map Act, as to methods of handling and discharge of waste in that the applicant has agreed not to proceed with the project until and unless a sewer system is approved acceptable to the Regional Water Quality Control Board, such that the present moratorium on new construction is lifted;
9. That the proposed subdivision be found consistent with the County zoning and the subdivision ordinance;
10. [Reserved]
11. That traffic impacts of the project will be fully mitigated by the applicant's private agreement with Rocky Setting to pay one-half of the cost of already completed pave-out adjacent to the subject property to County standards of Pecho Valley Road and Skyline Drive, and to participate in an assessment district formed by the County for traffic improvements, as provided in Condition No. 26 below;
12. That the Board of Supervisors has considered the information contained in the final EIR, Addendum, botanical study and cumulative impacts traffic analysis, and finds the documents to be adequate and adopts the attached findings as prepared and submitted by the applicant and his agents and his representatives.

CONDITIONS OF APPROVAL

Water Supply and Sewage Disposal

1. *Prior to filing the final map*  
This project shall connect to a sewer system approved by the RWQCB for the State of California, such that the present RWQCB moratorium on new construction is lifted.
2. *Prior to filing the final map*  
The applicant will be required to demonstrate an adequate water supply consistent with the County policies in effect at the time the final map is filed.

Vector Control and Solid Waste

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

EX. 6  
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B44

Access and Improvements

5. Roads and/or streets to be constructed to the following standards:
  - A. Interior streets constructed to an A-2 section within a 50 foot dedicated right-of-way.
  - B. Skyline Drive constructed to a 2/3 A-2 section within a minimum 40 foot dedicated right-of-way.
  - C. Pecho Valley Road between Los Osos Valley Road and Monarch Lane constructed to the project 1/2 of an A-2 4-lane arterial section. (The estimated improvement cost to be deposited with the County Engineer in lieu of construction.)
  - D. Monarch Lane, Butte and Howard Avenue widened to complete the project side of an A-2 section fronting the property.
  - E. Pecho Road to a constructed to 2/3 of an A-2 section including the undergrounding of the drainage facility.
6. The applicant offer for dedication to the public by certificate on the map or by separate document:
  - A. For road widening purposes 0 to 10 feet in width along Pecho Valley Road.
7. [Reserved]
8. Access be denied to lots along Pecho Road and Pecho Valley Road and that this be by certificate and designation on the map.
9. A pedestrian easement be reserved on the map for access for the end of Butte Street to Monarch Lane. The easement be constructed with steps as requested.
10. Butte may not be capable for carrying additional runoff. Construct off-site drainage facilities for an adequate outlet, or provide evidence of adequate drainage easements.
11. Submit complete drainage calculations to the County Engineer for approval.
12. Drainage may have to be detained in a drainage basin on the property. The design of the basin to have approved by the County Engineer, in accordance with County standards.

EX. 1  
BJS

13. If required, the drainage basin along with rights of ingress and egress be:
  - A. Offered for dedication to the public by certificate on the map.
14. If a drainage basin is required, a zone of benefit be formed within CSA #9 for maintenance of the drainage basin. Application to be filed with the County Engineer Special Districts Administrator, and be recommended for approval by the C.S.A. #9 Advisory Committee.

Utilities

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

Plans

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

- A. Screening of drainage basin (if required);
  - B. Planting of cut and fill slopes pursuant to erosion control plan.
21. All approved landscaping shall be installed or bonded for prior to filing of the map and thereafter maintained in a viable condition on a continuing basis. If bonded for, landscaping shall be installed within 60 days of final acceptance of the improvements.

Covenants, Conditions and Restrictions

22. The developer shall establish covenants, conditions, and restrictions. These CC&R's shall be administered by the subdivision homeowners' association. These CC&R's shall be submitted to the County Planning Department for review and approval with respect to condition 24(A).
23. The developer shall form a property owners' association (homeowners' association) for the area within the subdivision, so as to administer the CC&R's as noted above, and it shall conform to the requirements of the State Department of Real Estate.
24. The developer at a minimum shall provide the following provisions in the CC&R's:
- A. Maintenance of any common areas.

Miscellaneous

25. Three (3) copies of a Preliminary Soils Report prepared by a Registered Civil Engineer in accordance with Sections 17953, 17954, 17955 of the California Health and Safety Code must be submitted to the Engineering, Planning and Health Departments prior to the filing of the map by the County Engineer. The date and person who prepared the report are to be noted on the map.
26. The developer shall enter into an agreement with the County in a form acceptable to the County Counsel, whereby the developer agrees, on behalf of himself and his successors in interest, to waive the right to file or present any oral or written protest against the establishment of an assessment district for road improvements and all necessary appurtenances for installation of traffic signals at Los Osos Valley Road and 9th and 10th Streets, widening of Los Osos Valley Road between Ravenna and South Bay Boulevard. The method of spreading the assessments shall be in accordance with state law. Provided, however, the developer shall have the right to present any oral or written testimony concerning the spreading of the assessments.

EX. 6  
B-87

ADDITIONAL PROJECT DESCRIPTION  
TRACT 1646

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

Water Supply and Sewage Disposal

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

Vector Control and Solid Waste

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

Access and Improvements

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

EX. 6

000104

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

Utilities

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

## Plans

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

## Covenants, Conditions and Restrictions

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

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

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

Miscellaneous

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

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

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

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

SUBDIVISION REVIEW BOARD STOCK APPROVAL CONDITIONS  
FOR SUBDIVISIONS WITH COMMUNITY WATER AND SEWER

1. Community water and fire protection is to be obtained from the community water system.
2. Operable water facilities from an approved community water source shall be assured prior to the filing of the final map. A "will serve" letter shall be obtained and submitted to the county Health Department for review and approval stating there are operable water facilities immediately available for connection to the parcels created. Water main extensions and related facilities (except well(s) may be bonded subject to the approval of the County Engineer and the public water utility.
3. No residential building permits are to be issued until the community (public) water system is operational with a domestic water supply permit issued by the counth Health Officer.
4. In order to protect the public safety and prevent possible groundwater pollution, any abandoned wells on the property shall be destroyed in accordance with the San Luis Obispo County Well Ordinance Chapter 8.40, and county Health Department destruction standards. The applicant is required to obtain a permit from the San Luis Obispo County Health Department.
5. When a potentially operational or operational existing well(s) is located on the parcels created and approved community water is proposed to serve the parcels, the community water supply shall be protected from real or potential cross-contamination by means of an approved cross-connection control device installed at the meter or property line service connection prior to occupancy. (Chapter 8.30, San Luis Obispo County Ordinance)
6. Sewer service shall be obtained from the community sewage disposal system.
7. Prior to the filing of the map a "will serve" letter be obtained and submitted to the county Health and Planning Departments for review and approval stating that community sewer system service is available for connection to the parcels created. Sewer main extensions may be bonded for, subject to the approval of the County Engineer and sewer district.
8. No building permits are to be issued until community sewers are operational and available for connection.
9. An encroachment permit be obtained from the County Engineer for any work to be done within the county right-of-way.

10. An encroachment permit be obtained from the California Department of Transportation for any work to be done on the state highway.
11. Any existing reservoir or drainage swale on the property shall be delineated on the map.
12. Prior to submission of the map checkprints to the county Engineering Department, the project must be reviewed by all applicable public utility companies and a letter be obtained indicating required easements.
13. Required public utility easements be shown on the map.
14. Approved street names must be shown on the map.
15. The applicant must comply with state, county and district laws/ordinances applicable to fire protection and consider increased fire risk to area by the subdivision of land proposed.
16. The developer submit a preliminary subdivision guarantee to the County Engineer for review prior to the filing of the map.
17. Any private easements on the property must be shown on the map with recording data.
18. All conditions of approval herein specified, unless otherwise noted, are to be complied with prior to the filing of the map.
19. After approval by the Board of Supervisors, compliance with the preceding conditions will bring the proposed subdivision in conformance with the Subdivision Map Act and county ordinances.
20. A map shall be filed in accordance with Subdivision Map Act and county ordinance prior to sale, lease, or financing of the lots proposed by the subdivision.
21. A tentative map will expire 24 months from the date of Board of Supervisors approval. Tentative maps may be extended by the Board of Supervisors. Written requests with appropriate fees must be submitted to the Planning Department prior to the expiration date. The expiration of tentative maps will terminate all proceedings on the matter.

GL 0238(h)  
8/31/89

# Subdivision Application

F. NO. \_\_\_\_\_

San Luis Obispo County Department of Planning and Building

NOTE: If the project is located within the coastal zone, this application must be accompanied by a Coastal Development Permit Supplement.

### APPLICATION TYPE (Check the type of processing requested.)

- TRACT MAP Regular  Condo \_\_\_\_\_ Reversion to Acreage \_\_\_\_\_  
 PARCEL MAP Regular \_\_\_\_\_ Condo \_\_\_\_\_ Reversion to Acreage \_\_\_\_\_  
 LOT LINE ADJUSTMENT \_\_\_\_\_  
 CERTIFICATE OF COMPLIANCE Regular \_\_\_\_\_ Conditional \_\_\_\_\_  
 PUBLIC LOT REQUEST \_\_\_\_\_

### APPLICANT INFORMATION

Applicant or Agent Name E.C. Holland Day Phone (805) 528-1034  
Mailing Address 2505 Rodman Drive, Los Osos, CA Zip 93402  
Landowner Name E.C. Holland/Earl G. Rodman Day Phone (805) 528-1034  
Mailing Address 2505 Rodman Drive, Los Osos, CA Zip 93402  
Engineer or Surveyor Westland Engineering Day Phone (805) 541-2394  
Mailing Address 1037 Mill Street, SLO, CA Zip 93401

### PROPERTY INFORMATION

Assessor Parcel Number(s) 74-431-01, 74-022-22 Total Site Area 19.4 AC  
Legal Description: Lot 1, 2, 3, & 4 Block 4 Tract 185 Section \_\_\_\_\_  
Township \_\_\_\_\_ Range \_\_\_\_\_ Parcel Map Number 17 PM 28  
Site Location (if no street address, describe first with name of road providing access to the site, then nearest roads, landmarks) Corner Pechon Valley Rd. and Monarch

Existing number of parcels 4 Acreages or square footage of each parcel 1.5 to 3 AC

Present uses of the property Vacant

Existing structures on the property None

Existing or proposed easements PUE, ROADS, TEMP. SEWER EASEMENT WATER WELL EASEMENT

Existing available utilities:  Gas  Telephone  Electricity  CATV

Date property in question was acquired before 1968 Does owner own adjacent property? NO

Is this part of property that you previously subdivided? YES If so, what was the map number? 17PM28

### PROJECT INFORMATION

- PROPOSED DIVISION: Number of parcels requested 100 Parcel sizes 6000 to 11,600 SF  
Number of Certificates N/A Number of phases (if applicable) 1
- PROPOSED USES: What will the property be used for after division? RESIDENTIAL USE
- WATER SOURCE:  On-site well  Shared well  Community system  Other
- SEWAGE DISPOSAL:  Individual On-Site System  Community System  Other

### LEGAL DECLARATIONS\*

I (we) the owner(s) of record of this property consent to the below named engineer, surveyor or agent to act in my behalf in all contacts with the county in connection with this matter. I (we) have completed this form accurately and declare that all statements here are true. I (we) do hereby grant official representatives of the Subdivision Review Board authorization to inspect my property proposed to be divided or certified.

Applicant signature E.C. Holland Date \_\_\_\_\_  
Property owner signature E.C. Holland Date 000110  
Engineer, Surveyor or Agent \_\_\_\_\_ Date \_\_\_\_\_

EX-6

12. Will there be any drainage swale or streambed alteration associated with the project? no. Explain: Every lot is designed to drain directly to the public streets that drain to existing drop inlets on Butte Avenue and then into the bay.

### III. Water

1. What source of water is proposed?
  - a. Imported (give company's name) Southern California Water Company
  - b. Surface -----
  - c. Well -----
2. Has there been a sustained yield test on proposed or existing wells? N/A If yes, please attach a copy of the results.
3. What is the proposed use of the water?
 

Residential XXX

Agricultural ----- Explain -----

Commercial ----- Explain -----

Industrial ----- Explain -----
4. What is the expected daily water demand associated with the project? 300 gal./unit/day = 29,700 gal./day (99 lots)
5. Is there sufficient water available for the project? yes.
6. How many service connections will be required? 99
7. Population served? 297-347
8. Do operable water facilities exist on the site? yes. Describe: There is an existing water well with pump station that currently services Tract 185 adjacent to the site's West boundary.
9. Does water meet Health Department quality requirements?
 

Bacteriological: Yes XX No -----

Chemical: Yes XX No -----

Physical: Yes XX No -----

Water analysis report submitted? Yes ----- No XX
10. Do you have a letter or documents to verify that water is available for the proposed project? yes XX No -----

### IV. Waste Disposal

1. Is this project to be connected to an existing sewer line?
  - a. Yes ----- No XX
  - b. Distance to nearest sewer line: -----
2. What agency or company is responsible for sewage disposal? A privately owned corporation will be created to maintain the sewage treatment plant and treated effluent disposal system.
3. What is the capacity of existing or new sewage treatment facilities? 37,125 g.p.d.
4. What is the amount of proposed flow? approx. 21,385 g.p.d.
5. Does the existing collection treatment and disposal system have adequate additional capacity to accept the proposed flow?
 

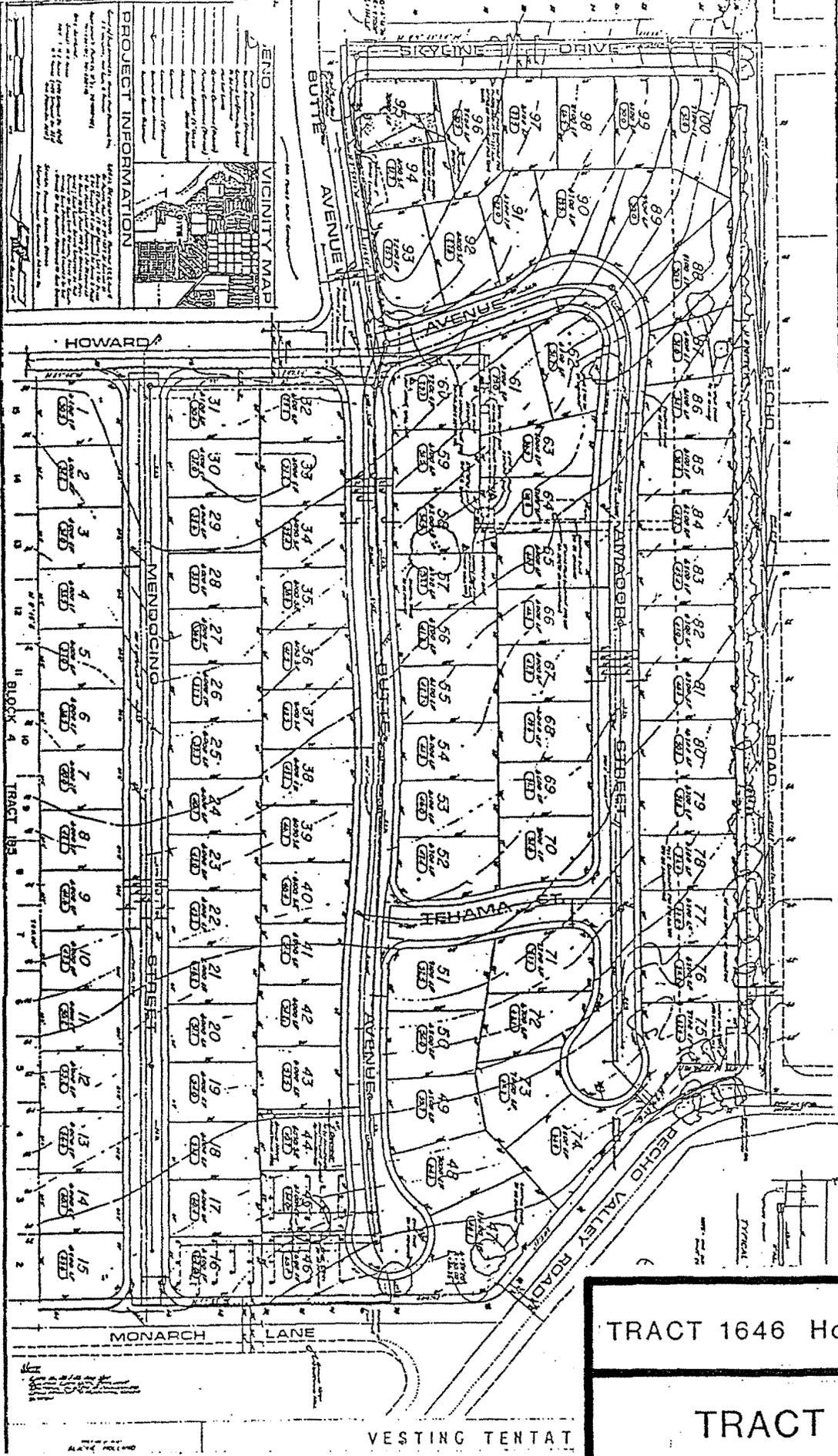
Yes N/A No N/A There is no existing collection, treatment or disposal system.
6. Do you have letter or documents from the facility operator verifying all of the above? Yes N/A No N/A

7. Will this project utilize an individual subsurface sewage disposal system? Yes \_\_\_\_\_ No XX If yes, please explain (i.e. septic tank, evapotranspiration...): \_\_\_\_\_
8. Has an engineered percolation test been accomplished?  
 Yes XX No \_\_\_\_\_
- a. Has a conclusion been stated as to the suitability of individual systems? Yes XX No \_\_\_\_\_
- b. Has a conclusion been stated as to the amount of required square feet of bottom area of leaching lines per 100 gallons of septic tank capacity? Yes XX No \_\_\_\_\_
- c. Has a conclusion been stated as to the amount of required cubic feet of seepage pits per 100 gallons of septic tank capacity? Yes XX No \_\_\_\_\_ If yes, please attach.
- d. Is the area (parcel, lot, etc.) of sufficient size to provide an area equal to 100% of original installation to provide for expansion? Yes XX No \_\_\_\_\_
- e. What is the depth of the water table? Approximately 55' to 65'
- f. What is the quality of any shallow (in relation to existing ground elevations) water table? Explain: The normal test value indicates that most wells in the area show a nitrate concentration of approximately 10 milligrams per liter.
- g. Is there a portion of the lot(s) that is unsuitable for individual installations due to soil or geologic conditions, slope, etc? Yes N/A No N/A If yes, please explain: A private sewage treatment facility and effluent disposal system is planned for the Subdivision.
9. What is the distance from proposed leach field to any neighboring water wells? 360 ft.
10. Will subsurface drainage result in the effluent reappearing on adjacent lands? Yes \_\_\_\_\_ No XX
11. Will subsurface drainage result in the possibility of effluent reappearing in surface water? Yes \_\_\_\_\_ No XX
12. What type of solid waste will be generated by the project?  
 Domestic XX Industrial \_\_\_\_\_ Agricultural \_\_\_\_\_ Other (explain) \_\_\_\_\_
13. What type of storage will be used for solid waste?  
 Dumpster \_\_\_\_\_ Single containers XX Other (explain) \_\_\_\_\_
14. Where is the waste disposal storage in relation to buildings?  
Waste disposal storage will be located in the 2-car garages and/or sideyards of each property.

#### V. Community Services

1. Number of school children in project: <sup>approx.</sup> 30-45  
 a. School district: San Luis Coastal Unified School District
2. Location of nearest police station: San Luis Obispo County- rural office  
 a. Response time (in minutes): approximately 15 minutes (for non-emergency)  
response time will vary during emergency  
-5- conditions.

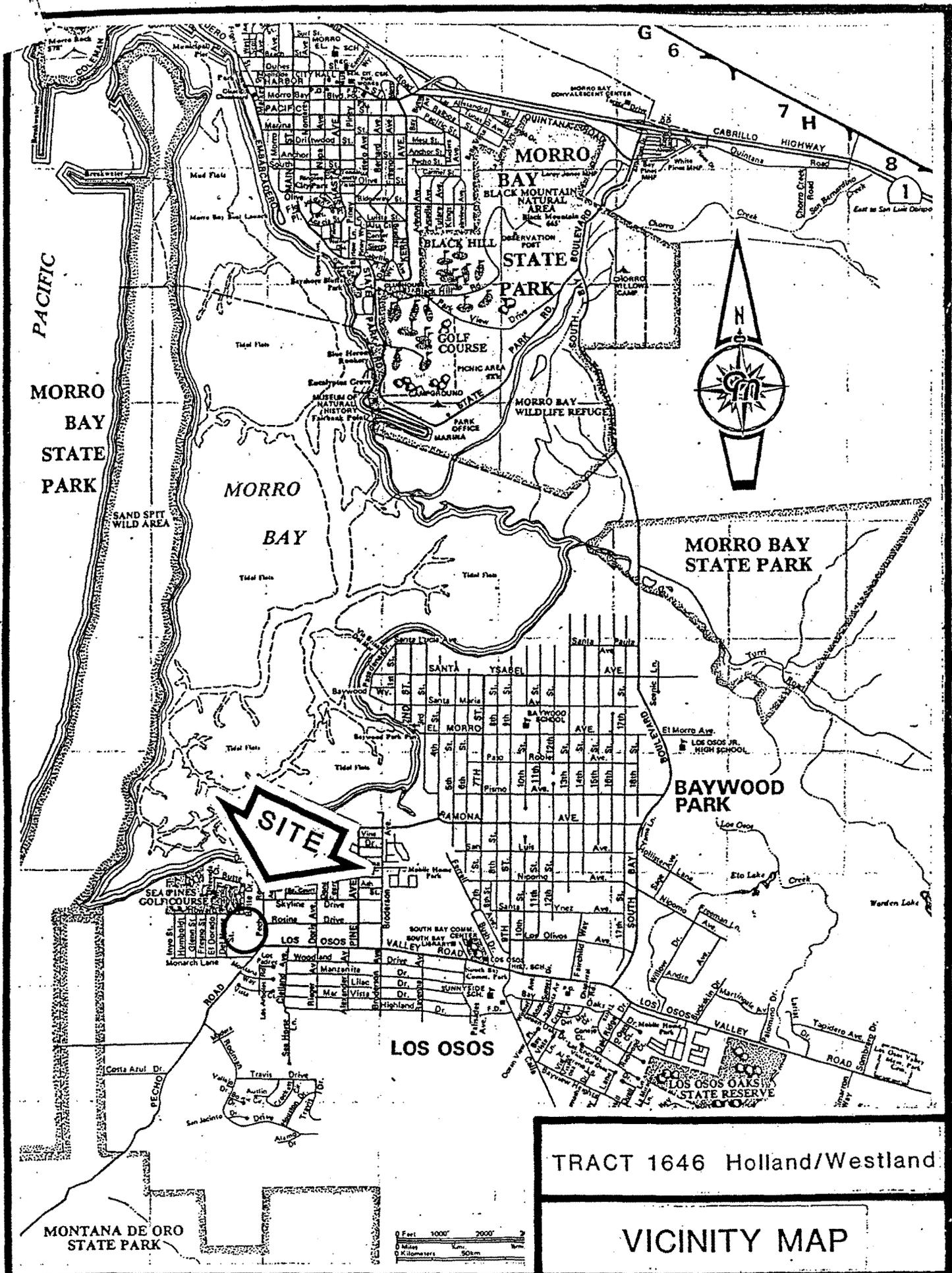
68.52.5 REVERSED 5.25.89 TRACT 1646



TRACT 1646 Holland/Westland

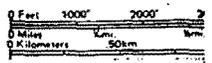
TRACT MAP

VESTING TENTAT



TRACT 1646 Holland/Westland

VICINITY MAP





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March 5, 1999

**RECEIVED**

REFER TO FILE NUMBER  
270154-001

MAR 05 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

The Honorable Rusty Areias, Chairman and  
Members of the California Coastal Commission  
Central Coast Area Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Re: Appeal of Coastal Development Permit  
No. A-3-SLO-98-108 (Item No. Th 5c,  
Agenda of March 11, 1999) - Comments of  
Project Applicants

Dear Chairman Areias and Members of the Commission:

We represent Messers. Ron Holland and Earl Rodman, the owners of the real property located in Los Osos, California that is the subject of the above referenced appeal. The purposes of this letter are to a) demonstrate that the Coastal Commission lacks jurisdiction to consider this appeal; and b) respond to the issues raised by the appellants and addressed in the "Staff Report: Appeal Substantial Issue Determination" ("Staff Report") of February 16, 1999.

Following is an analysis of the jurisdictional issue and responses to the issues raised by the appellants:

I. The Commission Lacks Jurisdiction to Consider the Appeal.

Appellate jurisdiction for appeals taken from decisions of a local government agency after certification of its local coastal program is conferred on the Coastal Commission by Public Resources Code section 30603(a) et seq., which provides that action on a coastal development permit appeal may be taken only under limited circumstances. The Staff Report contends that jurisdiction lies because a) the real property that is the subject of the appeal is located between the sea and the first public road paralleling the sea (Pub. Res. Code

**EXHIBIT 7**

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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Members of the California Coastal Commission

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§ 30603(a)(1)); and b) the subdivision approved for said real property is not listed as a principal permitted use on the applicable table of uses in the Land Use Element of the San Luis Obispo County Local Coastal Program ("LUE/LCP") (Pub. Res. Code § 30603(a)(4)).

Title 14, California Code of Regulations, section 13011 serves to define "first public road paralleling the sea" as found in Public Resources Code section 30603(a)(1) as the road nearest the sea that a) is lawfully open to uninterrupted public use and is suitable for such use; b) is publicly maintained; c) is an improved, all-weather road open to motor vehicle traffic in at least one direction; d) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and e) does, in fact, connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous shoreline. As the memorandum with accompanying map from the San Luis Obispo County Engineering Department to the County Counsel's office, a copy of which is attached hereto as Exhibit "A", explains, the subject real property is located landward of the "first public road paralleling the sea." That conclusion was reached by comparing the road system between the subject real property and the sea with the requirements of Title 14, California Code of Regulations, section 13011. The analysis and conclusion set forth in the attached memorandum is irrefutable; the Coastal Commission cannot base jurisdiction over this matter on Public Resources Code section 30603(a)(1).

The contention that jurisdiction lies with Public Resources Code section 30603(a)(4) because subdivisions are not listed as principal permitted uses in the applicable land use table of the LUE/LCP is similarly without merit. The Residential Use Group portion of Table "O" of the LUE/LCP identifies all of the principal permitted uses for the subject real property, among which is "single family dwellings." These land uses constitute the ultimate uses permitted to be developed. It is elementary that a subdivision map in and of itself does not authorize development per se. Approval of a subdivision map is but one step in the chain of land use entitlement approvals required before development of real property may occur. In fact, the Subdivision Map Act (Gov. Code § 66410 et seq.) ("Act") at Government Code section 66418.1 defines "development" as "the uses to which the land which is the subject of a map shall be put, the buildings to be constructed on it, and all alterations of the land and construction incident thereto." In the case of the subdivision map approved for the subject real property, (Vesting Tentative Tract Map 1646) ("Tract Map") one hundred (100) single family residential lots were created (subject to approval of a final subdivision map in accordance with the Act, Title 21 of the County of San Luis Obispo Codified Ordinances, and satisfaction of all conditions of approval of the Tract Map) on which may be developed "single family dwellings" as authorized in Table "O" of the LUE/LCP. Thus, the Coastal Commission cannot maintain that approval of a subdivision map for the subject real property constitutes approval of a use that is inconsistent with the principal permitted uses listed in Table "O". On the contrary, approval of a subdivision map

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facilitates the development of "single family dwellings", which is a principal permitted use. Accordingly, the Coastal Commission cannot base jurisdiction over this matter on Public Resources Code section 30603(a)(4).

## II. The Issues Raised by Appellants are Without Merit.

As discussed below, the issues raised by the appellants are without merit because they ignore the actions taken by the San Luis Obispo County Board of Supervisors with regard to the Tract Map, or the appellants have misread the County ordinances and provisions of the San Luis Obispo County Local Coastal Program that govern land use entitlement approvals.

A discussion of each issue follows:

a) The County Action is Inconsistent With San Luis Obispo County Public Works Policy 1 Which Requires That New Development Must Be Able to Show That Adequate Public or Private Services are Available to Serve It. This issue springs from the contention that the Board of Supervisors amended a condition of approval of the Tract Map by "revising" the condition that prohibits approval of a final subdivision map until a community-wide sewer system is operational and available to serve the subject real property, permitting instead development of an alternative sewer system. The record does not support such a contention.

The appeal filed by Mr. Holland on June 20, 1998 to the Board of Supervisors from a decision of the Planning Commission on an application to extend the Tract Map, a copy of which is attached as Exhibit "B", provides that the only condition imposed on the map that was appealed is "The granting of a three year extension." No other conditions were appealed.

At the initial Board of Supervisors hearing on Mr. Holland's appeal, held on August 25, 1998, the Tract Map condition of approval regarding the requirement to connect to a community-wide sewer system was discussed and a tentative decision was made to permit the condition to be satisfied by connection to the Los Osos Community sewer project or some other sewer project that meets the definition of "community-wide." Following the tentative decision, the hearing was continued to September 22, 1998. The August 25, 1998 minutes of the hearing are attached as Exhibit "C".

At the final hearing on Mr. Holland's appeal, the Board of Supervisors adopted Resolution no. 98-336, a copy of which is attached as Exhibit "D". The resolution clearly states that the only action taken on the Tract Map was to uphold "the appeal of Ron Holland and granting a five year time extension for Tract 1646." Inasmuch as the appeal filed by Mr. Holland was confined to the issue of the time extension of the Tract Map, no action was taken on the condition of approval that relates to sewer service.

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At most, the Board of Supervisors merely expressed an opinion as to how the sewer condition of approval may be satisfied. At the time an application for a final map is filed and acted upon, the County must determine whether all of the conditions of approval of the Tract Map have been satisfied, including the sewer condition. That is the time at which a determination must be made as to whether satisfaction of the conditions of the Tract Map comport with the requirements of Public Works Policy 1 of the LUE/LCP. Until then, the matter is not ripe for appeal or judicial review.

b) The County Action is Inconsistent With San Luis Obispo County Public Works Policy 1 Which Requires That New Development Demonstrate an Adequate Water Supply. As with the Tract Map condition of approval related to sewer service, the matter of the condition of approval that imposes the water "will serve letter" requirement was not appealed to the Board of Supervisors and no action was taken on that condition. Further, as with the sewer condition of approval, the County must determine at the time an application for a final map is filed whether the conditions of approval of the Tract Map have been satisfied and if the manner in which the conditions are satisfied comports with Public Works Policy 1 of the LUE/LCP.

c) The September 28, 1998 Board Action Made Substantive Changes Which Effectively Amended the Project Without Adequate Public Notice or the Findings Required by the Certified LCP Ordinance. Inasmuch as the Board of Supervisors took no action on the Tract Map on September 28, 1998, we assume the reference to action taken by the Board of Supervisors on that date is in error and that the "substantive changes" referred to in this issue is a reference to the September 22, 1998 action of the Board of Supervisors to uphold Mr. Holland's appeal and extend the Tract Map. As discussed above, the only action taken by the Board of Supervisors was to extend the Tract Map. No amendments to the conditions of approval of the Tract Map were approved, nor any other changes in or amendments to the project approved, substantive or otherwise.

The Staff Report contends that notice of the action taken by the Board of Supervisors on September 22, 1998 may be faulty because only extension of the Tract Map was described on the agenda transmittal. Since the only action taken by the Board of Supervisors was to uphold Mr. Holland's appeal and extend the Tract Map, no other description was necessary. Further, the Board of Supervisors minutes of September 22, 1998, a copy of which is enclosed as Exhibit "E", disclose that Mr. Dietz, the appellant who initiated the instant appeal, was present at the meeting and spoke. Accordingly, he cannot now complain that the notice given by the County was inadequate or improper.

d) The Tentative Map for Tract 1646 Was Not Properly Extended and the Coastal Permit for the Project Has Expired. As discussed in the February 25, 1999 letter from the San Luis Obispo County Counsel to Diane Landry of your staff, a copy of which is attached as Exhibit "F", Title 21 of the San Luis Obispo County Codified Ordinances governs approval of

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subdivision maps. Section 21.01.010 provides that approval of a tentative tract map (such as the Tract Map) "shall constitute approval of a coastal development permit as a local government equivalent in accordance with the certified local coastal program and the California Coastal Act of 1976." No separate action to approve a coastal development is required, and the validity of the coastal development permit runs concurrently with the validity of the Tract Map.

The Tract Map was originally approved "by operation of law" on December 11, 1990. Subsequently, on February 9, 1993, the Board of Supervisors acted to extend the Tract Map under the provisions of Government Code section 66452.6 on the basis that the County failed to issue and sell bonds to finance construction of a sewer treatment facility and system for the Los Osos area. The failure to sell bonds arose after the Tract Map was originally approved, and constituted a moratorium during which the validity of the Tract Map was extended. Subsequently, the State Legislature amended the Act by adding Government Code sections 66452.11 and 66452.13, which automatically added three (3) years to the validity of the Tract Map. Inasmuch as section 66452.6(a) provides that a tentative tract map may not be extended for more than five (5) years during a moratorium, Mr. Holland applied for a further five (5) year extension of the Tract Map on May 5, 1998, pursuant to the Act and Title 21 of the San Luis Obispo County Codified Ordinances. As discussed above, Mr. Holland's request for a five (5) year extension was granted. Since the Tract Map was originally approved for a period of two (2) years, and because the Tract Map was extended for a period of eight (8) years pursuant to the amendments of the Act enacted by the State Legislature and by the Board of Supervisors in recognition of the moratorium on development that was created when the County failed to issue and sell bonds to finance a sewer treatment facility and system, the action taken by the Board of Supervisors on September 22, 1998 extended the Tract Map and the coastal development permit for an additional five (5) years to 2006. A summary of the actions taken to extend the Tract Map, and the authority therefore, is contained in the memorandum of August 25, 1998 from Pat Beck to the Board of Supervisors, a copy of which is attached as Exhibit "G".

e) The County Action Is Inconsistent With Title 21, Section 21.06.060 of the Certified LCP Ordinance. As discussed in the Staff Report, the referenced section of Title 21 of the San Luis Obispo County Codified Ordinances applies to revisions of recorded subdivision maps. Inasmuch as the Tract Map is a tentative map, not a final map, the referenced section is not applicable to the action taken by the Board of Supervisors.

f) The County Action Was Inconsistent With Sections 21.06.060, 21.08.020, 21.08.022, 23.02.038, 23.04.430 and 23.06.102 of the Certified Zoning Ordinance. With regard to Sections 21.06.060, 21.08.020 and 21.08.022 and the alleged failure of the County to notice the Central Coast Regional Water Quality Control Board of amendments to the sewer and water conditions of approval of the Tract Map, the conditions of approval were not amended by the Board of Supervisors, as discussed above. With regard to Sections 23.02.038, 23.04.430 and

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23.06.102 of the San Luis Obispo County Coastal Zone Land Use Ordinance, they do not apply to subdivision maps as discussed in the attached letter from the County Counsel.

g) The Applicant Failed to Properly Notify the Coastal Commission of the 1990 Approval of the Project by Operation of Law as Required by the Permit Streamlining Act. As discussed in the Staff Report, this issue is moot because the 1990 approval of the Tract Map was appealed to the Coastal Commission.

In summary, the Coastal Commission lacks jurisdiction to hear this appeal. Further, there is no substantial issue present in this appeal as no amendment to the Tract Map, the conditions of approval thereof, or any other aspect of the project has been approved by the County of San Luis Obispo or its Board of Supervisors.

Thank you for your attention to this matter. I will be present at the hearing on this matter on March 11, 1999 to offer further oral testimony and respond to your questions.

Sincerely,



Gregory W. Sanders

of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

GWS/skd

Enclosures

**EXHIBIT 7**

004331



JAMES B. LINDHOLM, JR.  
COUNTY COUNSEL

OFFICE OF THE  
**COUNTY COUNSEL**

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JON M. JENKINS  
JAMES B. ORTON  
WARREN R. JENSEN  
MARY A. TOEPKE  
RAYMOND A. BIERING  
A. EDWIN OLPIN  
PATRICIA A. STEVENS  
KATHY BOUCHARD  
TIMOTHY MCNULTY  
ANN CATHERINE DUGGAN  
PATRICK J. FORAN  
ESLIE H. KRAUT  
RITA L. SCIARONI

February 25, 1999

**RECEIVED**

MAR 01 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Via Facsimile

Diane Landry, Esq.  
Staff Counsel  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Re: A-3-SLO-98-108, Tract 1646 (Holland)

Dear Diane:

Thank you for your letter to Alex Hinds of February 19, 1999. Alex is no longer the County Planning Director and so I will attempt to respond to your request for assistance regarding the above subdivision map/coastal development permit. In addition to your letter I have reviewed a packet of County documents forwarded to Lee Otter in December, and I have considered your substantial issue staff report prepared for the February Coastal Commission meeting. There are some problems with the February staff report that appear to be unrelated to the status of the County documents. With this letter I want to address those problems, but I also would like to extend any assistance I can provide in helping you to prepare your analysis. This project has been around so long that the Planning Department has nearly a foot of file material on it. If you need something from a specific time period I will be happy to help you obtain it. In the meantime, please consider these comments on the threshold issue of Coastal Commission appellate jurisdiction and the procedural and substantive analysis provided in your February staff report.

**Can the Coastal Commission act on this appeal?**

According to the staff report, this project is appealable to the Coastal Commission "[1] because the site is located between the first through public road and the sea and [2] because subdivisions are not listed as a Principal Permitted use on Table "O" of the certified Land Use Element of the San Luis Obispo County LCP" (staff report at page 4). As I will explain, each of these grounds for appellate jurisdiction presents particular problems.

In this case the project site is located on the inland side of the first public road paralleling the sea (Pub. Resources Code, § 30603(a)(1)). As you can see from County Engineering's attached memorandum and map of the County-maintained road system, this project sits inland of a

**EXHIBIT 8**

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February 25, 1999

network of roads that is (1) lawfully open to the public, (2) publicly maintained, (3) improved and all-weather, (4) not subject to restrictions on public use, and (5) connected with other public roads in a continuous access system generally parallel to and following the coastline (Cal. Code Regs., tit. 14, § 13011). It is unclear how the County's recent actions with regard to this project are appealable based on the project's location vis-à-vis the first public road.

The second source of Coastal Commission jurisdiction suggested by the staff report is Public Resources Code Section 30603, subd.(a)(4). Under this provision of law the Coastal Commission may consider appeals of "Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500)." Failing to find "subdivision map" on the list of permitted uses in Table "O", the staff report concludes that an appeal must be allowed.

A quick review of the permitted uses listed in the Residential Use Group of Table "O" explains why "subdivision" or "subdivision map" would not be found there. The residential uses allowed include things like: "caretaker residence", "mobilehomes", "organizational houses", "single family dwellings" and "temporary dwellings." In other words, the list is limited exclusively to uses of land. While a subdivision is "development" under both the Coastal Act and our Coastal Zone Land Use Ordinance (CZLUO), approval of a subdivision map does not constitute approval of a land "use" -- principal permitted or otherwise. Subdivision maps are unlike churches or single family dwellings which may be principal permitted uses in some zones and specially permitted or prohibited uses in other zones. There is no land use category in which a subdivision map is a principally permitted use because a subdivision map by itself is not a "use" of land.

In this case, the land use category for the parcel is "residential single family" (Estero Area Plan, South Bay Land Use Categories Map). Single family dwellings are principally permitted uses in this land use category (Coastal Table "O", Coastal Zone Framework For Planning). If this subdivision map is recorded, and a lot owner seeks to establish the land "use" of a single family dwelling, then the lot owner will be attempting to obtain a coastal development permit for a principally permitted use and an approval would not be appealable under this section of the law. If, on the other hand, the same lot owner received County approval to establish a church use on the parcel, then the lot owner's approval for a "specially permitted use" would be appealable to the Coastal Commission.

If the Commission were to adopt the view of appealability proffered in the staff report for Section 30603, subd.(a)(4) it would make every subdivision map approval in the County's coastal zone appealable to the Coastal Commission. Such an expansive reading of that provision could not have been what the Coastal Commission intended when it approved the County's Local

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Coastal Plan and over the last ten years it has not been the practice of either the Commission or the County to give the statute section that effect.

**Chapter 2 of the Coastal Zone Land Use Ordinance does not apply to this approval.**

As outlined above, a stand-alone subdivision map is "development" but it does not involve establishing a land use. The County's Local Coastal Plan recognizes this by allowing subdivision maps to serve as coastal development permits rather than requiring an additional land use coastal development permit at the subdivision stage. The staff report errs in attempting to apply the coastal development land use permit requirements of CZLUO Chapter 2 to this project.

Chapter 2 describes the County's land use permit hierarchy of Site Plans, Plot Plans, Minor Use Permits, Development Plans and Variances. Here is the core of the purpose paragraph for Chapter 2:

23.02.020 - Land Use Permit Procedures:

This chapter lists the land use permits required by this title, describes how such permit applications shall be processed by the Planning Department, and what information must be included with an application for processing. This chapter also sets time limits for application processing, the establishment of approved land uses, commencement of construction and project completion. . . .

Chapter 2 exists only to implement the County's land use permit process in the Coastal Zone. The term "land use permit" is defined very narrowly in Chapter 11 of the CZLUO:

For the purposes of this title, land use permits are the Plot Plan, Site Plan, Minor Use Permit, Development Plan or Variance established by Chapter 23.02 of this title.

This project has no Plot Plan, Site Plan, Minor Use Permit, Development Plan or Variance approved in conjunction with it. Although Chapter 2 does not apply here, the staff report repeatedly relies on it in evaluating the project. For example, on page 6 of the staff report, in a paragraph regarding extension of permits, there is a citation to Section 23.02.040 of the CZLUO. The citation is made to support the proposition that the initial term of the subject map/CDP was only two years. Here is Section 23.02.040 in its entirety:

23.02.040 - Permit Time Limits:

An approved Plot Plan or Site Plan is valid for a period of 18 months from its effective date. A Minor Use Permit, Development Plan or Variance is valid for 24 months after its

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effective date. At the end of such time period, the land use permit shall expire and become void unless:

- a. Substantial site work toward establishing the authorized use has been performed (Section 23.02.042); or
- b. The project is completed (Section 23.02.044); or
- c. An extension has been granted (Section 23.02.050).

If a Minor Use Permit or Development Plan has been appealed to but approved by the Coastal Commission, the time limits established by this section shall commence after final action by the Coastal Commission. Nothing in this title shall be construed as affecting any time limits established by Title 19 of the County Code regarding work authorized by a building permit or other construction permit issued pursuant to Title 19, or time limits relating to the expiration of such permit.

As you can see, Section 23.02.040, like all of Chapter 2, simply does not apply to subdivision maps. When applying the CZLUO to land divisions it is Chapter 1 that determines minimum parcel size (through its adoption by reference of land use categories and official maps from the Land Use Element) and it is Title 21 that determines nearly everything else. This is stated explicitly in Chapter 1:

#### 23.01.030 - Applicability of the Coastal Zone Land Use Ordinance

- c. Land divisions. This title (including applicable planning area standards adopted by reference as part of this title by Section 23.01.022) determines the minimum parcel size for new land divisions. Title 21 of this code contains the specific procedures and requirements for the land division process, **including compliance with coastal development permit requirements** (emphasis added).

Title 21 is the County's subdivision ordinance. It is Title 21, rather than Chapter 2 of the CZLUO, that controls in this situation where the approval sought is a stand-alone subdivision. The following section of Title 21 describes how subdivision maps serve as their own coastal development permits:

#### 21.01.010 - Title--Purpose

(d) It is further the purpose of this title to implement the county general plan and certified local coastal program. Approval of a lot line adjustment, tentative parcel map, tentative tract map, vesting tentative map, reversion to acreage, determination that public policy does not necessitate the filing of a parcel map, modification of a recorded parcel or tract

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map, or conditional certificate of compliance under Government Code section 66499.35(b) **shall constitute approval of a coastal development permit as a local government equivalent in accordance with the certified local coastal program and the California Coastal Act of 1976 (emphasis added).**

In San Luis Obispo County the approval of a tentative map constitutes approval of the required coastal development permit for that map. The land use permit process described in Chapter 2 of the CZLUO only applies to those projects that require a plot plan, minor use permit, development plan or variance **in addition to** the tentative map.

**Extending the life of this map extends the coastal development permit.**

Because the approved tentative subdivision map serves as the coastal development permit, extending the "life" of the map amounts to extending the permit. The staff report adopts a different view. The staff report attempts to find fault with the tentative map time extensions granted by the County by asserting that actions to extend the life of a tentative subdivision map do not automatically extend the coastal development permit that the map constitutes. In support of this position the staff report offers implied references to Government Code sections 66452.11 and 66452.13. These Map Act sections automatically extend State agency approvals that pertain to a development project included in a tentative map. These sections do not preclude such an extension for local agency permits associated with a tentative map. These two sections certainly do not address the situation that exists in this case where the tentative map is the local agency issued coastal development permit.

**The County properly found a stay to exist in 1993.**

The staff report also takes issue with the 5 year "stay" of this tentative map recognized by the Board of Supervisors back in February, 1993. The staff report adopts the view that a development moratorium existed in Los Osos prior to the Board of Supervisors approving the tentative map thereby making the tentative map ineligible for the 5 year stay. This is an issue that was raised and analyzed in early 1993 when the Board recognized the 5 year stay. According to the Board's 1993 findings, the necessity for the 5 year stay is based, not on the Regional Board's septage discharge prohibition, but rather on the County's subsequent failure to sell the bonds necessary to construct a community sewer. The County's inaction with regard to selling the bonds necessary for the sewer was found to be the event triggering the 5 year stay.

The stay and the various extensions of this subdivision map/CDP have been the subject of thoughtful review by Pat Beck of the Planning Department. Pat did not recommend the full five year extension recently granted by the Board of Supervisors, but she believed, as I do, that the Board had a "live" tentative map before it and that a five year extension was one available option.

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Re: A-3-SLO-98-108, Tract 1646 (Holland Appeal)  
February 25, 1999

**No amendment of the subdivision map was made by the County in September, 1998.**

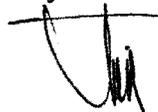
On pages 8 and 9 the staff report makes the argument that the Board effectively amended the tentative map by its actions of September 22, 1998. Staff argues that the Board was not properly noticed to amend the tentative map and that its attempt to do so raises a substantial issue.

Our procedure for amending tentative maps is identical to our procedure for approving tentative maps and it was not followed in this instance. (Again, the staff report is incorrect in attempting to apply the "Changed Project" provisions of CZLUO Chapter 2. As explained above, Chapter 2 applies only the CZLUO land use permit hierarchy.) The only action taken by the Board was to approve a resolution extending the life of the tentative map for five additional years (Resolution 98-336). The Board was not in a procedural posture that would allow it to amend the tentative map and it did not do so. If a final map is ever submitted for recordation the then sitting Board will need to determine if the project incorporates all the features promised at the time it became approved. If there has not been substantial compliance then the map will not be finally approved.

I will not attempt to address the "substantive planning issues" raised by the remainder of the staff report. These issues concern the proper application of Public Works Policy No.1 rather than legal or procedural questions. I hope you find this letter timely and useful. If I can assist your review in any other way please feel free to call.

Very truly yours,

JAMES B. LINDHOLM, JR.  
County Counsel



By: Timothy McNulty  
Deputy County Counsel

TM:kt  
PLN  
6050kt.ltr

# SAN LUIS OBISPO COUNTY ENGINEERING DEPARTMENT

COUNTY GOVERNMENT CENTER • ROOM 207 • SAN LUIS OBISPO, CALIFORNIA 93408

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MAR 01 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

ROADS  
SOLID WASTE  
FRANCHISE ADMINISTRATION  
WATER RESOURCES  
COUNTY SURVEYOR  
SPECIAL DISTRICTS

February 25, 1999

### MEMORANDUM

**TO:** Tim McNulty, Deputy County Counsel

**FROM:** Richard Marshall, Development Services Engineer *RM*

**SUBJECT:** Tract 1646 - Holland

As you requested, I have reviewed the provisions of the Coastal Act regulations which refer to the "first public road paralleling the sea" and how they apply to Tract 1646. Title 14, Section 13011 defines this term as follows:

1. Lawfully open to uninterrupted public use and suitable for such use;
2. Publically maintained;
3. Improved, all-weather road open to motor vehicle traffic in at least one direction;
4. Not subject to any restrictions on use by the public, except when closed due to an emergency or when closed temporarily for military purposes;
5. Connects with other public roads providing a continuous access system, generally parallels and follows the shoreline of the sea.

In the vicinity of Tract 1646, the following roads satisfy that definition, beginning at the intersection of Binscarth Road and Pecho Road:

- south along Pecho Road to Skyline Drive;
- west along Skyline Drive to Solano Street;
- south along Solano Street to Howard Avenue;
- west along Howard Avenue to Inyo Drive;
- south along Inyo Drive to Monarch Lane;
- east along Monarch Lane to Pecho Valley Road;
- south along Pecho Valley Road.

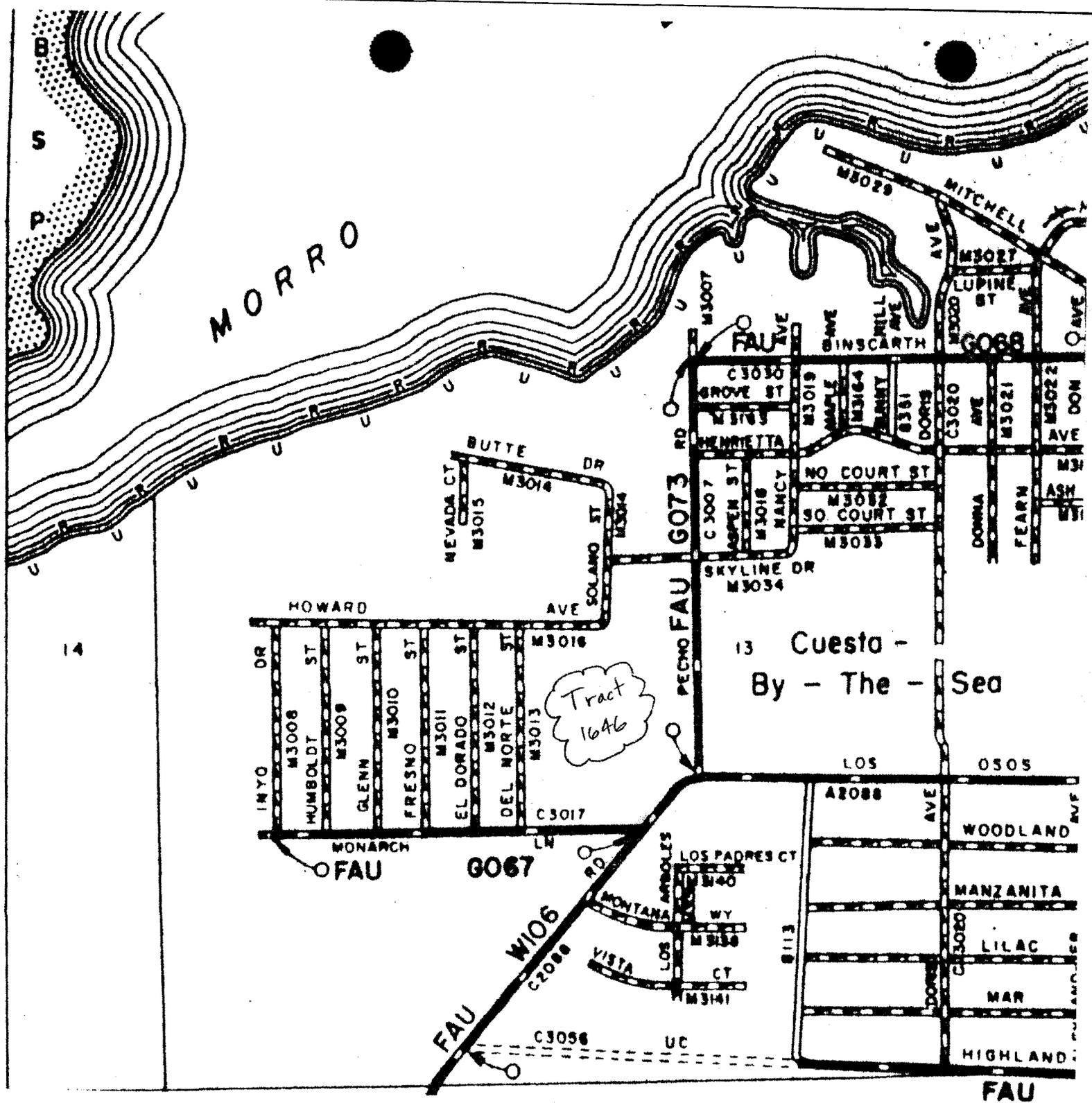
I am enclosing a copy from our Department's official maps of the County-maintained road system, which indicates that the roads listed above satisfy the definition from Section 13011. Please call me at 781-5280 if you need any additional information.

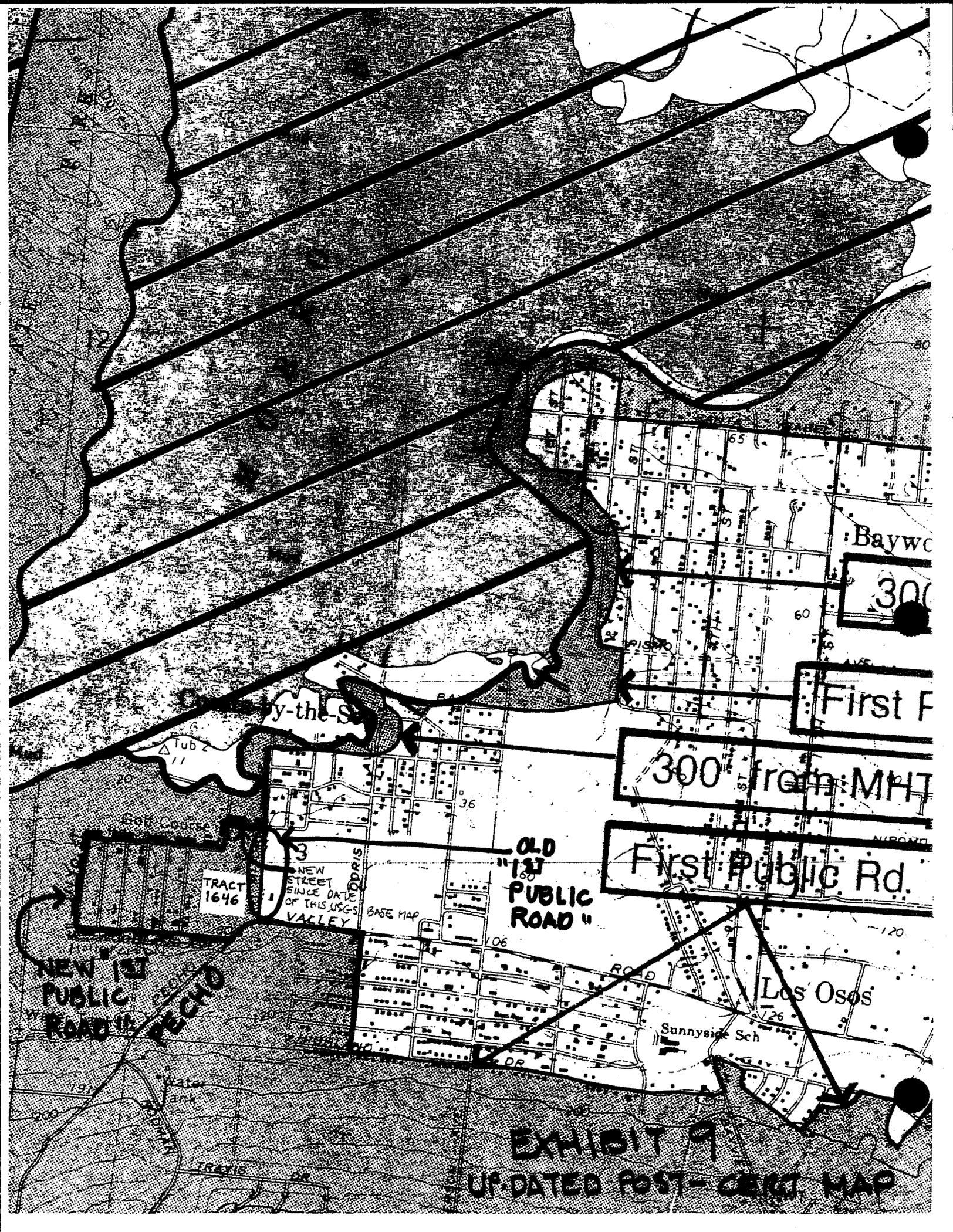
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## EXHIBIT 8

675





TRACT 1646

NEW STREET SINCE DATE OF THIS USGS VALLEY BASE MAP

OLD "1ST PUBLIC ROAD"

300' from MHT

First Public Rd.

NEW "1ST PUBLIC ROAD"

TRACT 1646

Baywo

300

First F

by-the-S

Los Osos

Sunnyside Sch

EXHIBIT 9  
UPDATED POST-CERT MAP

## C. ALLOWABLE LAND USES IN THE COASTAL ZONE

The following charts (Coastal Table O) list uses of land that may be established in the land use categories shown by the LUE area plans in the coastal zone. After determining what land use category and combining designation applies to a particular property, the chart can be used to find what uses are allowable. The chart will also show where to look in the Coastal Zone Land Use Ordinance to find the standards that apply to the planning and development of such land uses, as well as what permit is needed before a use can be established.

**IMPORTANT:** When determining the land use category and combining designation (if any) applicable to a particular property, also check the planning area standards and any policies from the Coastal Plan Policies Document that may apply to the property. (Planning area standards can be found in the LUE area plan that covers the part of the county containing the property in question. The LCP Policy Document may include additional requirements or standards affecting the type of development proposed.) Those standards may limit the uses allowed by the following charts, or set special permit requirements for a particular land use category, community or area of the county.

The column headings at the top of the charts are the land use categories, and the left column lists land uses, grouped under general headings. When the proposed land use is known, reading across the columns will show where the use is allowable. If a proposed use doesn't seem to fit the general land use headings, the definitions of uses in Section D of this chapter can help determine the proper group of uses to look for. A particular use of land need not be listed in the use definitions to be allowable. If a proposed use is not specifically mentioned, the planning director will, upon request, review a proposed use and identify the listed use it is equivalent to, as described in Chapter 2 of this document.

The letter "A" on the chart means that the corresponding use in the left column is "Allowed" in that land use category, if consistent with the LUE, LCP and other applicable regulations. Though some uses with an "A" in various categories (such as crop production) are identified in the Coastal Zone Land Use Ordinance as requiring no permit, in most cases the "A" means a use can be established with a plot plan approval as part of a building permit (or more intensive permit process if required by the CZLUO based on the size of the use), subject to the Coastal Zone Land Use Ordinance standards that must be considered in planning and developing a use.

The letter "S" means that a use is allowable in a particular land use category only when special standards or permit procedures are followed. The number after the "S" refers to the key following the charts, which explains where to look in the Coastal Zone Land Use Ordinance to find the special standards. A "P" means that the use is principally permitted and encouraged over non-principally permitted uses. A "PP" means the same as a "P" where found in the text. A blank space in a land use category column means the corresponding use on the left side of the chart is not allowable in that land use category.

EXHIBIT NO. 10
APPLICATION NO.
TABLE "O"
SLO LCP

## KEY TO COASTAL TABLE O

### USE STATUS

### DEFINITION

- A Allowed use, unless otherwise limited by a specific planning area standard. Coastal Zone Land Use Ordinance Chapter 23.03 ("Required Level of Processing") determines the permit necessary to establish an "A" use, and Chapters 23.04 through 23.06 determine the site design, site development, and operational standards that affect the use. See also the "Planning Area Standards" sections of the Land Use Element Area Plans and the LCP Policy Document to find any standards that may apply to a project in a particular community or area.
  
- S Special use, allowable subject to special standards and/or processing requirements, unless otherwise limited by a specific planning area standard. The following list shows where in the Coastal Zone Land Use Ordinance to find the special standards that apply to particular uses.
  
- P Principally permitted use, a use to be encouraged and that has priority over non-principally permitted uses, but not over agriculture or coastal dependent uses.

### "S" NUMBER

### APPLICABLE COASTAL ZONE LAND USE ORDINANCE SECTION AND/OR LAND USE ELEMENT REQUIREMENT

- 1 23.08.120 b MISCELLANEOUS USES
- 2 23.08.120 a MISCELLANEOUS USES
- 3 23.08.040 AGRICULTURAL USES
- 4 23.08.060 CULTURAL, EDUCATIONAL & RECREATIONAL USES
- 5 23.08.080 INDUSTRIAL USES are allowable subject to the special standards found in Section 23.08.080. For new or expanded uses within the Petroleum Refining and Related Industries and Marine Terminals and Piers use groups, a specific plan is required prior to acceptance of land use permit(s) subject to the standards as set forth in Section 23.08.094.
- 6 23.08.100 MEDICAL & SOCIAL CARE FACILITIES
- 7 23.08.140 OUTDOOR COMMERCIAL USES
- 8 23.08.160 RESIDENTIAL USES
- 9 23.08.170 RESOURCE EXTRACTION
- 10 23.08.200 RETAIL TRADE
- 11 23.08.220 SERVICES
- 12 23.08.260 TRANSIENT LODGINGS
- 13 23.08.280 TRANSPORTATION, UTILITIES & COMMUNICATION

- 14 Uses are allowable in the Open Space land use category on privately-owned land subject to Coastal Zone Land Use Ordinance Section 23.08.120a in addition to the special standards in Chapter 23.08, only when authorized by a recorded open space agreement executed between the property owner and the county. On public lands, uses designated are allowable subject to Coastal Zone Land Use Ordinance Section 23.08.120b, in addition to the special standards found in Chapter 23.08.
- 15 Listed processing activities are allowable in the Rural Lands and Agriculture land use categories only when they use materials extracted on-site pursuant to Coastal Zone Land Use Ordinance Section 23.08.120a, or when applicable, the Coastal Zone Land Use Ordinance Surface Mining Standards, Section 23.08.180 et. seq.
- 16 23.08.020 ACCESSORY USES
- 17 23.08.240 TEMPORARY USES
- 18 23.08.050 INTERIM AGRICULTURAL USES
- 19 23.08.400 WHOLESALE TRADE
- 20 23.08.300 ELECTRIC GENERATING PLANTS

# ALLOWABLE USES

## LAND USE CATEGORY

Open Space	Public Facilities	Industrial	Commercial Service	Commercial Retail	Office & Professional	Residential Multi-Family	Residential Single-Family	Residential Suburban	Residential Rural	Recreation	Rural Lands	Agriculture - Non-Prime Soils	Agriculture - Prime Soils
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PAGE NUMBER  
OR USE DEFINITION

## USE GROUP

A) AGRICULTURE	
Ag Accessory Structures	1
Ag Processing	2
Animal Raising & Keeping	3
Aquaculture	4
Crop Production & Grazing	5
Farm Equipment & Supplies	6
Nursery Specialties - Soil Dependent	8
Nursery Specialties - Non-Soil Dependent	9
Specialized Animal Facilities	10

S-3-P	S-3-P	S-3-P	S-3	S-3	S-3					S-3	S-3	S-3	S-14
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P	P	P	A	A	S-18	S-18	S-18	S-18	S-18	S-18	A	A	A
	S-3	S-3		S-3						A	A		
S-3-P	S-3-P	S-3		S-3	S-3					S-3	S-3	S-3	
	S-3	S-3		S-3	S-3					S-3	S-3	S-3	
S-3	S-3-P	S-3	S-3	S-3	S-3	S-3			S-3	S-3	S-3	S-3	

B) COMMUNICATIONS	
Broadcasting Studios	1
Communications Facilities	2

									P	A	P	A	A
	S-13	S-13	S-13	S-13						S-13	S-13-P	P	P

# LAND USE CATEGORY

Open Space	Public Facilities	Industrial	Commercial Service	Commercial Retail	Office & Professional	Residential Multi-Family	Residential Single-Family	Residential Suburban	Residential Rural	Recreation	Rural Lands	Agriculture - Non-Food Crops	Agriculture - Food Crops
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PAGE NUMBER  
OF USE DEFINITION

## USE GROUP

C) CULTURAL, EDUCATION & RECREATION	
Cemeteries & Columbariums	1
Churches	2
Coastal Accessways	3
Drive-In Theatres	4
Indoor Amusements & Recreation	5
Libraries & Museums	6
Marinas	7
Membership Organization Facilities	8
Off-Road Vehicle Courses	9
Outdoor Sports & Recreation	10
Passive Recreation	11
Public Assembly & Entertainment	12
Rural Recreation & Camping	13
Schools - Specialized Education & Training	14
Schools - College & University	15
Schools - Pre to Secondary	16
Social Service Organizations	17
Sports Assembly	18
Temporary Events	19

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			S-4-P					S-4	S-4-P	S-4			S-4-P	
			S-2-P	S-2				P	P				P	
			S-1-P							S-1			S-1-P	
			S-2					S-1	A	A	A	A	A	
		S-1	S-1											
			S-4-P	S-4	S-4	S-4	S-4		S-4	S-4			S-4-P	
	A	P	P	P	P	P	P	P	P	P	P	P	P	P
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								P	A	A	S-2	S-2-P		
			S-1							S-1	S-1	S-1		
	S-17	S-17	S-17	S-17				S-17	S-17	S-17	S-17	S-17		





# LAND USE CATEGORY

Open Space	Public Facilities	Industrial	Commercial Service	Commercial Retail	Office & Professional	Residential Multi-Family	Residential Single-Family	Residential Suburban	Rural	Recreation	Rural Land	Agriculture - Non-Franchise Soils	Agriculture - Franchise Soils
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PAGE NUMBER  
OF USE DEFINITION

## USE GROUP

F) RESOURCE EXTRACTION	
Fisheries & Game Preserves	1
Forestry	2
Mining	3
Petroleum Extraction	4
Water Wells & Impoundments	5

6-46  
6-46  
6-51  
6-54  
6-61

	A	A	A	A										S-14
	A	A	A	A	A									
	S-9	S-9											S-9	S-14
	S-9	S-9		S-9	S-9						S-9	S-9	S-9	
	S-9-P													

G) RETAIL TRADE	
Auto, Mobilehome & Vehicle Dealers & Supplies	1
Building Materials & Hardware	2
Eating & Drinking Places	3
Food & Beverage Retail Sales	4
Fuel & Ice Dealers	5
Furniture, Home Furnishings & Equipment	6
General Merchandise Stores	7
Mail Order & Vending	8
Outdoor Retail Sales	9
Roadside Stands	10
Service Stations	11

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									S-10-P	P	A			
	S-10		S-10-P	S-10	S-10			A	P	A	S-2			
			S-10-P	S-10	S-10	S-10	S-10	S-10	P	A	S-2			
										S-5	S-5-P			
									P	A				
			S-1-P						P	A				
									P	P	A			
	S-7	S-7	S-7	S-7				S-7	S-7	S-7	S-7	S-7	S-7	
	S-3	S-3	S-3	S-3	S-3									
			S-10						S-10-P	S-10-P	S-10			

# LAND USE CATEGORY

Open Space
Public Facilities
Industrial
Commercial Service
Commercial Retail
Office & Professional
Residential Multi-Family
Residential Single-Family
Residential Suburban
Residential Rural
Recreation
Rural Lands
Agriculture - Non-Prime Soils
Agriculture - Prime Soils

PAGE NUMBER  
OF USE DEFINITION

## USE GROUP

H) SERVICES	
Auto & Vehicle Repair & Service 1	6-40
Business Support Services 2	6-41
Construction Contractors 3	6-43
Consumer Repair Services 4	6-43
Correctional Institutions 5	6-44
Financial Services 6	6-46
Health Care Services 7	6-47
Laundries & Dry Cleaning Plants 8	6-49
Offices 9	6-52
Offices, Temporary 10	6-52
Personal Services 11	6-54
Public Safety Facilities 12	6-55
Storage, Accessory 13	6-58
Storage Yards & Sales Lots 14	6-59
Temporary Construction Yards 15	6-59
Waste Disposal Sites 16	6-60

										S-11-P	S-11		
										P	A		
										P	A		
									S-11	P	A		
												S-1-P	
				S-2					P	P			
				S-1					P	A			A
										P	P		
									P	A	A	A	A
				S-17	S-17	S-17	S-17	S-17	S-17-P	S-17	S-17	S-17	S-17
				S-1			S-11	S-11	A	P	P		
		S-2	P	P	P	P							
		A	S-16	S-16	S-16	S-16	S-14						
											S-7	S-7	S-7
		S-17	S-17	S-17	S-17								
		S-1	S-1									S-1	S-1-P

# LAND USE CATEGORY

Open Space	Public Facilities	Industrial	Commercial Service	Commercial Retail	Office & Professional	Residential Multi-Family	Residential Single-Family	Residential Suburban	Residential Rural	Recreation	Rural Lands	Agriculture - Prime Soils	Agriculture - Non-Prime Soils
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PAGE NUMBER  
OF USE DEFINITION

## USE GROUP

J) TRANSIENT LODGINGS	
Bed & Breakfast Facilities	1
Homestays	5
Hotels, Motels	2
Recreational Vehicle Parks	3
Temporary Const. Trailer Park	4

	S-12	S-12-P	S-12-P	S-12-P	S-12-P		S-12	S-12	S-12-P	S-12		S-12	
					S-12	S-12							
			S-12-P					S-12	S-12-P	S-12		S-12	
			S-12-P						S-12	S-12		S-1	
	S-12	S-12		S-12							S-12		

J) TRANSPORTATION	
Airfields & Landing Strips	1
Harbors	2
Marine Terminals & Piers	3
Pipelines & Transmission Lines	4
Public Utility Facilities	5
Transit Stations & Terminals	6
Truck Stops	7
Vehicle & Freight Terminals	8
Vehicle Storage	9

S-13	S-13	S-13	S-13	S-13				S-13		S-13	S-13	S-13-P	
												S-1-P	
			S-5							S-5	S-5	S-5-P	
S-13	S-14												
S-13	S-13	S-13		S-13	P								
			S-2					S-2	S-2	S-2	A	A	
										A	A		
										A	A		
			S-13					S-13	S-13	P	A	A	

K) WHOLESALE TRADE	
Warehousing	1
Wholesaling & Distribution	2

	S-19	S-19					S-19			P	A	A	
	S-19	S-19								P	A		

Pacific  
Ocean

**SITE**

**USL**

**URL**

1000 0 1000 2000 3000 Feet

-  Vacant Lots with Unsuitable Habitat, Developed Lots & Public Land (PF, OS, ROW)
-  Suitable Snail Habitat - Vacant less than 1 acre
-  Suitable Snail Habitat - Vacant greater than 1 acre

Source: County of San Luis Obispo Mapping Division, 1997; Crawford Multari & Clark Associates, 1997.

**DRAFT ESTERO PLAN**

is Osos Snail Habitat within the Sewer Services District

**EXHIBIT II**

is/Baywood Park Conservation Plan and Creek

