

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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STAFF REPORT:
SUBSTANTIAL ISSUE DETERMINATION
AND DE NOVO REVIEW

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: Approved with conditions, 9/13/99

APPEAL NO.: A-3-SLO-99-079

APPLICANT: Lee Linsley

APPELLANTS: Commissioners Wan and Estolano

PROJECT LOCATION: 2250 Pecho Road, Los Osos, San Luis Obispo County (APN 074-025-015)

DESCRIPTION: Subdivision of a 1.4 acre parcel into three parcels of approximately 20,000 square feet each.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; Final Local Action Notice 3-SLO-99-142 and attached materials; Coastal Development Permit Application File No. A-3-SLO-97-40 (Los Osos Wastewater Treatment Project); Coastal Development Permit Application File A-3-SLO-98-108 (Holland Subdivision); Draft Estero Area Plan Update, 1999

EXECUTIVE SUMMARY

The project involves the subdivision of a 1.4 acre lot designated for Residential Single Family use into three parcels of 20,021 square feet, 22,945 square feet, and 20,005 square feet. There is an existing single family residence on the parcel, which is located at the southeast corner of the intersection of Pecho Coast Road and Los Osos Valley Road, in the community of Los Osos, San Luis Obispo County.

The project is located in the septic tank prohibition area established by the Central Coast Regional Water Quality Control Board (RWQCB). The community of Los Osos also has a highly constrained water supply. To address the lack of public services currently available to serve the proposed parcels, the County's approval prohibits recordation of the subdivision until a community wide sewer system is constructed and available to serve the proposed parcels, and the applicant has obtained a will serve letter from a community water purveyor.

Staff recommends that the Commission determine that the appeal raises a substantial issue, then deny the Coastal Development Permit for the project, because the San Luis Obispo County Local Coastal Program prohibits approval of subdivisions if there are insufficient water and sewage disposal capacities to serve the created parcels. The County's condition of approval, prohibiting the recordation of the subdivision until these services become available, is inconsistent with LCP requirements that call for demonstration of adequate services *prior to the approval* of a subdivision. Until a wastewater treatment system has been designed and approved for the Los Osos community, there is no assurance that there will be sewage treatment available to serve the created parcels. The County's condition also prematurely concludes that a future community wastewater system (including a groundwater injection component) will resolve current water supply limitations associated with data that suggests that withdrawals from the Los Osos Groundwater Basin currently exceed its safe yield. The ability of a yet-to-be-designed and approved wastewater treatment system to effectively address the areas water supply needs will be subject to future analyses and a demonstrated ability to effectively recharge the groundwater basin. Until these issues are resolved, it can not be found that there is adequate water to serve the proposed subdivision, particularly in light of LCP policies that prioritize the provision of water to *existing* lots in the urban area and require the reservation of adequate water supplies needed for agriculture.

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I. SUMMARY OF APPELLANTS' CONTENTIONS

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

The appellants contend that the approval of the project, prior to demonstrating that there is sufficient services to serve the new development, conflicts with Coastal Plan Policy 1 for Public Works, and Sections 23.04.021(c) and 23.04.430 of the Coastal Zone Land Use Ordinance (CZLUO). This contention identifies that there are significant unresolved issues related to the timing and construction of a community wide wastewater treatment system, as well as its service capacity and ability to address groundwater/water supply issues. As a result, the appeals assert that it is premature to find that there are adequate water and sewage disposal capacities to serve the development. Such a finding must be made prior to the approval of a subdivision pursuant to the referenced LCP requirements.

Similarly, the appeals contend that the questionable availability of water to serve the project may jeopardize the availability of water to serve Coastal Act priority uses such as Agriculture. This calls into question the project's conformance with Estero Planning Area Standard 2, which requires that the review and approval of subdivisions implement priorities for water use, including the reservation of 800 acre feet per year for agricultural use.

The appeals also contend that the project is inconsistent with Estero Planning Area Standard 4 because building sites for the new parcels have not been identified; this standard requires that such building sites be identified on project plans and located so that they are least visible from public roads.

Finally, the appeals call into question the project's consistency with LCP requirements protecting environmentally sensitive habitats, because it has not been identified if there is any such habitat on the site, or if the proposed subdivision will impact such habitats. This contention references Coastal Plan Policy 4 for Environmentally Sensitive Habitats, which prohibits the division of parcels containing environmentally sensitive habitats, unless it can be found that the buildable areas are entirely outside the minimum setback needed to protect the habitat. Central to this concern is the potential for the Morro shoulderband snail to occur on the property. This species, which is listed as threatened under the federal Endangered Species Act, is known to occur in nearby areas.

II. LOCAL GOVERNMENT ACTION

The County of San Luis Obispo Subdivision Review Board conditionally approved the project as Parcel Map CO 98-0147 on September 13, 1999. The conditions of the Subdivision Review Board's approval are attached to this report as Exhibit B.

III. STANDARD OF REVIEW FOR APPEALS

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

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

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

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

MOTION: I move that the Commission determine that Appeal No. A-3-SLO-99-079 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Passage of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-SLO-99-079 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

The appeals raise a substantial issue, because as approved by the County, the project is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) requiring evidence that there is adequate water supply and sewage treatment capacities to serve the proposed subdivision, prior to its approval. These provisions include Coastal Plan Policy 1 for Public Works, South Bay Urban Area Planning Standard 2, and Sections 23.04.021(c) and 23.04.430 of the Coastal Zone Land Use Ordinance (CZLUO). The project is inconsistent with these standards because there is currently no means of treating the wastewater that would be generated by future development of the new lots, and because there does not appear to be adequate water to serve such development. The project is also inconsistent with the components of these LCP provisions that prioritize the provision of services to existing lots within the urban area, and require the reservation of a specific amount of water for agricultural use. The County's approval inappropriately relies on a yet to be designed and approved community wastewater system, and associated groundwater recharge component, to resolve these issues. This approach does not achieve project conformance with the aforementioned policies and ordinances because evidence of adequate services must be demonstrated prior to the approval of the subdivision. Furthermore, significant unresolved issues related to a future community wastewater treatment system that call into question the ability to accommodate additional residential lots within the Los Osos community consistent with LCP requirements.

A substantial issue is also raised by the fact that the potential impacts of the proposed subdivision on visual resources and sensitive habitats have not been adequately addressed. With respect to visual impacts, building envelopes on the new lots have not been identified, as required by CZLUO Section 23.04.021 (c) and Estero Area Planning Standard 4. As a result, the project can not be determined to be consistent with the LCP requirement that such envelopes be located so that they are least visible from public roads. Regarding environmentally sensitive habitats, there has not been an adequate assessment of the potential impacts that future development of the new parcels may have on any sensitive plants or animals that may exist on the site, such as the federally threatened Morro shoulderband snail, which is known to occur in nearby undeveloped areas. Coastal Plan Policy 4 for Environmentally Sensitive Habitats prohibits the creation of new parcels on which future development would adversely affect such habitats.

The above issues are addressed in more detail in the De Novo findings of this report.

VI. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, **deny** the coastal development permit required for the proposed subdivision.

MOTION: I move that the Commission approve Coastal Development Permit No. A-3-SLO-99-079 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the San Luis Obispo County certified Local Coastal Program. Approval of the permit will 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 development on the environment.

IX. DE NOVO FINDINGS AND DECLARATIONS

A. Project Description

The project involves the division of a 1.4 acre parcel, on which a single family residence currently exists, into three parcels of 22,021 square feet, 22,945 square feet, and 20,005 square feet. The proposed configuration of the new parcels is shown by Exhibit E. Condition 1 of the County approval prohibits recordation of a final map for the subdivision until (1) a community wide sewer system is constructed and operational; and (2) "will serve" letters are issued from community water and sewer providers indicating that such services are available to serve the new parcels.

Although no construction was proposed as part of the project, Conditions 3 and 7 of the County's approval require the applicant to widen the section of Pecho Road fronting the property to "A-2 (urban)" standards, and construct drainage basins on the property, as part of the subdivision. Pursuant to Condition 2 of the County's approval, such work can not commence until "the Regional Water Quality Control Board issues a letter to the county indicating that the community wide sewer final design has been approved, that financing for the construction of the sewer is available, and that the estimated time of project completion for the portion of the sewer system serving this project is not more than one year away."

B. Project Location

The project is located at 2250 Pecho Road, in the community of Los Osos, San Luis Obispo County (please see Exhibit C). The parcel is on the east side of Pecho Road, about 50 feet south of where Pecho Road intersects with Los Osos Valley Road (please see Exhibit D). The site is designated as Residential Single Family by the Estero Area Plan of the San Luis Obispo LCP, and is mapped as an Archaeologically Sensitive Area. The minimum lot size allowed by Section 23.04.028 of the CZLUO for new parcels in the Residential Single Family land use category ranges between 6,000 and 20,000 square feet, subject to consistency with other LCP standards. One exception to this minimum lot size is where parcels will be served by septic tanks and percolation rates exceed 5 minutes per inch. In such cases, the minimum lot size is 1 acre. In this case, the new parcels are proposed to be served by a future community sewer system. As a result, the potential 1 acre minimum lot size was not applied by the County to the project.

Very little information is contained in the local record provided by the County that addresses the appellant's contentions regarding biological and visual resources on the site. The information that is provided states that vegetation on the site consists of grasses, forbs, eucalyptus trees, and ornamentals, and that the site is surrounded by single family residences. The potential for the site to provide scenic value and support sensitive habitats is addressed in subsequent sections of this staff report.

Other 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 that will alleviate the impacts of the current method of sewage disposal and allow additional infill development in Los Osos.

C. Public Service Capacities**1. Applicable Standards**

LCP Policy 1 for Public Works states:

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the new development. Priority shall be given to infilling existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban services line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the USL shall be allowed only if it can be serviced by adequate private on-site water and waste disposal systems.

The applicant shall assume the responsibility in accordance with County ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources.

South Bay Urban Area Planning Standard 2 requires:

Prior to the completion of a Resource Capacity Study, the following priorities for water use shall be established, which shall be implemented through the review and approval of subdivision and development plan proposals.

- a. Reservation of 800 acre-feet per year (consumptive use) for agricultural use to protect existing and projected agricultural water needs in accordance with the Brown and Caldwell study (1974).*
- b. Projected infill of residential, commercial, and visitor-serving uses on existing subdivided lots.*
- c. Extended services to areas where services will correct existing or potential problems (e.g., areas with high nitrate readings) where individual wells are now in use.*
- d. Additional land division will be permitted within substantially subdivided areas in accordance with lot sizes permitted in the Land Use Element and Coastal Zone Land Use Ordinance. Findings must be made that resources are adequate to serve the previously identified higher priorities uses in addition to proposed lots.*
- e. Additional divisions would be permitted within the urban service line boundary only where adequate additional capacity is identified and it can be demonstrated that the proposed development would not jeopardize the availability of resources available to higher priority proposed uses.*
- f. Land divisions in areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and one-half acres.*

Section 23.04.021(c) of the CZLUO provides, in part, the following applicable "overriding land division requirements":

All applications for land divisions within the Coastal Zone (except condominium conversions) shall satisfy the following requirements, as applicable, in addition to all applicable provisions of Sections 23.04.024 through 23.04.036 [regarding

minimum lot size]. In the event of any conflict between the provisions of this section and those of Section 23.04.024 through 23.03.036, this section shall prevail.

(1) Water and sewer capacities – urban areas: In communities with limited water or sewer service capacity, as defined by Resource Management System alert level II or III¹:

- (i) Within an urban services line, new land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.*

...

(7) Location of access roads and building sites. Proposed access roads and building sites shall be shown on tentative maps and shall be located on slopes less than 20 percent.

CZLUO Section 23.04.430 reads, in relevant part:

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban services line over development proposed between the USL and URL [urban reserve line]. ...

2. Analysis

The proposed project involves the creation of two new lots, for the intended purpose of future residential development. Recognizing that there is currently no means of treating the wastewater that would be generated by future residential development on the new parcels, and that there may not be adequate water to serve such development, the County conditioned the project in a manner that prohibits recordation of the subdivision until a community wide wastewater treatment system is available to serve the project, and a will serve letter for water service has been obtained.

As previously noted, the site of the subdivision is within the "prohibition area", in which additional septic systems have been prohibited 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

¹ According to the 1999 Annual Resource Summary Report adopted by the San Luis Obispo County Board of Supervisors on December 7, 1999, County staff has recommended Alert Level II for the Los Osos water supply, and an Alert Level III for sewage treatment.

cumulatively within the prohibition area. 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. Due to the lack of available sewer service, the Central Coast Regional Water Quality Control Board submitted a letter to the County Planning Department opposing the subdivision (please see Exhibit F).

Currently, there also 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.

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. Thus, it appears that the safe yield figures given in the currently certified Estero Plan (dated 1988) have been exceeded.

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."

The LCP policies and ordinances cited above prohibit the creation of new lots unless it can be found that there is adequate public services (e.g., water and sewage treatment) to serve existing lots as well as the new lots. Moreover, they require the reservation of water supplies necessary for agriculture, and place higher priority on serving existing lots. Based on the lack of appropriate infrastructure to effectively treat wastewater in the Los Osos community, and the lack of water needed to serve existing development and coastal agriculture, let alone new lots, the proposed project is clearly inconsistent with these LCP provisions.

The County's approval of this project attempted to address this problem by prohibiting finalization of the subdivision until a community wastewater treatment system is available to serve the project, and a will serve letter is obtained from a community water purveyor. In justifying this approach, the County found that "Upon completion of the sewer system and connection to the existing community, wastewater now lost through septic tanks can be collected, processed and made available in an amount sufficient to supply for [sic] each of the higher priority uses." The County further found:

The sewer system will collect and process wastewater and release it subsurface, whereupon it will percolate into the Los Osos Groundwater Basin and, accounting for different geology, it can be pumped at different depths from wells, treated, and provided for domestic consumption in the approximate quantity of 600 acre feet per year, such that higher priority land uses can be assured water as follows:

- 1) "agriculture" now accounting for 574 acre feet per year consumptive use will have an additional 226 acre feet per year available so that the full 800 acre feet per year is set aside for agricultural uses,
- 2) the "projected infill" of residential uses estimated at 1,124 dwelling units and commercial uses will have a set-aside of 300 acre feet per year and,
- 3) that the sewer system will eliminate the nitrate problems and thus eliminate or substantially reduce the well to septic tank separation problem in the "problem areas" so that no (zero) additional water allocation will be needed in problem areas, and
- 4) that this "additional subdivision" will have adequate water available since the additional water provided by the waste water system will be approximately 600 acre feet per year and that 74 acre feet remain available after set-asides for each higher priority use, and that this subdivision will have a water demand of about 0.66 additional acre feet per year.

The Commission can not find that the County's conditional approval and above findings comply with the previously cited LCP requirements, because there are too many unresolved issues with respect to the design, capacity, and timing of a community wastewater system, and its ability to resolve the regions water supply issues.

The recently formed Los Osos Community Services District, which has assumed the responsibility of providing wastewater treatment service to the community, is currently considering significant modifications to the wastewater treatment system previously proposed by the County Engineering Department. These include potential changes to the method of treatment, disposal, and the area to be served. Once the final design is developed by the CSD, it will be subject to various regulatory reviews and approvals, which may result in additional modifications to the system. As a result, it is premature to assume that a yet to be designed and approved community wastewater system will be able serve the subdivision with both wastewater treatment and domestic water.

For example, the assumption that the Community wastewater system will be able to provide 600 acre feet of water that can be used for domestic and agricultural purposes is dependent upon the ultimate capacity of this system, the method of disposing treated wastewater, and confirmation that this disposal method will replenish groundwater supplies in a manner that can used for domestic purposes.

Moreover, it has been identified that existing water withdrawals may already be exceeding the groundwater basin's safe-yield. Thus, there is a high probability that any groundwater replenishment that might be realized by the future treatment system will be necessary to prevent overdraft of the groundwater basin by existing development. It is clear that a more detailed assessment of the region's water situation will be required before the future treatment system can be relied upon as a source of water for new development.²

3. Conclusion:

The project is inconsistent with LCP provisions that prohibit subdivisions unless there are adequate public services to accommodate the new lots, after priority uses such as agriculture and the infill of existing lots within the urban area have been accounted for. Because there are significant unresolved issues with respect to the availability of such services, particularly water and sewage treatment, the project can not be found to be consistent with these LCP requirements and therefore must be denied.

D. Other LCP Issues

While the Commission's denial of this project is based on the lack of public services needed to support the subdivision, there are additional unresolved coastal resource issues that would need to be addressed by any future subdivision of the site should public services become available.

First, evidence that the project complies with LCP requirements protecting Environmentally Sensitive Habitats must be provided. These include, but are not be limited to, Coastal Plan Policy 4 for Environmentally Sensitive Habitats, which states:

No division 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 the 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.

² The conditional approval of the County may establish an expectation of the property owner, and other large lot owners in the area, that such subdivisions are appropriate and consistent with LCP requirements. If the ultimate resolution of wastewater and water supply issues conclude that an increase in the number of residential lots can not be supported consistent with LCP standards, it can be expected that such property owners will attempt to fulfill their expectations through other means, potentially in a manner that jeopardizes effective resource management. For example In a recent Commission appeal of an amendment and extension of a CDP for another subdivision in Los Osos, the applicant pursued, and the County Board of Supervisors approved, the removal of a provision requiring that the subdivision be served by a community wastewater system (Coastal Development Permit File A-3-SLO-98-108 (Holland), denied by the Commission at its December, 1999 meeting). Avoiding such controversy is clearly in the best interest of both the property owner and the environmental resources that are at stake.

In its consideration of both the Los Osos Wastewater Treatment Project (A-3-SLO-97-40) and the Holland Subdivision (A-03-SLO-98-108), the Commission has become well aware of the sensitive nature of the remaining areas of coastal dune scrub vegetation within the Los Osos community, and the fact that such areas, as well as other open space areas, provide potential habitat for the federally threatened Morro shoulderband snail and other rare plant and animal species. The information that has been developed with respect to these projects indicates that the Morro shoulderband snail has been found on many small undeveloped lots within the Los Osos urban area.

The administrative record for this record provided by the County does not address this issue. It does, however, indicate that vegetation removal will be required (Condition 2, and Developer's Statement regarding Archaeological Resources). The South Bay Fire Protection Department also indicated in response to a project referral from the County Planning and Building Department, that fire access roads may be required, and that the "Project will have vegetation clearance issues".

Thus, an assessment of the habitat values of the site, and the potential impacts that the project may have on any sensitive habitats that may exist, will be required before the project can be determined to conform with LCP provisions protecting such resources.

Second, more information is required to determine the project's conformance with LCP visual resource protection standards. In order to assess the visual impact of subdivisions, CZLUO Section 23.04.021(c)7, previously cited in this report requires proposed access roads and building sites shall be shown on tentative maps and shall be located on slopes less than 20 percent. Similarly, Estero Planning Area Standard 4 requires:

Land division applications in areas visible from the public road must identify all building site envelopes. Where feasible, these building sites shall be in locations least visible from the public road. New parcels whose only building site is on the ridge top shall be prohibited.

The proposed subdivision, illustrated by Exhibit E, does not indicate the location of the new parcel's building sites. Nor has the local record provided by the County addressed the visibility of future development on the new parcels to be visible from public roads. The proposed project can not be found to be consistent with these LCP requirements until the location of future building sites is identified, and the visibility of these sites from public roads analyzed.

X. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 the California Environmental Quality Act (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 that would substantially lessen any significant adverse effect that the project may have on the environment.

San Luis Obispo County certified a Negative Declaration for the project on September 13, 1999. However, as detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that were not effectively addressed by the certified Negative Declaration. In particular, the Commission has found that approval of the project, without the necessary public services to accommodate the project, is inconsistent with coastal planning standards and resource management principals. As a result, approval of the project will have a significant adverse affect on the environment within the meaning of the California Environmental Quality Act.

CALIFORNIA COASTAL COMMISSION

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**Reasons for Appeal: San Luis Obispo County Coastal Development Permit No. CO 98-0147 (Linsley Subdivision, Los Osos)**

The proposed subdivision of a 1.4 acre parcel into three parcels of 20,021 square feet, 22,945 square feet, and 20,005 square feet may be inconsistent with various policies and ordinances of the San Luis Obispo County certified Local Coastal Program.

First, Policy 1 for Public Works requires evidence of sufficient services to serve new development before it is approved. Ordinance 23.04.021(c) also requires that:

- (i) Within an urban service line, new land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.

In this case, the subdivision will result in two new lots intended to accommodate future residential development, in an area where there is insufficient wastewater treatment infrastructure and questionable water supply. In order to address this issue, the County approval of this project prohibits the subdivision from being finalized until a Communitywide wastewater treatment system, that is also expected to address groundwater/water supply issues, is constructed and operational. However, there are significant unresolved issues related to the timing and construction of a Communitywide sewer system which precludes a finding that there are sufficient services available to accommodate the new development, as required by Policy 1.

Estero Planning Area Standard 4, which requires that land divisions identify all building site envelopes, and that building sites be located so that they are least visible from public roads. The information contained in the Final Local Action Notice for this project does not identify the location of the new building sites, or evaluate impacts to scenic resources along Pecho Road.

South Bay Planning Area Standard 2, which requires the review and approval of subdivisions to implement priorities for water use, including the reservation of 800 acre-feet per year for agricultural use. A new land division can only be approved where it can be demonstrated that it will not jeopardize the availability of resources needed to serve higher priority uses (e.g., agriculture). The proposed project is inconsistent with these requirements because it is reliant upon a future Communitywide wastewater treatment system, which has yet to be designed and approved; the ability of the future system to effectively protect water supplied needed to serve higher priority uses has yet to be established.

Coastal Zone Land Use Ordinance Section 23.04.430 prohibits the approval of new development requiring water or sewage disposal service unless it can be determined that there is adequate water and sewage disposal capacity available to serve the development. In this case, reliance upon a future Communitywide wastewater

treatment system that has an unknown capacity to provide the needed wastewater treatment, and to protect the water supply, does not meet the requirement of this ordinance.

Coastal Plan Policies for Environmentally Sensitive Habitats, and their parallel Ordinances, prohibit new development that would have a significant adverse impact on environmentally sensitive habitat areas. In particular, Coastal Plan Policy 4 for Environmentally Sensitive Habitats specifically prohibits the division of parcels having environmentally sensitive habitats within them, unless it can be found that the buildable area(s) are entirely outside of the minimum standard setback required for that habitat. The information contained in the Final Local Action Notice for this project is inadequate to determine whether or not there may be environmentally sensitive habitat areas on or adjacent to the site, or if the project complies with the habitat protection requirements of the LCP. Given the potential for the Morro shoulderband snail (a species listed as threatened under the Federal Endangered Species Act) to occur on or adjacent to the site, based upon its known occurrence in nearby areas, a more complete analysis of the project's compliance with the habitat protection requirements of the LCP is needed.

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Exhibit A, p. 2

EXHIBIT B
CONDITIONS OF APPROVAL - CO 98-0147

Wastewater

EXHIBIT NO. B, p. 1
APPLICATION NO. A-3-SLO-99-79
Local Conditions of Approval

1. Prior to recordation of the final map, the applicant shall satisfy the following:

- a. Provide a "will serve" letter from a community-wide sewer provider. Such letter shall contain a commitment to provide sewer service to the project at the time of final map approval.
- b. A community-wide sewer system shall be constructed and operational prior to recordation.
- c. Provide a final will serve letter from a community water purveyor.

Commencement of grading and installation of tract improvements

2. No site disturbance (grading, trenching, tree or other vegetation removal) shall occur until the Regional Water Quality Control Board issues a letter to the county indicating that the community wide sewer final design has been approved, that financing for construction of the sewer is available, and that the estimated time of system completion for the portion of the sewer system serving this project is not more than one year away. Grading is limited to the minimum necessary to construct access improvements and drainage facilities. In no case shall cut and fill exceed 5 feet in depth.

Access and Improvements

3. Roads and/or streets to be constructed to the following standards in addition to the County Standard Specifications:
 - a. Pecho Road widened to complete an A-2 (urban) section fronting the property.
4. Access to Pecho Road be denied to lots 1 & 3, and this shall be by certificate and designation on the map,
5. All grading shall be done in accordance with Appendix 33 of the Uniform Building Code. All lot lines shall be considered as Site Area Boundaries with slopes setback accordingly.

Drainage

6. Submit complete drainage calculations to the County Engineer for approval.
7. Drainage must be retained in drainage basins on the property as approved by the County

A-3-SLO-99-79
Exhibit B, p. 1

Engineer. The design of the basin shall be approved by the County Engineer, in accordance with county standards.

8. The drainage basin along with rights of ingress and egress be:

- a. Offered for dedication to the public by certificate on the map with an additional easement reserved in favor of the owners and assigns.

Utilities

9. Electric and telephone lines be installed underground or as otherwise approved by the County Engineer.

Plans

10. 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. Improvement plans shall be also be reviewed by the Environmental Division of the Department of Planning and Building for CEQA compliance checking. The plan to include:
 - a. Street plan and profile;
 - b. Drainage ditches, culverts, and other structures (if drainage calculations require);
 - c. Water plan (County Health);
 - d. Sewer plan (County Health);
 - e. Grading and erosion control plan for subdivision related improvements locations;
 - f. Public utility.
 - g. Noise berm/wall along Pecho Road
11. The applicant shall enter into an agreement with the county for inspection of said improvements, and for checking the improvement plans and the map.
12. 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 and the approved plans.

Covenants, Conditions and Restrictions

13. If common facilities such as a drainage basin is required on site, the developer shall submit proposed covenants, conditions, and restrictions for the subdivision to the

A-3-SLO-99-79
Exhibit B, p. 2

county Department of Planning and Building for review and approval. The CC&R's shall provide at a minimum the following provisions:

- a. Maintenance of drainage basins and establishment of a homeowner's association to fund maintenance (may be eliminated if basins are accepted for maintenance by an alternative maintenance entity such as a drainage district or park district).

Fire Safety

14. Prior to recordation of the final map, the applicant shall obtain a fire safety clearance letter from the South Bay Fire Department establishing fire safety requirements.

Quimby Fee

15. Unless exempted by Chapter 21.09 of the county Real Property Division Ordinance or California Government Code Section 66477, prior to filing of the map, the applicant shall pay the in lieu fee that will be used for community park and recreation purposes as required by Chapter 21.09. The fee shall be based on the total number of new parcels shown on the map that do not already have legal residential units on them.

Affordable Housing Fee

16. Prior to recording the parcel map, the applicant shall pay an affordable housing in-lieu fee of 3.5 percent of the adopted public facility fee effective at the time of recording for each residential or non-commercial lot unless exempted. This fee shall not be applicable to any official recognized affordable housing included within the residential/non-commercial project

Stock Conditions

17. This subdivision is also subject to the standard conditions of approval for all subdivisions utilizing community water and sewer a copy of which is attached hereto and incorporated by reference herein as though set forth in full.

Effective Approval Period

18. All time frames on approved tentative maps for filing of final parcel maps, tract maps or completion of lot line adjustments are measured from the date the hearing body approves the tentative map, not from any date of possible reconsideration action.

Environmental Mitigation Measures

Archaeological Resources

A-3-SLO-99-79
Exhibit B, p.3

19. Prior to commencement of subdivision improvements or ground disturbing activities, the applicant shall retain a qualified archaeologist, approved by the Environmental Coordinator, to observe the area of proposed development after it has been cleared of vegetation. Vegetation removal shall not occur until after issuance of the proper permits and/or approval of subdivision improvement plans by the County Engineering Department. The applicant shall implement the recommendations of the archaeologist, as required by the Environmental Coordinator.
20. Prior to ground disturbing activities for subdivision improvements or for development activities on individual parcels, the applicant shall retain a qualified archaeologist, approved by the Environmental Coordinator, to observe the area of proposed development after it has been cleared of vegetation. Vegetation removal shall not occur until after issuance of the proper permits. The applicant shall implement the recommendations of the archaeologist, as required by the Environmental Coordinator. Upon completion of all monitoring/ mitigation activities, and prior to occupancy or final inspection whichever occurs first, the consulting archaeologist shall submit a letter to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met.

Noise

21. Prior to final recordation the applicant shall demonstrate that the final subdivision design complies with the noise element of the general plan and the recommendations of the report entitled "Noise Investigation for Vesting Tentative Parcel Map, CO 98-0147" prepared by Donald O. Asquith (October 1, 1998) regarding mitigation of outdoor noise levels for proposed parcel 1, which included constructing a masonry wall (or other comparable structure) along the northwesterly boundary of the rear yard of Parcel 1 at a height of 5 feet.

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Exhibit B, p. 4

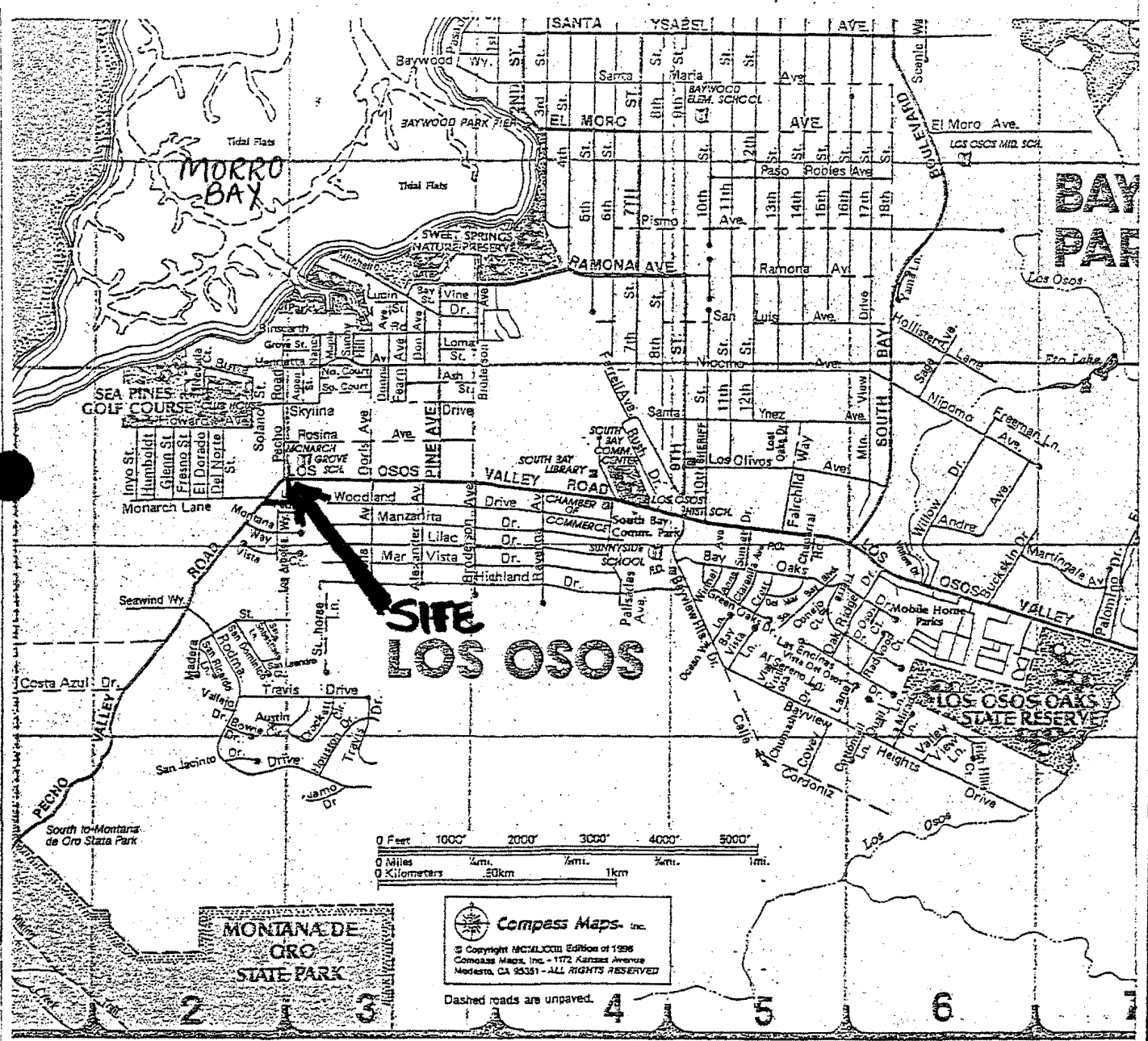
**STOCK APPROVAL CONDITIONS FOR
SUBDIVISIONS WITH COMMUNITY WATER AND SEWER**

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 wells) may be bonded for 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 county 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 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 shall 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 shall be obtained from the County Engineer for any work to be done within the county right-of-way.
10. An encroachment permit shall 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 obtained indicating required easements.
13. The applicant shall enter into an agreement with the County for the cost of checking the

subdivision map, the project plans for improvements if any, and the cost of inspection of any such improvements by the County or its designated representative.

14. Required public utility easements shall be shown on the map.
15. Approved street names shall be shown on the map.
16. 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.
17. The developer submit a preliminary subdivision guarantee to the County Engineer for review prior to the filing of the map.
18. Any private easements on the property must be shown on the map with recording data.
19. All conditions of approval herein specified, unless otherwise noted, are to be complied with prior to the filing of the map.
20. After approval by the review authority, compliance with the preceding conditions will bring the proposed subdivision in conformance with the Subdivision Map Act and county ordinances.
21. 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.
22. Prior to the sale of the designated remainder or omitted parcel, if applicable, the applicant shall obtain approval of a certificate of compliance or conditional certificate of compliance from the county.
23. A tentative map will expire 24 months from the effective date of the approval. Tentative maps may be extended. 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.

A-3-SLO-99-79
Exhibit B, p. 6



PROJECT
Linsley / Central Coast
Engineering CO 98-147



EXHIBIT
Vicinity Map

EXHIBIT NO. C
APPLICATION NO.
A-3-SLO-99-79
Linsley Subdivision
Regional Location

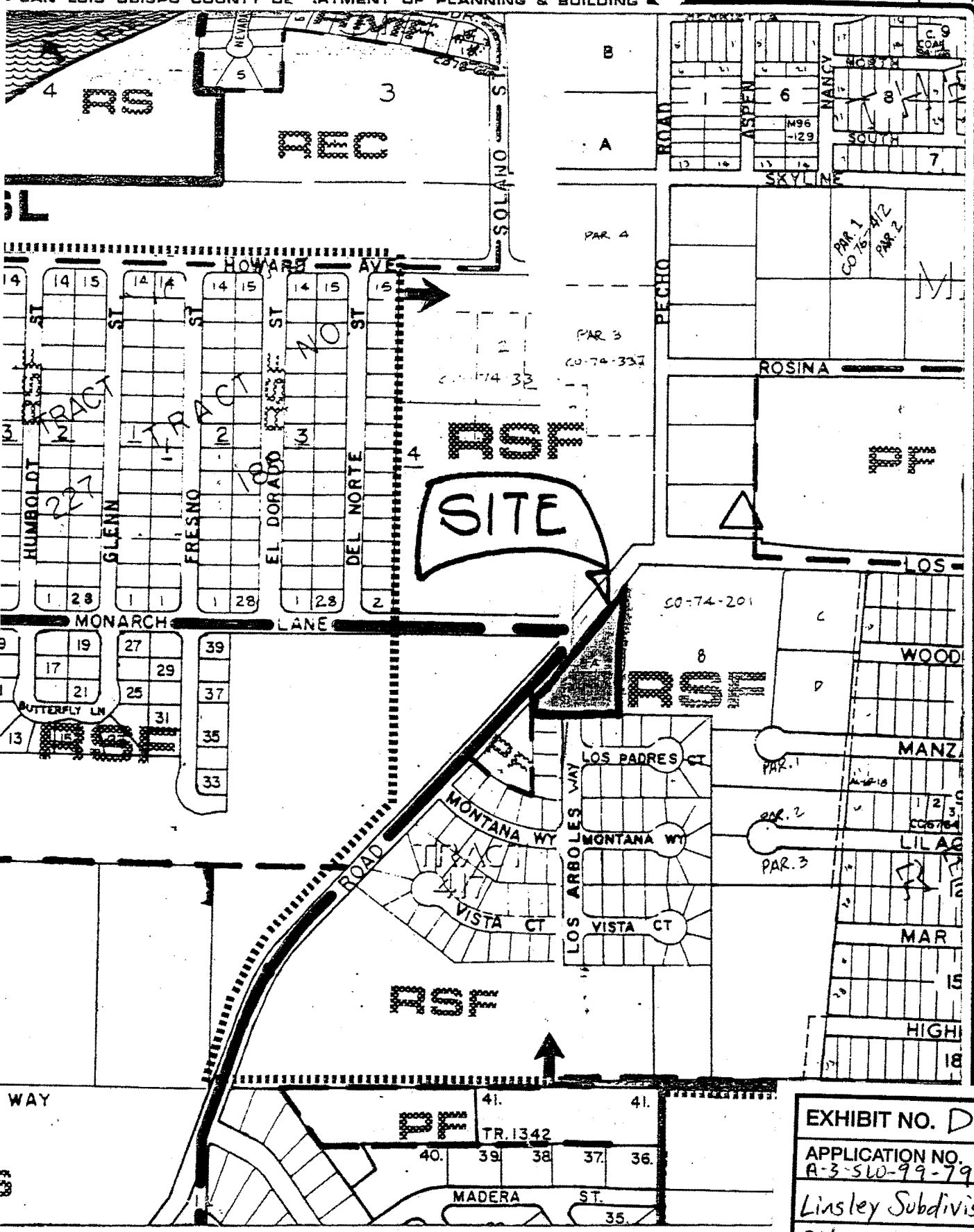


EXHIBIT NO. D
APPLICATION NO.
A-3-SLO-99-79
Linsley Subdivision
Site Location

PROJECT
Linsley / Central Coast
Engineering CO 98-147

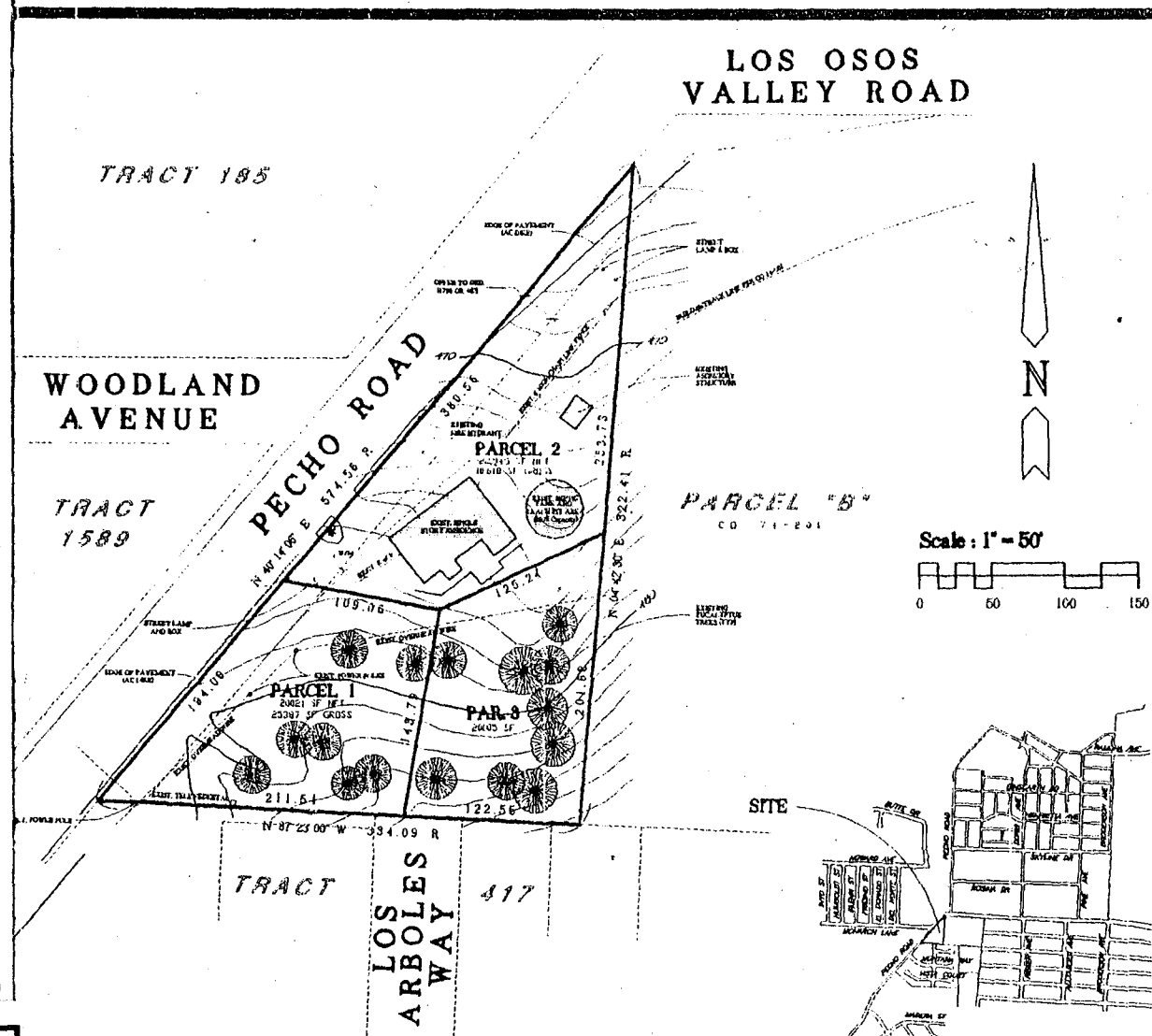


EXHIBIT
Land Use Map

PROJECT
Linsley / Central Coast
Engineering CO 98-147



EXHIBIT
Vesting Tentat
Parcel Map



Applicant/Owner

Lee & Patricia Linsley
301 Los Osos Valley Road
Los Osos, CA 93402

Project Address

301 Los Osos Valley Road
Los Osos, CA 93402

Assessor's Parcel Number

074 - 025 - 015

Parcel Areas

PARCEL 1
20,021 SF NET
25,397 SF GROSS

PARCEL 2
22,945 SF NET
30,618 SF GROSS

PARCEL 3
20,005 SF

REVISED

DATE: 9-13-99

VESTING TENTATIVE PARCEL MAP CO 98-0147

Being a subdivision of Parcel "A" of
Parcel Map CO 74-201 as shown in
Book 16 at Page 56 of Parcel Maps
in the Office of County Recorder,
San Luis Obispo County, California.

Central Coast Engineering
306 Buckley Road San Luis Obispo, CA 93301

11-10-1999 Sheet 1 of 1
FIRST AMERICAN TITLE • SLO - 931875 LG

1998	Min. 20,000 sf net areas	2
1998	2 to 3 Parcels	1

EXHIBIT NO. E

APPLICATION NO.
A-3-510-97-79

Linsley Subdivision

Project Plans

23-14



California Regional Water Quality Control Board

Central Coast Region

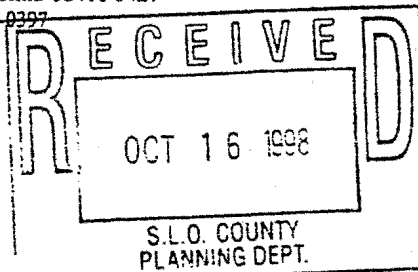
23-28



Pete Wilson
Governor

Mr. M. Rooney
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
81 Higuera Street, Suite 200, San Luis Obispo, California 93401-5427
Phone (805) 549-3147 • FAX (805) 543-8337



October 15, 1998

Lauren Lajoice
Department of Planning and Building
County Government Center
San Luis Obispo, CA 93408

Dear Ms Lajoice:

PROPOSED LINSLEY LOT SPLIT IN LOS OSOS, SAN LUIS OBISPO COUNTY

Thank you for the opportunity to review and comment on the proposed land division of parcel number 074 025 015. We understand the project involves division of a 1.39-acre property into 3 parcels. Water would come from Southern California Water Co. and sewage would be disposed of through individual on-site systems.

We do not support the lot split to less than one full acre until a community wide sewer system is in place. As you know, the discharge prohibition (in place since 1988) prohibits development of these parcels until sewer service can be provided. Therefore it appears misleading to allow subdivision to unusable parcels. We have no objection to the lot split after a community wide sewer system is in place.

If you have any questions, please call Sorrel Marks at (805) 549-3695.

Sincerely,

Bradley E. Hageman
For Roger W. Briggs
Executive Officer

Filename: ST/H:/sthoma/linsley.Hr/SJM
Task Code #: 121-01
Agency File: SLO Co, ISDS, Los Osos

California Environmental Protection Agency

Recycled Paper

EXHIBIT NO. F
APPLICATION NO. A-3-SLO-99-79
Letter from RWQCB