

CALIFORNIA COASTAL COMMISSION

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Staff: DSL-SC
Staff Report: January 21, 2000
Hearing Date: February 16, 2000

**STAFF REPORT
REQUEST FOR RECONSIDERATION**

Application No.: 3-SLO-96-113-R

Applicant: Dean Vadnais **Agent:** William Walter

Description: Request for reconsideration of the denial of a Coastal Development Permit for a 25 unit Condominium Subdivision on a three acre parcel at the northeast corner of Main Street and Pine Knolls Road in Cambria, San Luis Obispo County.

Commission Action: On October 13, 1999, the Commission denied Application 3-96-113 to develop a 25 unit condominium subdivision.

Summary Of Staff Recommendation: The Staff recommends that the Commission deny the request for reconsideration because no new, relevant information has been presented that could not have reasonably been presented at the hearing and no errors of law or fact have been identified that have the potential to alter the Commission's decision.

Substantive File Documents: San Luis Obispo Certified Local Coastal Program, San Luis Obispo County Growth Ordinance (Title 26), Permit File 3-96-113, Revocation File for 3-96-113, Transcript of October 13, 1999 Coastal Commission Hearing on Application 3-96-113, Reconsideration Request dated November 10, 1999 with all attachments, Permit File A-3-SLO-98-108

Procedural Note: The Commission's regulations provide that at any time within thirty days following a final Commission action on a permit, the applicant may ask the Commission to reconsider all or a portion of their action. (CCR Title 14, Section 13109. 2). The grounds for reconsideration are provided in Coastal Act Section 30627, which states in part: *"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence, could not have been presented at the hearing on the matter or that*

an error of fact or law has occurred which has the potential of altering the initial decision." (Coastal Act Section 30627 (b) (3))

Effect of Granting Reconsideration: If the Commission grants reconsideration, a de novo hearing of the application will be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS

In their reconsideration request submittal dated November 10, 1999 and received in the Santa Cruz office on November 12, 1999, the applicant contends that errors of fact and law occurred at the October Commission hearing on the condominium project. According to the applicant, correction of these errors has the potential to alter the Commission's action. The applicant also asserts that there is new, relevant information that could not have been reasonably found in time to present at the hearing but, now discovered, has the potential to alter the Commission's decision to deny the project.

The applicant's individual contentions are summarized below. Each of these contentions is discussed in detail in the Findings (pages 3 through 18 of the Staff Recommendation, Please see also Exhibit 3, applicant's letter requesting reconsideration).

1. An *ex parte* comment was relayed to the Commission after the close of the public hearing and the applicant was not given an opportunity to respond to this information.
2. The Commission staff incorrectly cited a portion of the County's Growth Control ordinance.
3. Since the Commission's action on the Coastal Development Permit, a lawsuit filed in San Luis Obispo County has generated an extensive administrative record demonstrating that the County Growth Control Ordinance was intended to coordinate the CCSD's water allocation waiting list with the Growth Management List.
4. The County and the CCSD have a clear duty to integrate their respective lists. Their failure to do so was the sole basis of the Commission's action to deny the project.
5. The CCSD recently requested the Board of Supervisors to carry over any unused single or multi family allocations from the County's building permit waiting list to next year rather than giving the allocations to other parts of

the county. This request demonstrates the integrated nature of the County and CCSD's respective lists. This information is contrary to CCSD's representations to the Commission that the lists are un-related and has the potential to alter the Commission's action.

6. The Commission has no jurisdiction over this project because the water supply issue was not raised by the appellants as a reason for appealing the county's action
7. The Commission has no jurisdiction over this project because the project is not appealable under the Coastal Act or the certified Local Coastal program.
8. The Commission failed to consider the fact that it had approved a desalination plant for the CCSD in 1995.
9. The Applicants have previously submitted five volumes of material relevant to the project. These materials raise additional (unspecified) errors of fact and law and are incorporated into this request for reconsideration.
10. Since the Commission action on the project, the applicant has filed suit against the CCSD and the County to force a resolution of the two lists.

MOTION

Motion: *I move that the Commission grant reconsideration of Coastal Development permit 3- 96-113.*

Staff Recommendation: Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Deny Reconsideration: The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit **3-96-113** on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has any error of fact or law occurred which has the potential to alter the initial decision .

FINDINGS AND DECLARATIONS

1. Permit History and Background: San Luis Obispo County's action to approve this 25 unit condominium subdivision in Cambria was appealed to the Commission on October 24, 1996 by "300 Cambria Homeowners" and the "Cambria Legal Defense Fund". The appeal was filed on October 25, 1996. The Commission's staff report, dated May 20, 1998, states the appellants contend *"the approval was inconsistent with Environmentally Sensitive Habitat Policies; Public Works policy relevant to adequate road capacity; Coastal Watershed Plans which require drainage plans, limit removal of vegetation and limit development to slopes less than 20%; Visual and Scenic Resource Policies regarding massing of structures on hillsides, amount of grading, compatibility of the proposal with the community, preservation of trees and visibility of utility lines; and Hazard policies concerning geological hazards such as stability of the site and erosion; and policies concerning the availability of sufficient water."* On January 9, 1997 the Coastal Commission determined that the county's action on the Coastal Development Permit raised a substantial issue relevant to consistency with the applicable policies and implementing ordinances of the certified Local Coastal Program (LCP), thus taking jurisdiction over the project.

Based on the issues raised at the Substantial Issue hearing, the applicant was asked by staff to provide additional information on these topics prior to the preparation of a staff report for the de novo hearing on the application. The requested information was eventually obtained and the de novo hearing was scheduled for the June 1998 Commission meeting. The staff report prepared for the project recommended approval with conditions relevant to water supply, drainage and management of run-off and erosion. The Commission approved a Coastal Development Permit for the condominium project on June 8, 1998.

On September 25, 1998, a request for revocation of the permit was filed on behalf of "Citizens for Fair Land Use" and the "Cambria Forum". The basis of the request was that the applicant's representative had misrepresented the status of water availability to serve the project. On March 11, 1999, the Commission held a public hearing on the request. At the conclusion of the hearing, the Commission voted to revoke the permit. The effect of the revocation was to schedule the item for a de novo hearing before the Commission at a subsequent time.

The de novo hearing on the project was scheduled for the October Commission meeting. Staff prepared a report recommending denial of a permit for the project largely based on inconsistency with Public Works Policy 1 of the San Luis Obispo LCP that requires new subdivisions to demonstrate an adequate water supply. The Commission held a public hearing on the project on October 13, 1999 and voted to

deny a permit for the reasons discussed in the staff recommendation. (Please see Exhibit 2, Adopted Findings and Declarations for Denial of A- 3-SLO-96-113). Revised Findings for the revocation of the permit were also approved by the Commission on that same date.

The Commission's regulations allow an applicant to request the Commission to reconsider its action on a permit application. (California Code of Regulations [CCR], Title 14, SECTION 13109.). Requests for reconsideration must be made within 30 days of the Commission's action. In this case, the Commission acted on the permit on October 13, 1999 and the timely request from the applicant's representative was received in the Santa Cruz office of the Commission on November 12, 1999, exactly 30 days from the date of action. (Please See Exhibit 3, Applicant's request for reconsideration letter.)

2. Request for Reconsideration: The applicant's request for reconsideration asserts that errors of fact and law occurred at the October hearing that have the potential to alter the Commission's action to deny the project. The request also contends that relevant, new information has been developed since the meeting that also has the potential to change the decision.

In a reconsideration request, the Commission must determine whether any errors of either a factual or legal nature were made and, if so, would knowledge of the true fact or legal point have altered its action on this item. In the case of an allegation of "new information", the Commission must determine whether the new information is relevant *and* " in the exercise of due diligence, could not have been presented at the hearing on the matter". (Coastal Act Section 30627) "Due diligence" is defined in Black's Law Dictionary as "*Due diligence. Such a measure of prudence, activity or assiduity, as is properly to be expected from and ordinarily exercised by, a reasonable and prudent man under the particular circumstances, not measured by any absolute standard, but depending on the relative facts of the special case.*"

If the Commission determines that the new information is indeed relevant *and* could not have been presented at the hearing on the project, then it must decide whether the new information has the potential to alter the Commission's action on the permit. If the Commission determines that grounds for reconsideration exist, the request should be approved and a new hearing on whether to approve a Coastal Development Permit for the project will be scheduled for a subsequent Commission meeting. If the Commission determines that grounds for reconsideration of the October action do not exist, the decision to deny the project stands.

The applicant has offered a number of reasons why he believes the Commission should reconsider its action to deny the permit for the condominium development. Each of these contentions is discussed in the following sections of these Findings.

Applicant's First Contention, Ex Parte Contact: "After the close of the public de novo hearing, District Director Grove was handed a note from Kat McConnell, who had previously made a presentation expressly on behalf of the Cambria Community Services District ("CCSD"). Presumably, comments made by the District Director were in some way premised upon this note. The Applicant was afforded no opportunity to respond to this post-hearing, ex parte contact which was apparently relayed via staff to the Commission without an opportunity to reply."

Analysis: In this contention, the Applicant implies that there was an improper ex parte contact. Section 30322 (a) of the Coastal Act defines an ex parte contact as ".....any oral or written communication between a member of the Commission and an interested person about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop or other official proceeding....". An "interested person" is defined in PRC Section 30323. Ms. McConnell qualifies as an "interested person" under subsection (a) of this section and thus would be subject to the provisions noted in PRC Section 30322. Ms. Grove, however, is a Commission staff member and thus does not come under the provisions of Section 30322 (a) because communications between Commissioners and staff are not considered ex parte communications by statute. (PRC 30322 (b) (1)). The note in question was given to a *staff member* by an "interested person " in the course of a public hearing before the Commission. On the face of it, this action by Ms McConnell was not an ex parte contact with any Commissioner as described in the statute. In fact, as discussed in the following paragraph, the note resulted in no communication with the Commission at all because its contents were never revealed by Ms. Grove.

Although not stated directly, the implication in this contention is that the note given to the District Director contained erroneous factual or legal information that was then passed on to the Commission by Ms. Grove. This assertion is incorrect. Both Ms. Grove and Ms. McConnell have stated to staff that the note contained information regarding the Community Service District's policy on the retro- fit program that Ms. Grove had requested earlier. A review of the transcript of the hearing on this item reveals that after the close of the public hearing (Please see Exhibit 1, page 32, lines 1 and 2), Ms. Grove made a number of comments to the Commission but none of her remarks dealt with the subject of the Community Service District's retro-fit program. (Transcript, pages 32-36)

The fact that Ms. Grove received a note on the retro-fit program at the public hearing does not provide any basis for reconsideration of the Commission's action.

The contents of the note were never presented to the Commission, thus the question of whether the information in the note was true or in error is immaterial for the purposes of establishing grounds for reconsideration.

Applicant's Second Contention, Growth Control Ordinance was Mis-cited:

"....a material error of law and fact was presented to the Commission by the District Director regarding the County's Growth Control Ordinances as well as the CCSD's ordinances.....the confusion arose because the District Director referred to the wrong portion of the County ordinance, and completely omitted controlling ordinance provisions which the applicant was referring to. The District Director, apparently, referred to Growth Management Ordinance Section 26.01.072 (a). "Transfer of allocations," (d), " Carry-over of unused Maximum Annual Allocation, " and/or (e) "Reallocation of expired units, " or perhaps Section 26.01.07 (g) (1) (a).. The applicant, however, was referring to a different section of the County's Growth Management Ordinance,..." (See Applicants request for reconsideration, pages 2-4 for complete text of this contention)

Analysis: In this contention, the applicant asserts that Ms. Grove misrepresented a critical term of the County's Growth Management Ordinance and, presumably, had it not been mis-stated, the Commission may have acted differently on the project (please see Exhibit 7, Growth Management Ordinance). Although the substance of this assertion will be addressed in this analysis, it is worthwhile to note the standard of review for appeals of locally issued Coastal Development Permits such as the Vadnais permit. Section 30603 of the Coastal Act provides that, after certification on an LCP, the standard of review for appealable, locally issued Coastal Development Permits shall be the certified LCP. Title 26, the County's Growth Control Ordinance contains some provisions relevant to public services but is not part of the certified LCP and thus may not be considered by the Commission as providing the standard of review for appealed items. (Please see Exhibit 4, correspondence from Alex Hinds, former Planning Director of San Luis Obispo County, dated February 5, 1996 and Staff Counsel Diane Landry, dated January 3, 1996 to Gerald Grey on this topic.) The Commission notes also that the staff reports prepared for this application do *not* discuss consistency with Title 26 but only contain analyses of the *certified LCP* portions of the County's various planning and ordinance documents. In summary, unless the Growth Control Ordinance is certified as part of the San Luis Obispo LCP, it is neither effective, nor does it provide a standard of review for Coastal Development Permits issued for projects, in the Coastal Zone.

The substantive crux of the Applicant's assertion is that the list kept by the County for the purposes of their Growth Control Ordinance and the list kept by the CCSD for the purpose of allocating water hook-ups in Cambria are related and that the District Directors comments relative to the relationship between the two lists were in error and that error had the potential to alter the Commission's action on the

permit. The implication of this assertion regarding the merger of the lists in that this will result in water being available to his project.

Since this assertion regarding the relationship of the County List and the CCSD Wait List is central to a number of the applicant's contentions, it is appropriate at this juncture to reiterate the Commission understanding of this issue. First, it must be recognized that the CCSD is a separate Special District, formed for the purpose of providing various community services to the unincorporated town of Cambria, it is not a county department. The CCSD has its' own Board of Directors and is empowered to enact ordinances and policies governing its' operation. The County of San Luis Obispo is a separate political entity, which is headed by the Board of Supervisors who are empowered to also enact ordinances and policies governing its operation.

In 1986, the CCSD established a Waiting List for water for new development proposed in the District. This List is specifically for the purpose of allocating limited water supplies to prospective developers in Cambria. In 1990, the County adopted a "Growth Management Ordinance", the purpose of which was to limit growth in the County by allocating only a certain number of construction permits per year to various areas of the County (Title 26, 26.01.010). Thus it is clear that the CCSD Wait List is for the purpose of allocating water hook-ups and the purpose of the County List is for the allocation of construction permits. The County has no ability to issue water connections and the CCSD cannot issue construction permits.

The County ordinance recognizes that, in areas with limited public services (water, sewer), an applicant may secure a position on the list for a construction permit but will have to also obtain water or sewer service from the appropriate provider to actually go forward and construct the development. Section 26.01.070(g)(1) describes how this process works in Cambria. This section states that Cambria (CCSD) "has an existing list for water service permits" and that "dwelling units to be allocated shall be taken from those next in line on the community waiting list [The CCSD List]." It then goes on to state:

Section 26.01.070(g)(1)(b)

- (b) Freezing of existing waiting lists.** In order to eventually eliminate the need for an individual community waiting list for services, the CCSD list that exists as of December 31, 1990, shall be frozen for purposes of administering this title. The County shall obtain a certified copy of the waiting list and all future allocations within each community shall come from the certified list. Any applicant wishing to apply for a dwelling unit allocation that is not on the certified list

shall apply to the county for placement on the county's waiting list for Requests for Allocation. At the point in the future when each existing community waiting list is exhausted, all future requests for new dwelling units shall be added to the county's wait list on a first-come-first-served basis and all allocations for new dwelling units in the unincorporated county shall be made from the county waiting list.

It is apparent that the Growth Management Ordinance contemplates that all of the development proposals on the CCSD List must be served first, ahead of the projects queued up on the County Construction Permit List alone. In other words, the ordinance asserts that the CCSD List must be exhausted before the applicants who have only a position on the County List can also be considered for water service. There is no mention (and certainly no requirement) in the ordinance of a "merger" of the two lists as "merge" means to combine the people on one list with those on the other. More importantly, while the Ordinance anticipates that at the time that the CCSD list is exhausted, the CCSD would turn to the County's construction permit allocation permit for purposes of allocating its water permits, it does not (and cannot) provide the legal mechanism for the CCSD to do so. Such an arrangement requires a separate action by the CCSD under its own Special District powers, which to date has not occurred.

Furthermore, even if the two lists were required (by both the County and the CCSD) to be merged immediately, it would still not result in any more water in Cambria. Until there is adequate water to serve both the Vadnais subdivision and all of the existing vacant lots of record (± 7500 at this writing), the project cannot be approved consistent with LCP Public Works Policy #1 and Title 23 Sec. 23.04.021(c)(1)(l).

The Applicant's representative, Mr. Walter testified to the Commission that "*The County enacted growth control back in 1990. At that point, they froze the Community Services District's list. The growth control ordinance says county and the Community Services District are to get together and to combine those lists. It is mandatory. There is no way to escape that.*" (Transcript, Page 16, lines 24 and 25, Page 17, lines 1 through 4) and "*The growth control ordinance requires that those list be merged.*" (Transcript, Page 27, Lines 16 and 17). Mr. Walter did not preface his characterization of the requirements of the ordinance at the hearing by specifying a particular ordinance section. In the request for reconsideration however, he cites Section 26.01.070 (g) (1) (b) as authority for his statements to the Commission. (Page 3 of the request for reconsideration) As discussed in detail in an earlier paragraph, careful reading of this section of the ordinance does not reveal a mandatory requirement to merge the two lists. In fact, it seems that this section

contemplates that the existing Community lists will be exhausted and then allocations will be made from the County's list.

The clear implication of this section of the ordinance is that when the existing Community Service District List is exhausted, then, if authorized by a future CCSD action, it will be replaced with the County list and the waiting list for services and the waiting list for growth control allocation of building permits will, *at that point*, be combined. In other words, this ordinance is prospective and does not appear to require (or even provide) for the merger of the existing CCSD list and the existing County list. It thus appears that the applicant's representative may have mis-characterized or misunderstood the provisions of this section of the Growth Control Ordinance.

Ms. Grove's testimony on the relationship of the two lists was accurate and consistent with the description given in an earlier section of this analysis. In her opening remarks she correctly characterized both the current water situation in Cambria, the different roles of the CCSD and the County and the function and purpose of the two lists. She also pointed out that there is no formal mechanism for merging the lists (Transcript, pg. 5, lines 22-25, pages 6 through 8). In her response to testimony after the close of the public hearing, she reiterated these comments (Transcript, pg. 32, lines 16-25 and pg. 33, lines 18-25) and then touched on the provisions for transferring unallocated units elsewhere in the County mistakenly believing that this issue had also been raised by Mr. Walter. (Transcript page 33, lines 5-17). The characterization of this portion of the Growth Management Ordinance was also accurate.

Substantively, the point regarding whether a *future* merger of the two lists is provided for, required or mandatory under the Growth Control Ordinance is of some interest in understanding the general issue of public services in San Luis Obispo County but is not specifically germane to this reconsideration request because the ordinance is not part of the LCP and also does not address the issue of present water availability. It is clear from the record that the Commission was concerned about water availability to the project at the present time, not at some undefined date in the future. The Commission was concerned with the *present* availability of water because the certified LCP, which *is* the standard of review, requires that water be available to serve both the proposed project and all existing lots of record as a pre condition to approval of a subdivision. (Public Works Policy One and Title 23, Section 23.04.021 (c) (1) (I)). Therefore, even if Ms. Grove or Mr. Walter mis-characterized the ordinance it can have no potential for altering the Commission's action on this permit.

Applicant's Third Contention, The County and the CCSD have a clear duty to merge their Lists: The Applicant contends that since the Commission hearing, the applicant has become aware of litigation demonstrating that the CCSD's

waiting list and the County's Growth Management Ordinance form "*....a common and coordinated legislative scheme , despite representations made by the current CCSD Director Kat McConnell to the Commission. Indeed, the common legislative scheme is reflected in the very language of CCSD Ordinance 14-90. Therefore, a serious error of law and fact occurred in the course of the prior hearing in that there is a clear duty on the part of the CCSD and the County to integrate, in a ministerial manner, their respective Multi-Family Wait Lists.*" (Page 4, Applicant's request for reconsideration)

Analysis : In this contention the applicant is apparently asserting that this litigation provides new, relevant information that has the potential to alter the Commission's decision on the Vadnais permit. Furthermore, he contends that this information regarding the status of the waiting lists maintained by the County and the CCSD contradicts the erroneous information on this subject given by a director of the CCSD at the October hearing.

In order to analyze this contention under the Coastal Act provisions for reconsideration requests, the Commission must first determine if this assertion is "*.... relevant, new information which , in the exercise of due diligence, could not have been presented at the hearing on the matter...*". The brief cited by the applicant in support of this contention is dated December 7, 1998 and is a San Luis Obispo County case (Cambria West v. Cambria Community Services District , CV 980722, Filed August 27, 1998, Please see Exhibit 5). The declaration referenced in the Applicant's discussion of this contention is dated December 1, 1998. Both the brief and the attached declaration are a matter of public record and no explanation is given as to why this information could not have been discovered and presented to the Commission in October of 1999, almost a year after it was on record. It therefore does not appear that introduction of this information at this time satisfies the standard laid out in the statute and thus does not provide grounds for reconsideration of the Commission's action.

The Applicant however, also states that this information supports his contention that the Commission was given erroneous information at the hearing regarding the relationship of the CCSD Wait List and the Growth Management Wait List. He asserts that the lists must be merged under the terms of the Growth Control Ordinance and that the brief and the Declaration support this contention. A review of the brief indicates only that the CCSD passed an ordinance in 1990 that stated it would "*....conform with the provisions of Section 26.01.070 (h) (2) of San Luis Obispo County Ordinance No. 2477*" Brief, Page 16. Lines 15 through 17). *The text of this section of the ordinance is given on page 15, lines 5 through 18 of the brief and is substantively the same as the current ordinance section 26.01.070 (g) (1) (b) discussed in the preceding section of these Findings. For the reasons given in that earlier analysis, the Commission finds that this section of the County's ordinance does not require a merger of the lists and also does not provide a*

standard of review for locally issued Coastal Development Permits which are appealed to the Commission. The information in the brief therefore does not support a finding that there was an error of law or fact that would have the potential to alter the Commission's action on this item.

The referenced Declaration of David Andres, a former director of the CCSD simply affirms that the CCSD did enact the 1990 ordinance. He goes on to offer the following insight into the Board of Director's intent on enacting the 1990 ordinance: *"The District did not adopt the ordinance to address applications for residential water service connections for properties on the County Wait List because it will be many years before the District Wait List is exhausted."* (Declaration of David Andres, Page 3, Lines 24 through 27 , emphasis added.) It thus appears that this Declaration provides support for the testimony given at the hearing, and contested by the applicant, that the lists are not related and that it is anticipated that the County List will not come into play until the District List is exhausted. Therefore it does not support the Applicant's contention that there was an error of fact or law that would have the potential to change the Commission's decision to deny the permit.

Applicant's Fourth Contention, Commission did not understand the relationship of the two Wait Lists: In this contention, the Applicant asserts that had the Commission properly understood the relationship between the County's Wait List and the Districts Wait List, it would not have denied the permit for the Vadnais project. As stated by the Applicant, *" This misconception of the law, therefore, becomes critically important since the Commission based its denial solely on the fact that the County and the CCSD had not complied with their duties to implement a ministerial administrative scheme to coordinate their respective Wait Lists. "* (Page 5, Applicant's request for reconsideration)

Analysis: The Applicant contends that because the Commission did not understand that the County and the District Wait Lists were related and were obliged to be coordinated, it voted against the project. This contention is basically a restatement of the previous two contentions and has already been discussed in detail in the preceding Findings. Based on the record however, it should be noted that the Commission denied the project because it did not meet specific standards in the certified LCP that require that water be available to serve existing lots (of which there are approximately 7500 vacant ones) *and* the proposed subdivision *before* that subdivision can be approved. There is *no* evidence in the record that, at the time the Commission heard this item, that there was water, available in Cambria, to serve the existing lots of record and this project. In fact, there is substantial evidence in the record to the contrary. Likewise, no new information has been submitted to show that the situation regarding water supply for this project has changed since the hearing. Finally, even if the County and the District Lists were merged, the Applicant would still have to demonstrate consistency with

the LCP by showing that water was also available for all the vacant lots as well as his own subdivision.

Applicant's Fifth Contention, The status of the two Wait Lists was misrepresented to the: *".....since the time the Commission purported to deny this Project, the CCSD Board of Directors has taken action to request from the County Board of Supervisors that any unused allocations from its single family and multi family Wait List for 1999 be carried over to the year 2000 and not be allocated to other areas of the County.....The documentation concerning this request is not at this time available, but clearly suggests and indicates (based upon CCSD staff reports) that there is a close coordination between the CCSD Multi Family Wait List and the County's Multi Family Wait List.....It was a complete misrepresentation to the Commission, as was done by the CCSD Director, that these two lists were unrelated."* (Please see Applicant's request for reconsideration, page 5 for the full text of this contention.)

ANALYSIS: This contention regarding the relationship between the County and the CCSD Wait Lists is similar to the three preceding contentions on this subject. Here, the Applicant, states that new information in documentation from the CCSD that is unavailable (and thus not included in the applicant's request package) "clearly suggests " that the two lists are closely coordinated. A rather obvious initial problem with this contention is the fact that the documentation that would support it is not available and thus, presumably, has not been actually seen by the Applicant. Even if the documentation was available and, after a review of this material, staff concluded it did suggest coordination between the County and the CCSD Lists, it would still not constitute new information or proof of an error of fact or law that would have the potential to alter the Commission's decision. As discussed in previous sections, the Commission understood the relationships between the lists, but also understood that the standard of review required the presence of an adequate water supply before the subdivision could be approved.

Applicant's Sixth Contention, Original Appellants were not entitled to appeal this project: The issue of water supply for the project was not raised by the Appellants at the local level and therefore *"....the opponents are not aggrieved parties for the purposes of this appeal. This fact would deprive the Commission of jurisdiction over this issue, the sole basis of denial."* (Please see page 5 of the Applicant's request for reconsideration for the full text of this contention.)

ANALYSIS: Apparently the contention here is that the Commission does not have appeal jurisdiction over the Vadnais project because the people who appealed the local action to the Commission did not raise the issue of water supply at the local level and therefore were not "aggrieved parties for the purposes of this appeal " . This contention does not support reconsideration of the Commission's action for two reasons; one, lack of jurisdiction does not provide grounds for reconsideration

of a Commission action under the Coastal Act or the Commission's regulations and two, the Applicant has a faulty understanding of the appeal provisions in the Coastal Act and the regulations that clearly allow this appeal.

Locally issued Coastal Development Permits, such as the Vadnais permit, that are appealable to the Coastal Commission under PRC Section 30603 may be appealed by "an applicant, any aggrieved person or any two members of the commission." (PRC Section 30625). An "aggrieved person" is defined in PRC Section 30801 which states ;

"For the purposes of this section and subdivision (c) of Section 30513 and Section 30625, an "aggrieved person " means any person who, in person or through a representative, appeared at a public hearing of the commission, local government or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government or port governing body of the nature of his concerns or who for good cause was unable to do either."

The Appellants in this case did appear at the local hearings on the Vadnais project and did make their concerns regarding consistency with the LCP known to the local government. Staff does not know if water availability was indeed one of the issues brought up by the appellants at county hearings but whether it was or was not is immaterial because the statute does not require that *all* potential appeal issues be raised at the local level particular. The appellants in this case are therefore "aggrieved persons" for the purposes of appeals to the Commission because they meet the terms of that definition in the Coastal Act.

The Applicant is also incorrect in his statement that the appellants did not raise water supply as an issue in their appeal to the Commission. A review of the appeal shows that the appellants initially submitted their appeal of this project on October 25, 1996. Six weeks later, on December 6, 1996, they amended the original appeal. One of the issues added at that time was item 21 that states:

21. "There is no water for this project for the foreseeable future. Although the site which is zoned for commercial use has an allocation of water for that use; it does not have an allocation of residential water from the Cambria Community Services District. The reference to being on the "County List" is practically useless since the Services District residential list of over 700 must first be exhausted. Before these Service District houses can first be built, the voters will be asked whether or not they want the permitted desalination plant to do this." (emphasis in original)

Staff notes that according to information on the Commission's Appeal Form, appellants are allowed to supplement their initial appeal with additional descriptions of the reasons for appeal and additional information to support the appeal request. (Page 3, Commission Appeal Form)

Section 30621 (a) of the Coastal Act states that "*The commission shall provide for a de novo public hearing on applications for coastal development permits and any appeals brought pursuant to this division....*" Black's Law Dictionary, Sixth Edition, defines a de novo hearing as follows:

"Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of a previous hearing. Trying matter anew the same as if it had not been heard before and as if no decision had been previously rendered." (emphasis added)

The Commission is thus entitled by statute to hear appeals "the same as if it had not been heard before". Clearly, a de novo hearing allows issues to be raised that were not raised at previous hearings on an item. Finally, staff notes that the Commission took jurisdiction over this appeal on January 9, 1997 when they acted to determine that the County's approval raised a substantial issue regarding conformity with the certified LCP. Under PRC Section 30801, "*Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Civil Code of Procedure, within 60 days after the decision or action has become final*". A substantial issue determination is an action that, in this case, the Commission took over three years ago. According to PRC 30801, the time for challenging the Commission's jurisdiction over this appeal is long past.

Applicant's Seventh Contention, The project is not appealable under the LCP or Coastal Act: The Applicant contends that the Commission does not have appeal jurisdiction over this project because a subdivision is not a land use and the LCP standards require a residential use on this property even though Table "O" designates the site for commercial uses. (The full text of this contention is found on pages 5 and 6 of the Applicants request for reconsideration.)

Analysis: This contention outlines another reason why the Applicant does not believe the Commission has appeal jurisdiction over the project. As discussed in the preceding analysis, an assertion of lack of jurisdiction does not provide grounds for reconsideration, the time for challenging the Commission's jurisdiction is long past and the Applicant's understanding of the appeal provisions in the Coastal Act and in the County's LCP is in error.

The Vadnais project is appealable to the Commission because condominium subdivisions are not principal permitted uses according to the certified LCP. PRC Section 30603 (a) (4) provides that " *Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map* " is appealable to the Coastal Commission. In a parallel regulation, the County's LCP provides that development which is not listed as a principal permitted use on Table "O" is appealable to the Coastal Commission. (Title 23. 01. 043. (c) (4),). The Vadnais site is designated for commercial use on the LCP maps. Table "O" does not list either subdivisions or residential development as a principal permitted use for this land use category.

This identical issue regarding the appealability of subdivisions in San Luis Obispo County was reviewed by the Commission in the recent hearing on the Holland Appeal (A-3-SLO-98-108).

The Findings adopted by the Commission for that project include a lengthy discussion of the appeal status of subdivisions and are incorporated into these Findings by reference and as an exhibit. (Please see Exhibit 6). Finally, in order to find that the proposed residential use (absent the subdivision) was a principal permitted use in the commercial land use category, the Commission would have to agree with the Applicant that a plan standard nullifies the clear language of the section of Title 23 cited above which simply states that if a use is not listed as a principal permitted use on Table "O", it is appealable. This section of the County ordinance does not temper this direction with the phrase " unless a plan standard provides for an alternative use". It is therefore an impermissible extension of this regulation to assert that this is the case here.

Applicant's Eighth Contention, Commission erred because it did not consider the desalination plant permit: The Applicant contends that the Commission erred when it failed to consider the fact that it had approved a permit for a desalination for the Cambria Community Services District in 1995. The Applicant states " *Thus, the CCSD has a permitted project which it can use to augment its water supplies, which was an error of fact not considered by the Commission in denying this Project.*" (Please see full text on page 7 of the Applicant's request for reconsideration.)

Analysis : The contention here seems to be that the Commission erred because it did not acknowledge that the CCSD held a permit for the construction of a desalination plant that, if built, could be used to augment water supplies in Cambria. There was no error in not considering this fact because this fact was irrelevant to the Commissions deliberations regarding the *present* availability of water for the Vadnais project as detailed in the discussion relevant to Applicants second through fourth contentions. While it is true that the Commission approved a *permit* for a desalination plant, it is also true that the plant has never been built

and is not funded. As of the date of the Commission's action on the Vадnais permit there was no desalination plant operating in the CCSD to augment any water supply. Finally, if the Applicant believed that this permit was important, he could have presented information on the desalination permit at the time of the hearing. Therefore the failure of the Commission to consider this irrelevant fact does not constitute an error of fact that could have the potential to alter the Commission action to deny the Vадnais permit.

Applicant's Ninth Contention, Unspecified information supports

reconsideration: The Applicant, at two points in his request for reconsideration, notes that "*New information has become available which justifies reconsideration of the denial of this project.*" and "*It is not our intent to restate every basis for reconsideration which has previously been raised by the Applicant and is already part of the record.*" (Please see pages 7 and 5 of the request for the full text .)

Analysis: These contentions assert that there is both *new* information and *additional* information in the existing administrative record that also bolsters the Applicant's arguments in favor of reconsideration. These particular contentions cannot be analyzed because no specific items have been identified by the Applicant from this large pool of "other information". For example, the Applicant asserts that there is information in the "*full administrative record for the Cambria West case*" and "*additional information has been developed by the CCSD*". No additional discussion is offered as to *what* this information might be, *why* it would be relevant, *why* if *new* information, it could not have been presented at the hearing nor are the referenced documents physically included with the reconsideration request. Regarding the second assertion that there is other material in the existing record that supports a reconsideration hearing, it is the obligation of the person seeking the reconsideration to supply the *specific information* that *they* believe provides the legally adequate support for their request. These contentions therefore do not provide new or other information that could have the potential to alter the Commission's decision on this matter.

Applicant's Tenth Contention, New litigation has been filed on the Wait List

issue: In this final contention, the Applicant asserts that the fact that he has filed litigation against the County and the CCSD to force merger of the two Wait Lists provides support for Commission reconsideration of the project. "*Based upon the Commission's action in denying this Project solely due to the inaction of the County and the CCSD, the Applicants seek to directly address this issue through the filing of litigation to resolve these various issues once and for all. It is clear that the Commission should reconsider its decision denying this Project until such time as the pending litigation addressing the central issue upon which the Commission based its denial has been resolved.*" (Applicant's Request for Reconsideration, page 8.)

Analysis: This contention is substantively related to Contentions Two through Five that focus on the status of the County Growth Management List and the CCSD Water Allocation List. Here again, the Applicant mistakenly asserts that the only reason the Commission denied the Vадnais project was because the County and the CCSD had failed to merge their respective lists. Staff review of the Findings made for the denial and the Commission discussion on this project clearly show that the project was denied because the Applicant could not demonstrate consistency with the LCP policy requirement that, *prior to approval*, there must be adequate water to serve *existing vacant lots and this project*. The mere merger of the two lists will not result in any more water in Cambria and it is only by increasing water supplies that this project will be able to meet the LCP standard for new subdivisions. The status of the lists is thus not germane to the Commission's decision and does not provide a basis for reconsideration of this action.

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STATE OF CALIFORNIA
COASTAL COMMISSION

CERTIFIED COPY

DEAN VADNAIS,

COMMUNITY OF CAMBRIA,

COUNTY OF SAN LUIS OBISPO

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Application No. A-3-96-113

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday
October 13, 1999
Agenda Item No. 13.a.

City of Oceanside
City Council Chambers
300 North Coast Highway
Oceanside, California

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A P P E A R A N C E S

COMMISSIONERS

Sara Wan, Chair
Dave Potter, Vice Chair
Paula Daniels
Shirley Dettloff
Cecilia Estolano
Nancy Flemming
Christine Kehoe
Cynthia McClain-Hill
Pedro Nava
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STAFF

Peter Douglas, Executive Director
Tami Grove, District Director
Ralph Faust, Chief Counsel
Jamee Jordan Patterson, Deputy Attorney General

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1 California Coastal Commission

2 October 13, 1999

3 Dean Vadnais -- Application No. A-3-96-113

4 * * * * *

5 DISTRICT DIRECTOR GROVE: We can now move onto
6 Item 13.a., which is a request by Mr. Dean Vadnais to
7 construct a 25-unit condominium subdivision at the northeast
8 corner of Main Street and Pine Knolls Drive in the Cambria
9 Village area.

10 By way of background, as you have just partially
11 heard, this project is now before you, following a 1996
12 approval of the project by the San Luis Obispo County Board
13 of Supervisors, that was appealed to the Commission, who in
14 turn found substantial issue, and subsequently granted a
15 permit for the project with various conditions in 1998.

16 As discussed in the findings that you just
17 approved in the previous item, one of the appellants then
18 filed a request to revoke the permit based on an assertion
19 that the applicant's representative intentionally made
20 inaccurate statements that he possessed a water will-serve
21 letter from the Cambria Community Services District, when in
22 fact he did not have such a letter.

23 The Commission then revoked the permit in March of
24 this year, based on the finding that misleading information
25 was provided, and that accurate information regarding the

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1 water situation would have caused the Commission to take a
2 different action. The proposal is therefore now back before
3 you, as a de novo hearing, on the overall merits of the
4 project.

5 The proposed development includes 10 two-story
6 buildings containing 25 condominium units on approximately
7 7300-square feet of a slightly over 3-acre site. A permit
8 granted by the Commission in 1980s included this project area
9 provided for an open space easement.

10 With the proposed reconfiguration as a part of
11 this development, the undeveloped portion of this site would
12 be placed in an open space easement that would be about three
13 times the size of the earlier easement.

14 As discussed in the staff report, analysis of the
15 project has involved evaluation of such issues as potential
16 impacts from drainage into environmentally sensitive habitat
17 area, and from grading on steep slopes.

18 In addition, concerns have been raised about
19 possible acceleration of erosion, sedimentation or flooding
20 hazards, and potential negative affects on visual and scenic
21 resources.

22 While staff has concluded that these issues can be
23 addressed through project refinements, and permit conditions,
24 to make the project consistent with applicable LCP policies,
25 we now have better information and understanding of the water

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1 situation in Cambria, which we believe makes this project
2 unapprovable.

3 In short, water for this project, and for all of
4 Cambria, is provided by the Cambria Community Services
5 District, which obtains its supply from wells along Santa
6 Rosa, and San Simeon Creeks.

7 Although Cambria is only about 25 percent
8 developed, municipal water resources are barely adequate to
9 serve existing development, and in times of drought the
10 creeks' resource are severely strained, and the community
11 experiences acute water shortages.

12 Part of the district's response to this situation
13 has been to limit the number of residential water permits
14 granted each year to a maximum of 125 new hookups, with 70
15 percent of those allocated to single family residences, and
16 30 percent to multifamily residences.

17 Since demand for water hookups far exceeds
18 availability, the district previously established a waiting
19 list for property owners who wished to develop their
20 residential lots. That list currently has over 800
21 applicants on it -- 762 for single family residences, and 49
22 for multifamily.

23 In light of the length of that list, and limited
24 ability to release new hookups, the district closed the list
25 in 1990, and has no plans to reopen it in the future.

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1 In the meantime, the county separately set up a
2 construction permit allocation list in 1991 to implement its
3 growth management ordinance.

4 I should quickly point out that the staff report
5 incorrectly referred to the county list as a water hookup
6 list on page 8 of the staff report, and you will have to
7 correct that, because it is a list that is intended to
8 allocate construction permits.

9 This county list has been described as second-tier
0 water allocation system, to be used in the unlikely event
1 that the district's list is exhausted; however, the county
2 has no role, or ability, to supply the necessary water.

3 In addition, no formal mechanism for the merging
4 of the county's construction permit list with the Community
5 Services District water list has ever been negotiated, and
6 this second list of the county's has, at best, questionable
7 standing with respect to water.

8 The applicant for this particular project does
9 have the first two positions on the county list; however,
0 that does not mean that he has adequate water to supply this
1 project. Given the very limited water supply in the Cambria
2 area, the length of the official water district list, the
3 historic pattern of exhausting all available permits on a
4 limited basis each year, as well as the questionable standing
5 of how the county's construction permit list will ever relate

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1 to water allocations, it is not possible to find that the
2 applicant has demonstrated that adequate water is available
3 to serve the proposed development, as required by the San
4 Luis Obispo County LCP.

5 Furthermore, the LCP also specifies that if water
6 service in an urban area is so constrained that it is at an
7 alert level under the county's resource management system --
8 as is the case with Cambria -- the new land divisions such as
9 this condominium subdivision cannot be improved unless
0 sufficient water capacities are available to accommodate both
1 existing development, and development that would be allowed
2 on presently vacant parcels.

3 Clearly, water supplies in the town are barely
4 adequate to meet the needs of existing development, and with
5 approximately 7500 existing small, vacant, residential lots
6 designated for development, the prospect of having sufficient
7 water capacity to serve the community's current buildout
8 potential are quite bleak.

9 Therefore staff is recommending denial of the
0 project, based on these LCP inconsistencies.

1 That concludes my report.

2 CHAIR WAN: And that concludes the staff
3 recommendation.

4 Any ex-parte communications?

5 [No Response]

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2 Mr. Faust, I have a question for you. This is
kind of a legal question, before we proceed.

3 We just revoked this permit. We did find
4 substantial issue on the application. Is there a basis for
5 us to bring forth the application for hearing? for a de novo
6 hearing?

7 [Pause in Proceedings]

8 Well, the comment was raised, and I just wanted to
9 get that clear. The comment was raised in the applicant's --
10 by the applicant's attorney, and I wanted to make sure there
11 was a legal basis upon which for us to proceed?

12 CHIEF COUNSEL FAUST: I believe, Madam Chair, that
13 the applicant is contesting the Commission's assertion of
14 jurisdiction over the appeal of the original permit, now
15 two-plus years ago -- or however long it was -- that the
16 Commission ultimately, after granting --

17 CHAIR WAN: Well, that is --

18 CHIEF COUNSEL FAUST: -- then revoked.

19 CHAIR WAN: -- not a problem, obviously.

20 CHIEF COUNSEL FAUST: That is my understanding of
21 the applicant's position. I may have it wrong, and the
22 applicant's attorney may want to clarify --

23 CHAIR WAN: All right, in that case --

24 CHIEF COUNSEL FAUST: -- it. If that is the case,
25 that matter is not at all before --

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1 CHAIR WAN: -- I'll open, all right --

2 CHIEF COUNSEL FAUST: -- this Commission at this
3 time.

4 CHAIR WAN: -- okay, in that case I will open the
5 --

6 Commissioner Estolano.

7 COMMISSIONER ESTOLANO: Actually, I think I got
8 your question, Chairman Wan.

9 On page 2 of this letter from the applicant's
10 attorney -- he just passed out -- they state that the
11 Commission does not have authority for holding a de novo
12 hearing after revocation. They are actually asking for what
13 the basis of the authority is, and I am curious, as well.

14 CHAIR WAN: That was the basis for my question.

15 CHIEF COUNSEL FAUST: Okay, that is a separate
16 question than the appeal question, which the applicant's
17 attorney also raises.

18 When this matter was revoked, Mr. Rodriguez from
19 the Attorney General's Office, and I discussed the
20 appropriate way for the applicant to come back before the
21 Commission. The Commission's regulations do not specifically
22 provide -- as they do, for example, in the contents of
23 extensions of permits -- that the matter come back before the
24 Commission de novo. We decided it was appropriate to
25 recommend to this Commission that the matter, in fact, come

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before the Commission de novo.

2 The applicant could, as well, have filed a new
3 application, if we hadn't taken that interpretation -- the
4 Commission hadn't taken that interpretation -- the applicant
5 could have filed a new application after waiting the
6 appropriate period, and paying the fees. It did not seem
7 appropriate to require that. I am not quite sure I under-
8 stand why the applicant is contesting this. The applicant
9 can, of course, withdraw the application, if the applicant
10 wishes.

11 But, be that as it may, it was our interpretation
12 of your regulations that it would be appropriate to allow a
13 de novo hearing --

14 CHAIR WAN: So, we do have the authority --

15 CHIEF COUNSEL FAUST: -- on the matter --

16 CHAIR WAN: -- upon which to conduct the hearing.

17 CHIEF COUNSEL FAUST: We believe you have the
18 authority to do that.

19 CHAIR WAN: That is the only question that I
20 wanted resolved before we went into the hearing.

21 In that case, I will now open the public hearing,
22 and 15 minutes per side. The applicant will speak first in
23 this case. I have two speakers on behalf of the applicant:
24 Mr. Walter, and Mr. Bond, and I will give you 15 minutes for
25 the two of you, and you can split that time up any way, but

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1 if you wish to have rebuttal, you need to reserve some of
2 that 15 minutes for your ability to have rebuttal. So, if
3 you would come forward, state your name for the record.

4 And, if I could find a staff member to set the
5 timer?

6 CHIEF COUNSEL FAUST: Madam Chair, before Mr.
7 Walter starts, let me add one more thing, because he may want
8 to comment on this, as well.

9 The other factor that went into our consideration
10 -- Ms. Patterson reminded me of -- is that this matter,
11 because it came to the Commission on an appeal, the applicant
12 would have been faced with the possibility of having to go
13 back and start afresh at the local government level, and go
14 through that entire process again. That was another reason
15 for following this procedure, instead.

16 CHAIR WAN: Okay, with that, I will open the
17 public hearing, and go to Mr. Walter, and again, you have 15
18 minutes for your side, including rebuttal time.

19 MR. WALTER: Right, and if I could reserve five
20 minutes.

21 CHAIR WAN: And, that is fine.

22 If you will let me know when eight minutes are up,
23 that will give you a two-minute warning for the 10 minutes.

24 MR. WALTER: Thank you very much.

25 If I could, let me just say, again, that we have

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submitted information to the Commission, that has been given
2 to the clerk. We would ask that that be made a part of the
3 record. Also, I ask, since they are sort of parallel letters
4 here, that our other letter that was addressing the revoca-
5 tion also be considered by the Commission in the course of
6 this hearing, as well.

7 We were concerned with the issue of the de novo
8 hearing. Originally, we thought that that might provide an
9 opportunity for the Commission to straighten out what seemed
10 to be a rather unusual process that had been followed before.

11 There is a history to this project that has
12 already included litigation. The applicants were sued by the
13 project opponents in San Luis Obispo Superior Court a number
14 of years ago, over a question of CC&Rs -- not related to
15 coastal issues whatsoever. So, we know that there is a
16 history that no matter what the Commission did, there was a
17 strong likelihood that the opponents of this project, having
18 sued the applicant once, might choose to sue the applicant
19 again. That is why we were in a terrible quandary when the
20 Commission was considering having a de novo hearing in the
21 absence of authority.

22 The absence of a authority to conduct the de novo
23 hearing provides an opportunity for the project opponents to
24 challenge whatever it is that the Commission might do in the
25 course of this hearing. For that reason, to try to

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1 straighten out the procedures, we submitted a request of
2 reconsideration of the revocation, based upon errors of fact
3 and law that have been well discussed, and I think you can
4 appreciate, at least our position, if not agree. And, also
5 raising the issue of jurisdiction over the original permit.

6 That request for reconsideration was dismissed by
7 staff on the grounds that there is no basis for, within the
8 regulations, for reconsideration after revocation -- or
9 reconsideration of revocation, whatsoever.

10 By the same token, there was no clear authority
11 for a de novo hearing after revocation, either. We thought
12 the better procedure, to make any ultimate approval -- if
13 there was ever to be one of this project -- more defensible,
14 would be to follow the other process, and that is why we have
15 raised the concern here.

16 In the course of reviewing the matter, though, we
17 also discovered this whole issue of whether or not the
18 Commission had jurisdiction. It is a very different LCP in
19 San Luis Obispo County -- as I know you have learned -- it is
20 a single map system. It is a very unusual system. It is a
21 system of priorities of documents, unlike many others. The
22 Land Use Plan, and the mapping system are all combined into
23 one system.

24 And, the typical basis for jurisdiction here would
25 be that this is not a principally permitted use. That is

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1 usually a very good argument. One would look to Table O in
2 the Ordinance of the county, and you would discover that the
3 commercial use is the principally permitted use for this
4 project.

5 But, then there are area standards that apply
6 specifically to this property, this portion of the property,
7 that state that multifamily residential use is the use that
8 is allowed on this portion of the property. So, you end up
9 with a very odd situation.

10 The hierarchy is that the area standard controls a
11 table in the CCLU ordinance -- CZLU ordinance -- but, yet the
12 area standard says this is to be multifamily. It is our
13 position that that area standard, by the language that is
14 replete all through these planning documents, controls, so
15 that the truly -- for the purposes of jurisdiction -- the
16 truly principally permitted use is, in fact, for multi-
17 family. If that is the principally permitted use, then there
18 would be no basis, we think, for jurisdiction. And, the odd
19 part about this interpretation, is we end up with a
20 conundrum, a paradox.

21 If the applicant had come in and proposed to
22 expand the shopping center next door, onto this property,
23 then that would have been the principally permitted use under
24 Table O. On that basis, there would be no jurisdiction.
25 There is no ESHA here. There is no blue line streams. There

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1 are none of those issues that would provide jurisdiction, so
2 a shopping center would provide the Commission with no
3 jurisdiction. But it would be inconsistent with the
4 designation, the controlling designation in the LCP, that
5 this property be used for multifamily residential. So, we
6 think that that is a serious concern, and we think that a
7 fair interpretation of the Commission's jurisdiction is that
8 it doesn't have any over the appeal in the first place.

9 And, believe me, the applicant didn't try to turn
10 this into a lawyer's project. Lawyers weren't involved in
11 this all the way through. It was only when it took a very
12 sour turn that the lawyers were brought in, and I think it is
13 better, usually, to be honest, to keep the lawyers out of
14 here. I am not going to leave quite yet, but --

15 COMMISSIONER ESTOLANO: You would lose your quorum
16 on this body.

17 MR. WALTER: What's that?

18 CHAIR WAN: You would lose your quorum on the
19 Commission.

20 MR. WALTER: Yeah, well there we go.

21 But, addressing the water issue, I know this seems
22 like kind of a confusing situation there. Let me just try to
23 make it as simple and as accurate as I can.

24 The county enacted growth control back in 1990.
25 At that point, they froze the Community Services District's

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1 list. The growth control ordinance says county and the
2 Community Services District are to get together and to
3 combine those lists. It is mandatory. There is no way to
4 escape that.

5 The LCP also states that 30 percent of the
6 allocations of permits in any year in Cambria are to be
7 reserved for multifamily projects. In order to effectuate
8 that LCP mandate -- which by the way is not mentioned in this
9 report -- it is necessary to have two lists. You can't
10 allocate unused multifamily allocations to single-family
11 allocations, and be consistent with the LCP requirement that
12 30 percent be reserved for multifamily.

13 As a consequent, in fact, the staff report is in
14 error. On the basis of our investigation -- and we have
15 obtained the computer printouts that the county maintains of
16 the CCSD list -- they have, in fact, annually exhausted --
17 meaning they have gone down their multifamily list --

18 CHAIR WAN: Just to let you know, you are at eight
19 minutes.

20 MR. WALTER: Okay, thank you.

21 -- they have exhausted that list, since I believe
22 1992, through the present. Now, what that means is that some
23 people elect not to build in that year. They maintain their
24 position on the list, but it goes to the next person down the
25 list, and the next person down the list. And, in fact, in

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1 1998, until about a week or so before the end of the year, it
2 looked as though they would finally go to the county's
3 waiting list on which this project holds two positions,
4 because they were told that is what they had to do, way back
5 when.

6 So, my point is that only by ignoring the LCP, and
7 this distinction between multifamily, can you support the
8 staff's conclusion that there is eight years left before this
9 project will come up. And, you can't really justify the CCSD
10 and the county not combining their lists. They have a
11 mandatory duty to do so.

12 Lastly, there is a -- I think the argument on
13 water goes too far. It would lead to a complete moratorium
14 within Cambria itself, and I don't think that is anything
15 that anyone up there wants.

16 There is a resource management system in place in
17 the county. That resource management system is reviewed
18 annually. They have a Level 3 level of severity in Cambria.
19 But, because of retrofitting, there is no need for a
20 moratorium, and, we have supplied copies of all of those
21 reports given the board of supervisors every year. That is
22 the reason: it is retrofitting.

23 Well, that is what this original project -- that
24 you approved and then revoked -- when you originally approved
25 it, it had a condition that required actual retrofitting. So,

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the water issue is not a justifiable issue, we think, under any scenario.

And, with that, I will reserve the rest of my time for rebuttal.

CHAIR WAN: Thank you.

I am going to go to the opponents now, and there are four speaker slips, and so I am going to divide that up to about 3.5 minutes apiece.

Kat McConnell has -- one of the speaker slips having donated time to her, so, I will give you six minutes, and then 4.5 to each of the other two speakers.

If you will come first, fine. Kat McConnell, you have six minutes.

MS. MC CONNELL: Thank you, Commissioners, Kat McConnell speaking on behalf of the Cambria Community Services District, an independent services district serving the Cambria Community area.

I just wanted to address the issue of the status of the project's water. And, that is that the county -- as your staff has accurately pointed out -- has a growth management ordinance, and maintains a construction allocation list in service to that ordinance. The Cambria Community Services District maintains a water and sewer service list in management of its resources. These two lists are of completely different purposes.

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The project in question has not been issued an intent to serve letter for water and sewer service, and is not on the district's water and sewer service wait list, from which intent-to-serve letters are issued.

The project may be on the county's construction allocation list for the purpose of growth management, but the county has no jurisdiction over the district's water and sewer service wait list.

The county and district ordinance both state that the district's water wait list must be exhausted completely before applicants not on the list currently may be considered for intent-to-serve letters. And, that has been the subject of some informal discussions between the district and the county on how ultimately the reopening of the list may be handled.

But, as you have heard, there is a resource management level three designation for the water resource in that area, so it is going to be a fairly long and complex process to address that issue.

If it pleases the Commission, I would also like to submit comments on behalf of the North Coast Advisory Council, which is the local land use body.

CHAIR WAN: If you would give that to our staff -- oh, you mean you want to --

MS. MC CONNELL: Yes, into the record --

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CHAIR WAN: -- read it into the record, fine.

MS. MC CONNELL: -- if it doesn't trouble you.

The North Coast Advisory Council is the local land use advisory body. It is a community elected volunteer body for the North Coast Area planning for San Luis County. And, I don't wish to confuse the Commission, the CSD deals strictly with water issues, and the North Coast Advisory Council deals strictly with land use issues.

The council did vote to approve this project, but only under the following conditions, and those conditions would be:

That a silt fence should be installed to contain the erosion and sediment that is currently migrating into the West Village and Santa Rosa Creek from the unimproved site;

That a traffic analysis for this project does not adequately address the cumulative impacts of the project, and should be revisited;

That the project must comply with all *California Coastal Act* open space standards;

That there should be no grading on slopes 30 percent or greater;

That the project should not be built on fill greater than eight feet in depth, and this is especially important due to the existing geologic conditions found on, and adjacent to the proposed property;

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1 And, that site drainage to Santa Rosa Creek, with
2 regards to sedimentation, pollutants, and flooding, has not
3 been adequately addressed;

4 And, it is questionable as to whether this
5 subdivision is appropriate, given the resource management
6 level 3 designation that the county has indicated for the
7 area, and water resources;

8 And, the project should be required to provide the
9 county ordinance required for affordable housing units. It
0 is with no sunset clause as to sale.

1 And, given the above, the council would have
2 preferred to see an environmental impact report on the
3 project, rather than a negative declaration.

4 Thank you very much.

5 CHAIR WAN: Vern Kalshan, you have 4.5 minutes.

6 MR. KALSHAN: Thank you, Madam Chairman, and other
7 honorable members of the Commission. Vern Kalshan. I am
8 representing Norm Flemming, and the Cambria Legal Defense
9 Fund, and the Citizens for Fair Land Use.

0 We concur in the staff report, as to Item 1 on
1 water. Item 2 in the staff report, regarding environmentally
2 sensitive habitat, we disagree with that.

3 I have provided a handout. One of the diagrams is
4 this one here, and I have marked in yellow, and the diagram
5 shows that the outlet part of the pipe, is below the toe of

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1 the creek, in fact, it is just a couple of feet from the
2 creek bed, itself. There is some poured concrete there, so
3 the water runs right on the concrete, and then into the creek
4 bed. This condition has existed for, oh, about 10 years,
5 since that project was built.

6 This is a 1984 drawing. I don't know how it
7 fitted in with the '84 plan. It is inconsistent with the
8 Local Coastal Plan, and it is should be remedied by bringing
9 the discharge portion of the pipe more than 50 feet back from
10 the creek bank.

11 The next drawing, which is this one, on the back
12 side of the sheet, are lines simply showing what the pipes
13 are. The final pipe discharging into the creek bank is 18
14 inches in diameter.

15 The next item -- so using an existing non-
16 compliant item, equity would require to bring the item into
17 compliance with the Local Coastal Plan before it could be
18 used for continued drainage of the exhaust from the shopping
19 center.

20 The next item is the road. We disagree with the
21 staff there. It was pointed out several years ago, from the
22 county report, that the road work to be done in the vicinity
23 of Pine Knolls Drive had already been completed, and there
24 won't be any further widening of the road, or bicycle paths.

25 With respect to Item 4, on grading -- several

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handouts were handed there -- we disagree with the staff on that item. Measurements were actually taken of the property by a civil engineer, and the slopes were measured and recorded here as shown. On the back side of where the slopes are shown, is a copy of the project, so that one can estimate about where the buildings would be, in relation to where the slopes would be. Also, those slopes are almost all in excess of 20 degrees. They were all in the area where the former conservation easement was located, and perhaps that should be reinstated to preserve that area.

The area where the slopes are less than 20 degrees, are where the fill is. But, in all equity, the fill should be removed, since it was illegally dumped there in the first place, and should not be a consideration in approving this project for development.

Item 5 on the visual, we disagree with the staff as to the 450-foot four-foot high retaining wall, from Pine Knolls Drive all the way to the existing shopping center sidewalk and retaining wall. The wall was put there by the county as a condition for sound attenuation, not for erosion or for structural integrity, and we request that it be removed, if the project is to go ahead on any of that basis.

Also, since we have met last, the Highway One has become a Coastal Scenic Highway, and it would be inconsistent with that to have a 450-foot retaining wall visible from the

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street. The staff thinks that the area is as shown, is consistent with further development. We disagree. The shopping center is well shielded by the cypress trees, as one drives down the highway to see this, and the cypress trees should be retained to hide the shopping center.

One last item, regarding the density. The staff report says in calculating densities of 15 units per square acre, they must consider only that part of the ground which is less than 20 percent. According to the grading map you see there, you see the whole upper part of the property is an average in excess of 20 percent, and so they have to recalculate to see even how many units could fit on this site, if that is true, in calculating the number of units.

That is all that I have. Thank you very much.

CHAIR WAN: Thank you.

The next speaker is Suzie Ficker. Staff, 4.5 minutes.

MS. FICKER: Thank you very much for the privilege of being here. I have pursued this now for seven years, so I hope we will reach some intelligent culmination. My name is Suzie Ficker, from Cambria, and I represent the Cambria Legal Defense Fund.

I would like to point out to this committee that I don't intend to pursue each and every bit of what has already been discussed, because I think that all of the documentation

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1 which we have sent to you thus far, pretty well substantiates
2 that this project was encumbered from its inception by
3 falsification of fact produced by the San Luis Obispo County
4 Planning Department -- Mr. Hines, particular, I believe was
5 responsible, because at both the Planning Commission meeting,
6 and at the meeting which we appealed to the supervisors, he
7 stated in each case -- and we have tapes of this which we may
8 have presented to you -- which state beyond any doubt, he
9 states that this project qualifies in every respect for
0 approval. At the very time that he made this statement,
1 there was evidence in the files, which I found, which stated
2 that there was no such possibility.

3 And, I think I have sent every bit of that
4 information to you, and if this suit pursues, I think that
5 every bit of this will be subjected to public scrutiny.

6 So, therefore, I ask you to not to approve this
7 project for any further consideration, until the county,
8 itself, embarks upon an EIR, hopefully with the presence of
9 Mr. Holanda, we may have better relationship between the
0 Coastal Commission and with the county, so that plans of
1 greater integrity will be presented to you that will not
2 confront you for as many years as this has.

3 Thank you very much.

4 CHAIR WAN: Thank you.

5 With that, I'll return to Mr. Walter, you have

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five minutes for rebuttal.

MR. WALTER: If it please the Commission, I will defer to Mr. Boud on the planning issues, and stick to some of the issues more appropriate for me.

CHAIR WAN: You have a total of five minutes on this.

MR. WALTER: Understood.

CHAIR WAN: Okay.

MR. WALTER: Understood.

CHAIR WAN: Thank you.

MR. WALTER: It is true that this project is not on the CCSD multifamily list. That is because when growth control was implemented those lists were frozen. The applicant went to the county -- actually wanted to go to the CCSD, but they were told they had to go to the county. They got on the county's list. The growth control ordinance requires that those lists be merged.

Bryce Tingle, who is the second ranking planning person down there in the county fully supports our interpretation, that if within any year the county's list has been exhausted, meaning that people -- pardon me, the CCSD's list has been exhausted, meaning that people waive their position, then this project would be next in line. I don't think this is a complex thing to merge these lists. They are really just computer printouts. You would just tape one to

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1 the bottom of the other. I don't think there is the
2 political will for the services district to merge the lists,
3 and I think that is the problem.

4 Please recall, also, that Bud Laurent, who is a
5 strong supporter of Coastal Act policies, and whose record, I
6 think, was very, very strong, voted in favor of this project.
7 He called this water issue one of semantics. It was a 4:1
8 vote on the board of supervisors, in favor of this project.

9 Remember, the applicant also paid \$14,000 to get
0 on the county's list, and the county has held that money ever
1 since.

2 I would just submit that the water issue, really,
3 is a false one simply because this project, as conditioned
4 originally by the Commission, would have to retrofit and
5 obtain all of that water. It is not going to take any water
6 from anyone.

7 And, I'll let Mr. Boud refer to a few of the
8 planning issues.

9 MR. BOUD: Thank you, my name is Joe Boud. My
0 firm, Joseph Boud and Associates, has been responsible for
1 the design, planning, and all of the sub-consultants that
2 have been involved with this project.

3 The points raised relating to drainage, I would
4 like to just state that the existing drainage outfall into
5 Santa Rosa Creek was constructed in approximately 1984, for

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the Cambria Village Shopping Center. We evaluated the size of that pipe, relative to the amount of site water that this site and the land above this site would be generating, and the pipe size was verified to be adequate, in terms of hundred year storm evaluation, which was county engineering requirement.

And, prior to us even hooking into that pipe, we will have to create a filtering system that would provide water, clean water, not water from streets and so forth, so that the quality of our discharge and quantity of the amount of water being discharged into that pipe, both of which would be satisfactory.

The issue of traffic that was brought up, we had a traffic engineer conduct a traffic analysis of this site, and the amount of trips per day, and the contribution to the roadways that this project would utilize. Those conditions, or recommendations, of the traffic engineer were built into the standards of conditions by the County of San Luis Obispo. We would be required to place site benches at the intersection of this site driveway, with Pine Knolls Drive.

And, he also evaluated the impacts on that intersection of Pine Knolls and Main Street, and found that the level of service would not be affected.

The comment related to visual retaining wall, the County of San Luis Obispo has a circulation plan. Their plan

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1 is to increase the width of Main Street. This project faces
2 on Main Street, over 450 feet of it. The only way, when you
3 have a steep slope that rises up, in order for the county's
4 right-of-way section to be completed, would be to establish a
5 retaining wall along that. The county limited the size of
6 that wall to four-feet high with street-tree cutouts every 20
7 feet, and they would be heavily planted and landscaped, so
8 there would be cascading landscaping over the wall height,
9 itself, in order for a curb, gutter, sidewalk, bike lane,
0 travel lane, and a continuous turn lane to be established
1 along this portion of the Main Street frontage.

2 The county, obviously, is tickled silly because of
3 the fact that the applicant is going to be financing these
4 right-of-way improvements, which would match the county's
5 circulation standard improvement for this particular street.

6 The issue of slopes, the construction of the
7 shopping center did place stockpiled material on this site.
8 It was all on the entire ownership, and it is permitted by
9 the *Uniform Building Code* to stockpile land, dirt from
0 excavation, on the same site. There is no illegal stock-
1 piling of material here at all.

2 The question of grading on undisturbed surfaces
3 was well documented by the county, and there is a condition
4 of approval from the county that states specifically -- and
5 it is identified on a map -- that no previously undisturbed

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areas would be permitted to be affected by any grading activity from this project, only the areas that were previously stockpiled where there was a 30-percent slope section, because it dropped off steeply -- and it is seriously deteriorated, I might point out, too -- would be allowed to be graded.

The road, itself, accessing the site, does not, obviously, exceed any more than -- there is a 12 percent section for approximately 80 feet, I believe it is 80 feet. Other than that, the road meets all of the other standard engineering requirements as far as vertical curve access, site distance, and so forth, into its point of egress at Pine Knolls Drive.

The density, the calculations for density, they were made based on 20 percent of slopes, less than that. This was verified by the county. This was also done using an electronic mapping system. The density, indeed, was --

CHAIR WAN: You have used up actually more than five minutes.

MR. BOUD: Thank you, that concludes my comments, only to point out that the density matter was very well documented, and in fact, would allow 31 units, rather than 25 units, based on only the 20 percent or less areas.

Thank you.

CHAIR WAN: Thank you.

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With that, I will close the public hearing and return to staff.

DISTRICT DIRECTOR GROVE: I'll try to respond to a few different issues that were raised.

With respect to the items that were just brought up, some of this new information regarding drainage, or the grading slopes, obviously, it would take some field trekking to see whether or not this information is correct. Staff did analyze the information in front of us, and our review of the plans indicated that the existing drainage system would be adequate to accommodate the drainage, and that the particular nature of this site, given that the materials were stock-piled, and created these excessive slopes, and given the configuration, that it did warrant using roads on slopes greater than 30 percent.

However, those items do not get at what the heart of our concern about this project, and that does have to do with water. There is a lot of confusion that is being presented to you, and I guess in the interest of trying to make that clear again, it is very clear that the county's list that is being referred to, does not relate in any way to water. That list was established under the county's growth management ordinance, in order to set up allocations of construction permits, and in fact the section of the ordinance that the applicant's representative refers to, the

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language talks about residential allocations may be transferred within the Cambria's Community Service District, as long as any such transfer conforms with the district's ordinances. That is not talking in any way relative to water allocations. All this is saying is that there are residential allocations that are set up under the growth management ordinance, in different areas of the county, that are under this alert under the resources management system.

There are specific allocations of residential construction permits that can be allocated in each of those different areas, and if for some reason one area might not come up to its full residential allocation, then the county could transfer some of those residential allocation construction permits to another area. That has nothing to do with providing water, nor in no way does this ordinance require the merger of any list with the Community Services District.

If you want any further clarification, we did attach to the Vadnais revocation findings a letter from the Community Services District that was written February 11, 1999 that very clearly outlines what the CCSD's procedure is with respect to its water list, and what its relationship is to the county, and makes it very clear that there are no agreements to any kind of water allocations that would come from the county's listing.

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In addition, there has been several questions regarding the appeal authority -- or the appealability of this project. First and foremost, I would point out that we and the county have always agreed that all principal permitted uses are listed in Table O of the LCP, and that has always been the basis upon which we have made any determination of appealability. And, in this case, the county -- this is not listed, and the county noticed the item as be appealable, and agrees with us that it is an appealable item; therefore, we are treating this consistently with all other developments within San Luis Obispo County.

Furthermore, while the zoning ordinance does allow for multifamily residential uses in this area, that does not necessarily equate directly to condo subdivisions, which is the case here. It could be apartments, or other multifamily uses, that do not require a subdivision, and in fact that this is a subdivision also does mean that it is not a principally permitted use under the county's LCP.

Finally, while they have raised some interesting hypotheticals about what might happen if a commercial development was proposed on this site, that obviously isn't the case of what is before you, and that does not serve any purpose, in terms of what in fact the impacts of this project may be, and the clear appealability of it to be heard before this Commission.

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whether these would call for apartments, or whether they would call for condo development is exactly the kind of interpretative issue to which that language might be applicable. So, they can be important interpretively, as any language in the Land Use Plan, or land use policies, but that does not make it a basis for determinations about the appealability of a project. The statute is limiting in that regard.

That concludes my comments.

CHAIR WAN: Okay, with that, Commissioner Reilly.

[MOTION]

COMMISSIONER REILLY: Madam Chair, I move that the Commission approve Application 3-96-113, and ask for a "No" vote.

COMMISSIONER NAVA: Second.

CHAIR WAN: Moved by Commissioner Reilly, seconded by Commissioner Nava.

Do you want to discuss that, Commissioner Reilly?

COMMISSIONER REILLY: No discussion on my part.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, I had a couple of questions for staff.

We acknowledge that they are on a county list, but that has no -- that does not reference any rights to acquiring water, so even if they would come up in a position

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1 of number one and number two, there is no, then, process that
2 they could go forward with to acquire those water rights,
3 because aren't they, then, at the dead end of that issue for
4 themselves, if the county's policy -- or the local entity's
5 policy would not allow them because of water not be
6 available? have they dead ended at that point, even though
7 they reference to the county's ability to allow them to go
8 forward?

9 DISTRICT DIRECTOR GROVE: What their position as
10 number one and two on that list, does in fact not translate
11 to them having water availability. It is a dead end in the
12 sense that that list doesn't provide them water.

13 Of course, they have the opportunity to work with
14 the Community Services District, and see what the
15 opportunities for --

16 COMMISSIONER DETTLOFF: But, they no standing --

17 DISTRICT DIRECTOR GROVE: -- future water
18 availability may be.

19 COMMISSIONER DETTLOFF: -- at this --

20 DISTRICT DIRECTOR GROVE: But, they have no
21 standing, and they are not currently on the water district's
22 --

23 COMMISSIONER DETTLOFF: So, would --

24 DISTRICT DIRECTOR GROVE: -- I mean the Community
25 Services District list.

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2 COMMISSIONER DETTLOFF: -- in our decision, would
3 we really be referencing then to the LUP public works policy
4 that states that the applicants for new development must show
5 that the public services needed to support their project are,
6 in fact, available? would that be --

7 DISTRICT DIRECTOR GROVE: That is correct.

8 COMMISSIONER DETTLOFF: -- where they would --

9 DISTRICT DIRECTOR GROVE: That is precisely the
10 LCP policy that is in conflict with this project.

11 COMMISSIONER DETTLOFF: So, in any case, if we
12 were to approve this project, as we did some now years ago,
13 there really is no way for this applicant to obtain that very
14 needed service, and in fact, the county, by approving it,
15 then went against their own LUP?

16 DISTRICT DIRECTOR GROVE: Essentially, the answer
17 to that is "Yes" to that. That is correct. They currently
18 cannot demonstrate that they have adequate water supplies,
19 which is a necessary finding in order to permit development.

20 COMMISSIONER DETTLOFF: Thank you.

21 CHAIR WAN: Any other questions or comments?

22 [No Response]

23 I'll call for the question? Okay.

24 Any objection -- do you want a roll call, or is
25 there an objection to a unanimous roll call?

[No Response]

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1 Seeing none, the project is --

2 COMMISSIONER REILLY: Let's do a roll call.

3 CHAIR WAN: You want to do a roll call? Okay.

4 Do a roll call.

5 The maker of the motion is recommending a "No"
6 vote.

7 COMMISSIONER REILLY: A "No" vote.

8 SECRETARY GOEHLER: Commissioner Dettloff?

9 COMMISSIONER DETTLOFF: No.

10 SECRETARY GOEHLER: Commissioner Estolano?

11 COMMISSIONER ESTOLANO: No.

12 SECRETARY GOEHLER: Commissioner Flemming?

13 COMMISSIONER FLEMMING: No.

14 SECRETARY GOEHLER: Commissioner Kehoe?

15 COMMISSIONER KEHOE: No.

16 SECRETARY GOEHLER: Commissioner McClain-Hill?

17 COMMISSIONER MC CLAIN-HILL: No.

18 SECRETARY GOEHLER: Commissioner Nava?

19 COMMISSIONER NAVA: No.

20 SECRETARY GOEHLER: Commissioner Potter?

21 COMMISSIONER POTTER: No.

22 SECRETARY GOEHLER: Commissioner Reilly?

23 COMMISSIONER REILLY: No.

24 SECRETARY GOEHLER: Commissioner Daniels?

25 COMMISSIONER DANIELS: No.

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SECRETARY GOEHLER: Chairman Wan?

CHAIR WAN: No.

SECRETARY GOEHLER: Zero, eleven.

CHAIR WAN: I am sorry.

We are going to take a five-minute break.

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[Whereupon the hearing was concluded.]

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R E P O R T E R ' S C E R T I F I C A T E

STATE OF CALIFORNIA)
)
COUNTY OF MADERA) ss.
)

I, PRISCILLA PIKE, Hearing Reporter for the State
of California, do hereby certify that the foregoing 40
pages represents a true, true and correct transcript of
the proceedings as reported by me before the California
Coastal Commission, October 13, 1999.

Dated: October 18, 1999

PRISCILLA PIKE
PRISCILLA PIKE
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CALIFORNIA COASTAL COMMISSION

COAST DISTRICT OFFICE
725 STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

C. F. Z.
7/22/99



W13a

Staff:	SG
Staff Report:	09/21/99
Hearing Date:	10/13/99
Previous Commission Action:	Substantial
Issue Found:	01/09/97
Permit Approved:	06/08/98
Permit Revoked:	03/11/99

STAFF REPORT: DE NOVO HEARING

APPLICATION NUMBER: 3-SLO-96-113

PROJECT DESCRIPTION: 25 unit condominium subdivision

PROJECT LOCATION: Northeast corner of Main Street and Pineknolls Drive, Cambria, San Luis Obispo County.

LOCAL DECISION: Planning Commission approved May 13, 1996; appealed to Board of Supervisors and approved By Board September 17, 1996.

APPLICANT: Dean Vadnais

AGENT: Joseph Boud

SUBSTANTIVE FILE DOCUMENTS: Staff Reports for Application A-3-SLO-96-113 and R-A-3-SLO-96-113; San Luis Obispo County Local Coastal Program; North Coast Area Plan Update LCP Amendment # 1-97 staff report; North Coast Engineering, Inc., letters re: drainage, of March 25, 1997 and July 25, 1997; San Luis Obispo County Engineering Department letters re drainage, of April 2, 1997, August 13, 1997, November 10, 1997; Various appeal documents from Appellants; North Coast Circulation Study, San Luis Obispo County Engineering Dept., February 1992.

Summary of Staff Recommendation

Staff recommends that the Commission, after public hearing, deny the application because there is insufficient water capacity available to serve the project and, therefore, the finding required by San Luis Obispo County Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.021.c(1)(i) cannot

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De Novo

be made. That LUP Section requires that in communities with limited water service capacity, new land divisions within an urban services line shall not be approved unless a finding is made that sufficient water is available to accommodate both existing development and development that would be allowed on presently vacant parcels. Because there is no evidence of water being available for this project, that required finding cannot be made. The project cannot, therefore, be found consistent with the County's LCP.

Staff Note

On September 17, 1996, the San Luis Obispo County Board of Supervisors, on appeal from the decision of the Planning Commission, approved a vesting tentative tract map, development plan, and variance to allow the creation of 25 condominium units and open space areas on a 3.1 acre parcel, including grading on slopes over 30 percent. The project then was appealed to the Commission by local residents.

On January 9, 1997, the Commission found that substantial issue existed with respect to environmentally sensitive habitat and erosion and sedimentation. The *de novo* hearing on the merits of the project was deferred to give the applicant time to produce additional information in response to the finding of substantial issue. After the applicant submitted the additional information, the Commission acted on the project on June 8, 1998, approving it with conditions. On September 25, 1998, one of the appellants filed a request to revoke the permit. The revocation request was based on the appellant's assertion that the applicant's representative stated at the June meeting that he had an intent to serve letter from the Cambria Community Services District when in fact he did not have such a letter. On March 11, 1999, the Commission revoked the permit pursuant to 14 California Code of Regulations section 13105, finding that grounds for revocation existed arising from inaccurate statements by the applicant's representative at the June 1998 meeting concerning the provision of water to the project. The proposal is now back before the Commission as a *de novo* hearing on the merits of the project.

In the June 1998 permit approval, the Commission found that the project was consistent with the LCP policy requirement that there must be sufficient water capacity available to serve the development. It now appears that the finding of sufficient water capacity was premature and inappropriate. Additional information has been received since that approval and, despite the passage of 16 months, the applicant appears to be no closer to securing water for the proposed condominiums than before. Therefore, it is now clear that a denial recommendation is required, for all of the reasons set forth in the findings below.

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SUMMARY EVALUATION OF PROJECT CONSISTENCY WITH THE LCP

ISSUE	LUP POLICIES	ZONING ORDINANCE SECTION	SUMMARY OF ISSUE
Environmentally Sensitive Habitat (ESH)	ESH policies 2, 18, 19, and 23	Sections 23.07.170 -178	Approval of drainage to Santa Rosa Creek was made without plans for discharge structure, hence no evaluation of alternatives or potential impacts to ESH. However, with additional information submitted by the applicant, the proposal is consistent with the LCP regarding ESH.
Road capacity and lack of water	Public Works policy 1, Availability of Service Capacity	Section 23.04.021c	LUP policy requires County to find that sufficient services exist for the proposed development and existing lots. County made finding for road capacity, but not for water and sewer. Section 23.04.021c(1)(i) requires findings that sufficient water and sewage disposal capacities are available; the County made no such findings. The proposal is not consistent with the LCP requirement regarding water availability.
Grading on slopes > 30%	Coastal Watersheds policy 7, Siting New Development	Sections 23.04.021, Land Divisions and 23.05.034, Grading	Grading over 20% is allowed for access roads. Section 23.04.021c(7) requires that roads and building sites be on slopes < 20%; section 23.05.034 allows for a grading adjustment on slopes between 20% and 30%, does not address grading on slopes > 30%. County approval is for part of access road on > 30% slopes, pursuant to a variance. Reason for grading on slopes > 30% is because of fill placed on site 14 years ago. The proposal is consistent with the LCP regarding grading.
Erosion and sedimentation	Coastal Watersheds policies 10, Drainage Provisions, and 13, Vegetation Removal	Section 23.05.036, Sedimentation and Erosion Control, and 23.05.040, Drainage	Site design shall not cause increased erosion and that vegetation removal on slopes >30% in geologically unstable areas requires erosion and sedimentation plan. County required these after approval of grading permit. See also ESH above.
Visual and Scenic Resources	Visual and Scenic Resources policies 1, 2, 5, 6, 7, and 8	Sections 23.05.034, Grading; 23.11, Definitions (Small-Scale Neighborhoods); 23.05.064, Tree Removal Standards; and 23.08.286d(4), Utility lines within public view corridors	Proposal is in developed urban area and, although visible from Highway One and other areas in Cambria, landscaping would screen much of the development. Existing, very visible development lies adjacent to and above site. Proposal is consistent with the LCP regarding visual resources.
Hazards	Hazards policies 1, 2, and 3	Sections 23.07.080, Geologic Study Area and 23.07.086 Geologic study Area Special Standards	Required geotechnical reports have been completed. The proposal is consistent with LCP regarding hazards.
Multi-Family Residential use in Retail Commercial land use designation	None	Section 23.08.162d(2), permit requirements for residential uses in commercial categories	This section requires findings regarding residential use on commercial property. LCP specifically calls for residential use on the subject site. The proposal is consistent with the LCP regarding the type of use.

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I. STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, deny the application because the required findings regarding water cannot be made.

MOTION: *I move that the Commission approve application 3-96-113.*

Staff recommends a NO vote on the preceding motion. This would result in denial of the permit application. To pass the motion, a majority of the Commissioners present is required.

Staff recommends that the Commission then adopt the following resolution:

DENIAL

The Commission hereby denies a permit for the proposed development, on the grounds that the development would be inconsistent with the certified San Luis Obispo County Local Coastal Program, and would have adverse effects on the environment within the meaning of the California Environmental Quality Act.

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II. FINDINGS

A. Location, Description, and Background

1. Location

The site of the proposed development is on a hillside on the north side of Main Street in Cambria. The Main Street area of Cambria lies in the lower Santa Rosa Creek valley. The site is about 300 feet deep and about 450 feet long, comprising 3.1 acres. The southwestern corner of the site at the intersection of Main Street and Pine Knolls Drive lies at about 60 feet above sea level. To the east, Main Street rises to about 78 feet above sea level at the southeast corner of the property. The southern edge of the property rises some 10 to 15 feet above the street, to an elevation of approximately 90 feet above sea level at the southeastern corner. The site also rises to the north away from Main Street to approximately 140 feet above sea level at the northern property line. The slope to the north up and away from Main Street is not a smooth incline. There are two existing, graded terraces created from earth that was placed there during the grading for the construction of the adjacent commercial development 14 years ago. (Please see Exhibit 4, site sections)

2. Description

The land use designation and zoning of the site is Commercial Retail, but the Land Use Plan Area Standard indicates that residential multifamily development at 15 units per acre is the intended use for the site. Allowable densities must be calculated using only the portions of the site that have slopes of 20% or less. (North Coast Area Plan, Cambria Village Square Commercial Retail Standard 9a). According to this formula, at least 25 units could be constructed on this site. Access to the site would be by way of a new street running from Pine Knolls Drive near the northwestern corner of the site to Knollwood Drive, an existing street in the adjacent commercial development. A gate at Knollwood Drive would prevent through vehicular access, except for emergency vehicles. The proposed development includes ten two-story buildings containing a total of 25 condominium units on +73,000 sq. ft. of the site. The undeveloped remainder of the site would be placed pursuant to the applicant's proposal in a reconfigured open space easement about 3 times the size of the existing easement required by the Coastal Commission in permit 4-83-680 (see Background, below, and 4-83-680-A1). One of the County conditions of approval was that the applicant must obtain approval from the Coastal Commission for the reconfiguration of the open space easement. Amendment 4-83-680-A1, approved by the Commission on June 8, 1998, allows the larger reconfigured open space easement to be offered in place of the existing easement configuration. The approved easement is shaped to exclude the graded terraces in the center of the site, thus accommodating the current condominium project as well as satisfying the County condition regarding the Commission-required open space offer.

3. Background

The Coastal Commission on May 9, 1984, approved permit 4-83-680 with special conditions, including a requirement to offer to dedicate an open space easement over the upper slopes of the property. The permit was for the subdivision of two parcels into six lots encompassing the subject site and the now commercially developed area immediately adjacent to the east. That permit

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contained four special conditions, as follows (the first three conditions all required completion prior to transmittal of the permit): 1) submit revised map showing six rather than the requested seven lots, 2) record irrevocable offer to dedicate open space easement, 3) submit findings from the County regarding road access and, 4) by accepting permit, permittee agreed to utilize construction practices which minimize erosion. All conditions were met and the coastal development permit was issued. Although the subdivision map was never recorded, certain improvements (streets, water and sewer lines, etc.) on the now commercially developed site adjacent to the subject site were constructed and the irrevocable offer to dedicate an open space easement was recorded. The two most westerly lots of that subdivision, which occupy the area of the current subject site, were to be developed for residential purposes sometime in the future. These parcels remain vacant. However, some 10,000 cubic yards of earth from the commercial development were placed onto them and remain there.

In 1985, the then permittee received another permit, 4-84-458 from the Commission, which permitted the construction of the commercial development adjacent to the subject site. That development has been constructed.

Amendment 4-83-680-A1, approved by the Commission on June 8, 1998, allows the applicant to reconfigure the area offered in the open space easement. The previously approved and recorded OTD was unsatisfactory in a number of ways: it was too small (25,000 sq. ft.), failed to cover substantial areas which exceed 20% slope, and did not yield a building envelope on that portion of the site most suitable for development. The revised OTD, under the terms of the amendment, is three times larger (75,000 sq. ft.), covers all post-construction slopes greater than 20%, frees up the area most suitable for development, and better protects public views. These things are achieved by reducing the area of open space at the easterly, upper most part of the site so as to accommodate structures, and redistribute some of the open space to the development's common areas on the northern end of the site.

On September 17, 1996, the San Luis Obispo County Board of Supervisors, on appeal from the decision of the Planning Commission, approved a vesting tentative tract map, development plan, and variance to allow the creation of 25 condominium units and open space areas on a 3.1 acre parcel, including grading on slopes over 30 percent.

The project then was appealed to the Coastal Commission by local residents who contended, among other things, that the County's approval was inconsistent with several LCP policies, including Environmentally Sensitive Habitat policies, the Public Works policy relative to provision of adequate road capacity; Coastal Watersheds policies which require drainage plans, limit removal of vegetation, and limit development to slopes less than 20 percent; Visual and Scenic Resources policies regarding massing of structures on hillsides, amount of grading, compatibility of the proposal with the community, preservation of trees, and visibility of utility lines; and Hazards policies concerning geological hazards such as stability of the site and erosion; and policies concerning the availability of water.

Other contentions of the project opponents included denial of due process because the County approved the proposal without the public knowing the following facts: i) how the issue of structures proposed in a recorded open space easement would be resolved, ii) location and size of drainage to Santa Rosa Creek and its potential impacts to the creek, and iii) how fees from development would solve traffic hazards on Main Street at the site.

On January 9, 1997, the Commission found that substantial issue existed with respect to environmentally sensitive habitat and erosion and sedimentation. The *de novo* hearing on the

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merits of the project was deferred to give the applicant time to produce additional information in response to the finding of substantial issue. After the applicant submitted the additional information, the Commission acted on the project on June 8, 1998, approving it with conditions. On September 25, 1998, one of the appellants filed a request to revoke the permit. The revocation request was based on the applicant's representative's assertedly inaccurate statement at the June meeting that he had an intent to serve letter from the Cambria Community Services District when in fact he did not have such a letter. On March 11, 1999, the Commission revoked the permit based on the finding that an inaccurate statement was made concerning water availability and that accurate information regarding the water situation would have caused the Commission to take a different action. The proposal is now back before the Commission as a de novo hearing on the merits of the project.

B. Standard of Review and Analysis

The standard of review for a *de novo* hearing following a finding of substantial issue is the County's certified Local Coastal Program and the Public Access policies of the Coastal Act. The issues raised on appeal were the proposal's impact on environmentally sensitive habitat, water supply and road capacity, grading, visual and scenic impacts, and residential development on land designated commercial retail.

1. Water Demand and Supply

Project Water Use and Community Water Supplier: The proposed 25 unit condominium project will use approximately 2775 gpd of domestic water for the units and landscaping according to typical use rates for multi-family residential development in Cambria. This projected water use is based on records that the Cambria Community Water District (CCSD) has maintained over the last several years.

In the June 1998 permit approval, the Commission found that the project was consistent with the LCP policy's requirement that there must be sufficient water capacity available to serve the development. It now appears that the finding of sufficient water capacity was premature and inappropriate. Additional information has been received since that approval and, despite the passage of 16 months, the applicant appears to be no closer to securing water for the proposed condominiums than before.

Water for this project, and for all of urban Cambria, is provided by the CCSD, which obtains its supply from wells along Santa Rosa and San Simeon Creeks. Although Cambria is only about 25% developed, municipal water resources are barely adequate to serve existing development and, in times of drought, the community experiences acute shortages. CCSD has, for many years considered a variety of methods to increase the water supply, including construction of a desalinization plant, improvements to the municipal wastewater treatment plant to allow use of reclaimed water for recharge, construction of off stream reservoirs and increased withdrawals from Santa Rosa and San Simeon Creeks. For various reasons, none of these options has been implemented and the water supply has remained static for the last thirty years. (Please see Exhibit 6, excerpt from adopted Commission Findings on the North Coast Area Plan, January 1998, for a detailed discussion of Cambria's water supply)

Although the District has been unsuccessful to date in increasing withdrawals or in finding new water sources, it has initiated a program to maximize conservation of existing resources and thus provide for a limited number of hook-ups for new development. Conservation methods include the mandatory use of water saving fixtures, repair and replacement of old pipes, mandatory retrofitting

programs and periodic water rationing. In order to provide for new development, the District has developed an allocation program that requires that applicants for new water hook-ups demonstrate that they can "save" twice the amount of water they will use. This saving is usually accomplished through participation in the Districts retrofit program, which as explained in Exhibit 6 has a finite life.

The District also limits the number of residential water permits granted per year to a maximum of 125 new hook-ups. Cambria LUP Standard 3 (page 8-20, North Coast Area Plan) provides that 70% of these hook-ups shall be allocated to single family residences and 30% to multi-family residences. Since demand for water hook-ups far exceeds availability, the District has established a waiting list for property owners who wish to develop their residential lots. Currently the list has over 800 applicants on it (762 single family, 49 multi family). Given its length and the limited ability to release new hook-ups, the District closed the list in 1990 and has no plans to re-open it in the near future. Water hook-ups are offered to applicants based on their position on the list (i.e. the person at the top of the list is offered a permit first and so on through the length of the list until all of the permits for the year are distributed). To date, the list has never been exhausted before all the permits have been allocated for a given year.

There is another list for water hook-ups maintained by the County. In 1991, the County decided to initiate a waiting list for Cambria development even though it has no ability to supply the necessary water. This list currently contains 326 names (268 single family and 58 multi-family) and was apparently developed as a second tier allocation system to be used in the unlikely event that the CCSD list was exhausted before all of the new hook-ups were spoken for. The applicant for the project that is the subject of this appeal has the first two positions on this list. The Commission notes that the applicant has stated that there may be a potential merger of the CCSD and County lists, but investigation reveals that this possibility has not progressed beyond the discussion stage. Since the Commission considered the project in June 1998, it has become clear that CCSD and the County are not close to developing such a mechanism. It now is clear that there is no timetable for the County and CCSD to resolve this issue and there is no basis for predicting or estimating when a mechanism to provide water to the County waiting list will be developed. It is thus unknown if this is a viable option or what the terms of such a merger might entail. There is also no indication that the CCSD intends to deviate from its established practice of allocating water permits to the applicants on its own list in favor of those who had obtained a place on the County's list. If the CCSD must exhaust its own list under a merger mechanism, it may not reach the applicant in the foreseeable future.

In conclusion, given the very limited water supply, the length of the official CCSD list, the historic pattern of exhausting available permits before exhausting the list, the closed nature of the list and the second tier (at best) status of the county list, **there is no credible evidence indicating that the proposed condominium project will be able to obtain water hook-ups within any reasonably proximate time period.** In fact, discussions with CCSD staff indicate that they estimate water service for this project would be at least eight to ten years in the future and then only if there is any water to allocate.

Planning Background:

In 1997, San Luis Obispo submitted an update of the North Coast Area Plan for Commission review and action. The Commission adopted the staff recommendation for approval with modifications in January 1998. In the adopted Findings the Commission recognized that one of the most important issues for Cambria was the need to match the water supply to the town's development potential consistent with the protection of riparian and wetland habitat. The Findings

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state that the present water supply is woefully inadequate to serve the potential build out of Cambria's approximately 7500, small, vacant, residentially designated lots and that withdrawals from the creeks, even at the present rate may be problematic. As a solution to this mismatch of infrastructure to development potential, the modifications proposed by the Commission provided for a comprehensive program to address the inadequacies of the water supply while ensuring that habitat values would be protected. This program is detailed in Exhibit 7. In summary, this program includes a multi-pronged planning effort to reduce the over-all number of lots; conducting studies to determine appropriate withdrawal amounts from Santa Rosa and San Simeon Creeks; and developing and implementing a water management strategy to include water conservation, reuse of wastewater, alternative water supply (desalinization) and possible off steam impoundments. The suggested time frame for accomplishing this comprehensive management effort was three years (January 2001). If the work was not completed by that date, the modification required that no further permits should be issued for new development until the program was completed.

Although the County declined to accept the Commission's action on the North Coast Area Plan Update, the Commission continues to support a comprehensive solution to the Cambria water supply problem. Consistent with the approach taken by the adopted Findings and Modifications, the Commission has not appealed individual projects that have received a water allocation from CCSD since their action on the North Coast plan in 1998 in order to allow the County and the CCSD time to initiate and implement the planning solution recommended by the Commission or to propose an alternative that would have the same effect. Although eighteen months have passed since fielding the proposal, it is anticipated that the North Coast Area Plan will be returned for Commission review within the next year and concrete progress can be made on this issue. Until a comprehensive program is in place, though, projects that would not be eligible to obtain water hook-ups, until well after the January 2001 target date, such as this one, should not be approved.

LCP Consistency:

The standard of review for appealed projects is consistency of the local government's action with the provisions of the Local Coastal Program. The San Luis Obispo LCP contains one LUP policy and one Implementation Plan section relevant to the issue of an adequate water supply for new development as follows:

LCP Public Works Policy 1: Availability of Service Capacity

New development (including subdivisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within 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 service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the URL shall be allowed only if it can be serviced by adequate private on site water and waste disposal systems.

The applicant shall assume 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 would otherwise be approved consistent with available resources.

Title 23, Section 23.04.021 (c)(1)(i)

c. 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. In the event of any conflict between the provisions of this section and those of 23.04.024 through 23.04.036, this section shall prevail.

(1) **Water and Sewer capacities-urban areas:** In communities with limited water or sewage disposal service capacity as defined by Resource Management System alert level II or III:

(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.

Analysis of LUP Public Works Policy 1: This policy states that applicants for new development must show that the public services needed to support their project are, in fact, available. The policy goes on to state that failure to make "proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that would otherwise be approved consistent with available resources". Thus, in this case the policy obliges the project proponent to unequivocally demonstrate that they have secured an adequate and available water supply for the 25 units. Available is understood to have its common meaning of "present or ready for immediate use" (Merriam Webster's Collegiate Dictionary, Tenth Edition). Failure to guarantee this vital service is grounds for denial of the project.

The applicant for this project cannot demonstrate that an adequate water supply is available to his project. As detailed in the preceding paragraphs regarding the waiting lists and allocation method establishing an available and adequate water supply for a particular project, it is clear that the applicant does not have any entitlement to a water permit for this project and it is extremely uncertain when, and if such a permit could be obtained. Based on this evidence, the applicant has not met his obligation under Public Works Policy 1 to satisfactorily demonstrate that water is available for his project. This failure, by the specific terms of the policy, provides adequate grounds for denial of the project.

Public Works Policy 1 also places an obligation on the approving authority that

[p]rior 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 service line for which services will be needed consistent with the Resource Management System, where applicable.

In this case, the Resource Management System is not applicable because the County has not implemented its provisions in Cambria. The applicable "commitment" in this case is the long waiting list maintained by the CCSD, which represents an outstanding, long term commitment to the listees. Given the length of this list, coupled with the very limited amounts of water available for allocation, it is unknown whether there will ever be sufficient water to clear the list, let alone provide

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for additional development. The County did not, and the Commission cannot, find that there is adequate water for this project after the existing commitments, represented by the CCSD list, are met. The proposed project therefore is inconsistent with Public Works Policy 1 and must be denied.

Analysis of Title 23, Section 23.04.021 (c)(1)(i): Approval of the proposed project at this time is also inconsistent with Section 23.04.021 (c)(1)(i) of Title 23 of the county's LCP Implementation Plan. Part of the project proposed by the applicant is a condominium subdivision. These types of land divisions are considered subdivisions under the terms of the Subdivision Map Act and are processed as such by the County. Section 23.04.021 (c)(1)(i) applies to all subdivisions except condominium conversions. This project is for new condominium development and must, therefore, comply with this ordinance section.

The ordinance states that if water service in an urban area, like Cambria, is so constrained that it is at "alert level " II or III as defined by the Resource Management System, then new land divisions "shall not be approved unless the approval body first finds that sufficient water...capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels". The latest status of water service vis a vis the Resource Management System is found on Table 3-1 in the updated North Coast Area Plan adopted by the County Board of Supervisors in 1996. According to Table 3-1, water service in Cambria is at level III, the most constrained level of the system. (Please see Exhibit 8, Table 3-1).

The project, must, therefore, comply with Section 23.04.021 (c)(1)(i). In order to accomplish this compliance, the Commission, as the approving body, must find that there is adequate water available to serve this project as well as all of the development that would be permitted on lots that are currently vacant. As discussed in an earlier section of these findings, water supplies in Cambria are barely adequate to meet the needs of existing development, which accounts for only 25% of the potential, planned build out of the community. There are approximately 7500, small, vacant residential lots designated for residential development and there are approximately 1000 lot owners on the CCSD waiting list for water. It is obvious from this evidence that the water district is not currently able to accommodate the remaining vacant lots let alone the new proposed condominium subdivision. The required finding for compliance with Title 23, Section 23.04.021 (c)(1)(i) cannot be made and the project must be denied.

2. Environmentally Sensitive Habitat (ESH), Erosion, Sedimentation

The LCP's ESH policies and the zoning ordinance sections that implement them make it clear that before approval of a permit for development in or near an ESH, the applicant must demonstrate that there will be no significant impact on the ESH. Here, the County has required the applicant to discharge drainage directly into Santa Rosa Creek rather than allowing the runoff to flow toward the West Village area of Cambria. Although this is beneficial since the West Village is prone to flooding, the County approval was made without any plans or details of how the drainage would be discharged into the creek and what impacts there may be. It is likely that there would have to be some sort of structure at the creek discharge point such as an energy dissipater and the drainage pipe itself. The County approval required the discharge point to be downstream of the Highway One bridge. Santa Rosa Creek is a steelhead spawning creek and its lower reaches, where the discharge point would be, are vegetated with willows and other riparian species. Yet the County approved development in the creek without any information about potential impacts to the riparian resources.

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a. Storm Drain Impacts on Creek Habitat

As originally approved by the County, impacts on the Santa Rosa Creek ESH would have resulted from grading, trenching or other construction work needed to install a new storm drain facility. Such work would have had the potential to significantly disrupt Santa Rosa Creek or its adjacent riparian vegetation depending on the size and configuration of the outlet. This ESH supports an endangered steelhead run, as well as the Federally-listed red-legged frog and other sensitive species that would be affected by drain installation in or adjacent to the stream channel. The exact effects are unknown because the County's approval did not include approval of a specific drainage plan with details of construction and evaluation of impacts. Silt-laden runoff during the construction phase, as well as the cumulative effects of polluted runoff from streets, parking areas, lawns, etc. over the long run, also would potentially harm Santa Rosa Creek.

The LCP's ESH policies and the zoning ordinance sections that implement them require that before approval of a permit for development in or near an ESH, the applicant must demonstrate that there will be no significant impact on the ESH. The environmentally sensitive area is not on the subject site in this case, but is off-site, in Santa Rosa Creek. Here, the County required the applicant to discharge drainage directly into Santa Rosa Creek rather than allowing the runoff to flow toward the West Village area of Cambria. Although this may be a good alternative since the West Village is prone to flooding, the County approval was made without any plans or details of how the drainage would be discharged into the creek and what impacts there might be on the creek habitat.

Possible ways of routing the runoff directly to the creek include placing a new drainage pipe from the site or nearby along Main Street to Santa Rosa Creek or directing the runoff to an existing drainageway to the creek. The first alternative would entail construction of a new pipeline which would be within the Main Street and Highway One rights-of way, and depending on the exact route, would either cross private property (the Mid-State Bank Site) or be in the Cambria Drive right-of-way. The second alternative would entail construction of appropriate runoff conveyances to carry the water to a nearby existing drain pipe to the creek. The first alternative would be the more expensive and difficult one to construct because from about 1000 feet to one-quarter mile of new pipeline would have to be constructed, including jacking the pipe under Highway One. The second alternative could be relatively inexpensive if an existing drainage way to the creek were to be found nearby, because only a relative short section of new pipe or gutter, or some other form of runoff conveyance, would be needed. The first alternative would require work in the creek to construct some sort of energy dissipater at the drainage pipe outlet into the creek to reduce the erosive force of the runoff and could entail significant impacts to the riparian habitat. Originally, it was not known whether or not the second alternative might or might not require any work in the creek; such determination depended on whether or not the increased flow out of the existing drainage pipe would necessitate any work at the outlet into the creek.

After discussions with staff, the applicant pursued the second alternative by investigating the possibility of routing some or all of the drainage from the site into an existing drainage pipe across Main Street. According to the applicant, engineering studies have

determined that it is feasible to gravity flow the storm water from the project site into the existing storm drain system which discharges into the creek adjacent to Cambria Elementary School and that this drainage system has the capacity to handle the additional water. This revised drainage proposal has also been reviewed and found to be acceptable by the San Luis Obispo County Engineering Department.

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The existing drainage system proposed to be used by the applicant discharges into Santa Rosa Creek upstream of the Highway One bridge.

The existing drainage system was installed in 1984. Grouted rip-rap was installed at the discharge point as an erosion control measure. The storm drain drops steeply for its final 45 feet. At the bottom of the slope, the storm drain is horizontal for several feet before discharging onto the grouted rip-rap. This horizontal section also functions as an energy dissipater, which along with the grouted rip-rap functions to greatly reduce the erosive force of runoff discharged from the storm drain. According to a County Engineering letter dated August 13, 1997, the presence of the rip-rap is "...sufficient to serve as the necessary erosion control at the outlet of the storm drain. . . ." Thus, the design of the drainage system at the point of discharge is sufficient to reduce the energy of the runoff so that it will not erode the creek bank and bottom and no work will be necessary in the creek.

The LCP's Coastal Plan Policies for ESH's require the protection of coastal streams and adjoining riparian vegetation. ESH Policy 18 states:

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.

With respect to riparian vegetation along the streambank (which would be disrupted by the trenching and construction for a new storm drain outfall), the LCP states, in ESH Policy 24:

Cutting or alteration of naturally occurring vegetation that protects riparian habitat is not permitted except ... where no feasible alternative exists or an issue of public safety exists ... Minor incidental public works project may also be permitted where no feasible alternative exists including but not limited to utility lines, pipelines, driveways and roads...

The CZLUO implements these policies by prohibiting most cutting or alteration of natural vegetation that protects a riparian habitat, except where "no feasible alternative exists" (CZLUO section 23.07.174(e)).

In this case, a feasible alternative to riparian habitat destruction does exist, i.e., utilizing the existing storm drain system. By finding a way to utilize the existing storm drain, the applicant will conform his project to the applicable LCP ESH standards. Therefore, the project is consistent with the ESH policies of the LCP.

b. Erosion Control

The County required an erosion and sedimentation plan for the site itself. Such a plan would be based on the proposed grading which the County has reviewed. The County's LCP allows erosion and sedimentation plans to be approved along with grading plans, which typically are approved by the County Engineer sometime after approval of the coastal development permit. However, the County's approval does not specify measures for the control of polluted runoff.

The appropriate methodologies for minimizing such impacts, both during the construction phase and over the long run, are now referred to in the construction industry and by governmental land use and water quality regulatory agencies as Best Management Practices (BMPs). The County's permit conditions already require supervision by an environmental monitor during construction, a

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grading and erosion control plan for subdivision improvements, a mitigation plan for grading and drainage, a landscaping plan (including performance bond), and CC&Rs (covenants, conditions, and restrictions) requiring permanent maintenance of all drainage facilities (see Exhibit 1). Appropriate BMPs can be found in a number of source documents, including the California Storm Water Best Management Practice Handbooks (prepared by Camp Dresser & McKee, et al, for the Stormwater Quality Task Force, March, 1993), but are not mentioned in the County Permit. To insure that the project's grading, erosion control, and related plans are consistent with current practice would require incorporation of appropriate BMPs. This would serve to clarify how the County's already-adopted permit conditions would be carried out; and, with respect to the issue of polluted runoff, would assure conformance with the LCP's ESH Policy 18 regarding protection of coastal stream and riparian habitats. Assuming that the County's environmental monitor will properly apply the BMPs, no further disruption of the environmentally sensitive stream corridor would result from polluted runoff, because implementation of BMPs includes implementing those measures to reduce or eliminate polluted runoff from reaching the creek. On this issue the project is, therefore, consistent with the above-cited LCP requirements regarding ESH.

c. Drainage Impacts On Santa Rosa Creek Flooding

Off-site flooding and sedimentation also raise issues of potential impacts to habitat, because increased flood intensity or loss of streambed capacity due to siltation may result in loss of downstream environmentally sensitive riparian and lagoon habitats. What effect the addition of runoff from the project site would have on the water elevation in Santa Rosa Creek is of concern since the Highway One bridge is a flood-water bottleneck in larger storms, causing overflow out of the creek and into West Village. The bottom of the Highway One bridge is at elevation 35.6±. The water surface elevation (wsel) at the bridge in a 25 year storm is approximately 31 feet, so the bridge can pass a 25 year flood. The wsel in a 50 year storm is approximately 36.6 feet, or about one foot higher than the bottom of the bridge. By interpolation, the streamflow resulting from any storm greater than about a 45 year storm will not be able to pass completely under the bridge, but will back up and some will flow overland across the Mid-State Bank property into the West Village. A 100-year storm would produce a wsel of about 37.50 feet, two feet above the bottom of the bridge. The most recent major flooding in the West Village of Cambria occurred in early 1995.

Peak flow runoff from the project site itself would be approximately 4.0 cubic feet per second (cfs) during a 100 year storm. Total runoff from the site plus 1.6 acres above the site, in the Pine Knolls neighborhood will be about 5.8 cfs. Peak flow in Santa Rosa Creek during a 100 year storm would be approximately 17,993 cfs, or about 3100 times the peak flow from the project site and the 1.6 acres in Pine Knolls. Considered in percentages, 5.8 cfs is 0.03 percent of 17,993 cfs. According to the applicant's engineer's report,

The hydrographs indicate that the peak flow from Tract 2176 . . . occurs approximately 2.8 hours before the peak flow in Santa Rosa Creek. . . . The hydrographs also indicate that the flow from the site is 1.0 cfs when the peak flow in Santa Rosa Creek occurs. The increase in the Santa Rosa Creek 100-year peak flow due to the development of Tract 2176 is 0.006% of the total flow (1.0 cfs ÷ 17,993 cfs x 100). A change in flow of this magnitude would be imperceptible as well as insignificant. . .

In order to determine the impacts that development of Tract 2176 will have on the 100-year WSEL [Water Surface Elevation] of Santa Rosa Creek, a rating curve was developed for a cross section of the creek immediately above the State Route 1 bridge. The rating curve was derived from FEMA flood profile and flow information. Based on the rating curve, the existing 100-year WSEL immediately above the State

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Route 1 bridge was determined to be 37.50'. After development of Tract 2176, the 100-year WSEL at this same section was determined to be 37.50'. The development of Tract 2176 will not result in any perceptible or significant increase in the 100-year WSEL of Santa Rosa Creek at the State Route 1 bridge.

The figures and the design of the storm drain were reviewed by County Engineering Department staff and Commission staff, who concurred with them.

The LCP, in CZLUO section 23.05.040, explains why detailed drainage plans, as required by the County for this project, are necessary:

Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff and resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development....

With respect to inundation of downstream areas, the LCP's Coastal Watersheds Policy 10 requires that the watercourse be "suitable" for receiving drainage from the site:

Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses.

Several things are clear from the information provided and staff's analysis of this issue. First, the runoff from the project site can be accommodated in the existing drainage system. Second, the runoff from the site is insignificant in comparison to the flow in Santa Rosa Creek. Third, the runoff from the site will not raise the level of storm flows in Santa Rosa Creek. Thus it appears that even though the drainage outfall is currently proposed to be upstream of the Highway One bridge, a perennial bottleneck in large storms, runoff from the project site will neither exacerbate nor cause flooding downstream in the West Village.

Finally, the County has received funding for flood improvements in Cambria, including work at the Highway One bridge to allow for larger storm flows to pass under the bridge and not overflow into the West Village.

Therefore, the project's proposed storm water drainage system is consistent with LCP Coastal Watersheds policies and with Coastal Zone Land Use Ordinance section 23.05.040 (drainage).

3. Road Capacity

Main Street is literally that, the main street in Cambria. It carries the bulk of traffic in the community. Additional traffic could adversely affect the special, small town character of Cambria by creating a more urban feel with traffic congestion and associated difficulty of ingress and egress from driveways in the downtown area, although access to the beach would not be affected. A traffic study was conducted for the project that indicated that the proposed development would have negligible impacts on the volume of traffic and the wait at the stop sign on Pine Knolls Drive at the intersection with Main Street. The County is currently in the process of widening Main Street by installing a two-way left turn lane and adding bicycle lanes and sidewalks from just north of the

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subject site past it into the eastern part of Cambria (the East Village). According to the County, although this type of improvement will not actually increase capacity, as would the addition of travel lanes, it will remove turning vehicles from the traffic stream and allow the peak hour level of service (LOS) on summer weekdays to improve from LOS "E" to LOS "D" (LOS rankings range from the best, "A," where there are free flow conditions, to "F" where traffic is congested for long periods). The development would be required to pay a traffic fee of \$679.00 per unit. Based on these factors the County found that there would be no adverse impacts to traffic from the proposal.

4. Grading

The file from the original Coastal Commission permit, 4-83-680, reveals that there was concern about grading on the site, specifically on slopes over 20 percent. Since the site lies on a hillside, and is in a mapped geological hazard area, geological and geotechnical (soils) reports are required. These have been completed and have concluded that the site is suitable, from a geological and geotechnical viewpoint, for the proposed development. The fill material that was placed on the site when the adjacent commercial development occurred is not engineered fill. It may require removal and recompaction before the proposed development can take place. According to the geotechnical engineer, *"The southern half of the site will need to be further addressed as noted in the referenced Geotechnical Report...During the grading process the lower fill will be evaluated to determine it is suitable for supporting the proposed development. If the lower fill is found not to be suitable all of the fill will need to be removed and regraded."*

Typically, grading is limited by the County's LCP to slopes of 20 percent or less, with some exceptions, including grading of an access road necessary to provide access to an area of less than 20 percent slope where development is to occur, and if there is no less environmentally damaging alternative. The LCP's CZLUO, in section 23.05.034, also allows grading on slopes between 20% and 30% as a "grading adjustment" if certain findings are made (see Exhibit 2, attached). However, zoning ordinance section 23.04.021c(7), Overriding Land Division Requirements, Location of Access Roads and Building Sites, states that "Proposed access roads and building sites shall be shown on tentative maps and shall be located on slopes less than 20 percent." That would seem to be an absolute bar to access roads on slopes over 20 percent, but there is the possibility of seeking a variance from any of the zoning ordinance sections. That is what the applicant did here.

The County found that a variance allowing grading on slopes over 30 percent could be approved. The findings state that the variance did not constitute a grant of special privileges inconsistent with other properties with similar slopes in the vicinity because adjacent lots with steep slopes are developed and the proposal could not reasonably be constructed without some grading on slopes in excess of 30 percent. The adjacent lots with steep slopes contain single family dwellings, some of which were developed prior to certification of the LCP and some of which fall into the over-20-percent grading exception (for existing lots of record in the Residential Single-Family land use category where a residence cannot be feasibly sited on a slope less than 20 percent). The County also found that there were special circumstances applicable to the property related to the topography that would justify grading on slopes over 30 percent. The reason that grading must occur on slopes over 30 percent is that the original owner placed about 10,000 cubic yards of fill on the site when the commercial development adjacent to the south was constructed. In other words, the "30% slopes" apply to the steep-sided benches comprised of stockpiled excess grading spoils from the commercial site next door. These stockpiled materials will be regraded and redistributed

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to accommodate the proposed road improvements. So, in order to remove and reuse the steep-sided fill materials, grading on these man-made "slopes over 30%" is required.

The reasons to generally not allow grading on slopes over 20 percent are to reduce erosion and drainage problems, avoid alteration of natural landforms, minimize cuts and fills, and ensure stable building areas. From the previous discussion about drainage it appears that drainage impacts can be controlled. Erosion potential will be minimized by a variety of measures cited above, including the application of BMPs and by allowing grading only during the non-rainy season. The County has limited the area of grading on slopes over 30 percent and has required that there be no grading on slopes over 30 percent to make building pads for residences. The removal of stockpiled fill material will not result in the "alteration of a natural landform." Therefore, the "special circumstances" cited by the County support the variance for grading on slopes over 30%.

Concerning slopes over 20% but less than 30%, the County's approval limits residential structures to that portion of the site with less than 20% slope; the variance is needed only for access roads and related site improvements. The language in the County's Development Plan permit refers to a variance for grading on slopes over 30%. However, the same permit specifically authorizes "grading on slopes over 20%". While the County's permit would appear internally inconsistent, by authorizing grading on slopes over 20% the permit is, in effect also a variance for grading on slopes over 20%. Therefore, the project is in conformance with the "grading adjustment" criteria for slopes between 20% and 30% as cited in CZLUO 23.05.034.

5. Visual and Scenic Resources

The site of the proposed development is visible from Main Street, from Highway One, and from other areas in Cambria, primarily from upslope and from the developed hillside and hilltop across the creek to the southwest. The site is in between the two commercial areas of Cambria, the East Village and the West Village. The site to the east is developed with commercial structures that are very visible, lots upslope have single family dwellings which are visible through trees. Across Main Street is a church and a bank, a vacant lot lies to the west across Pine Knolls Drive and to the southwest are community buildings. Clearly, the site lies in a developed urban area where one would expect to find new development concentrated. Still, development must be sited and landscaped such that it doesn't clash with its surroundings or degrade or block public views to and along the coast and scenic areas. The County approval is conditioned to require a great deal of landscaping to soften the appearance of the development and to partially screen it. The County conditions require that utility lines be installed underground, removing that potentially degrading feature.

Tree removal would be necessary for the proposal and would involve removing two Monterey pines and thinning of the stand of planted cypress trees on the east side of the site. The County conditions require tree replacement at a 2:1 ratio.

The County has identified Main Street in Cambria as a special community with unique, visually pleasing characteristics which are worthy of protection through such measures as attention to architectural features, use of wood, and other design features compatible with the community. No specific findings are required for development in a special community.

Prior approvals from the Coastal Commission and the County envisioned development on this site. While it is a visible site, the County's approval is conditioned to ensure the compatibility of the

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development with its surroundings. Therefore, the project is consistent with LCP policies and CZLUO sections that protect public views.

6. Multi-Family Residential Use in the Commercial Retail Land Use Category

Residential uses are permitted in the Commercial Retail land use category pursuant to Table O. Typically, when residential development is approved on commercially designated land, the County must find that the residential use will not reduce the inventory of commercial property available for the commercial needs of the community and that it will not impede development of necessary commercial uses. The County did not make such findings. However, it must be kept in mind that from the earliest stages of development proposals here, it was envisioned that the now developed commercial site would be just that and that this site would be for residential uses, even though it was zoned Commercial Retail (see permit 4-83-680). The North Coast Area Plan portion of the LCP specifies that the subject site is to be used for multi-family residential purposes (Cambria Village Square Standard 9a). Therefore, even though the County did not make a specific finding for residential use on commercial retail land, the totality of the record makes it clear that there is sufficient commercial property available for the needs of the community. Therefore, multi-family residential use on this commercial retail designated site is consistent with the LCP.

C. 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 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 available that would substantially lessen any significant adverse effect that the activity may have on the environment. The Commission analysis of this proposal has shown that there are feasible mitigation measures for potential adverse effects to the riparian habitat of Santa Rosa Creek due to drainage. However, the availability of water for this project is very uncertain. Currently, and for the foreseeable future, the project is not even eligible for water from the Cambria Community Services District because the project is not on the District's water list. Although the project holds the first two positions on the County's building permit allocation list, there is no mechanism to allow the District to serve water to projects on that list. Because of this, the Commission finds that the proposed project will have significant adverse effects on the environment in terms of water supply and that feasible mitigation measures have not been identified to mitigate for adverse water supply effects, and that therefore the project cannot be found to be consistent with CEQA.

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NOV 12 1999

November 10, 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

VIA FACSIMILE (Without Enclosures) AND
VIA CALIFORNIA OVERNIGHT (With Enclosures)

Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Tami Grove
District Director
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Vadnais Project
Application No. A-96-113
Request for Reconsideration of "De Novo"
Hearing October 13, 1999

Dear Mr. Douglas and Ms. Grove:

This office represents the Applicants in the above-referenced matter, which includes the denial of a Coastal Development Permit in the de novo hearing before the Coastal Commission on October 13, 1999.

I. REQUEST FOR RECONSIDERATION.

The purpose of this letter is to request formal reconsideration of the denial of the permit pursuant to Public Resources Code Section 30627 and 14 Cal. Admin. Code Section 13109.1, et seq.

The grounds for this request for reconsideration of denial of the Project at the de novo hearing is that "an error of fact or law has occurred which has the potential of altering the initial decision." (P.R.C. Section 30627(b)(3)). Further grounds for the appeal is that there is "relevant new evidence." Clearly, this denial pursuant to the de novo hearing is subject to reconsideration pursuant to P.R.C. Section 30627(a)(1), since the action taken by the Commission falls within the category of "[a]ny decision to deny an application for a Coastal Development Permit."

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Subsequent sections of this letter will set forth in greater detail the applicant's request for reconsideration.

II. GROUND'S FOR RECONSIDERATION.

A. Errors Of Law And Fact Form The Basis Of The Commission's Denial Of This Project.

1. Miscitation Of The County Growth Management Ordinance After The Close Of The Public Hearing.

After the close of the public de novo hearing, District Director Grove was handed a note from Kat McConnell, who had previously made a presentation expressly on behalf of the Cambria Community Services District ("CCSD"). Presumably, comments made by the District Director were in some way premised upon this note. The applicant was afforded no opportunity to respond to this post-hearing, ex parte contact which was apparently relayed via Staff to the Commission without an opportunity to reply.

More specifically, a material error of law and fact was presented to the Commission by the District Director regarding the County's Growth Control Ordinance as well as the CCSD's Ordinances. The transcript reads:^{1/}

". . . There is a lot of confusion that is being presented to you, and I guess in the interest of trying to make that clear again, it is very clear that the county's list that is being referred to, does not relate in any way to water. That list was established under the county's growth management ordinance, in order to set up allocations of construction permits, and in fact the section of the ordinance that the applicant's representative refers to, the language talks about residential allocations may be transferred within the Cambria's Community Service District, as long as any such transfer conforms with the district's ordinances. That is not talking in any way relative to water allocations. All this is saying is that there are residential allocations that are set up under the growth management ordinance, in different areas of the county, that are under this alert under the resources management system.

^{1/} California Coastal Commission hearing October 13, 1999, Reporter's Transcript of Proceedings, pg. 32, line 18 through pg. 33, line 17.

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" There are specific allocations of residential construction permits that can be allocated in each of those different areas, and if for some reason one area might not come up to its full residential allocation, then the county could transfer some of those residential allocation construction permits to another area. That has nothing to do with providing water, nor in no way does this ordinance require the merger of any list with the Community Services District."

While one might agree with the District Director that there was confusion concerning these issues, the confusion arose because the District Director referred to the wrong portion of the County ordinance, and completely omitted controlling ordinance provisions which the applicant was referring to. The District Director, apparently, referred to Growth Management Ordinance Section 26.01.072a, "Transfer of allocations," d, "Carry-over of unused Maximum Annual Allocation," and/or e, "Reallocation of expired units," or perhaps Section 26.01.070g(1)(a).

The applicant, however, was referring to a different section of the County's Growth Management Ordinance, which expressly provides in Section 26.01.070g(1)(b):

"Freezing of existing waiting lists. In order to eventually eliminate the need for individual Community waiting lists for services, the list that exists in Cambria as of December 31, 1990, shall be frozen for purposes of administering this title. The County shall obtain a certified copy of the waiting list and all future allocations within each community shall come from the certified list. Any applicant wishing to apply for a dwelling unit allocation that is not on the certified list shall apply to the county for placement on the county's waiting list for Requests for Allocation. At the point in the future when each existing community waiting list is exhausted, all future requests for new dwelling units shall be added to the county's waiting list on a first-come-first-serve basis and all allocations for new dwelling units in the unincorporated county shall be made from the county waiting list. (Emphasis added.)"

Clearly, the County's Growth Management Ordinance expressly contemplates the eventual elimination of the need for "individual community waiting lists for services". The statement that the County List and the CCSD List are unrelated is entirely incorrect. Similarly, CCSD Ordinance No. 14-90, provides:

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"A. Effective 4:00 P.M. on December 31, 1990 Residential Applications for the Water and Sewer Waiting List shall no longer be taken in order to conform with the provisions of Section 26.01.070b(2) [prior numbering system] of San Luis Obispo County Ordinance No. 24777 [Growth Management Ordinance]. From the above date forward only Commercial Applications will be accepted by the District."

Therefore, it is clear that there was a common legislative scheme which has been consistently followed (until this Project was approved) by the County and the CCSD since 1990, to coordinate the allocations under the County's Growth Management Ordinance and allocations for Intent-to-Serve letters by the CCSD.

Since the Commission's last hearing on this matter, we have been advised that litigation was filed against the CCSD concerning many of these same issues. That litigation is entitled Cambria West v. Cambria Community Services District, San Luis Obispo Superior Court Case No. CV 980722. That litigation was subsequently settled through a mediation process, but an extensive and voluminous Administrative Record, including a compilation of all of the CCSD's prior ordinances was prepared. While the CCSD has refused to provide full copies of this extensive Administrative Record, portions which we have obtained include a Declaration from David Andres, who was the prior General Manager of the CCSD. In that Declaration, Mr. Andres indicated that he personally participated in the drafting of Ordinance No. 14-90, which was intended to coordinate the CCSD's Wait List with the County's Growth Management Ordinance. In effect, the two sets of ordinances formed a common and coordinated legislative scheme, despite representations made by the current CCSD Director Kat McConnell to the Commission. Indeed, the common legislative scheme is reflected in the very language of CCSD Ordinance 14-90.

Therefore, a serious error of law and fact occurred in the course of the prior hearing in that there is a clear duty on the part of the CCSD and the County to integrate, in a ministerial manner, their respective Multi-Family Wait Lists. As the Applicants were consistently informed, if in any year the CCSD Multi-Family Wait List is exhausted (i.e., persons are issued Intent-to-Serve letters or defer to the next year to accept the letter) then the next in-line on the County Multi-Family Wait List (this Project) would be offered the Intent-to-Serve letter upon satisfying the CCSD's requirements.

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This misconception of the law, therefore, becomes critically important since the Commission based its denial solely on the fact that the County and the CCSD had not complied with their duties to implement a ministerial administrative scheme to coordinate their respective Wait Lists.

In addition, since the time that the Commission purported to deny this Project, the CCSD Board of Directors has taken action to request from the County Board of Supervisors that any unused allocations from its Single-Family and Multi-Family Wait List for 1999 be carried over to the year 2000 and not allocated to other areas of the County (The Ordinance section to which the District Director referred). The Board of Supervisors in its annual review of the Resource Management System will consider this request in early December, 1999. The documentation concerning this request is not at this time available, but clearly suggests and indicates that (based upon CCSD Staff Reports) that there is a close coordination between the CCSD Multi-Family Wait List and the County's Multi-Family Wait List which requires annual reports and submittals from the CCSD to the County in administering its Growth Management Ordinance. It was a complete misrepresentation to the Commission, as was done by the CCSD Director, that these two lists were unrelated. The long and complex history of the actual administration of these ordinances is to the contrary.

2. The Issue Of Water Supply For This Project Was Never Raised Before The County Board Of Supervisors, Or Even In The Initial Appeal To The Commission Of This Project.

The record is clear that the issue of water availability for this Project was not a basis of appeal presented to either the Planning Commission or to the Board of Supervisors. Indeed, it was not even a portion of the original appeal of the County's approval of this Project. Therefore, the opponents were not aggrieved parties for the purposes of this appeal, having never raised the issue before the Board of Supervisors or Planning Commission at all. This fact would deprive the Commission of jurisdiction over this issue, its sole basis for denial.

3. The Commission Has No Jurisdiction Over This Project.

It is not our intent to restate every basis for reconsideration which has previously been raised by the Applicants and which is already a part of this record. However, after the

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close of the public hearing, the Commission was advised by Staff that the Commission has jurisdiction over this matter because a subdivision was requested which is not a principally permitted use. There was also a misstatement of the Applicants' arguments concerning jurisdiction, that there would be a paradox which would occur because under the LCP hierarchy multi-family residential use is required for this property, while Table O in the County's Land Use Ordinance indicates that the principally permitted use would be commercial. Therefore, if the Applicants had proposed a commercial project, there would be no basis for jurisdiction by the Commission, even though such a use would contradict the controlling, site specific area standards applicable to this specific property. Staff dismissed this argument and mischaracterized it, by saying that since no commercial use was proposed, such an issue was irrelevant, but never explained on the record the paradox which results from the basis on which the Commission asserts jurisdiction.

In addition, as correspondence with the County fully demonstrates, the Commission Staff was approached more than one year ago for a determination as to whether or not the filing of the Coastal appeal tolled the running of the approval of the condominium map. The Commission Staff opined that the relationship between the Coastal Act and the Subdivision Map Act was ambiguous, and that the filing of the Coastal appeal may have no impact upon the map. Upon that basis, the Applicants, during the pendency of the appeal, applied for an extension of the vesting condominium map with the County, in order to avoid a potential later argument reminiscent of the Mid-State Bank Cambria Project, that a County approval had expired.

The point of this background is that: (1) a condominium map is not a use within the meaning of the Coastal Act; and (2) the Coastal Commission's Staff has taken the position that the filing of a Coastal appeal does not control the time limits under the Subdivision Map Act, which in turn leads to the inference that the Commission may have no jurisdiction over the subdivision map. Thus, the Commission Staff has taken inconsistent positions with regard to this Project and the basis of the Commission's jurisdiction: on the one hand the subdivision map creates jurisdiction over the Project, while on the other the filing of the Coastal appeal does not control even the time limits under the Subdivision Map Act. This is a serious error fact and law which should be reversed.

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4. The Commission Failed To Consider Its Prior Actions In Approving Additional Water Supplies For The CCSD.

While the Commission's findings make reference to limited water supplies in Cambria, the Commission did not consider its approval of desalination facilities for the CCSD to supplement its water supplies. Thus, the CCSD has a permitted project which it can use to augment its water supplies, which was an error of fact not considered by the Commission in denying this Project.

5. Incorporation Of Prior Submittals.

The Applicants have previously submitted numerous materials in the form of correspondence, supporting documents, and other information which demonstrates that the Commission's decision erred as a matter of law. These materials include five (5) Volumes of supporting documentation submitted at the October 13, 1999, findings on revocation and de novo hearings. These materials raise additional errors of fact and law and are incorporated herein by this reference.

B. New Information Has Become Available Which Justifies Reconsideration Of The Denial Of This Project.

Since the Commission took its action, additional information has been developed by the CCSD, as well as a full Administrative Record in the Cambria West application, including a comprehensive legislative history, declarations, permit history and other critical documents which were unavailable at the time of the Commission's consideration of this matter. The CCSD has produced only a portion of these documents, and has to date not provided the entire record in that matter. Further, the County Board of Supervisors will consider specific requests from the CCSD to reserve unused allocations for the year 2000, which documents were not available at the time of the Commission's actions in this matter in early December.

Perhaps most important, however, is the fact that based upon the Commission's findings that the County and the CCSD are allegedly not close to resolving issues of their two separate Multi-Family Wait Lists, the Applicants have chosen to force the resolution of that issue through the filing of litigation against both the County and the CCSD in the Superior Court of the County of San Luis Obispo to resolve this issue. Commissioner Dettloff highlighted the need for this litigation by commenting that "there

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is really no way for this applicant to obtain that very needed service," referring to water service.

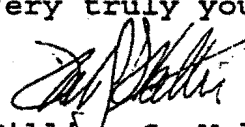
Based upon the Commission's action in denying this Project solely due to the inaction of the County and the CCSD, the Applicants seek to directly address this issue through the filing of litigation to resolve these various issues once and for all.

It is clear that the Commission should reconsider its decision denying this Project until such time as this pending litigation addressing the central issue upon which the Commission based its denial has been resolved. The Commission's denial of this Project, therefore, is premature until such time as the Court has determined the Applicants' contentions that there is a ministerial duty based upon a common legislative scheme to coordinate the administration of the County and CCSD Multi-Family Wait Lists. These allegations are set forth in considerable detail in the Petition and Complaint, which is filed concurrently with this request for reconsideration and will be pending judicial determination.

If the Commission does not reconsider its decision, then it is entirely possible that the Applicants could prevail in their litigation with the CCSD and the County, resolve the issue of the various Wait Lists, and then unjustly have its Project denied upon the grounds which a Court later remedied.


It is respectfully requested that the Commission grant reconsideration of its denial.

Very truly yours,


William S. Walter

WSW:ckb

As the Applicant's representative of record, I concur with, join in, and authorize this request for reconsideration.


Joseph Boud

cc: Dean D. Vadnais (via U.S. Mail)
Joseph Boud (via U.S. Mail)

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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

FRONT STREET, STE. 300

CAMBRIA, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200



January 3, 1996

Gerald H. Gray
P.O. Box 1528
Cambria, CA 93428

SUBJECT: San Luis Obispo County Growth Management Ordinance

Dear Mr. Gray:

As mentioned in your letter, the Coastal Commission staff report on the Cambria desalination project stated, "The referenced growth management ordinance has never been certified by the Commission and so is not legally effective in the coastal zone to limit growth." This assertion was based on our opinion that this local land use regulation is not legally effective in the coastal zone until it is certified by the Coastal Commission.

Prior to the desalination plant staff report, our staff briefly discussed with the County the fact that the growth management ordinance has not been certified. We do not know if, or when, the County might be submitting the growth management ordinance as an amendment to the LCP. With respect to the proposed North Coast Area Plan update, the County has the two options identified in your letter:

1. delete all references to the ordinance or,
2. submit the ordinance along with the proposed update.

Thank you for your interest in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Diane Landry".

Diane Landry
District Counsel

c: San Luis Obispo County

EXHIBIT 4 2

A-3-96-113-R



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

February 5, 1996

Mr. Gerald Gray
P.O. Box 1528
Cambria, CA 93428

RECEIVED
FEB 08 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

ALEX HINDS
DIRECTOR
BRYCE TINGLE
ASSISTANT DIRECTOR
ELLEN CARROLL
ENVIRONMENTAL COORDINATOR
BARNEY MCCAY
CHIEF BUILDING OFFICIAL
NORMA SALISBURY
ADMINISTRATIVE SERVICES OFFICER

Dear Mr. Gray:

Thank you for your recent letter regarding your concerns that the San Luis Obispo Growth Management Ordinance requires California Coastal Commission certification. As you may know, the County's position has been that Title 26 of the County Code (the Growth Management Ordinance) is a county-wide regulation and not a part of any Coastal Zone land use regulatory document. Thus, it is not subject to Coastal Commission certification.

However, in response to the concerns raised by you at recent hearings and in your recent letter, I personally met with Coastal Commission staff on January 12, 1996 to discuss this matter. As a result, I believe that both Coastal Commission and County staff left the meeting with a greater understanding of the complex set of circumstances surrounding this issue and a renewed commitment to continued dialogue before any final determinations are made.

In conclusion, I agree with your statement that in the current economic climate, the San Luis Obispo County Growth Management Ordinance has not unduly restricted lot owners interested in building. I also agree that the matter should be resolved in order to avoid further ambiguity.

Towards that end, I look forward to continued discussions with Coastal Commission staff and your continued participation in the North Coast Area Plan Update.

Sincerely,

Alex Hinds

ALEX, HINDS, DIRECTOR
Department of Planning and Building

c: Laurence Laurent, Second District Supervisor
Diane Landry, District Counsel, Coastal Commission

e:\wpdocs\AH\C9600031.LTR

EXHIBIT 4

A-3-96-113-R

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2 PIERO C. DALLARDA, Bar No. 181497
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9 Telephone: (805) 543-4171

10 Attorney for Applicant Cambria West, A General Partnership

11 BOARD OF DIRECTORS

12 CAMBRIA COMMUNITY SERVICES DISTRICT

13 CAMBRIA WEST, A GENERAL
14 PARTNERSHIP,

15 Applicant,

16 v.

17 CAMBRIA COMMUNITY SERVICES
18 DISTRICT, A PUBLIC AGENCY,

19 Respondents.

BRIEF IN SUPPORT OF
APPLICATION FOR DECLARATION
OF RIGHT TO WATER SERVICE

Date: December 7, 1998
Time: 7:00 p.m.
Place: 2284 Center Street,
Cambria, CA

20
21
22
23
24
25
26 EXHIBIT 5

27 A-3-96-113-R
28

1 received from Mr. Bradley and from Mr. Topping which are the
2 subject of the Application and this brief are the first letters
3 from the District stating that Tract 1804 is ineligible for water
4 service.

5
6 B. Historical Review of the District's Allocation
7 Ordinances.

8
9 Historically, the District provided water service on an as
10 needed basis with no allocation limitations. The District began
11 allocating water service in response to permit requirements
12 imposed by the California Coastal Commission. Subsequently, the
13 District also modified its allocation ordinances to conform to the
14 County's Growth Management Ordinance. Following is a
15 chronological summary of pertinent events related to the
16 development of the District and County's allocation regulations.

17
18 1. Ordinance 10-81.

19
20 On August 17, 1981, the District adopted Ordinance 10-81.
21 Section 1.a. of Ordinance 10-81 provides, in pertinent part, that
22 "the District will issue a water and sewer permit on a first come,
23 first served basis, subject to the quota limitations and/or
24 requirements imposed by other governmental agencies." No quota
25 limitations are otherwise specified in the ordinance. (See,
26 Document Index No. 3.)

27
28 2/ (...continued)
been imposing water stand by charges to Tract 1804.

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1 2. Ordinance 2-82.

2
3 On January 18, 1982, the District adopts Ordinance 2-82. The
4 recitals in Ordinance 10-82 recognize two facts. First, Coastal
5 Commission Permits 132-18 (as amended) and 132-20 (as amended)
6 limit annual allocations of water service connections to 125; and,
7 second, a waiting list is established because the annual demand
8 for water service connections exceeds the allocation allowed by
9 the Coastal Commission Permits. (See, Document Index No. 164.)
10

11 3. Ordinance W-82.

12
13 On October 18, 1982, the District adopted Ordinance W-82, a
14 comprehensive ordinance establishing rules, regulations and fees
15 regarding water supply and usage. Ordinance W-82, however, does
16 not repeal either Ordinance 10-81 or 2-82 and does not contain any
17 additional provisions regarding allocations. (See, Document Index
18 No. 4.)
19

20 4. Ordinance 9-84.

21
22 On August 27, 1984, the District adopts Ordinance 9-84.
23 Ordinance 9-84 amends portions of Ordinance 10-81 in regard to the
24 following pertinent provisions:
25

- 26 a. Section 1.A. states, in part, that "the
27 District will issue water and sewer permits on
28 a first come, first served basis, subject to

1 the quota limitations and/or requirements
2 imposed by other governmental agencies[.]”;

3
4 b. Section 1.A.(1) states, in part, that pursuant
5 to the Coastal Commission permits, the
6 District will allocate water capacity on the
7 basis of 20% for recreation-commercial and 80%
8 for residential; and,

9
10 c. Section 1.A.(4) states, in pertinent part:
11 “Sufficient reserves of water must be set
12 aside to assure that all existing contractual
13 commitments are honored.” (See, Document Index
14 No. 5.)

15
16 5. 1985 Contract.

17
18 As set forth above, on June 5, 1985, Cambria West and the
19 District entered into the 1985 water service contract which amends
20 and supersedes the 1969 Agreement. (See, Leimert Decl., Exhibit
21 B.)

22
23 6. Ordinance 2-86.

24
25 On February 24, 1986, the District adopted Ordinance 2-86.
26 Ordinance 2-86 modifies the method of allocating commercial and
27 residential water service connections to conform to the
28 limitations imposed by the Coastal Commission Permits. For

EXHIBIT 5
A-3-96-113-R 4

1 instance, and without limitation:
2

3 a. Section 1.5 finds that Ordinance 2-86 will not
4 adversely affect the available housing supply
5 because the District does not limit the number
6 of housing units allowable under the
7 District's current regulations and Coastal
8 Commission Permits; and,
9

10 b. Article 2.5 adopts a system of allocating
11 water service connections based on Equivalent
12 Dwelling Units (EDUs). Annually the District
13 will not issue residential water service
14 permits totaling more than 125 EDUs nor
15 commercial water service permits totaling more
16 than 31.25 EDUs. 100 residential EDUs are
17 allocated to single family residential
18 projects and 25 residential EDUs are allocated
19 to multi-unit residential projects; and,
20

21 c. Section 6 of Ordinance 2-86 explicitly states
22 that section 1.A.(4) of Ordinance 9-84,
23 regarding the reservation of reserves to honor
24 the District's contractual commitments, is not
25 repealed. (See, Document Index No. 6.)
26

27 EXHIBIT 5 5

28 A-3-96-113-R

1 7. Resolution 31-88.

2
3 On December 12, 1988, the District adopted Resolution 31-88
4 which accepts the water facilities constructed and dedicated by
5 Cambria West pursuant to the 1985 Agreement. The facilities
6 accepted included a water tank, fee title to the tank site and the
7 water service improvements for Tract 543. The cost of
8 constructing the facilities accepted by the District and the value
9 of the land exceeded \$250,000.00. (See, Leimert Decl., ¶¶ 5,6.)
10 The facilities accepted by the District also included water
11 transmission lines and fire hydrants located on Tract 1804 and
12 intended to serve Tract 1804. (See, Leimert Decl., ¶¶ 5,6.)
13

14 8. Ordinance 1-89.

15
16 On March 27, 1989, the District adopted Ordinance 1-89.
17 Ordinance 1-89 is an emergency ordinance intended to control water
18 use under drought conditions. This ordinance does not repeal or
19 directly modify the ordinances mentioned above regarding the
20 District's allocation system, but it does superimpose a system of
21 restricting water supply upon findings of limited water supply
22 conditions. (See, Document Index No. 157.)
23

24 9. Filing Of Tentative Map for Tract 1804.

25
26 On August 1, 1989, Cambria West filed a vesting tentative map
27 with the County for Tract 1804. Although initially rejected by
28 the County, it was subsequently deemed complete effective

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1 September 1, 1989, pursuant to a settlement agreement entered into
2 between Cambria West and the County.^{4/} (See, Document Index No.
3 205; see also Leimert Decl., Exhibit E.)
4

5 10. County Ordinance 2412.
6

7 On August 23, 1989, the County adopted Ordinance 2412 which
8 is the first in a series of interim urgency growth management
9 ordinances. The ordinance establishes a limit on building permits
10 for new residential units located in the unincorporated areas of
11 the County. The limitation is equal to 2.5% of the existing
12 households in the County. Ordinance 2412 exempts building permits
13 for parcels created through vesting tentative maps. (See, Document
14 Index Nos. 31 and 32.)
15
16
17

18 **EXHIBIT 5 7**

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19 ^{4/} The events related to the County's rejection of the initial
20 map have some bearing on the question of water service to
21 Tract 1804. Cambria West has been caught in several
22 contradictory determinations by the County regarding water
23 service. At times Cambria West has been told that it cannot
24 obtain water service from the District and must use well
25 water because Tract 1804 is outside the Urban Reserve Line.
26 At other times, however, Cambria West was told that it
27 cannot use well water and must use District water because it
28 is inside the District boundaries. Ultimately it was
agreed that the vesting map application would be accepted on
the premise that during the processing of the application,
Cambria West and the County would determine whether water
service would come from wells or from the District. The
application was resubmitted and then rejected again by the
County; this time on the basis that the proposed 18 lots
exceeded the allowable density. A dispute on the density
issue resulted in a lawsuit between Cambria West and the
County. When the lawsuit was settled on February, 1992, the
County agreed to process the vesting map application and to
deem it complete on September 1, 1989.

1 11. District's Letter to County Dated September 14,
2 1989.

3
4 On September 14, 1989, the District sent a letter to the
5 County Board of Supervisors addressing the County Growth
6 Management Ordinance. The letter asked that the County exempt the
7 entire Cambria area from the Growth Management Ordinance, or, in
8 the alternative that the County modify the Growth Management
9 Ordinance. The requested modifications included a request to have
10 the County allocation list coincide with the District's waiting
11 list. (See, Document Index No. 35.)
12

13 The letter did not state why it was requesting modifications
14 to the Growth Management Ordinance, but the reasons are obvious.
15 If the Growth Management Ordinance did not allocate building
16 permits in sync with the District's allocation of water service
17 connections, then the result would be a double layered system of
18 obtaining building permits and water services that would
19 effectively preclude property owners from obtaining the same
20 entitlements at the same time. In short, property owners who had
21 risen to the top of the District's waiting list may likely not be
22 able to receive a building permit under the County's allocation
23 system. Likewise, a property owner who received a building permit
24 under the County allocation system may not be entitled to a water
25 service connection under the District's allocation system. The
26 net effect of such two incompatible ordinances would be to
27 unfairly deny property owners of the opportunity to develop their
28 property. Ironically, Cambria West is facing the same problem at

1 this time. After working for nearly ten years to obtain approval
2 from the County of a tract map, Cambria West is now told by the
3 District that Tract 1804 is not eligible for water service even
4 though, as shown below, the Growth Management Ordinance expressly
5 exempts it.

6
7 12. County Ordinance 2440.

8
9 On January 9, 1990, the County adopted Ordinance 2440, a
10 second interim urgency growth management ordinance. Ordinance
11 2440 contains a provision allocating building permits in Cambria
12 based on the District's waiting list, as had been requested in the
13 District's September 14, 1989 letter. On July 9, 1990, the County
14 adopted a third interim urgency growth management ordinance which
15 extends the provisions of Ordinance 2440. Ordinance 2440, as
16 amended, exempted from its provisions building permits for parcels
17 with already filed vesting tentative maps. (See, Document Index
18 No. 41.)

19
20 13. District Letter to County Dated August 2, 1990.

21
22 On August 2, 1990, the District sent another letter to the
23 County requesting changes to a proposed permanent growth
24 management ordinance. The requested changes are intended to
25 further coordinate the District's system of allocating water
26 service connections with the County's system of allocating and
27 issuing building permits. (See, Document Index No. 44.)

28 EXHIBIT 5

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1 14. County Ordinance 2477.

2
3 On October 23, 1990, the County adopted Ordinance 2477, a
4 permanent growth management ordinance that establishes the
5 foundation of the Growth Management Ordinance currently in place
6 with the County. (See, Document Index No. 243.) Ordinance 2477
7 contains a 2.3% cap on residential buildings in the unincorporated
8 areas. As with all the prior interim growth management
9 ordinances, Section 26.01.034(c) of Ordinance 2477 exempts vesting
10 tentative tract maps filed prior to July 10, 1990. Thus, by its
11 very terms, the Growth Management Ordinance does not apply to
12 Tract 1804, since the vesting tentative map for Tract 1804 has
13 been deemed filed on September 1, 1989. (See, Document Index No.
14 205.)

15
16 Section 26.01.070(h) of Ordinance 2477 sets out specific
17 provisions related to the Cambria area.^{5/} These provisions
18 expressly recognize that the District ordinances are to be
19 compatible with the County's General Plan and to "carry out the
20 County's purposes, goals and objectives." Thus, the allocation of
21 residential units in Cambria is provided as follows:

- 22
23 a. The number of allocations within the District
24 boundaries and within the Urban Reserve Line
25 is not to exceed 2.3% of the total dwelling
26 units located within these lines. The

EXHIBIT 5

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27
28 ^{5/} Of course, the exemption provisions for tentative maps still
apply to the Cambria area, and Tract 1804 remains exempt.

1 allocation of building permits is to be taken
2 from the District's water service waiting
3 list;^{6/}
4

5 b. To eliminate the need for individual water
6 service waiting lists, the existing Cambria
7 waiting list shall be frozen effective
8 February 15, 1990.^{7/} Any property owner
9 wishing to apply for a dwelling unit
10 allocation that is not on the District's
11 existing waiting list shall apply to the
12 County for placement on the County's waiting
13 list. When the existing Cambria waiting list
14 is exhausted, all future requests shall be
15 added to the County's waiting list on a first-
16 come-first-served basis and all allocations
17 shall be made from the county waiting list for
18 the unincorporated areas of the County; and,
19

20 EXHIBIT 5 "

21 A-3-96-113-R

22 ^{6/} This provision clearly provides that properties located
23 within the Urban Reserve Line ("URL") have a separate
24 allocation system from properties located outside the URL.
25 That is, properties located outside the Urban Reserve Line
26 receive allocations base on the 2.3% cap as applied to the
27 dwelling units located in the overall unincorporated areas
of the County. As set forth above, Tract 1804 is exempt
from the Growth Management Ordinance. Even if it were not,
however, because Tract 1804 is outside the URL, it would
receive an allocation based on the County wide cap, and not
the cap for properties within the URL.

28 ^{7/} The effective date was later changed to December 31, 1990,
to conform to the cutoff date adopted by the District in
Ordinance 14-90.

1 c. "Grandfathered" units shall be limited to four
2 per year. (See, Document Index No. 243.)
3

4 15. Ordinance 14-90.
5

6 On November 19, 1990, the District adopted Ordinance 14-90 to
7 track the Growth Management Ordinance. (See, Document Index No.
8 47.) Ordinance 14-90 amends portions of District Ordinance W-82.
9 Specifically subsections A, B, and C of section 2.5-5 of Ordinance
10 W-82 is amended as follows:
11

12 a. Subsection A added a provision stating that
13 effective December 31, 1990 Residential
14 Applicants for the Water Waiting List shall
15 "no longer be taken in order to conform with
16 the provisions of Section 26.01.070h(2) of San
17 Luis Obispo County Ordinance No. 2477."
18

19 Subsection A was also amended to state that
20 applicants for commercial projects could still
21 submit applications for water service.

22 b. Subsection B was amended to state that all
23 residential applications shall be rejected.
24

25 c. Subsection C was amended to clarify that it
26 only referred to the processing of commercial
27 applications.
28

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1 The amendments described in Ordinance 14-90 did not change
2 pertinent *allocation* provisions contained in District Ordinances
3 2-86 and 9-84. Indeed, these provisions remained unmodified and
4 are summarized as follows:

- 5
- 6 a. Section 1.A.(4) of Ordinance 9-84 remains
7 unchanged by Ordinance 14-90 and still
8 obligates the District to set aside sufficient
9 reserves of water to assure that all existing
10 contractual commitments are honored;
- 11
- 12 b. Section 2.5-3 of Ordinance 2-86 also remains
13 unchanged by Ordinance 14-90 and preserves the
14 allocation of 125 EDUs for residential
15 projects and 31.25 for commercial.^{g/} In fact,
16 Ordinance 14-90 does not state that the
17 District is abrogating its prior system of
18 allocating 125 residential EDUs per year.
19 (See, Document Index No. 6.)

20

21

22

23

24 ^{g/} Subsequently, on June 26, 1995, the District adopted
25 Ordinance 2-95 which contains a new section 2.5-3. It
26 states that water services provided to new customers shall
27 come from one of two sources; allocations from the "Existing
28 Commitments" list, or, allocation from the District Waiting
 List in accordance with District ordinances. It does not
 appear that the District intended for this new section 2.5-3
 to replace section 2.5-3 as stated in Ordinance 2-86. This
 conclusion is reached because the District continues to
 allocate commercial water service connections based on the
 31.25 maximum described in section 2.5-3 of Ordinance 2-86.

1 C. Summary of District and County Allocation Ordinances.

2
3 The historical review of the District allocation ordinances
4 shows that, for the most part, the District's imposition of
5 limitations on water service has come from directives imposed upon
6 the District by the Coastal Commission and by the County. The
7 allocation of 125 residential EDUs is the direct result of
8 restrictions imposed by the Coastal Commission.

9
10 As to the County, the District was a reluctant participant in
11 the County's legislative growth management plan. The District's
12 first choice was to be exempted from the Growth Management
13 Ordinance. The County did not offer this option, and the only
14 other option was for the District to work together with the County
15 in the adoption of a common legislative plan that included
16 compatible provisions.

17
18 While the District and the County worked to develop
19 compatible ordinances, the differences in their roles is apparent.
20 The function of the District is to provide water service.^{2/} The
21 function of the District is not to engage in land use planning or
22 the regulation of growth.^{10/} The County, on the other hand, has
23 the power and authority to regulate growth, but it does not
24 provide water service. Nonetheless, the practical impact of the
25 County's growth control ordinance is so pervasive that it.

26
27 ^{2/} It is recognized that the District performs many other
28 functions, but water service is the relevant function in
this matter.

^{10/} See, Government Code section 61600.

EXHIBIT 5 14

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1 effectively overrides the District's system of water service
2 allocation.

3
4 In furtherance of the common legislative plan, and
5 recognizing the District's subordinate role in the County's growth
6 management plan, the District essentially left its preexisting
7 allocation system in place, froze its existing residential waiting
8 list and deferred to the allocation system implemented by the
9 County. (See, Declaration of Dave Andres, "Andres Decl.", ¶¶ 4-
10 11; see also, Declaration of Reginald Perkins, "Perkins Decl., ¶¶
11 7,8.)^{11/} This situation is evidenced by the fact that the
12 District, in Ordinance 14-90 did not repeal the allocation
13 provisions of Ordinances 9-84 or 2-86. The only express change in
14 the District ordinances is the statement in Ordinance 14-90 that
15 residential applications shall no longer be taken "in order to
16 conform with the provisions of Section 26.01.070h(2) of the San
17 Luis Obispo County Ordinance 2477." (See, Document Index No. 47.)
18

19 The remaining particulars of the allocation system are
20 contained in the Growth Management Ordinance. This deferral of
21 legislative authority is expressly recognized in the provisions of
22 County Ordinance 2477 which states that the District is allocating
23 resources so as to be compatible with the County ordinances and
24 "to carry out the county's purposes, goals and objectives." (See,
25 Section 26.01.070.h, Document Index No. 243.) Although perhaps
26 begrudgingly, the District has simply recognized the County's.

27
28 ^{11/} Both declarations and accompanying exhibits are submitted
concurrently.

EXHIBIT 5 15
A-3-96-113-R

1 allocation system, but at the same time has left its underlying
2 allocation system in place.

3
4 D. The District and County's Administration of the Water
5 Service Allocations and Building Permit Allocations.
6

7 As further evidence of the common legislative plan described
8 above, since adoption of County Ordinance 2477 and District
9 Ordinance 14-90, the District and the County have generally acted
10 in a manner consistent with the ordinances described above. The
11 District has generally deferred to the County's system of
12 prioritization and has issued water service connections only to
13 property owners receiving an allocation from the County pursuant
14 to the Growth Management Ordinance.
15

16 1. Requests for Allocation.
17

18 Under the terms of the Growth Management Ordinance, in the
19 fourth quarter of each year the County Board of Supervisors is to
20 review a Resource Management System report to evaluate the
21 proposed growth rate for the coming year. Each year the County
22 has retained the 2.3% cap specified in the initial ordinance.
23 Each year the District has asked the County to confirm the number
24 of allocations allowed for properties within the District.^{12/} Each
25 year the County has advised the District of the allocations
26 available in Cambria, specifying the number allocated to single
27

28 ^{12/} Actually, it is more correct to refer to property within the
Urban Service Line within the District.

EXHIBIT 5 16

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1 family residences, to multi-family residences and to grandfathered
2 units. The District has only issued intent to serve letters and,
3 ultimately, water connection permits for properties that have
4 received an allocation from the County.

5
6 The District has periodically requested that the County carry
7 over expired or unused allocations from one year to another. The
8 District, however, has only issued connection permits for
9 properties receiving the right to carry over the allocations.

10
11 2. Referrals to the County.

12
13 The District has ceased accepting new applications for
14 residential water service. (Andres Decl., ¶ 8.) Persons
15 requesting residential water service applications are referred to
16 the County. (Andres Decl., ¶ 8.) The County receives the
17 applications and maintains a list of properties in Cambria that
18 have submitted applications. (Andres Decl., ¶ 8.) These property
19 owners are told that the list maintained by the County will
20 establish their priority to water service from the District once
21 the existing waiting list is exhausted.

22
23 3. District Requests to the County for Modification.

24
25 The District has submitted various requests to the County
26 asking that the Growth Management Ordinance be modified. Some of
27 these requests have been granted, and some have not. The District
28 has administered its water service allocations in accordance with

1 the modified ordinances actually adopted by the County. Following
2 are some examples of requested modifications:

3
4 a. Request to Modify Freeze Date.

5
6 Shortly after the Growth Management Ordinance was adopted,
7 the District asked that the County modify the freeze date for the
8 waiting list and change it from February 15, 1990 (the date
9 contained in County Ordinance 2477) to December 31, 1990 (the date
10 contained in District Ordinance 14-90). This request was granted
11 and the Growth Management Ordinance was modified by the County
12 accordingly.

13
14 b. Request To Modify Or Eliminate Allocation of
15 Grandfathered Meters.

16
17 The District has repeatedly asked that the County either
18 modify or eliminate the allocation of grandfathered meters. The
19 Growth Management Ordinance limits grandfathered allocations to
20 four per year. The County has not changed the growth management
21 ordinance and the District has limited its water service
22 allocations to that allowed by the County.

23
24 c. Request For Transfer of Allocations.

25
26 The District has asked that the transfer of allocations in
27 Cambria be allowed so as to make the County Ordinance consistent
28 with the transfer provision of the District Ordinances.

EXHIBIT 5

18

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1 d. Request for Modification of Carry-Over
2 Provisions.
3

4 The District has asked that the County modify the carry over
5 provisions of the Growth Management Ordinance. Section
6 26.01.070.h.(1) of the original Growth Management Ordinance stated
7 that any unused allocation in Cambria would become available to
8 the county wide allocation. The District would issue intent to
9 serve letters equal to the full number of allocations allowed
10 under the Growth Management Ordinance. Some of the property
11 owners receiving the intent to serve letters were either unable to
12 complete the building permit process within the time allowed by
13 the Growth Management Ordinance or they voluntarily withdrew their
14 application to the County. Many of these allocations were
15 effectively lost, and could not be used to the benefit of property
16 owners in Cambria. The County modified the Growth Management
17 Ordinance to allow unallocated units to be added to the units in
18 Cambria. (See, County Ordinance 2743 adopted December 5, 1995,
19 Document Index No. 93.)
20

21 4. Allocation Exemptions.
22

23 Consistent with the District's recognition of the allocation
24 limitations imposed by the County Growth Control Ordinance, the
25 District has also recognized exemptions allowed under the Growth
26 Management Ordinance. Section 26.01.034.b of the Growth
27 Management Ordinance provides an exemption for affordable housing
28 units qualifying as such under State law and the Coastal Zone Land

EXHIBIT 5 19

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1 Use Ordinance.^{13/} In April 1993, the District received a request
2 from a property owner requesting a water service connection for an
3 affordable housing project. Thereafter, on July 26, 1993, the
4 District adopted Ordinance 4-93 which provides water service
5 allocations to projects that qualify as affordable housing
6 projects under applicable State and County law.

7
8 5. Stand By Fees.

9
10 Pursuant to Government Code sections 61765 and 61765.12, the
11 District has for several years imposed water standby fees on
12 property in the District. Throughout the years Cambria West has
13 paid these standby fees on that portion of Tract 1804 located
14 within the District. (See, Document Index No. 251.)

15
16 In 1993, the District decided to omit the assessment of
17 standby fees for properties that did not have the opportunity to
18 obtain water service from the District. In June, 1993, the
19 District adopted a series of resolutions addressing water standby
20 fees; specifically 6-93, 7-93, 20-93 and 25-93. Pursuant to these
21 ordinances the District eliminated the water standby fees for
22 unimproved properties that were not on either the District waiting
23 list or the County's "Building Permit Waiting List." Clearly this
24 was done in recognition that unimproved properties not currently
25 on either of these two lists did not have a sufficient expectation

26
27 ^{13/} There are only four exemptions under the Growth Management
28 Ordinance, only three of which have potential application to
the District. One is the affordable housing exemption, the
second is the vesting map exemption and the third refers to
the URL.

EXHIBIT 5

20

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1 of future water service from the District to justify assessing the
2 property for standby fees.

3
4 Implicit in the District's decision to continue assessing
5 standby fees on property included on the District list and the
6 County list as well is the premise the placement on both of these
7 lists entitled property owners to some form of water service
8 priority. In other words, the District, in its taxing decisions,
9 has recognized that the County list provides the property owners
10 on the list with a place in line for water service, even though it
11 is a list maintained by the County. This indicates that the
12 District has deferred to the allocation system in the Growth
13 Management Ordinance. The District is thus taxing property within
14 its boundaries in a manner that is squarely within the allocation
15 system contained in the Growth Management Ordinance.

16
17 More important, under the District's taxing decisions, Tract
18 1804 continues to be assessed the standby charges. Resolution 20-
19 93 list APN numbers 013-081-039 and 013-081-049 both as being
20 assessed a standby charge *for water*. Clearly, this is a
21 recognition by the District that Tract 1804 has an entitlement to
22 water, even though it is not on either the District list or the
23 County list. As set forth in this Application, the entitlement
24 arises by contract and by existing District ordinances, and this
25 entitlement is preserved by virtue of the exemption contained in
26 the Growth Management Ordinance for vesting tentative maps.

27 ~~EXHIBIT~~ 5

21

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1 III. DISCUSSION

2
3 The denial of water service eligibility by the District is
4 not supported by the District or the County's applicable
5 ordinances, is a violation of the District's obligations and
6 Cambria West's rights under the contracts and leads to
7 unconscionable and unjust results.

8
9 A. The District Has A Ministerial Duty To Follow Its
10 Ordinances And The 1985 Agreement

11
12 As a public entity, the District has a clear, ministerial and
13 mandatory duty to follow its own ordinances and to refrain from
14 making decisions which are arbitrary, capricious or entirely
15 lacking in evidentiary support and/or which violate Cambria West's
16 rights. The District also has a mandatory ministerial duty to
17 abide by the terms of its agreements with Cambria West. Indeed,
18 although the District had wide discretion to enter into the
19 agreements, once the District chose to do so, it assumed the duty
20 to abide by their terms.

21
22 B. Tract 1804 Is Entitled To Water Service Under The
23 District and County Ordinances.

24
25 Under sections 26.01.034(c) and 26.01.070(g) (1) of the
26 Growth Management Ordinance, Tract No. 1804 is not subject to any
27 limitations, allocations or moratoriums on water services because
28 it is a vesting tentative map filed prior to July 10, 1990, and is

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1 outside the URL and, thus, not subject to the District's cap and
2 waiting list requirements. Accordingly, the District cannot rely
3 on those ordinances to deny Tract 1804 water services. It is the
4 District's duty to provide water services to Tract 1804, and the
5 District has no legal or practical reason not to do so. In fact,
6 the District's denial of water services interferes with the
7 County's housing supply aims and contradicts the District and
8 County common legislative scheme.
9

10
11 1. The District Has The Capacity To Provide Water
12 Services To Tract 1804.

13
14 It should be recognized that the limitations of the Growth
15 Management Ordinance, while superimposed on the District
16 ordinances, are not limitations premised on a lack of water
17 resources. Existing water resources support the issuance of 125
18 residential EDUs per year, plus commercial uses. Since the
19 adoption of District Ordinance 14-90, the District has withheld
20 issuance of water service connections that it had the resources to
21 provide, and it has done so solely to accommodate the legislative
22 goals of the Growth Management Ordinance. (Perkins Decl., ¶¶ 10²⁴
23 7,8.) 54
24

25 Based on the District's underlying resource allocation
26 ordinances, the District has the water resources sufficient to
27 serve the 18 lots contained in Tract 1804.^{14/} Water service

28 ^{14/} In the eight years since the adoption of Ordinance 14-90 it
EXHIBIT 5 23 (continued...)

1 connections are to be allocated by the District so as to be
2 compatible with the Growth Management Ordinance, and although the
3 County system is an under-utilization of the District's water
4 resources, the common legislative plan is for the District to
5 follow the plan adopted by the County. (Perkins Decl. ¶ 7.)
6 Therefore, the only issue relative to the question of Tract 1804's
7 water service entitlement is determined by looking to the
8 allocation system superimposed by the County.^{15/}
9

10 The underlying District Ordinance which remain in force
11 subsequent to Ordinance 14-90 retain express provisions requiring
12 the District to maintain a reserve of water to honor contractual
13 commitment (Section 1.A.(4) of Ordinance 9-84). The District has
14 retained its prior allocation of system of 125 residential EDUs
15 per year. These provisions give the District the power and the
16 obligation to issue water service connections to Tract 1804, so
17 long as the allocation of resources to Tract 1804 is consistent
18 with the provisions of the Growth Management Ordinance.
19

20 ^{14/} (...continued)
21 is estimated that the District has withheld approximately 50
22 water service connections per year (a total of 400) that,
but for the growth management ordinance, would otherwise be
available under the District ordinances.

23 ^{15/} As discussed below, the District cannot withhold available
24 water resources to restrict the housing supply. Not only
25 does Government Code section 61600 not grant the District
26 power to control housing, any agency which adopts ordinances
27 resulting in the restriction of the supply of housing must
28 make express findings justifying the restrictions. See,
Government Code § 65863.6 and Evidence Code § 669.5. In
fact, when the District adopted its 125 EDU allocation
system in ordinance 2-86, it expressly found that the
allocation system will not adversely affect the available
housing supply on the basis that the allocation system did
not limit the housing units allowable under the District
regulations or Coastal Permit (Section 1.5). **EXHIBIT 5** 24

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2. Tract 1804 Is Entitled To Water Services Under The Current Common Legislative Plan.

The allocation system incorporated into the Growth Management Ordinance provides as follows:

Residential properties located within the Urban Reserve Line are subject to a 2.3% cap on allocations, based on existing dwellings within the Urban Reserve Line. (Andres Decl., ¶ 10.) The County sets this cap each year. Generally the cap has been approximately 77 allocations each year. The allocations are taken from those next in line on the District's residential water service waiting list.^{16/} Tract 1804 is not located within the Urban Reserve Line so this provision of the Growth Management Ordinance is not applicable to Tract 1804.

Allocations for residential properties located outside the Urban Reserve Line are not taken from the District's waiting

^{16/} A special note should be made about this waiting list. Since adoption of the growth management ordinance, this list has really taken on a different purpose than is served prior to the growth management ordinance. The list is being used by the County to allocate building permits, and the District will issue water service connections to these property owners. The list is not being applied to all the property within the District since it only applies to property within the Urban Reserve Line. The County's list will replace the District list, once the District list is exhausted. The list is in reality irrelevant to the issues regarding Tract 1804, and the manner in which it is treated in the growth management ordinance is only important to show that the District truly has deferred to the County's system of allocation.

1 list.^{17/} These properties receive allocations based on the 2.3%
2 cap applicable to the unincorporated areas of the County.
3 Therefore, if Tract 1804 were subject to the allocation provisions
4 of the Growth Management Ordinance, which is not, then allocations
5 are issued based on the County wide cap.
6

7 Allocations for parcels created through a vesting tentative
8 tract map filed with the County prior to July 10, 1990 are exempt
9 for the allocations restrictions of the Growth Management
10 Ordinance. Therefore, the lots in Tract 1804 are not subject to
11 any allocation restrictions arising under the Growth Management
12 Ordinance.
13

14 The District has no need or basis to deny water service on
15 the basis that the County allocation system restricts building
16 permits. The District has reserved water to honor contractual
17 commitments and it has the power and duty to issue water service
18 connections to Tract 1804 upon request.
19

20 The District is not justified in withholding service to
21 accommodate the growth control aims of the County. In fact, to
22 deny water service to Tract 1804 would be to interfere with the
23 housing supply aims of the County.
24

25 In fact, The District's denial of water service to Tract 1804
26 is a dramatic reversal of the regulatory hierarchy that has

27
28 ^{17/} There are only two property owners with properties located
outside the Urban Service Line but within the District
boundaries. These are Cambria West and Josh Brown.

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1 existed to date. Whereas in the past the District properly could,
2 and did make findings that its allocation ordinances did not
3 adversely affect the available housing supply (See, section 1.5 of
4 District Ordinance 2-86), this is no longer the case. The
5 District could make these findings when it was simply implementing
6 quotas imposed upon it by the Coastal Commission, an agency with
7 the power and authority to adopt land use controls. However, by
8 denying water service to Tract 1804, the District is imposing a
9 restriction that has the effect of restricting development of this
10 housing supply and the District's limitation directly contradicts
11 the Growth Management Ordinance and, as set forth below, is
12 inconsistent with the Land Use Ordinance as interpreted by both
13 the County and the Coastal Commission.

14
15 3. The County and Coastal Commission Approval of
16 District Service to Tract 1804.
17

18 The historical review of the District ordinances shows that,
19 for the most part, the restriction of water connections by the
20 District has been the direct result of restrictions directly
21 imposed on the District by the Coastal Commission and allocations
22 voluntarily adopted by the District in order to be compatible with
23 the Growth Management Ordinance. Neither the County nor the
24 Coastal Commission, either directly or indirectly, prohibit water
25 service by the District to Tract 1804. On the contrary, both
26 agencies have expressly found that Tract 1804 can be served by the
27 District.
28

EXHIBIT 5

27

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1 During the processing of the vesting tentative map
2 application for Tract 1804, the Coastal Commission and the County
3 raised the question whether Tract 1804 could be served by the
4 District since it was outside the URL. In a letter dated July 10,
5 1995, the Coastal Commission stated that Tract 1804 is consistent
6 with the Coastal Zone Land Use Ordinance because it has existing
7 facilities for water service from the District. (See, Leimert
8 Decl., Exhibit D.) In addition, the County Board of Supervisors
9 adopted resolution 95-506 interpreting the Coastal Zone Land Use
10 Ordinance and finding that Tract 1804 is consistent with the Land
11 Use Ordinance because Tract 1804 has existing facilities and
12 contract right intended to provide water service from the
13 District. (See, Leimert Decl., Exhibit E.)

14
15 The fact that both agencies not only do not restrict water
16 service to Tract 1804, but have also expressly found that its
17 development is proper based on water service from the District,
18 directly refutes the District staff's finding that Tract 1804 is
19 not eligible. These are the agencies that have either directly or
20 indirectly restricted water service by the District and yet
21 neither has stated that the District lacks the authority or the
22 resources to serve Tract 1804.

23
24 The District does have adequate resources to serve Tract
25 1804. The Coastal Commission, through conditions to the
26 District's permits, has found that the issuance of 125 residential
27 units per year is a proper allocation of District resources.
28 (Andres Decl., ¶ 10.) For nearly nine years the District has

EXHIBIT 5 28

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1 withheld a substantial number of these allocations in order to be
2 compatible with the County's Growth Management Ordinance. It is
3 estimated that the District has withheld more than 400 allocations
4 that would otherwise be allowed by the resource restrictions
5 imposed by the Coastal Commission. The District definitely has
6 adequate resources to serve 18 lots.

7
8 4. Administration of the Waiting List is Unreasonable.

9
10 The District has advised Cambria West that it will not
11 allocate water service connections to residential properties until
12 the residential waiting list is first exhausted. It is
13 unreasonable for the District to require any residential property
14 owner, including Cambria West, to wait until the residential
15 waiting list is exhausted because the manner in which that list is
16 being administered leads to unconscionable results.

17
18 Based on the provisions of section 26.01.070.h.(1) of the
19 Growth Management Ordinance, the County and the District must
20 issue allocations to those property owners next in line on the
21 residential wait list. Procedurally this takes place by the
22 District as follows.

23
24 At the end of each calendar year, the District issues an
25 Inquiry Letter to the property owners next in line on the
26 residential wait list, up to the number of allocations permitted
27 by the County. The inquiry letter asks the property whether they
28 would "accept" or "defer" an "Intent to Serve Letter", should one be

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1 issued. If the property owner advises the District that they
2 would defer, then the property owner remains on the waiting list.

3
4 If, on the other hand, the property owner states they would
5 accept, then they are issued an Intent to Serve Letter. The
6 property owner then must comply with the District's retrofit
7 ordinance. If they fail to do so within the time allowed, then
8 they are put back on the list. If they comply, then the County is
9 notified and the property owner must obtain the necessary County
10 permits within a specified time. If the property owner fails to
11 obtain those permits, then the owner is returned to the waiting
12 list. If the owner obtains the permits, then the District issues
13 the owner a "Connection Permit." The Connection Permit is good
14 for one year. If the residence is not constructed within the time
15 allowed, then the owner is returned to the waiting list.

16
17 In short, absent an owner intentionally requesting removal
18 from the waiting list, an owner will remain on the waiting list
19 until they have actually constructed a residence. As a result,
20 some property owners on the waiting list have been given more than
21 one opportunity to obtain water service and it appears that all
22 property owners have been given the opportunity at least once
23 since the list was frozen. (See, Document Index Nos. 171-179, 182-
24 203, 208 and 229-231.)

25
26 For example, a property owner who submitted an application to
27 the District in October, 1987 received a Intent to Serve Letter in
28 March, 1994 which was thereafter declined. This same property

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1 owner then received Inquiry letters in January, 1995; December,
2 1995; December, 1996 and December, 1997. Another property owner
3 who submitted an application to the District on December 31, 1990
4 (the date the list was frozen) received an Inquiry Letter in
5 March, 1996. (See, Document Index Nos. 171-179, 182-203, 208 and
6 229-231.)

7
8 The District is effectively recirculating through the
9 residential waiting list, leaving open the possibility that a
10 property owner will receive water service until either the
11 property owner builds the residence or intentionally withdraws
12 from the list. This conduct is inconsistent with the manner in
13 which the District administered the residential waiting list prior
14 to the list being frozen.

15
16 Given the limited number of allocations that the County
17 allows each year under the growth management ordinance, and given
18 the manner in which the list is being recirculated, it effectively
19 makes the residential list inexhaustible. This practice is unfair
20 and unjustified, depriving property owners not on the list who
21 have needs and desires to exercise their right to water service
22 from the District, the reasonable opportunity to do so.

23
24
25
26 **EXHIBIT 5 31**

27 **A-3-96-113-R**

28

1 C. The District's Denial Of Water Services Violates Cambria
2 West's Contract Rights And The District's Obligations
3 Under The Contracts.
4

5 The contracts entered into between Cambria West and the
6 District, and the financial contributions made by Cambria West in
7 performance of the contracts entitle Tract 1804 to water service.
8

9 The District has, by Ordinance 9-84, section 1.A.(4) reserved
10 sufficient water to assure that all existing contractual
11 commitments are honored. At the time Ordinance 9-84 was adopted
12 Cambria West and the District had in place the 1969 Agreement.
13 The 1969 Agreement was superseded by and ^{inc}incorporated into the
14 1985 Agreement. Both Agreements include the property now known as
15 Tract 1804. Thus, the reservation of water resources to assure
16 contractual commitments, as described in Ordinance 9-84, includes
17 a reservation for the 1985 Agreement.
18

19 Section 1.A.(4) of Ordinance 9-84 has neither been repealed
20 or modified, it is valid and enforceable and it should be
21 recognized. At the time Section 1.A.(4) was adopted the District
22 already had a waiting list in place. The waiting list was first
23 authorized upon adoption of Ordinance 2-82 on January 18, 1982.
24 The waiting list was necessary because demand exceeded the quota
25 established by the Coastal Commission. Ordinance 9-84 expressly
26 recognized the quota and other limitations imposed by the Coastal
27 commission, and in clear recognition of these restrictions the
28 District made an express reservation of water necessary to honor

1 contractual obligations.
2

3 In 1986, when the District modified its allocation provisions
4 pursuant to Ordinance 2-86, it expressly left in place section
5 1.A.(4). Ordinance 2-86 is specific in repealing only Sections
6 1.A(1) and 1.A.(3) of section 1.A of Ordinance 9-84 and it
7 expressly states that "in all other respects, Ordinance 9-84 shall
8 remain in effect (see section 6 of Ordinance 2-86). This leads to
9 the clear conclusion that the District intentional left intact
10 section 1.A.(4) when it adopted the EDU allocation system
11 described in Ordinance 2-86. At no time since Ordinance 2-86 was
12 adopted has the District repealed any other portion of Ordinance
13 9-84.
14

15 By virtue of section 1.A.(4) of Ordinance 9-84 the District
16 has set up a specific class of water service entitlements that
17 coexists with the other components in the Districts water service
18 allocation provisions. Section 1.A.(4) of Ordinance 9-84 was
19 unaffected by Ordinance 14-90 or any other growth management
20 related ordinance. Since the Growth Management Ordinance exempts
21 Tract 1804 from its provisions, there is no reason for the
22 District not to apply the water service rights created by
23 contract and authorized by Ordinance 9-84.
24
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1 D. The District's Denial Of Water Services Leads To Absurd
2 And Unconscionable Results

3
4 The District's determination that Tract 1804 is not entitled
5 to water services is not only illegal, but also leads to absurd
6 and unconscionable results. County health related ordinances
7 prohibit development of wells because Tract 1804 is located within
8 the District's boundaries. Accordingly, County approval of Tract
9 1804 was premised on the provision of water service by the
10 District. If the District refuses to provide water service,
11 Cambria West has no other option to obtain water service.
12 Consequently, water service from the District is essential to any
13 reasonable use of Tract 1804, and especially to carry out the
14 reasonable expectation to develop Tract 1804 in accordance with
15 the extensive planning and substantial expenditure of funds by
16 Cambria West over the last decade.

17
18 If the District staff's position is correct, then Tract 1804
19 would be denied water services in the foreseeable future.
20 According to the District, Tract 1804 is not eligible for water
21 service because it is not on the District wait list and that wait
22 list has been closed as of December 31, 1990. Conversely, Tract
23 1804 cannot be on the County wait list because the County does not
24 maintain a list for properties exempt from the County's Growth
25 management Ordinance. According to the District, the destiny of
26 Tract 1804 is to forever remain captive in an administrative
27 limbo.

28
EXHIBIT 5 34
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1 E. If Cambria West Prevails In Its Claims, It Will Be
2 Entitled To Water Services, Damages And Attorney's Fees
3 And Costs.
4

5 If the Court in this action finds that Tract 1804 is entitled
6 to water services from the District, Cambria West will be entitled
7 not only to water services for Tract 1804, but also to any damages
8 resulting from the delay in development of Tract 1804 caused by
9 the District, as well as any attorney's fees and costs which
10 Cambria West has incurred as a result of the District's refusal to
11 provide water services to Tract 1804. This means that if Cambria
12 West ultimately prevails, which it will, the District's exposure
13 will be hundreds of thousands of dollars.^{18/}
14

15 F. Remedy
16

17 There are several options available to the District Board to
18 remedy the denial of water service. First, the present problem
19 must be clarified. The gist of the problem with the District
20 staff's denial of water service is the determination that Tract
21 1804 is not eligible for water service because it is not on any of
22 the current waiting lists. Indeed, when this determination is
23 coupled with the manner in which the District is interpreting
24 applicable ordinances and the manner in which it is administering
25 the residential waiting list, the effect of the decision is to
26 Tract 1804 the opportunity for water service anytime in the
27

28 ^{18/} In the unlikely event that Cambria West does not prevail,
the District would not be entitled to its attorney's fees.

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1 foreseeable future.

2
3 As discussed above, Tract 1804 is presently eligible for
4 water service from the District, and upon finalization of the
5 final tract map, lot owners within Tract 1804 will be entitled to
6 receive water service from the District. The existing District
7 and County ordinances create a ministerial duty on the part of the
8 District to so indicate at this time so that Cambria West may
9 proceed in processing its permits with the Department of Real
10 Estate and to complete the final tract map. Therefore, Cambria
11 West is asking that the District Board direct staff to issue an
12 intent to serve letter stating that Tract 1804, and the lots
13 within it, are eligible for water service from the District.

14
15 Alternatively, it is possible that the District will
16 recognize its contractual and legal obligations to provide Tract
17 1804 with water service, but nonetheless conclude that some form
18 of enabling ordinance must be adopted by the District in order to
19 carry through on these obligations. If that is the case, then the
20 District has the obligation to adopt whatever enabling ordinances
21 are necessary to honor its contractual and legal obligations. In
22 this case, Cambria West asks that the District Board adopt the

23
24
25
26 EXHIBIT 5 36

27 A-3-96-113-R
28

1 necessary ordinances, and based on these ordinances issue the
2 requested intent to serve letter.

3
4 Dated: December 2nd, 1998.

5 BEST BEST & KRIEGER LLP

6
7 By: 

8 Gene Tanaka
9 Piero C. Dallarda
10 Attorneys for Applicant
11 Cambria West

12 ANDRE, MORRIS & BUTTERY, ALC

13
14 By: 

15 Dennis D. Law
16 Attorneys for Applicant
17 Cambria West

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26 EXHIBIT 5 37
27 A-3-96-113-R
28

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11 and Plaintiff Cambria West, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN LUIS OBISPO
14

15 CAMBRIA WEST, INC.,) Case No. CV 980722
a general partnership,)
16 Plaintiff and Petitioner,) DECLARATION OF DAVID ANDRES
17 v.) Action Filed: August 27, 1998
Trial Date: Not Set
18)
19 CAMBRIA COMMUNITY SERVICES)
DISTRICT, a public agency;)
and Does 1-50, inclusive,)
20 Respondents and Defendants.)
21

22
23
24 ~~EXHIBIT~~ 5 38
25 A-3-96-113-R
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27
28

DECLARATION OF DAVID ANDRES

I, DAVID ANDRES, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, I could and would competently testify to the truth of those facts.

2. I was the General Manager for the Cambria Community Services District ("District") between 1989 and 1996. My duties as General Manager included overseeing the day-to-day operations of the District's facilities, providing water and other services to the District's customers and implementing the policies of the District's Board of Directors ("District Board"). This involved attending District Board meetings, participating in discussions with representatives of the County of San Luis Obispo regarding water services and developing adequate sources of water.

3. I have become aware that Cambria West claims that it is entitled to water service from the District for lots within Cambria West's property generally known as Tract 1804, located near Cambria in the County of San Luis Obispo, California. This property is also located within the District's boundaries and is subject to an Agreement, dated June 4, 1985, between the District and Cambria West's predecessor for water service and the construction of water facilities. A true copy of the Agreement is attached as Exhibit "A."

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1 4. On February 24, 1986, and May 27, 1986, the District
2 adopted Ordinance Nos. 2-86 and 4-86, respectively. True copies
3 of Ordinances Nos. 2-86 and 4-86 are attached as Exhibits "B" and
4 "C," respectively. These Ordinances restricted the number of new
5 residential water service connections that would be granted by the
6 District on an annual basis to conform to the California Coastal
7 Commission's Permit. The Permit limits were set at 125
8 residential water service connections per year of which no more
9 than 100 could be for single-family units.

10
11 5. Because the District received a greater number of
12 requests for new water services connections than were allowed
13 under Ordinance Nos. 2-86 and 4-86, it maintained a waiting list
14 of requests for new residential water service connections
15 ("District Wait List"). The District Wait List operated on a
16 first-come, first-served basis.

17
18 6. Between 1986 and 1988, the District issued approximately
19 125 residential water service connections of which 100 were single
20 family residences. Consistent with Ordinance Nos. 2-86 and 4-86,
21 these connections were issued to all applicants who:

- 22 (a) were within the Districts boundaries;
23 (b) had residential development projects;
24 (c) were next in order on the District Wait List; and
25 (d) paid the District's fees.

26
27 7. On October 23, 1990, the San Luis Obispo County Board of
28 Supervisors ("County Board of Supervisors") adopted Ordinance No.

1 2477, also known as the Growth Management Ordinance. A true copy
2 of the Growth Management Ordinance of October 23, 1990, as revised
3 in October 1992, is attached hereto as Exhibit "D." The Growth
4 Management Ordinance was enacted primarily to implement the County
5 General Plan for development by establishing an annual rate of
6 growth of 2.3% per year consistent with the ability of community
7 resources to support the growth. The Growth Management Ordinance
8 also establishes a system for allocating the number of residential
9 construction permits to be allowed each year by the annual growth
10 rate set by the County Board of Supervisors.

11
12 8. On November 19, 1990, the District adopted Ordinance No.
13 14-90 ("Ordinance No. 14-90"). A true copy of Ordinance No. 14-90
14 is attached as Exhibit "E". Ordinance No. 14-90 amended Ordinance
15 Nos. 2-86 and 4-86 to conform to the County's Growth Management
16 Ordinance. I personally participated in the drafting of
17 Ordinance No. 14-90 and the District's discussions with the County
18 Staff in connection with the County's Growth Management Ordinance.
19 Therefore, after December 31, 1990, the District's single and
20 multi-family residential Wait List was closed and any subsequent
21 applicants were referred to the County Wait List pursuant to the
22 Growth Management Ordinance.

23
24 9. The District did not adopt an ordinance to address the
25 applications for residential water service connections for
26 properties on the County Wait List because it will be many years
27 before the District Wait List will be exhausted.

28 EXHIBIT 5 41

A-3-96-113-A

1 10. In 1990, under the County Growth Management Ordinance
 2 cap, the District was limited to about 80 residential water
 3 service connections of which about 63 were single family
 4 residential and 18 were multi-family residential. This limit was
 5 increased 2.3% per year consistent with the County Growth
 6 Management Ordinance. The cap for new water services connections
 7 set by the District through the County was not a capacity cap, but
 8 a growth management cap to which the District voluntarily adhered.
 9 In fact, prior to 1989, the District had assumed it had the
 10 capacity to serve 125 residential units, approximately 40% more
 11 than the number set by the County Growth Management Ordinance.
 12

13 11. The growth cap of the Growth Management Ordinance does
 14 not apply to certain types of users. For instance, the County
 15 exempted building permits for low income housing under the Growth
 16 Management Ordinance, and the District set up a separate Wait List
 17 for such water service connections. In addition, property outside
 18 the Urban Reserve Line and Urban Services Line is not subject to
 19 the Cambria allocation under the Growth Management Ordinance.
 20

21 I declare under penalty of perjury under the laws of the
 22 State of California that the foregoing is true and correct.
 23

24 Executed on December 1, 1998, at Monte Rio
 25 California.

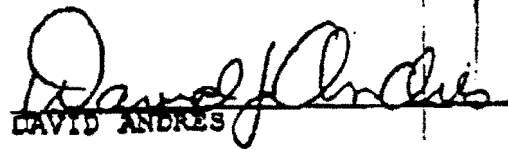
26 
 27 DAVID ANDRES
 28

EXHIBIT 5 42
 A-3-96-113-R

USE OF
 THIS MAIL & SERVICE IS
 3750 University Avenue
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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863

**F4a**

Appeal Filed:	12/02/98
49th Day:	1/20/99
Staff:	DSL/CL-SC
Staff Report:	11/14/99
Hearing Date:	12/10/99
Commission Action:	
Open and Continue:	1/13/99
Substantial Issue:	3/11/99
Jurisdiction:	9/15/99
Revised Findings:	11/17/99

**STAFF REPORT: REGULAR CALENDAR
REVISED FINDINGS: APPELLATE JURISDICTION**

APPLICATION: A-3-SLO-98-108, TRACT 1646

APPLICANT: NOEL RODMAN AND RON HOLLAND

PROJECT DESCRIPTION: Establishment of Commission appellate jurisdiction over the extension of the coastal development permit for Tract 1646 for a period of five years; and 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 8/25 and 9/22/98 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 9/22 and 8/25/98, 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. Transcript of 9/15/99 Commission Hearing on A-3-SLO-98-108.

COMMISSIONERS ON PREVAILING SIDE: Wai, Desser, Dettloff, Allgood, Flemming, Kruer, Potter, Orr, Reilly, Daniels

EXHIBIT 6**A-3-96-113-2**

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. On September 15, 1999 the Commission conducted a public hearing on the issue of jurisdiction. At the conclusion of the hearing, the Commission, based on the staff recommendation and testimony taken at the hearing, found that it had jurisdiction over the County's action on this project.

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.

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EXHIBIT 6

A-3-96-113-R

I. STAFF RECOMMENDATION

A. REVISED FINDINGS: APPELLATE JURISDICTION

Staff recommends that the Commission adopt the revised findings in support of its appellate jurisdiction to review the County's action on the request to extend and amend permit A-3-SLO-98-108.

Motion on the revised findings:

I move that the Commission adopt the following revised findings regarding jurisdiction over appeal A-3-SLO-98-108 under Public Resources Code section 30603.

Staff recommends a **YES** vote on the motion. The effect of a yes vote on the motion will be to adopt the revised findings. A majority of the Commissioners prevailing on the jurisdiction issue is required to approve the motion. Commissioners eligible to vote on the revised findings are Commissioners Wan, Desser, Dettloff, Allgood, Flemming, Kruer, Potter, Orr, Reilly and Daniels.

Resolution:

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

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:

EXHIBIT 6 5

- **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."

EXHIBIT 6

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.

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. 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.

1. 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, as explained by Chief Counsel Faust at the hearing¹, the language of section 30603 includes the decision of a local government to amend or extend a permit. Please see Ex. 3, transcript of Mr. Faust's remarks pg. 20-24, the reasoning of which the Commission adopts as its own. 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 consistent with the LCP, and therefore no appeal to the Commission was filed and the ten working day appeal period passed. 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 of local government actions to amend or extend a coastal development 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 4 and 5.) 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

¹ Chief Counsel Faust comments on jurisdiction are found in the transcript attached as Exhibit 3 and are, by reference, incorporated into these findings.

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 4 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 6, 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 provided three examples of subdivisions in San Luis Obispo that were identified as appealable by the County and could only have been so based on PRC 30603(a)(4) (Please see Ex. 3 transcript, comments of Charles Lester, page 24, lines 23-25). 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 in the staff recommendation dated November 17, 1999 for the de novo hearing portion of this appeal, explain how the county action conflicted with these important LCP policies and procedures and demonstrate the need for Commission review.

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.

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COUNTY OF SAN LUIS OBISPO

**GROWTH MANAGEMENT
ORDINANCE**

TITLE 26 OF THE SAN LUIS OBISPO COUNTY CODE

ADOPTED BY
THE SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS
October 23, 1990 - Ordinance No. 2477

Revised December, 1995

EXHIBIT 7
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COUNTY OF SAN LUIS OBISPO

Board of Supervisors

Harry Ovitt, District 1
Laurence Laurent, District 2
Evelyn Delany, District 3
Ruth Brackett, District 4
David Blakely, District 5

Department of Planning and Building

Alex Hinds, Director
Bryce Tingle, AICP, Assistant Director
Jean McKown, Word Processing
John Kelly, Supervising Mapping & Graphics Technician
Dan Lambert, Mapping & Graphics Technician II

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COUNTY OF SAN LUIS OBISPO
GROWTH MANAGEMENT ORDINANCE

Adopted October 23, 1990, Ordinance 2477

Amended

July 11, 1991	Ordinance No. 2506
October 27, 1992	Ordinance No. 2580
December 5, 1995	Ordinance No. 2743

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CHAPTER 1: GROWTH MANAGEMENT ORDINANCE

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26.01.010 Title and Purpose: This title is known as the Growth Management Ordinance of the County of San Luis Obispo, Title 26 of the San Luis Obispo County Code. These regulations are hereby established and adopted to protect and promote the public health, safety and welfare, and more particularly:

- a. To implement the County General Plan by establishing an annual rate of growth that will give further guidance to the future growth of the county in accordance with that plan; and
- b. To establish an annual rate of growth that is consistent with the ability of community resources to support the growth, as established by the Resource Management System (RMS) of the County General Plan; and
- c. To establish a system for allocating the number of residential construction permits to be allowed each year by the annual growth rate set by the county Board of Supervisors; and

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- d. To minimize adverse effects on the public resulting from a rate of growth which will adversely affect the resources necessary to support existing and proposed new development as envisioned by the County General Plan; and
- e. To assist the public in identifying and understanding the growth management regulations affecting the development and use of land in San Luis Obispo County.

26.01.020 - Maps and Text Included by Reference: In order to effectively implement the provisions of this title, the following documents, including maps and text, are hereby adopted and included by reference as part of this title, as though they are fully set forth herein:

- a. San Luis Obispo County General Plan, including all elements thereof and all amendments thereto, as adopted by the Board of Supervisors pursuant to Sections 65000 et seq. of the Government Code.
- b. Building and Construction Ordinance, Title 19 of the County Code.
- c. Land Use Ordinance, Title 22 of the County Code.
- d. Coastal Zone Land Use Ordinance, Title 23 of the County Code.

26.01.030 - Applicability of the Growth Management Ordinance. The provisions of this title apply to the issuance of all construction permits for dwelling units within the unincorporated areas of San Luis Obispo County, as follows:

- a. **Proposed dwelling units.** The provisions of the title apply to all dwelling units proposed to be constructed after the adoption of this title unless specifically exempted by this title. It shall be unlawful and a violation of this code for any person to construct a dwelling unit (including the placement of a mobilehome on an individual parcel, placement of a mobilehome within a mobilehome park, or the conversion of a non-residential structure to a dwelling unit) contrary to or without satisfying all applicable provisions of this title. [Amended 1995, Ord. No. 2743]

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- b. Completion of existing projects.** Nothing in the title shall require any change in the plans, construction or approved use of a dwelling unit for which a permit has been issued before the effective date of this title, provided construction is commenced and completed in accordance with the provisions of the county code, including but not limited to: Title 19, Building and Construction Ordinance; Title 22, Land Use Ordinance; and Title 23, Coastal Zone Land Use Ordinance.

26.01.032 - Compliance with the Growth Management Ordinance

Required: No application to construct a new dwelling unit shall be accepted for processing or approved, unless the proposed new dwelling unit is determined to be in compliance with the provisions of this title and other applicable provisions of the County Code.

26.01.034 - Exemptions. The provisions of the title do not apply to any of the following:

- a.** Proposed new dwelling units constructed as secondary dwellings in conformance with the requirements of the Land Use Ordinance and Coastal Zone Land Use Ordinance, Title 22 and 23 of the County Code, respectively. [Amended 1995, Ord. No. 2743]
- b.** Proposed new dwelling units which will be affordable housing for persons and families of low or moderate income as defined by California Health and Safety Code Section 50093, with long-term affordability guaranteed for a period of 30 years as provided by Section 22.04.094 of the Land Use Ordinance and Section 23.04.094 of the Coastal Zone Land Use Ordinance. [Amended 1992, Ord. 2580]
- c.** Building permit applications for new dwelling units using the rights conferred by a vesting tentative map as provided by Government Code sections 66498.1 et seq. where the vesting tentative map application was filed with the Planning and Building Department on or before July 10, 1990, except where such applications are denied pursuant to any of the provisions of California Government Code section 66498.1.
- d.** Building permit applications for new dwelling units using the rights conferred by a vesting tentative map as provided by Government Code sections 66498.1 et seq. where the vesting tentative map application was filed with the Planning and Building Department on or before July 10, 1990 and was withdrawn and simultaneously resubmitted one time after July 10, 1990, except where such applications are denied pursuant to any of the provisions of Government Code section 66498.1.

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- e. Construction permit applications for dwelling units located on sites within projects approved for annexation to an Improvement Area within a County Service Area under an annexation agreement entered into within the county prior to July 1, 1989.
- f. Construction permit applications for labor camps that house agricultural employees, on properties outside of village and urban reserve lines as defined in the county general plan, when authorized as group farm support quarters under Land Use Ordinance section 22.08.034b(6) or Coastal Zone Land Use Ordinance section 23.08.034b(6) and in accordance with the requirements of Health and Safety Code Section 17008.

[Amended 7/11/91, Ord. 2506]

26.01.036 - Fees Required. Any Request for Allocation, as defined in Section 26.01.070d, filed with the Department of Planning and Building pursuant to this title shall be accompanied by the required filing fee at the time of submittal. The required filing fee is determined by the county fee ordinance.

26.01.040 - Administration of the Growth Management Ordinance. This title shall be administered by the Director of Planning and Building, who will establish specific procedures, consistent with the intent of this Title, and advise the public about its requirements. The responsibilities of the Planning Director under this title include the following functions, which may be carried out by Planning Department employees under the supervision of the director:

- a. **Application processing.** Receive and review all applications for projects; certify that applications submitted have been properly completed; establish permanent files; conduct site project analyses; meet with applicants; collect fees; prepare reports; process appeals; present staff reports to the Planning Commission and Board of Supervisors where applicable; and
- b. **Permit issuance.** Issue dwelling unit allocations and permits under this title and certify that all such allocations and permits are in full conformance with its requirements; and
- c. **Coordination.** Refer and coordinate matters related to the administration of this title with other agencies and county departments; and

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- d. **Amendment.** Request that the Board of Supervisors initiate amendment of this title pursuant to Land Use Ordinance section 22.01.050 and Coastal Zone Land Use Ordinance section 23.01.050, when such amendment would better implement the policies of the General Plan and increase its effectiveness and/or improve or clarify the procedures or content of this title.

26.01.050 - Rules of Interpretation. Any questions about the interpretation or applicability of any provision of this title, are to be resolved as provided by this section.

a. **Effect of provisions:**

- (1) **Minimum requirements:** The regulations set forth in this title are to be considered minimum requirements, which are binding upon all persons and bodies charged with administering or enforcing this title.
- (2) **Effect upon private agreements:** It is not intended that these regulations are to interfere with or annul any covenants or other agreements between parties. When these regulations impose a greater restriction upon the issuance of construction permits for new dwelling units than are imposed or required by other ordinances, rules, regulations or by covenants, or by covenants or agreements, these regulations shall control.

b. **Definitions:** Definitions of the specialized terms and phrases used in this title are contained in certain other sections of this title where the terms and phrases are actually used, or in the documents comprising the County General Plan, or in Titles 19, 22 or 23 of the County Code. For purposes of this title, the following definitions shall also apply:

- (1) **Allocation:** The right, granted by the Board of Supervisors, to make application for construction of a new dwelling unit (including the placement of a mobilehome or the conversion of a non-residential structure to a dwelling unit) in the unincorporated area of San Luis Obispo County. An Allocation is not a guarantee of receiving approval for the requested dwelling unit. The actual number of dwelling units to be allowed shall be determined by the Board through an annual allocation process.
- (2) **Construction of this title:** When used in this title, the words "shall," "will," and "is to" are always mandatory and not discretionary. The words "should" or "may" are permissive. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural, and the plural the singular.

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- (3) **Maximum Annual Allocation:** The Maximum Annual Allocation equals the annual number of construction permits that may be issued for new dwelling units per year in the unincorporated area of the county.
- (4) **New Dwelling Unit:** The construction of a new structure to be used as a dwelling unit, including placement of a mobilehome on an individual parcel, placement of a mobilehome within a mobilehome park, or conversion of a non-residential structure to a residential use. For the purposes of this ordinance, "new dwelling unit" does not include the replacement of any existing, lawfully established dwelling unit with another unit on the same site, or the remodeling or enlargement of an existing unit, provided that the number of existing units is not increased. [Amended 1995, Ord. No. 2743]
- (5) **Number of days:** Whenever a number of days is specified in this title, or in any Request for Allocation, or in any permit, condition, or notice issued or given as set forth in this title, such number of days shall be deemed to be consecutive calendar days, unless the number of days is specifically identified as business days. Whenever the term "week" is used, it shall mean the days from Sunday to the following Saturday, inclusive.
- (6) **Planned Development:** A project based on a comprehensive, unified site design that will include a phasing schedule specifying the time period over which the project will be built and the number of dwelling units to be built in each phase, and meeting the following criteria: each phase will provide the necessary services and infrastructure so as to be both self-supporting as well as integrated into the whole project, including specifying the standards for land use and related improvements (i.e., streets, utilities, public and private open space, buffers, etc.) plus responsibilities for their installation, ownership and maintenance; the overall project is characterized by creative and innovative design features and a variety of housing types. Such projects are to be approved as cluster divisions or agricultural cluster projects under the provisions of Titles 22 or 23 of the County Code, approved through a development plan, approved through a Specific Plan adopted by the County in accordance with the California Government Code, or covered by a development agreement approved by the Board of Supervisors. [Amended 1995, Ord. No. 2743]
- (7) **Specific Plan:** A plan adopted by the County for the systematic implementation of the County General Plan in accordance with section 65451 of the California Government Code.

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26.01.060 - Appeal. Any person aggrieved by a decision of the Director of Planning and Building involving the interpretation or application of this title may appeal any such decision as follows:

a. Processing of appeals:

- (1) **Timing and form of appeal:** An appeal shall be filed within 14 days of the decision that is the subject of the appeal. The appeal shall be in writing and shall be filed with the Planning Commission Secretary using the forms provided by the Department. The written appeal must state the factual and legal basis by which the appellant contends that he or she is entitled to have the decision of the Director overturned.
- (2) **Filing fee and cost recovery:** The appeal shall be accompanied by an appeal fee in the amount of \$500, representing a deposit to be used to reimburse the County for the actual costs and expenses incurred by the County in processing, investigating, and deciding said appeal. The appellant shall execute a cost accounting agreement with the county pursuant to the County's fee ordinance to reimburse the county for the actual recorded costs, plus overhead, incurred by the county in processing the appeal.
- (3) **Report and hearing:** When an appeal has been filed, the Director shall prepare a report on the matter, and cause the appeal to be scheduled for consideration by the Planning Commission at its next available meeting after completion of the report.
- (4) **Action and findings:** After holding a public hearing on the matter pursuant to subsection b of this section, the Planning Commission may affirm, affirm in part, or reverse the action, decision or determination that is the subject of the appeal, based upon findings of fact regarding the particular case. Such findings shall identify the reasons for the action on the appeal, and verify the compliance or non-compliance of the subject of the appeal with the provisions of this title.
- (5) **Withdrawal of appeal:** After an appeal to a decision regarding the interpretation or application of this title has been filed, the appeal shall not be withdrawn except with the consent of the Planning Commission.

- b. Public hearing notice:** When a public hearing is to be held pursuant to this title, notice of the public hearing shall be provided as required by Government Code Sections 65091 et seq. and by any additional means the Director of Planning and Building deems appropriate.

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- c. **Appeal jurisdiction:** All appeals shall be heard by the Planning Commission. The following actions of the Department of Planning and Building pertaining to the interpretation or application of this title may be appealed to the Planning Commission:
- (1) Determinations on the meaning or applicability of the provisions of this title which are believed to be in error, and cannot be resolved with staff;
 - (2) Any determination that information submitted with any application or request required by this title is incomplete;
 - (3) Any decision of the Department to approve or deny any application or request required by this title;
 - (4) Any decision by the Director of Planning and Building to revoke or cancel any application or request approved pursuant to this title.
- d. **Matters excluded from appeal:** Specifically excluded from appeal are matters which for their resolution require the amendment or change of this title, or other county ordinances or resolutions.
- e. **Planning Commission decisions:** All decisions of the Planning Commission on appeals filed pursuant to this title are final.

26.01.070 - Construction Permit Allocation Procedures: This section describes general procedures for determining the number of dwelling unit construction permit applications processed by the Department of Planning and Building, how the annual allocation of those dwelling unit permits is to be conducted, what information must be included with an application submitted for processing under the provisions of this title, and the time limits for processing applications for new dwelling units to be permitted under this title.

- a. **Maximum number of new dwelling units allowed:** The Maximum Annual Allocation shall be limited to an amount sufficient to accommodate an annual increase of 2.3% in the number of dwelling units. The number of new dwelling units to be allowed shall be based on the number of existing county unincorporated housing units, as defined by the most recent annual estimate provided by the state Department of Finance.

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26.01.070

- b. Annual review of growth management program.** In the fourth quarter of the calendar year, the Board of Supervisors shall hold a public hearing to consider the annual summary report of the Resource Management System (RMS) as described in Framework for Planning of the general plan. The Board shall evaluate the proposed growth rate for the ensuing year in light of the availability of resources and services necessary to accommodate new development and may initiate proceedings to amend this title to modify the annual growth rate based on the evaluation of the RMS data.
- c. Distribution of allocated units.** After the allowed number of new dwelling units is determined by the Board of Supervisors through the process described in subsections a and b of this section, the allocated units shall be distributed countywide, based on the availability of resources needed to support the new development as defined by the RMS.
- (1) Diversity of dwelling unit types.** In order to allow opportunities or development of individual dwelling units and larger residential projects and to encourage a variety of dwelling unit types, the Maximum Annual Allocation of new dwelling units will be distributed as follows:
- (a) Category 1:** Twenty (20) percent of the Maximum Annual Allocation shall be reserved for developers of multi-family dwellings and dwelling units in phased projects approved as Planned Developments or through adoption of a Specific Plan. No single applicant shall be eligible in any one year for more than five (5) percent of the Maximum Annual Allocation. Dwelling units to be developed in such projects may be carried over for one year upon written request of the applicant within the 180 days specified in subsection "f" of this section. If there are not enough applications for dwelling units to use up the 20% reservation in this category, those unused allocations shall be available for use in Category 2. [Amended 1995, Ord. No. 2743]
- (b) Category 2:** The remaining 80 percent of the Maximum Annual Allocation shall be available for all other applicants for new dwelling units. However, no single applicant shall receive more than five (5) percent of the annual allocations. If there are not enough applications for dwelling units in Category 2 in the allocation year, those unused allocations shall be available for use in Category 1.
- d. Filing of Requests for Allocation.** Applicants interested in building new dwelling units will file a Request for Allocation with the Department of Planning and Building on a form provided by the department. Building plans are not required at this time. The Request for Allocation shall be accompanied by the filing fee specified in the county fee ordinance. The Request for Allocation will be accepted only from the owner of the

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parcel proposed for development, or an agent acting with the written authorization of the owner.

(1) **Limit on number of allocation requests.** Only two Requests for Allocation will be accepted for any single existing legally created parcel per year, except that a single applicant may file one Request for Allocation for a maximum number of dwelling units not to exceed 2.5% of the total allocation per year on properties designated Residential Multi-Family and proposed for development of multi-family dwelling units; or a maximum number of dwelling units not to exceed 5.0% of the total annual allocation for a phased project approved as a Planned Development or through adoption of a Specific Plan, or where such units are included in a development agreement approved by the Board of Supervisors, in accordance with sections 26.01.050b(6) and (7) of this title.

e. **Filing of allocation requests.** The Department of Planning and Building will accept Requests for Allocation at any time and will be placed on the waiting list in first-come-first-served order. [Amended 1995, Ord. No. 2743]

f. **Authorization to file construction permit applications.** The Department of Planning and Building will process Requests for Allocation on a first-come-first-served basis, with all Requests added to the County waiting list. The method of allocation will be for the Department to issue a letter of authorization to file a construction permit application for a new dwelling unit in accordance with Titles 19, 22 and 23 of the County Code. Letters of authorization will be issued until the Maximum Annual Allocation has been reached for the current calendar year. The application of a construction permit must be filed with the Department within 180 days of the date on the notification letter in order to retain their allocation. An additional 90 days may be granted by the Director of Planning and Building if the applicant so requests in writing and can demonstrate due diligence towards completing an application that can be accepted for processing, or that circumstances beyond the control of the applicant have prevented action from being taken within the prescribed time periods. [Amended 1995, Ord. No. 2743]

g. **Communities with existing waiting lists.** The following communities have waiting lists for development. Those waiting lists are administered by the specified community service provider(s) and the issuance of Allocations by the County shall be in accordance with the provisions of the local waiting lists, as specified below. [Amended 1995, Ord. No. 2743]

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(1) **Cambria.** The Cambria Community Services District (CCSD) has an existing waiting list for water service permits. The CCSD is allocating resources in compliance with its own resource management policies and ordinances, so as to be compatible with the Resource Management System of the County General Plan and to carry out the county's purposes, goals and objectives. In recognition of the management policies in place, the allocation of dwelling units in Cambria shall be conducted as follows:

(a) **Allocation limit.** The annual number of new dwelling units to be allocated shall not exceed 2.3% of the total number of dwelling units within the community services district boundary within the Urban Reserve Line as designated in the County General Plan. The dwelling units to be allocated shall be taken from those applicants next in line on the community waiting list. The number of allocated units may be reduced if the resources are not available to support the maximum number of potential allocations. Any dwelling unit allocations not utilized by Cambria shall become available for countywide allocation in accordance with the provisions of this title.

(i) **"Grandfathered" units in Cambria.** Of the total number of dwelling units to be allowed in Cambria each year, the Cambria Community Services District shall reserve four (4) allocations for parcels certified by the district as having "grandfathered" right to water service and "will serve" letters will be issued to such applicants on a first-come-first-served basis.

(ii) **Transfer of allocations in Cambria.** Residential allocations may be transferred within the CCSD as long as any such transfer conforms with District Ordinance 1-93, as may be amended from time to time by the District relating to retirement of development rights.

(b) **Freezing of existing waiting lists.** In order to eventually eliminate the need for an individual community waiting list for services, the CCSD list that exists as of December 31, 1990, shall be frozen for purposes of administering this title. The County shall obtain a certified copy of the waiting list and all future allocations within each community shall come from the certified list. Any applicant wishing to apply for a dwelling unit allocation that is not on the certified list shall apply to the county for placement on the county's waiting list for Requests for Allocation. At the

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point in the future when each existing community waiting list is exhausted, all future requests for new dwelling units shall be added to the county's waiting list on a first-come-first-served basis and all allocations for new dwelling units in the unincorporated county shall be made from the county waiting list.

- h. Communities with moratoria or prohibitions.** A portion of the unincorporated community of Baywood/Los Osos (South Bay) is presently unable to have construction permits issued for new dwelling units because of a sewage disposal prohibition imposed by the California Regional Water Quality Control Board, Central Coast Region. In the affected area where a development prohibition is imposed, Requests for Allocation may be filed but allocations will not be granted to individuals in areas where development can not occur. In this event, the applicant's name will be added to the end of the current county waiting list of Requests for Allocation.

[Amended 7/11/91, Ord. No. 2506; 12/5/95, Ord. No. 2743.]

26.01.072 - Post-allocation Procedures. Following the determination by the Board of Supervisors of the Maximum Annual Allocation, those allocations shall be subject to the following:

- a. Transfer of allocations.** Dwelling units will be allocated through the process described in sections 26.01.070 of this title to specific parcels, except that allocations may be transferred within the Cambria Community Services District as described in section 26.01.070g(1)(a)(ii), or on other properties in the unincorporated county where approved as part of a county Transfer of Development Rights (TDR) program. In all other instances, the allocations will run with the land and cannot be transferred to other parcels, although ownership of a vacant site with an unexpired dwelling unit allocation may be changed. [Amended 1995, Ord. No. 2743]
- b. Expiration of allocations.** After receiving a dwelling unit allocation as provided by this title, the applicant must file a complete construction permit application along with any required land use permit application within the number of days of the date of notice of an allocation as provided in section 26.01.070f, plus any requested time extension for such filing. [Amended 1995, Ord. No. 2743]

Once a construction permit application has been accepted for processing, the normal time limits affecting the expiration of plan review and issued building permits will apply as set forth in the Building and Construction Ordinance, Title 19 of the county code. If

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plan review expires because the applicant has not pursued permit issuance or an issued permit expires because work is not started within the time limits prescribed by Title 19, or if substantial site work has not been completed as set forth in Titles 22 and 23 of the County Code, the dwelling unit allocation will also expire.

- c. Carryover of individual annual allocations.** The only exceptions to the expiration rules specified in subsection b of this section will be for properties for which multi-family units or units in Planned Developments are proposed in compliance with section 26.01.070c(1)(a).
- d. Carryover of unused Maximum Annual Allocation.** If all the units allocated countywide are not requested in the year in which they are allocated, the unused allocations may be carried over to the following allocation year at the discretion of the Board of Supervisors in a number not to exceed ten (10) percent of the Maximum Annual Allocation of that year. Such a determination is to be made at the time the Board establishes the next Maximum Annual Allocation as specified in this title. [Amended 1995, Ord. No. 2743]

[Amended 7/11/91, Ord. 2506]

- e. Reallocation of expired units.** Where any applicant withdraws his application, or where such application has been deemed expired pursuant to the provisions of this title, that unused allocation shall become available for use within the current Maximum Annual Allocation as if it were a new Request for Allocation, subject to all provisions of this title. Where the allocation is located within a community subject to a waiting list as described in Section 26.01.070g, the allocation shall be made available within that community subject to the ordinance or administrative procedures adopted by the service provider within that community. [Amended 1995, Ord. No. 2743]

26.01.080 - Time for Judicial Review: Any court action or proceeding to attack, review, set aside, void, or annul any decision pursuant to this title, or concerning any of the proceedings, acts or determinations taken, done, or made prior to any such decision, shall not be maintained by any person unless such action or proceeding is commenced within 90 days and service is made within 120 days after the date of the decision. Thereafter, all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decisions, proceedings, acts or determinations.

EXHIBIT

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A-3-96-113-A

26.01.082

26.01.082 - Severability of Provisions. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

EXHIBIT 7 18
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