

CALIFORNIA COASTAL COMMISSION

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Th13a

C.F.L. 5/24/00



Filed: February 15, 2000
Staff: DSL
Staff Report: April 18, 2000
Hearing Date: June 15, 2000
Commission Action:

CLAIM OF VESTED RIGHTS STAFF REPORT AND RECOMMENDATION

CLAIM NO.: 3-99-048-VRC

CLAIMANT: CHARLES PRATT, Owner
William Walter, Attorney

PROJECT LOCATION: South side of Rodman Drive, adjacent to Montana de Oro State Park, Los Osos, San Luis Obispo County

DEVELOPMENT CLAIMED: All off-site improvements (roads, utilities, drainage and erosion facilities) for Unit II of Tract 308 for 152 lots.

Recordation of Final Map for the 81 acre site that includes 152 lots ranging in size from 10,000 sq. ft. to 28,750 sq. ft.;

or as an alternative to the above;

The right to complete and record Tract 1873, a 124 acre site composed of Tract 308, Unit II and an additional, adjacent 43 acre parcel to be subdivided into 45 lots ranging in size from 20,000 sq.ft. to 73,740 sq.ft., 3 open space parcels totaling 88 acres, and including all subdivision improvements (roads, utilities and graded building pads).

FILE DOCUMENTS:

Vested Right Claim VR-3-99048 which includes two volumes of written materials (approximately 1000 pages) and applicants exhibits 1 through 18 of oversize maps and plans, supplementary materials received December 15, 1999, Application 128-02 (Claim of Vested Right for Tract 308, Unit I, APN 74-022-31, 74-022-32, received May 13, 1977 , South Coast Regional Coastal Commission), Coastal Development Permit Application 125-34, Coastal Development Permit Application 4-86-48, Coastal Development Permit 4-87-337, San Luis Obispo County files for Tract 308, Tract 1342 and Tract 1873, Appeal 3-SLO-98-087, South Coast Regional Coastal Commission v. Charles Pratt Construction Company (1982) 128 Cal. App. 3d at 830, A-3-SLO-98-087 (Appeal of Tract 1873)

ACTION: Commission Hearing and Vote

STAFF RECOMMENDATION: Staff recommends that the Claim of Vested Rights for Tract 308, Unit II or Tract 1873 be rejected.

Motion No. 1 :

"I move that the Commission determine that the Claim of Vested Rights for Tract 308, Unit II as described in 3-99-048-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution No. 1:

The Commission hereby determines that 3-99-048-VRC, Claim for Tract 308, Unit II, is not substantiated and adopts the Findings set forth below.



Motion No. 2:

"I move that the Commission determine that the Claim of Vested Rights for Tract 1873 as described in 3-99-048-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution No. 2:

The Commission hereby determines that 3-99-048-VRC, Claim for Tract 1873, is not substantiated and adopts the Findings set forth below.

Summary of Recommendation

Charles Pratt has submitted a Claim of Vested Rights for the subdivision of a 81 acre parcel into 152 residential lots ranging in size from 10,000 sq. ft. to 28,750 sq. ft. (Tract 308, Unit II, the completion of all road and utility improvements to serve the lots and the recordation of the final map. In the alternative, the Claimant proposes that the Commission acknowledge a Claim of Vested Rights for construction of all subdivision improvements and recordation of a Final Map for Tract 1873. Tract 1873 is a proposed 45 lot subdivision of all of the land included in Tract 308, Unit II plus an additional, adjacent 43 acres. The sites for both Tract 308, Unit II and Tract 1873 are located on a hillside on the south side of Rodman Avenue next to Montana de Oro State Park in the Los Osos area of San Luis Obispo County. (Please see Exhibit 1, Location Map)

Mr. Pratt's claim regarding Tract 308, Unit II is based on his assertions that, prior to January 1, 1977, the effective date of Coastal Commission jurisdiction over the site, he had valid county approvals for the work needed to satisfy the conditions attached to the Tentative Map in order to file the Final Map for the subdivision and had completed substantial work on subdivision improvements in reliance on the county permits. He further asserts that he is entitled to a Claim of Vested Right for Unit II of Tract 308 because a published appellate court decision which granted a partial vested right for the completion of subdivision improvements for Unit I of Tract 308 (South Central Coast Regional Coastal Commission v. Charles Pratt Construction Company, (1982) 128 Cal.



App. 3d at 830) is also applicable to Unit II. Finally, he asserts that a portion of the cost of work exempted for subdivision improvements for Unit I in 1977 should be allocated to Unit II because some of the improvements would also serve Unit II.

Mr. Pratt's claim regarding Tract 1873 is based the fact that part of Tract 1873 was once Unit II of Tract 308 and on dicta found in the Pratt case referenced above that the claimant asserts commits the Commission "to complete the subdivision provided it comports with the land density requirements of the Coastal Act" (Pratt infra at 848). Tract 1873 was approved by the County of San Luis Obispo in 1997 and is the subject of an appeal to the Commission (A-3- SLO- 98-087) which is scheduled for hearing on the same agenda as this Claim of Vested Right.

In support of his claim, Mr. Pratt has submitted two volumes of written material, numerous oversize maps and plans and the Pratt case cited above. A supplemental packet of material was received in December 1999 in response to a staff request for more specific information regarding the exact development claimed and supporting documentation. (Please see Exhibit 2, portion of submittal and staff letter)

Staff has reviewed the submittal as well as the files for the Vested Right Claim for Unit I Tract 308, CDP Applications 125-34, 4-86-48, 4-87-337, the appeal of Tract 1873 and the San Luis Obispo County Files for Tracts 308, 1342 and 1873. This analysis is detailed in the following Findings and concludes that neither the claim for Tract 308, Unit I nor that for Tract 1873 should be acknowledged because of the following reasons:

1. The Claimant did not have all valid local approvals for Tract 308 prior to January 1, 1977. He had only conceptual approval of a Tentative Map and approval of a preliminary grading plan. There are currently no valid approvals for this project as shown on the following chart.



| Tract 308, Unit II Local Approval Needed | For site work | For Final Map | Date Approved | Date Extended | Date Expired |
|---|---------------------|---------------------|------------------|---|-----------------|
| Preliminary Grading Plan | X | X | 8/6/1976 | exercised | N/A |
| Tentative Map (TM) for Tract 308, Unit II | X | X | 5/7/1973 | 10/1/1974 for 2 years, 9/28/1976 for 18 months | 3/28/1978 |
| TM Condition 1; Revised Map to show 8 acres Open Space or fewer lots | | X | NO | N/A | N/A |
| TM Condition 2: Final "Improvement Plan " | X | X | NO | N/A | N/A |
| TM Condition 3: Drainage Plan | X | X | NO | N/A | N/A |
| TM Condition 4: Water System Plans and proof of water supply | X | X | NO | N/A | N/A |
| TM Condition 5: Sewer System, RWQCB sign off | | X | NO | N/A | N/A |
| TM Condition 6: Utilities plan and easements | X | X | NO | N/A | N/A |
| TM Condition 7: Final Grading Plan | X | X | NO | N/A | N/A |
| TM Condition 10: Revised Map showing open space lots, legal documents establishing Homeowners Association | | X | NO | N/A | N/A |
| TM Condition 11: Fire Protection Plan | | X | NO | N/A | N/A |
| TM Condition 12: Revised street names | | X | NO | N/A | N/A |
| TM Condition 14: Revised map showing max. building heights for each lot | | X | NO | N/A | N/A |



2. The Claimant did not perform substantial work in reliance on and pursuant to all necessary and valid local permits prior to January 1, 1977. The work that was done prior to 1977 was limited to rough grading for the purpose of establishing a survey for preparing a final grading and improvement plan that would be subject to county review and was undertaken pursuant to a *preliminary* grading plan approved by the County in August of 1976. The money expended for this rough grading and vegetation clearing was minimal in relation to total cost of project. Money spent on improvements for nearby subdivisions constructed under separate and much earlier approvals may not be counted towards the cost of completing Tract 308, Unit II improvements.
3. The local approval for the Tentative Map for Tract 308, Unit II has long expired because the Claimant failed to satisfy the conditions needed to file the Final Map. Any vested right obtained under that approval has lapsed due to the expiration of the underlying permit without recordation of the final subdivision map.
4. The Claimant has abandoned Tract 308, Unit II in favor of a new project on the same site, Tract 1342. A condition attached to the approval of Tract 1342 required that four acres of the former Unit II of Tract 308 be dedicated for open space to mitigate impacts on other portions of Tract 1342. This acreage deletes 10 lots in Tract 308, Unit II.
5. The claim for the exemption of Tract 1873 cannot be acknowledged because it was approved by San Luis Obispo County in 1997, over twenty years after the site came under the jurisdiction of the Coastal Commission.
6. The Claimant applied for and obtained) a permit for Tract 1873 before making the vested right claim. A 1976 published Appellate Court decision holds that a claim of vested right may not be asserted if the claimant has already applied for a permit for the project. (Davis v. Central Coastal Zone Conservation Commission (1976) 57 Cal App. 3d. 700) Under this ruling, the claimant thus relinquished a right to assert a claim of vested right for Tract 1873.
7. The dicta cited in the 1982 Pratt case regarding the vested right claim for Unit I of Tract 308 does not apply to either Tract 308 Unit II nor does it require the Commission to approve Tract 1873 if it meets the " land use density requirements of the Coastal Act ". According to statute, projects approved prior to the certification of a Local Coastal Program must be found consistent not only with density requirements but also with *all* applicable resource protection policies of Chapter Three of the Coastal Act (PRC 30604 (a)). After certification of an LCP, the statute requires that the projects be consistent with the provisions of the relevant LCP (PRC 30604 (b) and (c) as applicable).



Findings and Declarations

1. Legal Authority and Standard of Review

Section 30608 of the Coastal Act provides that no person who has obtained a vested right in a development prior to January 1, 1977 shall be required to secure a Coastal Development Permit (CDP) for that development. The procedural framework for Commission consideration of vested rights claims is found in Sections 13200 through 13208 of the Commission's Administrative Regulations (California Code of Regulations, Title 14 et seq.) These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development or development activity, then the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any changes to the exempted development after January 1, 1977 would require a CDP. If the Commission finds that the claimant does *not* have a vested right for the particular development, then a CDP must be secured before the project can go forward.

Mr. Pratt has applied for an exemption from the CDP requirements of the Coastal Act contending that he has a vested right to complete the improvements and record the Final Map for the 152 lot subdivision of Tract 308, Unit II because the project was "vested" prior to the establishment, on January 1, 1977, of the Commission's regulatory jurisdiction in this area of San Luis Obispo County. The Commission must apply certain legal criteria to determine whether a claimant has vested rights for a specific development. These criteria are based on case law interpreting the Coastal Act's vested right provision as well as common law vested rights claims. The standard of review for determining the validity of a Claim of Vested Right is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the claimed development prior to January 1, 1977. Typically this would be a building permit, grading permit, Final Map, health department permit for a well or septic system etc. or evidence that no permit was required for the claimed work. (Billings v. California Coastal Commission (1988) 103 Cal. App. 3d at 729)
2. If work was not completed as of January 1, 1977, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization prior to January 1, 1977. (Tosh v. California Coastal Commission (1979) 99 Cal. App. 3d at 388 (Avco Community Developers Inc. v. South Coast Regional Commission (1976) 17 Cal. App. 3d at 785)

In order to acknowledge a claim of vested right for a specific development or development activity, the commission must find that the claimant met all applicable



permit requirements for the project and, at a minimum, performed substantial work and/or incurred substantial liabilities in good faith reliance on all applicable permits and other approvals for the project, prior to January 1, 1977. In this case the Claimant is asking that he be allowed to finish all improvement work on the subdivision and file the Final Map. He must therefore demonstrate that he has fulfilled the conditions attached to the Tentative Map and has secured all approvals necessary to carry out the work needed to construct the subdivision improvements. In addition, and particularly relevant to this claim, the local approvals must still be valid so as to allow the completion of the development. McPherson et al v. City of Manhattan Beach (2000) 78 Cal Ap 4th 1252, 1257) The burden of proof is on the claimant to substantiate the claim. (California Code of Regulations, Title 14, Section 13200)

There is also legal authority that suggests that there are two additional, applicable criteria that should be considered in determining whether a particular claim for an assertion of a vested right to complete a development can be acknowledged. The first is the holding that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (Urban Renewal Agency v. California Coastal Zone Conservation Commission (1975) 15 Ca. 3d at 577). In this case, it is not necessary for the Commission to decide the issue of whether Mr. Pratt has standing in light of the cited case because he owned the property in 1976.

The other factor to consider is whether in making an application for a Coastal Development Permit, the claimant relinquishes any right to make a subsequent vested right Claim for the same project. Davis v. Central Coast Regional Coastal Commission (1976) 57 Cal. App. 3d at 700). In Davis, the applicant, after being denied a permit by the Commission, argued during the trial and subsequent appeal challenging that denial, that he had a fundamental vested right to develop his property. The Court of Appeal held that Davis should have applied to the Commission for a vested rights determination and could not now, when dissatisfied with the Commission's permit decision, apply for an exemption from the Coastal development Permit requirement. The Davis case *is* relevant to the Commission's determination because the facts are quite similar to those associated with the claim for Tract 1873. Mr. Pratt sought (and obtained) a CDP from San Luis Obispo County for Tract 1873 in 1997. In the current Vested Right Claim submittal, received in the Central Coast Office in January of 1999, he has asked that the Commission acknowledge a vested right for this tract.

The following vested right analysis is based on information submitted with the application and supplemental Commission staff research of official Commission and County records.



2. Development Claimed As Exempt From Coastal Act Permit Requirements

The claimant, Mr. Pratt, has submitted a Vested Right Claim Application for Tract 308, Unit II, 152 lot subdivision of a 81 acre parcel in the Los Osos area of San Luis Obispo County. The application proposes that the Commission exempt the recordation of the Final Map for Tract 308, Unit II and the completion of all subdivision improvements which the Claimant describes as follows:

- a. Continuation of utilities from existing stubs.
- b. Construction and continuation of street paving, curbs and gutters
- c. Completion of storm drain system per plan

(from Claimant's submittal, Expanded Answer to 9, Claimant's Exhibit 8 M)

The Claimant may be underestimating the amount of work still to be accomplished on this site. Based on information found in County Records, a review of proposed improvement plans and a recent inspection of the site, it appears that no significant work has been done and all of the subdivision improvements (installation of all utilities, drainage and erosion provisions and all paving of roads) remain to be accomplished. It also appears that the limited grading and clearing done in 1976 is now completely overgrown and the visible graded areas are no more than paths at this point. The widest graded "road" is perhaps 10' with most only a few feet wide. It is obvious from the site inspection that the substantial additional grading for the entire road system must be done before any paving or other finish work could be undertaken.

In the alternative, the Claimant has requested that the Commission acknowledge a Claim of Vested Right for Tract 1873. This acknowledgment would exempt the recordation of the Final Map for the subdivision of a 124 acre site into 45 lots and the construction of all subdivision improvements.

3. History of the Claim

In order to adequately consider the claimants assertions it is necessary to understand the history of Tract 308, Unit I and Unit II, Tract 1342, Tract 1873 and the factual details of the Vested Right Claim for Tract 308, Unit I, the subsequent Appellate Court ruling on this claim, the Commission action to approve a 40 lot subdivision and remainder parcel for Tract 1342, formerly Tract 308, Unit I and II in 1988, and the County action to



approve Tracts 1342 and 1873. This history is discussed in the following paragraphs. A chart summarizing relevant information is also included.



| Tract Number | Project Description | SLO/CCC Action | Map Extend | Final Map | Map Expired |
|--------------|--|---|--|---------------|----------------|
| 308, Unit I | 86 lots on 26 acres | SLO: Tentative Map, 5/7/1973 Approved, CCC: VRC128-2 partly Denied, CDP 125-34, Denied CCC decision on VRC upheld by Court 2/1982 | SLO :10/1/1974, and 9/28/76 Superior Court: 34 mos. After decision | NO | May 1985 |
| 308, Unit II | 152 lots on 81 acres | SLO: Tentative Map, 5/7/1973 Approved | SLO: 10/1/1974 and 9/28/76 | NO | March 28, 1978 |
| 1342 | 40 lots on 26 acres, 81 acre remainder parcel (Old Tract 308, Units I and II) | SLO: Tentative Map 12/1/1985 Approved CCC: CDP 4-86-48, 8/13/86 Denied, CDP 4-87-337, 5/7/88 Approved | ? | Sept. 7, 1989 | N/A |
| 1873 | 45 lots on 124 acres (Old Tract 308, Unit II plus two additional parcels) | SLO: Tentative Map, 9/1/1998, Approved CCC: Appeal Pending | N/A | NO | NO |

The Common History of Units I and II of Tract 308: The Subdivision Review Board (SRB) of San Luis Obispo County prepared a staff report for Tract 380 dated February 21, 1973. The project was described as an expansion of the existing Cabrillo Estates south of Los Osos and was for 235 residential lots on 107.7 acres with two open space parcels totaling 22.4 acres. (Please see Exhibit 1) The Tentative Map for Tract 308, was recommended for *conceptual* approval by the Subdivision Review Board in their recommendation to the Planning Commission dated March 6, 1973. (Please See Exhibit 3) The Subdivision Review Board recommended " *that the Planning Commission approve the Tentative Map in concept only in regard to the number of lots, lot layout and street configuration, subject to further review of said items upon submission of a grading plan and erosion control plan.*" The SRB recommendation went on to include a number of conditions and appears to contemplate revisions of the map based on proposed mitigations. This report does not describe the size or location



of the lots but proposed Condition 11 requires the applicant to consult with the State Department of Parks and Recreation "*regarding fire control along the south boundary of the property*". It can be inferred from this condition that this action included what is now known as Unit II of Tract 308.

On April 24, 1973, the San Luis Obispo County Planning Commission considered the report of the Subdivision Review Board on Tract 308 and recommended to the Board of Supervisors that the Tentative Map be approved subject to the Board's adoption of the Environmental Impact Statement and the Subdivision Review Board recommendations of March 6, 1973 with some exceptions not relevant to these findings. The Planning Commission recommendation for conceptual approval does not contain any specific description of the project. Again however it can be inferred that Unit II was part of the approval because of the SRB condition relevant to coordination with the State Department of Parks and Recreation.

On May 7, 1973, the Board of Supervisors approved the Tentative Map for Tract 308 with conditions as submitted by the Subdivision Review Board as stated in the Planning Commission's letter of April 24, 1973 to the Board. The description provided by the Board Resolution is vague and does not indicate the size, location or number of lots approved by their action. From the exceptions granted to the subdivider for development adjacent to Montana de Oro State Park it can, however, be implied that the subdivision included land in what is now identified as Unit I and Unit II of Tract 308.

It thus appears that as of May 7, 1973, the applicant had a *conceptual* approval for a 235 lot subdivision on 107.7 acres of land subject to a number of conditions, some of which had the potential to change the number and configuration of the lots. Staff notes that the Subdivision Map Act does not provide for conceptual approvals of Tentative Maps so the legal status of the County's 1973 action on Tract 380 remains unclear. In any event, because this was not the last discretionary approval, no claim of vested rights can be based upon any of the County approvals up to this point in time.

On October 1, 1974, the Board of Supervisors approved a two year extension of the 1973 approval of Tract 308 until November 1, 1976. It is not revealed in the brief note of this action why an extension was requested or if any progress had been made on meeting the numerous conditions attached to the 1973 approval. In a supplemental attachment to the Vested Right Claim for Unit I, the applicant states that the Board of Supervisors, on September 28, 1976 approved an alternative sewage treatment system for Tract 308 and also renewed the time running on the Tentative Map for an additional one and a half years. (See also Claim of Exemption 128-2, report prepared by the Office of the Attorney General dated July 19, 1977, Exhibit 4).



It is at this point in the past that the history of Units I and II diverge. Unit I becomes the subject of a 1977 Vested Rights Claim and a 1977 CDP application (125-34) which was denied. (Please see Ex. 5, VRC Application) Tract 308, Unit II expired in March of 1978 based on the 18 month extension granted to the applicant by the County in September 1976. Tract 308, Unit I expired in May of 1985 by the terms set out in the litigation over the vested right claim relevant to Unit I. On January 26, 1986, the County approved a tentative Map for Tract 1342 which was co-terminus with the area of expired Tract 308 Unit I and Unit II. Tract 1342 proposed a 40 lot subdivision of old Tract 308, Unit I with Unit II shown as a remainder parcel. (Please see Ex. 1, location maps and site plans). A condition attached to the approval of this subdivision required that approximately four acres in the south-west corner of the remainder parcel was to be placed in an open space easement as mitigation for impacts on habitat which would occur as a result of the forty lot subdivision. This subdivision was approved by the Coastal Commission in 1988 (4-88-337). In 1997, the County approved a Tentative Map for Tract 1873. Tract 1873 includes all of the remainder parcel from Tract 1342 (Old Tract 308, Unit II) and an additional 26 acres to the south-east. This Tract Map was appealed to and by the Commission; the de novo recommendation for denial is before the Commission as A-3-SLO-98-087.

The applicant for the current Vested Right Claim asserts that the Court decision relevant to Unit I of Tract 308 also conferred a vested right on Unit II. The following paragraphs detail the history of the Vested Right Claim (VR 128-2) and conclude that this claim was made only for Unit I and does not confer any exemptions on Tract 308, Unit II.

Vested Right Claim 128-2 for Unit I of Tract 308

Project Description: On May 13, 1977, Charles Pratt Construction Company submitted a Claim of Vested Right for "recordation of final map and completing off site improvements for Tract 308 of Cabrillo estates for 86 single family homes" (Tentative Claim of Exemption Form, item 3 , Please see Exhibit 7). Item 13 on this form used by the Commission to process Vested Rights Claims asks if the development is planned as a series of phases or segments. The applicant responds that "*no, tract completed in one phase*". Unit II is not mentioned as a possible future phase of the project presented for the 1977 Vested Right determination.

Further evidence to support the notion that the 1977 VRC was for Unit I only is found in the exhibits attached to the claim form. Attachment 1 shows the site as being approximately 25 acres in size and bisected by Rodman Drive. Attachment 2 lists the local governmental approvals and expenditures to date for Unit I only. Please see Exhibit 5. In a letter written by the applicants representative included as part of the claim, the representative notes "*while Cabrillo Estates as a total project may abut Montana de Oro State Park, this specific proposal is internal to the project and has no*



common boundary with the park". (Andrew Merriam, AIA, letter to Joan Valdez of the South Central Coast Regional Commission, dated May 11, 1977) In a letter of April 18, 1977 to the Commission, Mr. Merriam makes a distinction between Unit I and II by describing Unit I as under construction and Unit II as "designed", with the implication that it is *not* under construction. The Assessor parcel numbers given by the applicant refer only to parcels located within the 25 acre area of Unit I shown on the site map referred to earlier.

The July 19, 1977 staff report prepared by Peter Kaufmann of the Office of the Attorney General for this claim describes the project as the "*subdivision of Tract 308, Cabrillo Estates, into 86 individual lots suitable for the construction of single family residences*" and analyzes only the expenditures for work done on Unit I. (Please see Exhibit 4). A staff report prepared by Commission Staff for the appeal of the South Central Regional Commission action on the claim states that the requested exemption is for "*subdivision into 86 lots, completion of subdivision improvements and drilling one water well*". (Page 1, Appeal Summary dated 9/21/77) The subdivision improvements are described as follows in the appeal summary and clearly apply only to those needed to serve the proposed 86 lots: "*The off-site improvements generally consist of grading, the construction and paving of streets, the construction of driveways, the construction of curbs and gutters, and the placement of utility facilities and sewage disposal facilities all for the creation of 86 single family residence lots* (emphasis added). There is thus no support in the 1977 Claim and subsequent analysis for the Claimant's current contention that some of these improvements for Unit I were also to serve Unit II.

Finally, the various courts that reviewed the litigation surrounding the Commission's action on VR128-2 have described the site as being consistent with the characteristics of Unit I only. In his April 21, 1980 decision, Judge Richard Kirkpatrick of the San Luis Obispo Superior Court describes the project as

" real property located in San Luis Obispo, California known as Tract 308 consisting of approximately 25 acres located in the Cabrillo Heights development in the Baywood Park area of the un-incorporated portion of San Luis Obispo County." (lines 7-10, page 2, Findings of Fact and Conclusions of Law, dated April 21, 1980)

The Judge also described the project as follows; "*such map Tract 308 divided the property into 86 lots*" (Lines 23 and 24, page 2 *infra*).

Although the Appellate Court did not completely agree with the decision of the San Luis Obispo Superior Court, it did agree with the description of the project claimed for exemption. The project is described by the Appellate Court as



"Pratt owns 25 acres of real property in San Luis Obispo County described as Tract 308" and "On May 4, 1973, the San Luis Obispo County Board of Supervisors approved a tentative map for tract 308 which delineated the property into 86 residential lots. The tentative map was subject to certain conditions relating to street grading, paving, driveways, gutters. Water, utility extensions, water and sewer lines and extensions, all of which are known as "off site Improvements" ". (South Central Coast Regional Commission v. Charles A. Pratt Construction Company, 128 Cal. App. 3d at 835)

In conclusion, it is abundantly clear that only Unit I of the original Tract 308 fits the description of the project claimed by the applicant in their 1977 submittal of a Vested Right claim to the Commission. This project was the only one analyzed by Deputy Attorney General Kaufmann in his recommendation to the Regional Coastal Commission, by planning staff in the appeal of the Regional Commission action to the State Coastal Commission and identified as the project by both courts with jurisdiction over the litigation on this claim. The Commission notes that this is also the County's position as evidenced by a recent letter to the claimant from the County Counsel's Office (please see Ex. 6). Unit II was not part of this VRC and thus cannot receive any entitlements to construct improvements or file a Final Map based on the outcome of the claim for Unit I.

**Final Disposition of Vested Right Claim 128-2 for Unit I of Tract 308
Commission Action:**

The Vested Right Claim for Unit I of Tract 308 was heard by the South Coast Regional Commission on August 12, 1977. The Applicant had requested an exemption to allow him to file the Final Map for the 86 lot subdivision, complete all subdivision improvements and to drill a water well. Staff recommended that only the subdivision improvements be granted an exemption because the claimant;

"has spent \$46,894.25 which represents 22.8% of the total cost of the total {subdivision improvement} cost of \$205,400 . This represents a substantial liability. Further there are no grounds for finding this to have been done with "unseemly haste."

The work accomplished on the site was undertaken pursuant to an "Improvement Plan " for the subdivision improvements (road paving, installation of utilities etc.) approved by the county. This "Improvement Plan", based on a review of County records, was for Unit I *only*. The Regional Commission concurred with the Staff Recommendation and acknowledged the claim for the improvements but denied the claims for the water well and the Final Map. The Applicant appealed the Regional Commission action to the



State Coastal Commission on August 23, 1977. In September of 1977, the State Commission declined to hear the appeal and thus, the Regional Commission decision became final.

Litigation: Unsatisfied with the Commission's action on the Vested Right Claim, Mr. Pratt filed suit against the Commission in the San Luis Obispo Superior Court. On April 21, 1980, the Court ruled in favor of Mr. Pratt on all points and the judgment was filed on May 2, 1980. (Please see Exhibit 9, SLO Superior Court decision) As part of the decision, the Court extended the life of the tentative map by stating that *"The time for expiration of the tentative map for Tract 308, Cabrillo Estates, San Luis Obispo County, California shall be extended and the tentative map shall be valid for a period of thirty eight (38) calendar months following the entry of final judgment of this litigation."* Given that the only focus of this litigation was on Unit I of Tract 308, it is reasonable to assume that the extension of the Tract approval was for Unit I and did not extend time on the approval for Unit II.

The Superior Court decision was appealed by the Coastal Commission. In February 1982, the Fifth Appellate Court handed down what became the final decision upholding the Commission's action on the Vested Right Claim for Unit I of Tract 308. (Please see Exhibit 6) At that point the thirty eight month time period provided by the Superior Court began to run. The Tentative Map of Unit I would expire in May of 1985.

County and Coastal Commission Permit History

CDP Application 125-34, 1977 for Tract 308, Unit I: After the Vested Right Claim for Tract 308 Unit I was only partially acknowledged by the Commission in 1977, Mr. Pratt applied for a Coastal Development Permit for the project. (Application 125-34) The staff report describes the proposed project as an 86 lot subdivision on a 25 acre parcel bisected by Rodman Drive. Maps attached as exhibits to the staff report show the same area considered in the Vested Right Claim. Unit II of Tract 308 is not a part of the proposed project. On September 30, 1977, the South Coast Regional Commission denied the project largely because it did not meet the Coastal Act criteria for rural land divisions. The Regional Commission's decision was appealed to the State Coastal Commission which upheld the denial.

CDP Application 4-86-48, (1986) for Tract 1342 : In 1984, Mr. Pratt applied to the county for a revised tentative tract map based on a lower density for the proposed subdivision. This new project boundaries were co-terminus with those of old Tract 308, Units I and II and proposed the division of the 25 acre parcel bisected by Rodman Drive into 40 lots (site of Tract 308 Unit I) and a remainder parcel of 81 acres (site of Tract 308, Unit II). The time required for County review of the proposal exceeded the life of



Unit I of Tract 308, which was to expire in May of 1985. As mentioned previously, Unit II had already expired in March of 1978. With expiration of the tentative map for Tract 308, Units I and II, a new tract number was assigned to the project (Tract 1342) and it was processed by the County as a new application. The County allowed the EIR for Tract 308 to be used for CEQA purposes, but required an extensive update and supplemental information regarding traffic and habitat values. The County approved the new proposal on December 1, 1985. A condition attached to the Tentative Map approval required that four acres in the south west corner of the 81 acre remainder parcel be set aside in an open space easement to mitigate impacts of the project on pygmy oak and Morro Manzanita habitat caused by the 40 lot subdivision. (Please see Exhibit 1, location maps and site plans)

In February of 1986, the Applicant submitted an application for Tract 1342 to the Coastal Commission for review. (CDP 4-86-48). The project was denied by the Commission on August 13, 1986 because of impacts on habitat and lack of adequate public services. A subsequent request for reconsideration (A-4-86-48-R) was also denied.

CDP Application 4-87-337 (1988) for Tract 1342 : On November 23, 1987, Mr. Pratt again filed an application for a Coastal Permit for Tract 1342 with the Commission. The project is described in the Commission staff report as:

"The proposed project is : (1) to divide 107 acres into into 40 residential lots of 20,000 square feet minimum (on a 26 acre portion of the site, a holding basin lot of approximately two acres, and one parcel of 81 acres; and (2) grading and construction of street and utility improvements for the 40 residential lots."

Exhibits attached to the staff report show the parcel bisected by Rodman Drive and formerly Tract 308, Unit I as the site for the 40 lots. The site of former Tract 308, Unit II is shown as the 81 acre remainder parcel.

The initial staff recommendation prepared for the project was for denial. The application was heard by the Commission on June 7, 1988 and, by a 6-5 vote was approved. Revised Findings reflecting the Commissions action were prepared and adopted subsequent to the June approval of the subdivision. The Final Map was recorded on September 7, 1989.

Appeal A-3-SLO- 98-087 (1998) for Tract 1873 : On February 13, 1990, Mr. Pratt submitted an application for the subdivision of a 124 acre site into 45 parcels including 41 residential lots ranging in size from 20,000 square feet to 4.6 acres, four open space



lots totaling 78.8 acres and approximately 6.4 acres for street improvements. Of the one hundred twenty four acres that made up the site, eighty one consist of the remainder parcel for Tract 1342 discussed above. (old Tract 308, Unit II) Two parcels immediately to the east of the site of former Tract 308, Unit II totaling 43 acres were added to make up the new site now known as Tract 1873. The County filed the application on July 10, 1990.

A Draft EIR was prepared for the project in 1995 and the Final EIR was certified in 1996. (Cabrillo Associates Tract 1873, Final Supplemental EIR, prepared by the Morro Group, July 1996) This EIR offers some insights into the status of Tract 308, Unit II and rough grading on the site in 1976 that forms one of the bases for the current Vested Right Claim. In their response to comments from Central Coast Engineering (September 25, 1995) the Certified EIR states as follows:

The record should be made clear regarding the previous Tentative Tract 308. Historical files indicate that the area encompassing the current request (Tract 1873) was also considered as Unit II of Tract 308. Although approved at the tentative stage, neither Unit I of Tract 308 or Unit II of Tract 308 ever recorded. As the Coastal Act was considered by the legislature, pending subdivisions in the coastal zone were required to be consistent with the Coastal Act. Unit I of Tract 308 was litigated and eventually the applicant prevailed in the courts. Unit II of Tract 308 was later reprocessed as Tract 1342 and was eventually recorded. It does not appear that Unit II was part of the settlement of this case.

The County in adopting the Certified EIR also found:

There are substantial differences between Unit I and Unit II of Tract 308. Unit I has approved tract (road) improvement plans on record with the County Engineering Department and Tract 308 Unit II (now Tract 1843) does not..

Unit II of Tract 308 has no approved improvement plans on file with the County Engineer. Although the applicant's engineer maintains that "grading" was approved for the roads proposed in Tentative Tract 308, Unit II, no evidence has been found that any authorization to construct roads ever occurred. Therefore, it appears that any grading that occurred, rather than implying some sort of "vested right", is, in fact unauthorized grading.¹ Although the proposed but unimproved roads involved vegetation clearance, the extent of cut and fill was limited. It should be

¹ As discussed below, a permit for "preliminary" grading of the site was obtained in August of 1976.



noted that the width of the cleared areas are relatively narrow and do not approach the width of public roads.

Planning staff has been advised that there is no "vested right" to build roads proposed by Tentative Tract 308, Unit II since it long ago expired, no improvement plans were ever approved by County Engineering and any actual work done was unauthorized. (Final EIR, page X-34)

The information cited above from the EIR should be clarified regarding the status of permits for grading work undertaken on the site in 1976 and on which this claim for an exemption from the Coastal Development requirement is based. The Claimant did receive approval of a Tentative Map for Tract 308 Unit II on May 7, 1973. This approval contained the following condition:

2... " approve the Tentative Map in concept only in regard to the number of lots, lot layout and street configuration, subject to further review of said items upon submission of a grading plan and erosion control plan. Said plan is to be to a scale of 1" = 50' and contain the following information:

- (a) All cuts and fills necessary to complete said subdivision*
- (b) All lot grading*
- (c) Proposed driveway provisions for lots south of South Bay Blvd. (Staff Note: Unit II is south of South Bay Blvd.)*
- (d) Disruption of natural terrain outside road right of ways necessary to provide utilities.*
- (e) Natural vegetation to be removed and remain. Notation shall be made of all trees proposed for removal*
- (f) All proposed measures to reduce erosion, including designation of all plant species and temporary erosion control methods during construction. Note : The applicant shall consult with the Soil Conservation Service in preparation of the erosion control plan and a copy of the completed plan shall be submitted to the Soil Conservation Service for review.*

*Further, said plans are to be submitted to the Planning Department at which time an evaluation based on the information shown on said plans as to lot lay out, lot number, erosion control and street configuration will be made by the Department and transmitted to the applicant. **If there are disagreements that result in unresolvable problems, the matter will be submitted to the Planning Commission for final action.** (emphasis added.)*



Note: These requirements will give the applicant a chance to show that his mitigation measures will eliminate or lessen the impact on environmental concerns. Also, if lots are eliminated, the open space requirement may also be reduced accordingly.

This condition clearly requires the applicant to take some intermediate steps before the County will approve a *final* grading and "Improvement Plan" for the subdivision. It is also clear that the final street configurations and number of lots may be different from that conceptually approved by the Board of Supervisors in May of 1973. Since the site of Unit II of Tract 308 was steep and heavily vegetated, a survey would be required to provide the field data needed to prepare the plan called for in condition 2. In order to accurately survey this site, clearing and rough grading would have to be done. A permit for this "preliminary" grading was approved by the County in August of 1976. The plans signed off by the County Planning Department at that time state *"for general conformance with the P. C. concept approval"*. The sign off by the County Engineer is even more specific, stating, *"for preliminary grading required by Tentative Map Condition"*.

The distinction between the approval for this preliminary clearing to allow for a survey and an approval for "Improvement Plans" is important to the analysis of this claim. Discussions with County Engineering staff reveal that a preliminary grading plan does not authorize the final grading and paving of roads, or the installation of utilities and drainage facilities. This type of work is (and was, in 1976 as well) authorized by an "Improvement Plan". There is no record at the County Engineer's Office of an "Improvement Plan" being authorized for Unit II. In contrast, an "Improvement Plan" is on file for Unit I of Tract 308 and it was on this local approval that the actual street improvements which provided the basis for the vested right for that project was founded. Thus the statement in the EIR is correct in that there was no valid local approval to actually undertake the work of finish grading and paving the roads and driveways or installing the utilities and drainage facilities on Tract 308, Unit II. The EIR is incorrect however in stating that *no* permits whatsoever were issued. The Claimant has shown that he did have local approval to clear and rough grade in order to properly survey the site consistent with the direction of Condition 2. Among other criteria, the Commission must consider whether work done pursuant to this limited local approval is sufficient to provide the basis for acknowledging this claim of a vested right.

The County Board of Supervisors approved Tract 1873 on September 1, 1998. Their action was appealed to the Coastal Commission by Commissioners Wan and Reilly, US Fish and Wildlife Service, California Department of Parks and Recreation, California Department of Fish and Game, California Native Plant Society, John Chestnut and Randall Knight. The Commission took jurisdiction over the project on January 13, 1999 when it determined that the County's action presented a number of issues regarding



consistency with the certified LCP. The de novo hearing on the appeal is scheduled to follow the hearing on this Vested Right Claim at the April 2000 Commission meeting.

4. Claimant's Contentions

Mr. Pratt offers a number of reasons in support of his contention that the Commission should acknowledge a vested right claim for Unit II of Tract 308 or, in the alternative for Tract 1873. These reasons are summarized from the claim as follows:

1. "The Court of Appeal's decision in *South Central Coast Regional Com. V. Charles A. Pratt Construction Company* (1982) 128 Cal. App. 3d 830 is applicable to both Unit I and Unit II of Tract 308. "
2. The appellate court decision in *Pratt* holds that the "Commission is committed to granting a permit to complete the subdivision (either Tract 308, Unit II or Tract 1873) provided it comports with the land density requirements of the Coastal Act."
3. In reliance on valid local approvals, the claimant incurred substantial liabilities prior to January 1, 1977 by expending money on rough grading, tree removal and clearing on Unit II of Tract 308. Additional funds were expended on utilities for Tract 308 Unit I, 306, 307 and 310 to serve Unit II.
4. Local approvals for Tract 308, Unit II are still valid and thus Claimants vested right to complete Tract 308 has not lapsed.
5. Contrary to the holding in the 1982 Pratt case, current vested right law acknowledges that possession of a Tentative Map is sufficient authority to give the claimant a vested right to complete the subdivision.

In summary, the claimants basic argument is that Unit II should be exempt from the Coastal Development Permit requirement because it was part of the 1982 Pratt case wherein the Court purportedly committed the Commission to approving a subdivision of the site if the density was appropriate. The Claimant also contends that Unit II is eligible for exemption because substantial work was done on the project (both on site and on near by sites) prior to the effective date of the Coastal Act. Each of the claims outlined above are discussed in the following sections of these Findings.



Claimant's Contention: The 1982 Pratt Case applies to Unit II of Tract 308 as well as to Unit I.

A detailed account of the history of the Vested Right Claim that gave rise to the Pratt Case is found on pages 8 and 9 of these Findings. As discussed in the history, a review of the Commission and Court Records for his case provide absolutely no evidence that the Vested Right Claim made in 1977 for Unit I extended to Unit II of Tract 308. The only evidence the claimant offers to support his assertion that Unit II was part of the Vested Right Claim in the Pratt case is that the Court of Appeal's decision references Tract 308 without differentiating the two units. This evidence is unpersuasive because the applicant never stated that both units of Tract 308 were being claimed. In his application to the Commission for the Vested Right Claim in 1977, the project claimed for exemption is identified as *'recordation of final map and completing off site improvements for Tract 308 of Cabrillo Estates for 86 single family homes'*. Exhibits attached to the application show only the 25 acre parcel bisected by Rodman Drive coinciding with the area of Unit I. No mention is made of the 81 acre Unit II site and it is not shown on the maps submitted with the claim nor was Unit II added at any time during the protracted Commission and Court Hearings on the 1977 claim. Therefore, if the Court did not differentiate between Unit I and Unit II it was because the case before the Court was for one subdivision on 26 acres and the Court was unaware that Tract 308 comprised two units based on information supplied by the applicant. Finally, it is worth reiterating that the project description (86 lots, 25 acre site) remained constant throughout all proceedings. If a mistake was made, and the applicant intended to include Unit II, there was ample opportunity to correct the record. The assertion that Unit II was part of the 1982 Pratt case is not supported by evidence in the record and thus a claim of vested right should not be acknowledged based upon this contention.

The Claimant further asserts that unspecified improvements made to Unit I also will serve Unit II inferring that some of the cost of these improvements should be attributed to Unit II for the purposes of this claim. The Commission is not persuaded by this assertion because the record for the 1977 VRC shows that the Claimant stated that that all of the money spent on subdivision improvements was for work done to complete the infrastructure for Unit I pursuant to the County approved "improvement plan" for Unit I. No mention was made by the Claimant that a portion of the work, and consequently, a portion of the money spent, was for a different project (Unit II). The Commission also notes that Unit I and Unit II do not share any common infrastructure that would be constructed as part of either tract. (Please see Exhibit 1, location maps and site plans)

Claimant's Contention : The 1982 Pratt Decision commits the Commission to approving the subdivision of Tract 308 and Tract 1873



The Claimant asserts that the following dicta found in the Appellate Court ruling on the 1982 Pratt case requires the Commission to approve the subdivision of Tract 308, Unit I and Unit II .

" As we have explained, the California Coastal Act reflects an important public policy to protect the coastal environment on behalf of the people of our state and our nation. The granting of a total exemption to the developers in this case would frustrate that policy to a significant degree. (See Avco Community Developers Inc. v. South Coast Regional Com. Supra 17 Cal.3d 785, 797-798)

Neither subdivider has shown it will suffer irreparable detriment if it is required to obtain a coastal permit. Because Pratt was allowed to complete the off site improvements, the Commission is committed to complete the subdivision provided it comports with the land density requirements of the coastal act. "

A thorough reading of the entire Pratt case results in a rather different interpretation of these remarks by the Court than that urged by the claimant. The Pratt Court clearly understood the broad mandate of the Coastal Act to protect coastal resources because the decision states

*" The Coastal Act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone **and to ensure that any development within the zone will be consistent with this overall objective.**" (Infra, 844,emphasis added).*

If the Court understood that the Coastal Act provided a comprehensive body of policies to protect *all* of the natural and scenic resources of the Coastal Zone, why then, in the final paragraphs of the decision did the Court suggest that the Commission was committed to approve the Pratt subdivision if it was consistent with only the policy of the Coastal Act relating to "land use densities". The answer to this question may be found on page 838 of the case wherein the Court notes that the Regional Commission had denied a Coastal Development Permit for the subdivision because *"the proposed project was inconsistent with Section 30250 (a) of the Coastal Act."* Thus the Court may have assumed that the proposed density was, (and in order to provide support for the Claimant' assertion, would forever remain) the only aspect of the project that was an issue regarding consistency with Chapter 3 of the Coastal Act. There is no support in the opinion for the proposition that the Court intended to exempt the project from compliance with all other applicable resource protection policies found in Chapter 3 that provide the standard of review for all other projects proposed in the Coastal Zone. (PRC Section 30604 (a)).



This issue of a special Commission "commitment" to approve this subdivision has been brought up before by the Claimant in the context of his application for Tract 1342. The Commission considered this assertion in the adopted Findings for both CDP 4-87-337 and 4-86-48 which state the Commission's position on this contention as follows:

"The applicant filed suit (Charles A. Pratt Construction Company, Inc. v. California Coastal Commission) seeking an exemption from the requirement for a coastal development permit and for a grant of time extension for the tentative map based upon the vested rights of his improvements. The applicant challenged only the denial of the claim of exemption. The trial court ruled in favor of the owner. The Commission appealed the decision and the appellate court ruled that the project was not exempt from the Coastal Commission jurisdiction. The court also stated that "because Pratt was granted a permit to complete the offsite improvements, the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act."

Within the discussion section of the opinion, the court notes that "the 1976 Coastal Act . . . represents a major statement of overriding public policy regarding the need to preserve the state's coastal resources not only on behalf of the people of our state, but on behalf of the people of our nation." The discussion further indicates that Section 30001 sets forth the legislative findings and declarations for the Coastal Act as "(a) that the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."

The Court's opinion speaks of the overriding policies of the Coastal Act in reviewing project developments within the coastal zone and concluded that the proposed development must be found consistent with these policies, hence its finding that the Commission "is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act."



The Commission interprets the language of the court's decision as containing an assumption that upon resubmittal of the permit application, all surrounding circumstances will be as they were at the time of the issuance of the opinion. However, language throughout the opinion stressed the overriding need to preserve the state's coastal resources. This leads to the conclusion that any significant change in such circumstances could justify a change in the Commission response to a resubmitted application." (excerpt from CDP 4-87-337, emphasis added)

Finally, even if it could be reasonably argued that the Pratt Court carved out a special exemption from the application of most Coastal Act policies to the subdivision that was the subject of that case, this exemption would only apply to Commission consideration of a *Coastal Permit Application* for Tract 308, Unit I. Here, the Claimant is asking the Commission to acknowledge a *Vested Right Claim* for different projects (Unit II of Tract 308 or, Tract 1873). There is no explanation to support this creative bootstrapping from project to the other and from one procedure to another.

In conclusion, the Commission is not "committed" to approve a Vested Right Claim for either Tract 308, Unit II or the newer Tract 1873 based on the paragraph cited by the Claimant from the Pratt Case. It has, on two occasions specifically addressed the issue presented by the Pratt Court's statement regarding a commitment in a manner that does not agree with the interpretation placed on this statement by the Claimant. The Commission's interpretation was not challenged by the Claimant in 1986 or 1988 and remains unaltered in these Findings.

Claimant's Contention: The Claimant incurred substantial liabilities prior to January 1, 1977 for work done on the project pursuant to valid local approvals.

In order to acknowledge a claim of Vested Rights, the Commission must determine that the Claimant incurred "substantial liabilities" in undertaking work on the project pursuant to valid local approvals. Mr. Pratt claims that, in reliance on valid county approvals, he spent a substantial amount of money for grading work done on the site. According to estimates included in the Claimant's submittal for total cost of project and cost of work done before January 1, 1977, he had expended over 35% of the total project cost by that date. The Claimant has also submitted a number of plans showing a variety of improvements made for Tracts 306, 307, and 310. The Maps submitted by the Claimant for these Tracts, show that the owner was a Mr. Rodman, not Mr. Pratt and



were approved and constructed before Tract 308, Unit II received local approval. Inexplicably, these *existing* improvements are also included on the Claimant's list of improvements needed to be constructed to complete Tract 308.. The Claimant is contending that 52% of the money spent on these improvements (estimated by the Claimant's engineer at \$95,000) should also be counted towards the claim for Tract 308, Unit II because they may be used by people living in Tract 308 if it was ever constructed (i.e. residents of Tract 308 would use the road system of Tracts 306 and 307 to gain access to their property, drainage from Tract 308, because it is at a higher elevation would flow thru Tracts 306, 307 and 310's storm drains etc). Under this theory, a portion of the cost of *any* earlier infrastructure (Los Osos Blvd., Highway 101 etc) that would serve a development for which a vested right was being sought could be attributed to that project as part of the vested right determination. This effort to draw upon long completed improvements for nearby, but separate developments, to support the claim for Tract 308, Unit II is creative but inconsistent with the legal standard for reviewing vested right claims.

As discussed in an earlier section of these Findings, a review of the record for the 1977 Vested Right Claim for Tract 308, Unit I does not reveal that any of the expenditures claimed for that project would also serve Unit II. It is also not appropriate to consider a portion of the money spent by another developer on improvements to earlier, nearby subdivisions.

Regarding funds expended pursuant to the preliminary grading plan, the only local approval the applicant had obtained prior to 1977, the Commission disagrees with the assertion that the Claimant has incurred a "substantial liability". The following paragraphs describe the legitimate costs that can be considered in this vested right determination and provide a detailed analysis of the Claimants contentions in this regard.

According to established law regarding the determination of vested rights for a project, the courts have held that the only those funds that can be considered are those spent directly on physically developing the project and pursuant to valid local approvals. The Courts have also held that the work must be done in "good faith" and "without unseemly haste" (Tosh v. California Coastal Commission, *infra* and Avco Community Developers Inc. v. South Coast Regional Commission, *infra*,) This means that the costs associated with *obtaining* local approvals (land acquisition, design work, EIR's, Permit Fees, Legal, Planning and Engineering costs, etc.) cannot be counted. Examples of *allowable* costs would be grading done pursuant to a valid grading permit, foundations poured pursuant to a building permit, septic systems installed under a permit from the Health Department and the like. The money expended on the pre January 1, 1977 work must also be "substantial" in relation to the total cost of completing the project. While the Courts have not identified a specific percentage of work that constitutes "substantiality", in the Pratt



Case (infra), the Court agreed with the Commission that the Claimant was entitled to a vested right to complete the subdivision improvements for Unit I of Tract 308 because 22% of the work was already complete. With these ground rules in mind, the following analysis concludes that the Claimant has not incurred " substantial liabilities" because of the minimal work done prior to January 1, 1977 given the total cost of project completion.

Work Needed to Complete the Project

The claimant, Mr. Pratt, has submitted a Vested Right Claim Application for Tract 308, Unit II, 152 lot subdivision of a 81 acre parcel in the Los Osos area of San Luis Obispo County. The application proposes that the Commission exempt the recordation of the Final Map for Tract 308, Unit II and the completion of all subdivision improvements as follows:

- d. Continuation of utilities from existing stubs.
- e. Construction and continuation of street paving, curbs and gutters
- f. Completion of storm drain system per plan

(from Claimant's submittal, Expanded Answer to 9, Claimant's Exhibit 8 M)

The Claimant may be underestimating the amount of work still to be accomplished on this site. Based on information found in County Records, a review of proposed improvement plans and a recent inspection of the site, it appears that no significant work has been done and all of the subdivision improvements (installation of all utilities, drainage and erosion provisions and all paving of roads) remain to be accomplished. It also appears that the limited grading and clearing done in 1976 is now completely overgrown and the visible graded areas are no more than paths at this point. The widest graded "road" is perhaps 10' with most only a few feet wide. It is obvious from the site inspection that the grading done in 1976 to allow for a proper survey must be augmented and re-done before any paving or other finish work could be undertaken. The cost of this new grading must thus also be added to the estimate for completion of work.

Work Completed and Money Spent Prior to January 1, 1977

The Claimant has not submitted receipts to document his assertion that he spent substantial money on the project in 1976, instead he has submitted several statements



and declarations describing the work performed on the site prior to January 1, 1977. The statements describe the Declarants present recollection of the costs of that work performed over twenty two years ago. All of this information relates only to the Claim of Vested Right for Tract 308, Unit II. (No information has been submitted regarding expenditures for Tract 1873 prior to 1977 because the Claimant's theory for why a Vested Right should be acknowledged for that Tract rests on a different legal theory.)

This material for Tract 308, Unit II is summarized below.

Claimants Submittal, Volume 2, 5H, Answer to Question 8 . Here the Claimant states that 60% of 7,400 lineal feet (4400' is 60% of this figure) of a 50' wide road was rough graded and 100% of the clearing and grubbing needed for locating the roads was accomplished prior to January 1, 1977.

Declaration of Randy Houg, Volume 2, 5H : Mr. Houg apparently worked on the surveying crew for laying out the roads for the project. In his declaration, he states that the " roads were cleared by bulldozer " and that this work was done in " the latter part of 1976 ". (Houg Declaration, June 16, 1999)

Declaration of Jack Foster, June 22 1999, Volume 2, 5H : Mr. Foster does not state when the work was done but does describe working, with a crew, on the site for approximately three weeks. During that time he states that he and his crew were "doing work on an hourly rental basis for the purposes of taking out eucalyptus trees, brush, and clearing to facilitate access by surveyors. Based upon my experience and general recollections, we would have used a D-6c Dozer, D-8h Dozer and 977L Track loader for this clearing work for proposed streets in Unit II of Tract 308 ". Regarding the cost of this work, he states that " it is my opinion that the minimum amount billed for this work in clearing the proposed streets for the upper Unit of Tract 308 would have been \$26, 400. " (all figures in this portion of the Findings are in 1976 dollars, to convert to 1999 dollars the figures should be multiplied by 3.5)

Declaration of Charles Pratt, June 11, 1999, Volume 2, 5H : Mr. Pratt declares that clearing and grubbing of the proposed streets was done " between October 1976 and before Christmas 1976 ". It is his recollection, this work took " approximately one month". He also states that " After the proposed streets in the upper portion of Tract 308 had been cleared and grubbed, we next graded the proposed alignments for the streets in the upper portion of Tract 308. This work was completed prior to the end of 1976. This substantial work involved the cutting of existing ground to proposed grades and filling other areas to proposed grades. This cutting and filling and compacting all occurred within the proposed right of ways for the streets which are approximately 50' wide . This work involved approximately 7000 lineal feet for the proposed future streets. Prior to January 1, 1976, a minimum of 80% of the work necessary to complete the



rough grading for the proposed streets was completed." During the fall of 1976, Mr. Pratt states that "I supervised the excavation and grading of the storm retention basin for Tract 308.....the excavation work for this basin was completed during the fall of 1976. "

Mr. Pratt states that the total funds expended for grading and clearing for the roads and the detention basin was **\$154,000** (\$100,000 for rough grading of roads, \$26,000 for clearing and grubbing, \$18,000 for excavation of settlement basin and \$10,000 for drainage improvements to Tract 308, Unit I that also serve Unit II).

Declaration of Ben Maddalena, June 10 1999, Volume 2, 5H : Mr.. Maddalena states that the site was cleared and grubbed by Jack Foster in the fall of 1976 and approximately 80% of the proposed street alignments were rough graded prior to January 1, 1976. He states that the cost of this work totals **\$117,635** (\$20,635 for design, clearing and surveying, \$97,000 for rough grading of the roads).

Applicant's Submittal, Volume 2, 8M : In the Claimant's expanded to question 8 on the Vested Rights Claim form, Mr. Pratt provides a breakdown of pre 1977 expenditures on the project. (Please see Exhibit 12) Many of the expenditures are not for physical work on the site pursuant to the county approval for preliminary grading. As noted in an earlier section of these Findings, Courts have held that Vested Right Claims are not supported by expenditures not directly made for work on the site such as legal and engineering fees, taxes, land acquisition costs, and interest (presumably on the loan to buy the property) or for work that was not authorized by a valid local permit. Subtracting these types of costs, the breakdown shows that \$97,300 was paid out for " Grading, tree removal and storm drain " and another \$8,111 was expended for " Administration and supervision" for a total of **\$105,411**.

Based on the foregoing declarations and statements in the submittal, it appears that somewhere between \$105,000 and \$154,000 is claimed to have been spent by the applicant on work pursuant to a valid local approval prior to January 1, 1977. Staff notes that ordinarily expenditures in support of a vested right claim include objective documentation such as cancelled checks, invoices and the like unless these would be impossible to provide. The Claimant has been asked to provide this type of documentation and has provided such information for certain legal and design costs but has not furnished this type of documentation for actual site work (grading, clearing) accomplished pursuant to the preliminary grading permit. Thus, while Declarations may be appropriate as supplementary information, in this case, they constitute the only documentation regarding expenditures. The Commission may therefore accord these figures the credence it believes they are entitled to recognizing that according to aerial photographs taken in early 1977, it is clear that rough grading of the roads had been accomplished by that time. Based on the recent site visit, it does not appear that the roads were ever graded to a 50' width however. Staff also notes that the Claimant



states that 25,000 cubic yards of grading was performed at a cost of \$100,000 or \$4.00 per cubic yard (Declaration of Charles Pratt). Information obtained by staff from a representative of Granite Construction Company indicates that the standard price for grading in Central California in 1976 was \$1.00 to \$1.50 a cubic yard or \$25,000 to \$37,500 to grade 25,000 cubic yards.

If the figures given by the Declarents and in the statement included as 8M of the Claimants submittal are assumed to be accurate, the following adjustments must be made to them to comply with the requirement that only work done pursuant to a valid local approval may be counted. The only local approval the Claimant had authorizing any work on Tract 308, Unit II in the fall of 1976 was the preliminary grading plan for the roads signed off by the county in August of 1976. A review of these plans show that they are for road *grading* only. No other work is shown on the plans (no drainage improvements, no settlement basin, etc.) It can therefore be concluded that the *only* work authorized by these plans was grading to essentially accommodate a proper survey for the proposed subdivision roads in order to prepare the final " Improvement Plan" as envisioned by Condition 2 of the 1973 approval. Thus, only the sums expended on road grading can be used in this determination and Mr. Pratt's estimate of pre-1977 expenditures must be reduced by \$28,000 to \$126,000 (subtracting the unauthorized work on the drainage and settlement basin). Averaging the three estimates (Pratt, Maddelena and Statement at 8M) which seem to account for all the permissible work on the site before 1977, it appears that a working figure of **\$117,000** is appropriate for continuing the analysis. The Commission may also consider the lower figure of **\$57,000²** if it finds the cost per cubic yard figures supplied by Granite Construction more persuasive. The next step is to determine whether this sum represents a " substantial liability" in terms of the overall cost to complete the project.

Cost to Complete the Project

In order to obtain a Vested Right to complete the subdivision improvements for Tract 308, Unit II, the Claimant must demonstrate that he incurred *substantial* liabilities for work done in reliance on a valid approval. The method of determining if substantial work has been done is to compare the cost of the pre-1977 work with the cost to complete the work after 1977. In general, if much of the work has been done and little remains, a Vested Right Claim will be upheld. Conversely, if only a small amount of work was accomplished and most remains to be finished, then a claim will not be sustained. Although there are no set percentages to provide objective guidance, the claim for the completion of subdivision improvements for Unit I of Tract 308, a smaller project, was sustained by a showing that 22% of the improvements were completed.

² 25,000 cubic yards of grading at \$1.25 per cubic yard (the average of the range of \$1.00 to \$1.50 quoted by Granite) = \$31,250 plus \$26,000 (estimate from Declaration of Jack Foster) for a total of \$57,000.



Three factors however, complicate an analysis of this claim and distinguish it from others. One factor that the Commission must consider is the long period of time, over 24 years, that has passed since the pre Coastal Act work was done on this site. This long gap affects the calculation of the ratio of the cost of the pre 1977 work to the cost in 1999 of completing the subdivision improvements. The Claimant suggests that either the 1999 costs to complete be converted into 1976 dollars or that the 1976 expenditures be converted into 1999 dollars. The law, perhaps contemplating that a vested right claim would be made in a more timely fashion, simply requires a comparison of the costs paid out before the project came under the jurisdiction and what it would cost to complete the project at the time the claim is submitted for a determination. To avoid a series of potentially confusing computations the analysis of this issue is made using 1976 dollars for 1976 expenses and current dollars for current estimates to complete work. Exhibit 8 provides mathematical alternatives as proposed by the Claimant to this method of computation

Another factor the Commission must consider in this case is whether the Claimant *can* complete the subdivision improvements for Tract 308 at this late date. This issue is discussed in a subsequent section of these Findings but concludes that the Claimant does not now, and never did have the local approvals required to finish the project and meet the conditions attached to the Tentative Map as necessary to record a Final Map for Tract 308, Unit II. The following discussion therefore focuses on the ratio of pre Coastal Act expenditures vs. Post Coastal Act costs to finish the improvements.

Finally, the Commission must consider the amount and type of work done in 1976. In 1976, the Claimant had obtained only a preliminary grading permit to allow him to properly survey the site in order to prepare the final grading plan which would be used, after county approval, to lay out the final alignment of the roads for the subdivision. The preliminary grading permit did not authorize much, if any, substantial work towards physically constructing the subdivision infrastructure. The limited grading that was accomplished may or may not have ultimately been useful to the final grading of the subdivision roads but, as the County conditions for the Tentative Map stated, the road configuration was subject to change and the final "Improvement Plan" that would have truly sited the roads was never submitted to the County. It thus remains unknown how much of this 1976 work would have remained as part of the completed project. In any event, it is clear that most of this 1976 work must be re-done and significantly augmented before any final grading, paving and utility installation can be undertaken on this site.

The Claimant states that he has expended \$117,000 on work prior to 1977. He estimates that he will spend an additional \$759,000 to complete the project. (Claimants submittal, 8M, expanded answer to question 10 of the Vested Right Claim form). There



is no breakdown of the cost of the individual improvements that remain to be constructed, however, the figure given seems very low based on staff's experience with construction and paving costs in California. A separate estimate for the work remaining to be accomplished has been prepared by the Commission's Civil Engineer based on information from San Luis Obispo County, Granite Construction and recent projects in the Coastal Zone. (Please see Exhibit 9) This estimate , which does not include all of the work to complete the subdivision because of the difficulty in obtaining some of the information is therefore low but indicates that a more reasonable figure for completion of the site work would be **\$2,500,000**. The Commission finds that this figure is the appropriate one to use in calculating the ratio of pre 1977 expenditures to post 1977 completion costs. Based on the actual dollars spent and to be spent only 5% or 3%, based on the lower Granite figures for grading in 1976, of the work was completed prior to 1977. The Commission notes that even if the Claimants formula for identifying the ratio between money spent to date and the work done compared with what remains to be spent and done was used, the 1976 expenditures and work remain insignificant in light of what is needed to complete the project.

In conclusion and based on all reasonable evidence, it does not appear that the Claimant has adequately demonstrated that he has incurred substantial liabilities because of the work performed on Tract 308, Unit II in 1976. The amount of money the Claimant contends was spent is not supported by independent verification and would in any event only represent 5% of the reasonable cost to finish the improvements. The Claimant has also apparently not been financially damaged by the 1976 expenditures because he abandoned work on Tract 308, Unit II for almost a quarter of a century in favor of pursuing alternative development on the site for which most of the proposed improvements to Tract 308, Unit II would be inconsistent. (Tract 1342 and, later Tract 1873)

Claimant's Contention: The Local Approvals for Tract 308 are still valid and thus Claimants Vested Right to Complete the Project has not lapsed

In addition to demonstrating that "substantial liabilities" have been incurred, the successful Claimant for a vested right must also show that they have the valid local approvals needed to complete the project. In this case, the Claimant is requesting a vested right to allow for the completion of subdivision improvements and the filing of the Final Map for Tract 308, Unit II. To properly analyze this request, it must be determined what local approvals are required for the physical work needed to complete the project, what approvals are required to satisfy all of the conditions of the Tentative Map and the status of these approvals. These items are discussed separately in the following paragraphs.



THE TENTATIVE MAP FOR TRACT 308, UNIT II: The Tentative Map for Tract 308, Unit II expired 22 years ago and because it expired, any Vested Right Claim based on that approval has also expired. This map was conceptually approved by the Board of Supervisors of San Luis Obispo County in May 1973. Under the terms of the Subdivision Map Act, Tentative Maps are valid for two years from the date of approval. Tract 308, Units I and II was thus valid until May 1975. On October 1, 1974, the Board of Supervisors extended the life of Tract 308 until November 1, 1976. On September 28, 1976 the map was again extended for an additional eighteen months (until March 28, 1978). There is no record of any more extensions for Tract 308, Unit II after the September 1976 extension. There is no record that the Claimant satisfied any of the conditions attached to the Tentative Map before it expired. The Tentative Map for Tract 308, Unit II thus expired on March 28, 1978.

The Claimant's argument regarding the continued validity of the Tentative Map for Tract 308, Unit II is unpersuasive. His argument is basically a contention that the original map for Unit II is still valid because it evolved into Tract 1342 that then became part of Tract 1873, a Tentative Map that is valid as of this date. Even if it could be reasonably argued that because the *descendent* of a valid map was valid, so was an earlier version, the map for Unit II was not valid at the time Tract 1342 was approved. As discussed earlier, Tract 1342 was approved on January 26, 1986. The Tentative Map for Unit II expired on March 28, 1978 and the Tentative Map for Unit I expired in May of 1985. Therefore, neither map was valid at the time Tract 1342 was approved.

IMPROVEMENT PLAN FOR THE SUBDIVISION: In order to file the Final Map for Tract 308, Unit II, the subdivider was required to complete the subdivision improvements as conditioned in the county approval of the Tentative Map. These improvements included road grading and paving to county standards, installation of all utilities (water, electrical, gas, cable), drainage facilities, erosion control devices and individual driveways. In San Luis Obispo County, an approved " Improvement Plan " is the local approval that authorizes this work. There is no record at the county that the Claimant ever applied for, or received, this permit.

OTHER NECESSARY LOCAL APPROVALS: The Tentative Map approved for Tract 308 also included a number of other conditions that had to be satisfied before the Final Map could be recorded. Many of these conditions, as discussed below, required the submission of various plans and other documents for County review and approval. Based on the information in the Claimant's submittal and the County file for Tract 308, none of these other approvals were secured.

1. Tentative Map Approval: Condition 1 This Condition, read in conjunction with the preceding county staff note, requires a revised subdivision map reflecting the BV zoning requirements and showing an "additional 8 acres of open space or the



elimination of lots in the steep part of the tract" (Unit II is the steep part of the tract). There is no evidence in the file that this revised map was ever prepared or approved by the County

2. Tentative Map Approval : Condition 2. This is the condition discussed above that requires the submittal of an " Improvement Plan" to the Planning Department for review and approval. The plan was never submitted and thus never approved.
3. Tentative Map Approval: Condition 3. This condition requires the submittal of a drainage plan for the review and approval of the County Engineer. The plan is to include " a complete drainage plan with all hydraulic design computation.....all easements required for drainage purposes....off site drainage facilities and meet the requirements of Zone 5-A Flood Control District." There is no record in the file of an approved drainage plan.
4. Tentative Map Approval: Condition 4. This condition requires the applicant to " submit complete plans for the proposed water system, prepared by a registered Civil Engineer " and "evidence of a potable water source satisfactory in quantity and quality " to the County Engineer for review and approval. The condition also requires that "Fire protection must be provided in a way as to meet county standards". There is no evidence in the file of an approved water system in compliance with the terms of this condition.
5. Tentative Map Approval: Condition 5. This condition requires the applicant to submit " complete plans for the proposed sewer system.....required sewer easements....." to the County Engineer for review and approval and " a report of waste discharge " to the Water Quality Control Board to set discharge limits. There is no evidence that this condition was satisfied.
6. Tentative Map Approval: Condition 6. This condition requires that " all utilities must be shown on the improvement plans and will be subject to the approval of the County Engineer" and "All utility easements required by the utility companies.... ". There is no record in the County files or in the Claimants submittal that these improvement plans were approved by the County Engineer.
7. Tentative Map Approval: Condition 7. This condition requires a final grading plan and cut and fill slope easements to be submitted to the County Engineer for review and approval. There is no record of an approved final grading plan in the County files or in the Claimants submittal.



- 8 Tentative Map Approval: Conditions 8 and 9. Both of these conditions are related to the "Improvement Plan " for the construction of the infrastructure for the subdivision. As already, discussed, this "Improvement Plan" was never approved by the County.
- 9 Tentative Map Approval: Condition 10. This condition requires the designation of open space lots and legal documents relevant to the establishment of the homeowner's association charged with the maintenance of the open space areas. There is no evidence of compliance with this condition in the County files or the Claimants submittal.
- 10 Tentative Map Approval: Condition 11. This condition requires the applicant , after consultation with the California State Department of Parks and Recreation, The State Division of Forestry and the South Bay Fire District to prepare a fire protection plan for the review and approval of the Planning Department. There is no evidence in the County's files or the Claimant's submittal of an approved fire protection plan for the subdivision.
- 11 Tentative Map Approval: Condition 12. This condition required the submittal of revised street names for Planning Department review and approval. There is no record of compliance with this condition.
- 12 Tentative Map Approval: Condition 14. This condition required that the applicant " submit building heights for each lot" to the Planning Department for review and approval. There is no evidence in the County's files or in the material submitted by the Claimant to indicate compliance with this condition.

There is therefore no evidence to support the Claimant's contention that the local approvals needed to complete the improvements for Tract 308, Unit II are still valid or were indeed ever obtained. The Tentative Map for Tract 308, Unit II expired over 22 years ago, the one local approval that was issued (the preliminary grading permit) was exercised and the other approvals required by the conditions attached to the Tentative Map were never secured. It is therefore unreasonable, in the face of these facts, to assert that the Claimant has any valid authority to complete this long expired project.

Claimant's Contention: Current Vested Right Law Provides that a Tentative Map is Adequate Authority to Grant a Vested Right Claim

The Claimant speculates that under the Supreme Court holding in the Santa Monica Pines, Ltd. V. Rent Control Board case (35 C. 3d 858, 1984) , he would be entitled to a vested right because he obtained approval of the Tentative Map for Tract 308 prior to



the effective date of the Commission's jurisdiction over his project. A review of the Santa Monica Pines case reveals that the holding of the Court does not merely state that the possession of a Tentative Map is sufficient to ensure a successful vested right claim. Rather, the decision supports the Commission's Findings because in Santa Monica Pines, the Court affirmed the decisions of both the Trial and Appellate Courts in holding that *even though* the Claimant had obtained a Tentative Map (and that was the only permit needed) for the conversion of apartments to condominiums prior to the effective date of a local ordinance regulating condominium conversions, the developer was not entitled to a vested right to complete the conversion because

" the amount of money actually spent by appellants in reliance on the Tentative Map approval - only about \$1,700 was expended between the date the map was approved and the date the rent control law was adopted - was inadequate to predicate a vested right to complete the conversion free of rent control." (infra 860)

The Court thus affirmed the long line of vested right cases that require not only some form of local approval for a project but *also* that the developer incurred substantial liabilities in reliance on that approval. That test was not met in Santa Monica Pines and it is not met in this case.

The Commission also notes that the Claimant has supplied staff with extensive legal authority detailing why he believes that the Commission should uphold his Vested Right Claim. All of this authority either actually supports the staff's position or is not applicable to the question of vested rights in this situation. The authority cited by the Claimant that *does* apply, supports staff's assertion that in order to sustain the Vested Right Claim, the Claimant must prove that he had all necessary governmental approvals as of January 1, 1977, and that he had performed substantial work or incurred substantial liabilities in good faith reliance upon those governmental authorizations. In addition, in this case, the Claimant must also prove that he filed the Final Subdivision Map within the valid life of the Tentative Map (McPherson v. City of Manhattan Beach, (2000) 78 Cal. App4th, 1252,1257) In this case over twenty two years have gone by without filing the Final Map, and as discussed at length elsewhere in these Findings, the Tentative Map has long expired thus making it impossible to ever file the Final Map. Because the Claimant never filed the Final Map is reason, by itself, for the Commission to reject this claim.

5. Conclusions Regarding the Claims

A. Claim Number One , VRC for completion of all subdivision improvements for Tract 308, Unit II : In order to sustain this claim, the Commission must find that



- 1) **substantial work was done on the site pursuant to valid local approvals before January 1, 1977 and**
- 2) **the Claimant currently has the valid local approvals needed to finish up the work.**

The Claim fails because neither of these criteria are met in this case. As discussed in these Findings,

- 1) **The Claimant has not shown that substantial work was performed on site, pursuant to valid approvals, prior to January 1, 1977. The work that was done is insignificant in view of the cost to complete the project.** Virtually *all* of the work needed to construct the subdivision improvements remains to be done. The small amount of grading and clearing done in the fall of 1976 to allow for an accurate survey is almost completely overgrown and, based on a recent site inspection, was never done to the standard that would have allowed paving or the installation of utilities. It is thus obvious that a substantial amount of additional grading would have to be done before the Claimant would be able to make the improvements he has listed as items to be constructed. The amount of money spent doing the preliminary grading in 1976 (\$117,000 based on the Claimants recollections or a significantly lesser sum (\$57,000) based on general grading costs in Central California at the time) is insignificant in relation to the amount of money it would take to construct the subdivision improvements consistent with the conditions attached to the Tentative Map. The Commission notes that the cost to mostly complete this project would, as a conservative estimate be almost \$2,500,000. The Claim is therefore not acknowledged because the amount of work done pursuant to the locally approved preliminary grading plan and the liabilities incurred were not substantial in view of the total cost of the project.
- 2) **The Claimant has not shown that he has currently valid approvals needed to finish the work .** The Claimant does not have *any* of the local approvals required to finish work on this site. In order to undertake finish grading, road paving, installation of utilities and drainage and erosion control facilities, the Claimant would have to have a valid County permit for an "Improvement Plan". The Claimant does not have such a permit and, based on a review of the County records, has never applied for this permit.

B. Claim Number Two : Recordation of the Final Map for Tract 308, Unit II : In order to sustain this claim, the Commission must find that :



.All of the conditions attached to the Tentative Map have been met and that the Tentative Map is still valid.

The Tentative Map expired on March 28, 1978 and, as of that date, *none* of the conditions attached to approval of the Tentative Map had been satisfied. The Claim of exemption cannot therefore be acknowledged, because the critical requirements have not been met. The Commission is un-persuaded by the Claimant's contention that the Tentative Map for Tract 308, Unit II remains valid because subsequent tracts have been approved on this and neighboring sites after Tract 308, Unit II expired. (Tracts 1342 and 1873).

C.Claim Number Three. Construction of all Subdivision Improvements for Tract 1873 and Recordation of the Final Map for Tract 1873 : In order to acknowledge this claim, the Commission would have to find that :

- 1. substantial work, pursuant to valid local approvals, was done on the site prior to January 1, 1977 and**
- 2. the conditions attached to the Final map had been satisfied prior to that date.**

Tract 1873 was not approved by San Luis Obispo County until 1997, twenty years after the site came under the jurisdiction of the Coastal Act. The conditions attached to the local approval of the Tentative Map have not been satisfied and final approval of the subdivision has not yet been obtained because the project is currently on appeal to the Coastal Commission. The Commission cannot, therefore make the Finding that work was done on the project prior to January 1, 1977. The Commission is also un-persuaded by the Claimant's arguments that *if* Tract 308, Unit II is entitled to a Vested Right, so is Tract 1873 because it is one of the successors to Tract 308. Likewise the Claimant's argument fails regarding his assertion that the Commission is " committed" to approve the current proposal for Tract 1873 because of statements in the Pratt case. Finally, Tract 1873 is a different project than Tract 308, Unit II. It is based on a larger site and a different lot and road lay out. Even if Tract 308, Unit II qualified for a Vested Right exemption, Tract 1873 would not. The controlling statute , Public Resources Code Section 30608 , expressly states that

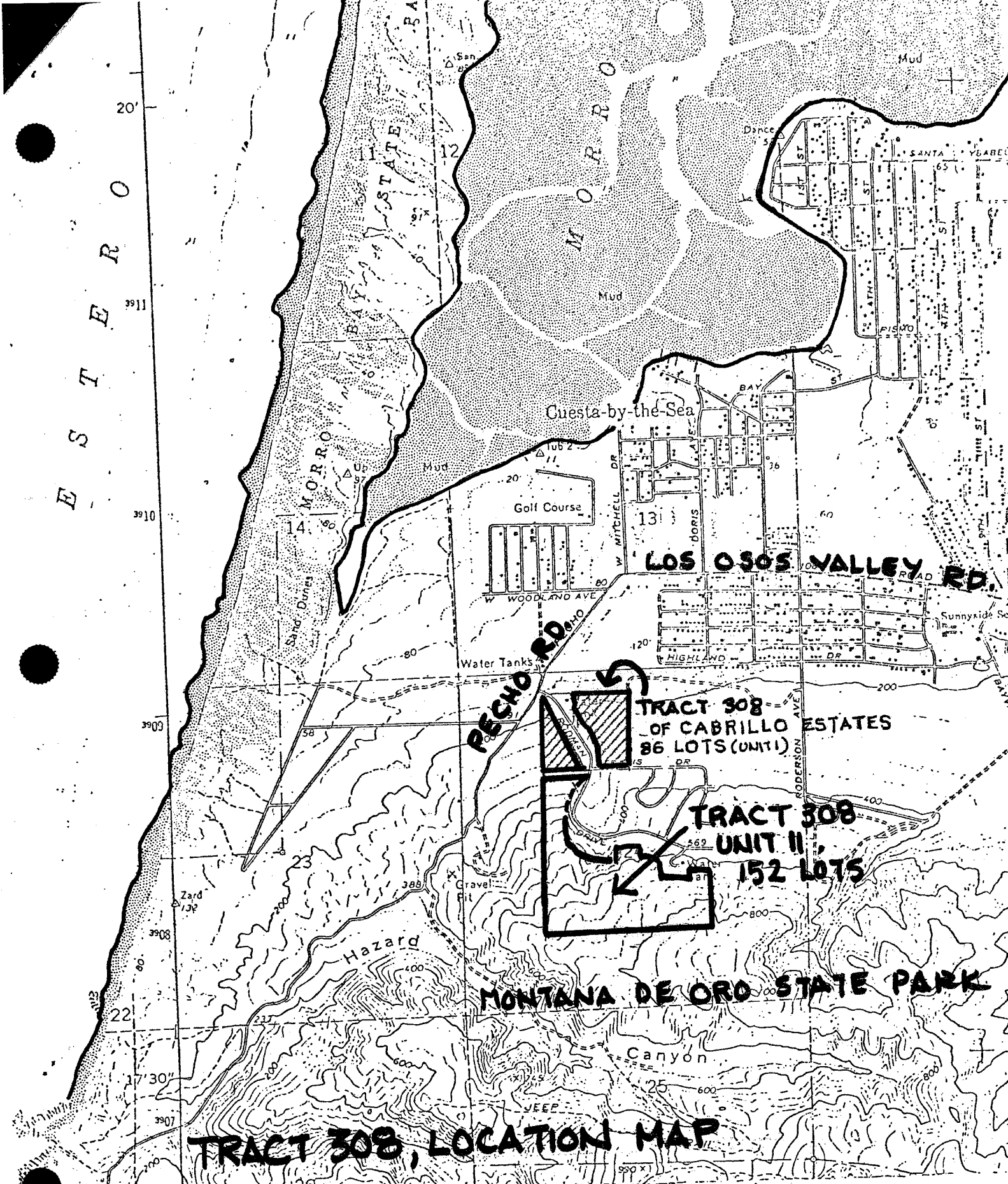
" no substantial change may be made in any such development [exempted under this section] without prior approval having been obtained under this division "

As discussed in detail in preceding sections of these Findings, there is no basis under any valid legal theory to sustain a Vested Right Claim for a subdivision



approved over twenty years *after* the effective date of Coastal Commission jurisdiction over the site.





TRACT 308, LOCATION MAP

**TRACT 308, UNITS 1 AND 2
TENTATIVE MAP APPROVED 5/73**

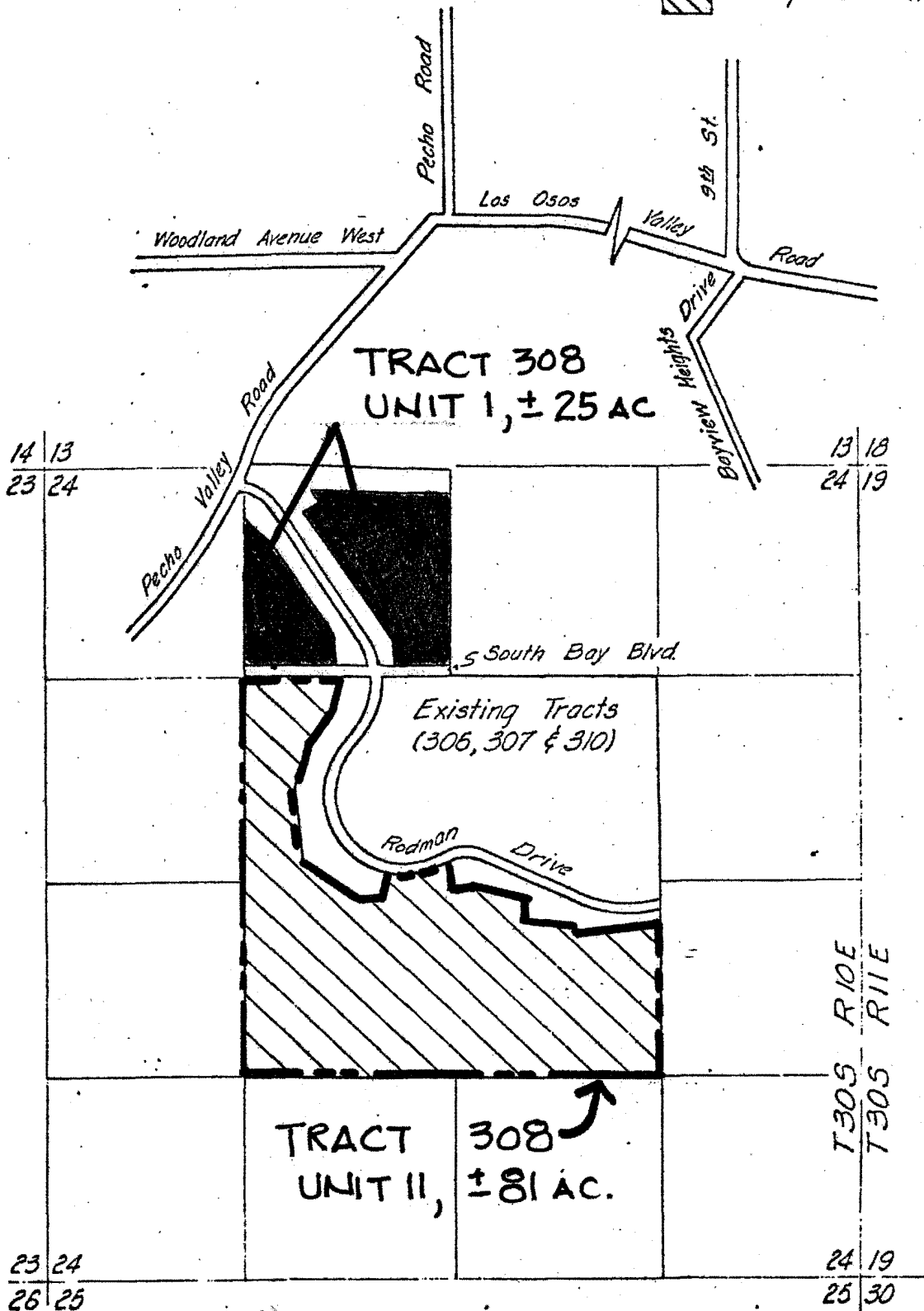
S.P. QUAD: MORRO BAY SOUTH

**EXHIBIT 1
VRC 3-99-48**

MORRO BAY



Proposed TRACT 308



VICINITY
MAP

EXHIBIT I

Plate 1

MAP #2

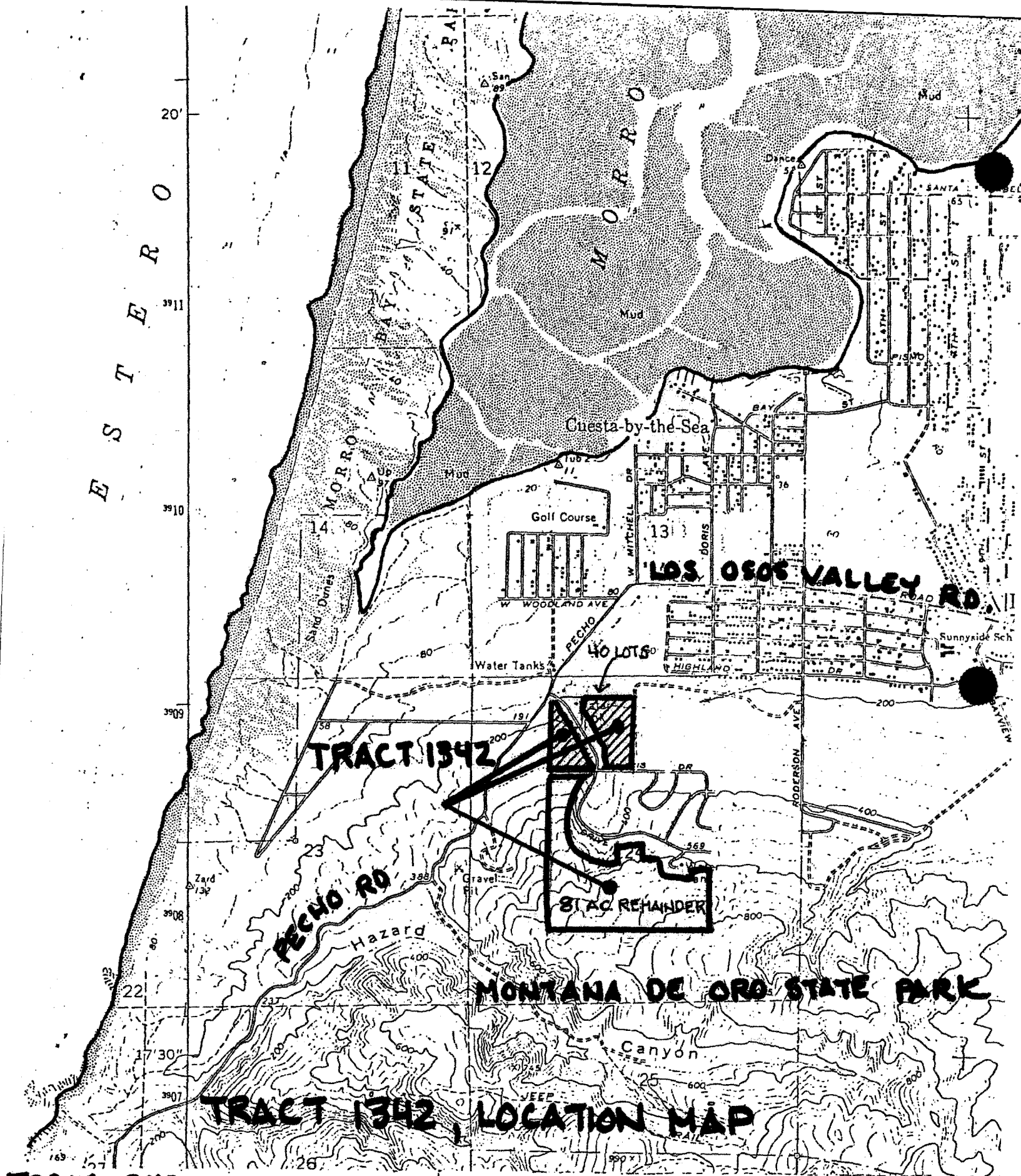
TRACT 308, UNIT II

PECHO ROAD

TRACTS
306, 307
310

TRACT 308
UNIT I

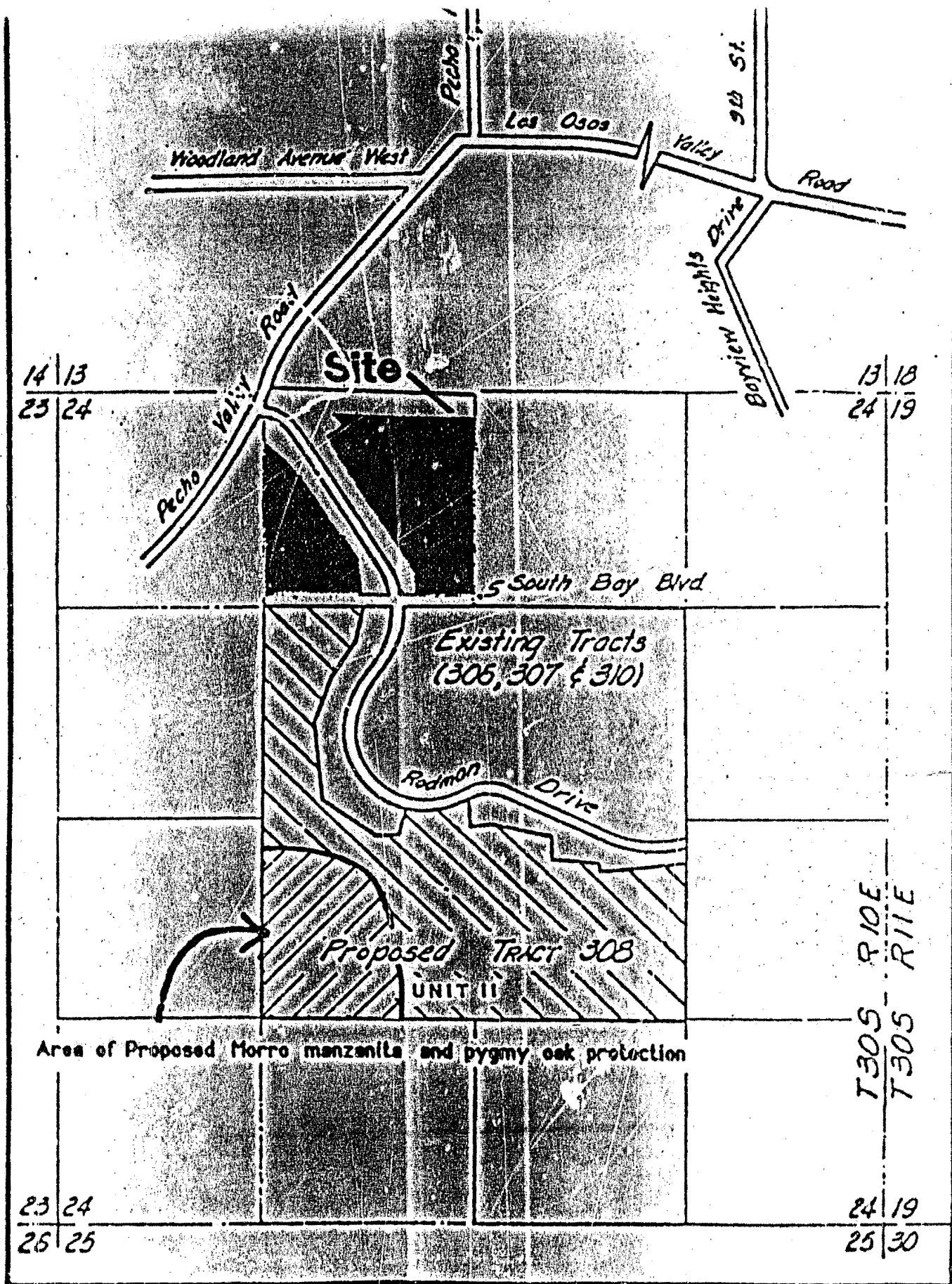
EXHIBIT I



**TRACT 1342
TENTATIVE MAP
CDP**

FROM U.S. TOPO. QUAD: MORRO BAY SOUTH

EXHIBIT I



**EXHIBIT 1 DEDICATED
PRESERVE
TRACT 1342**

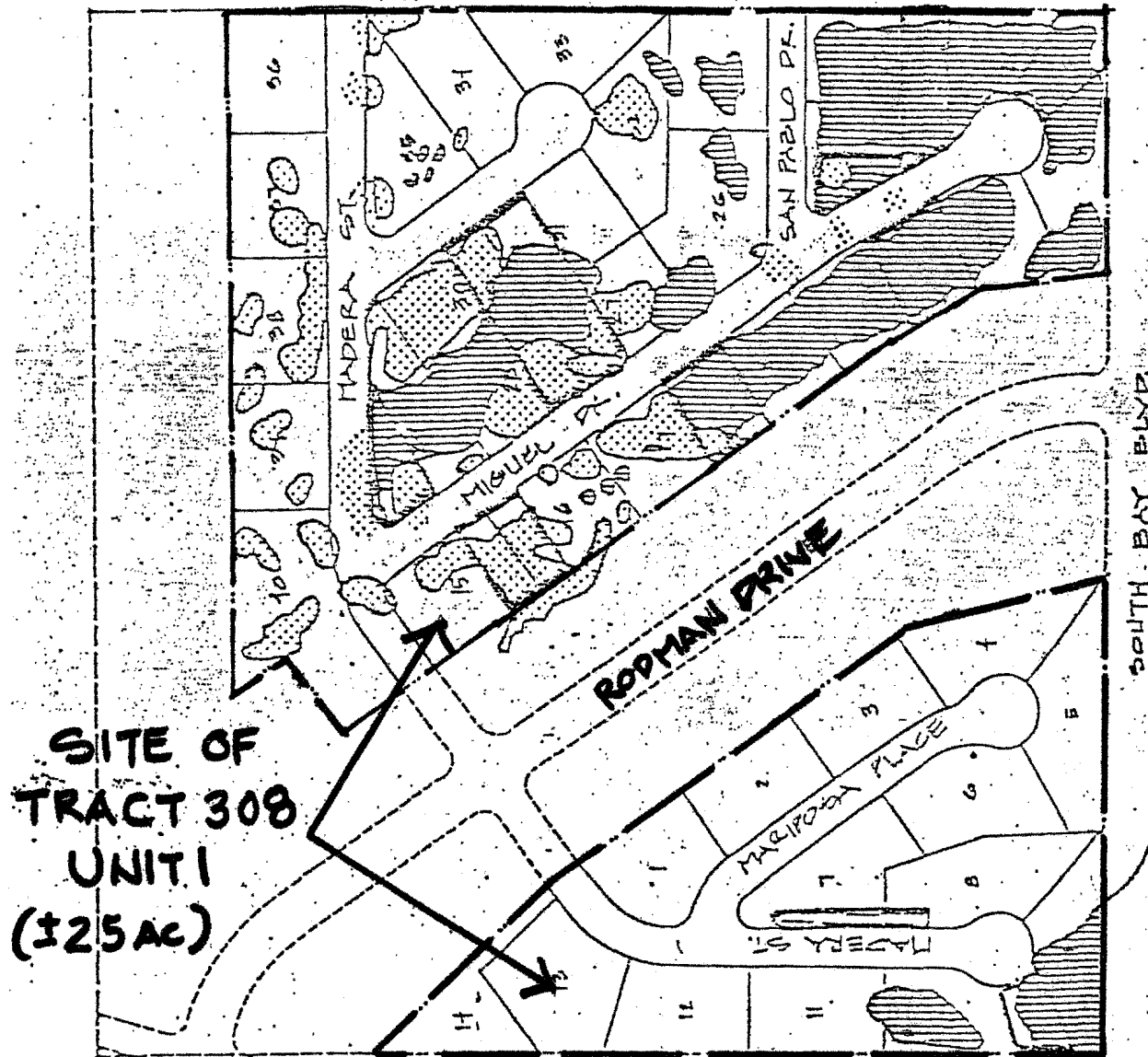
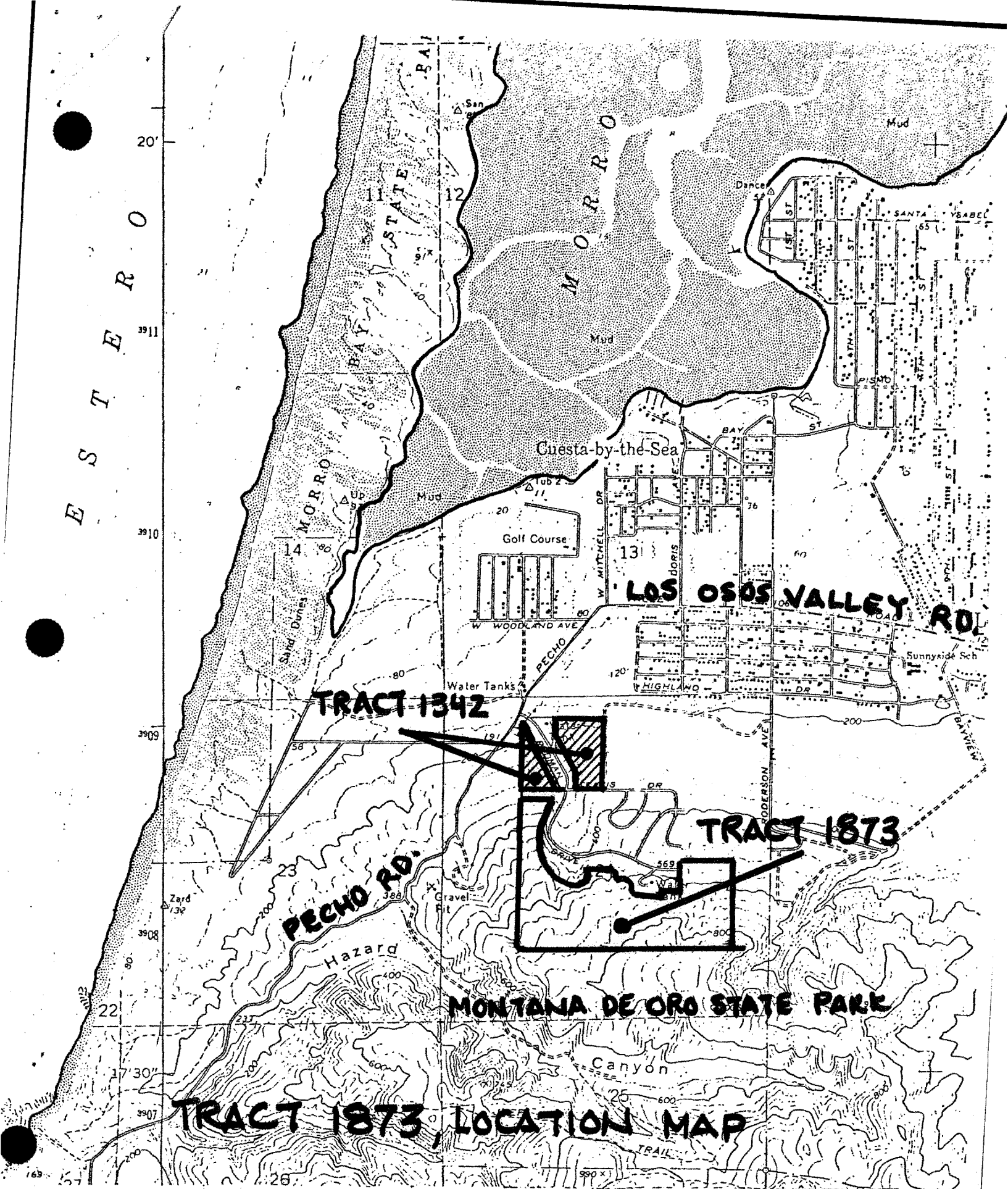


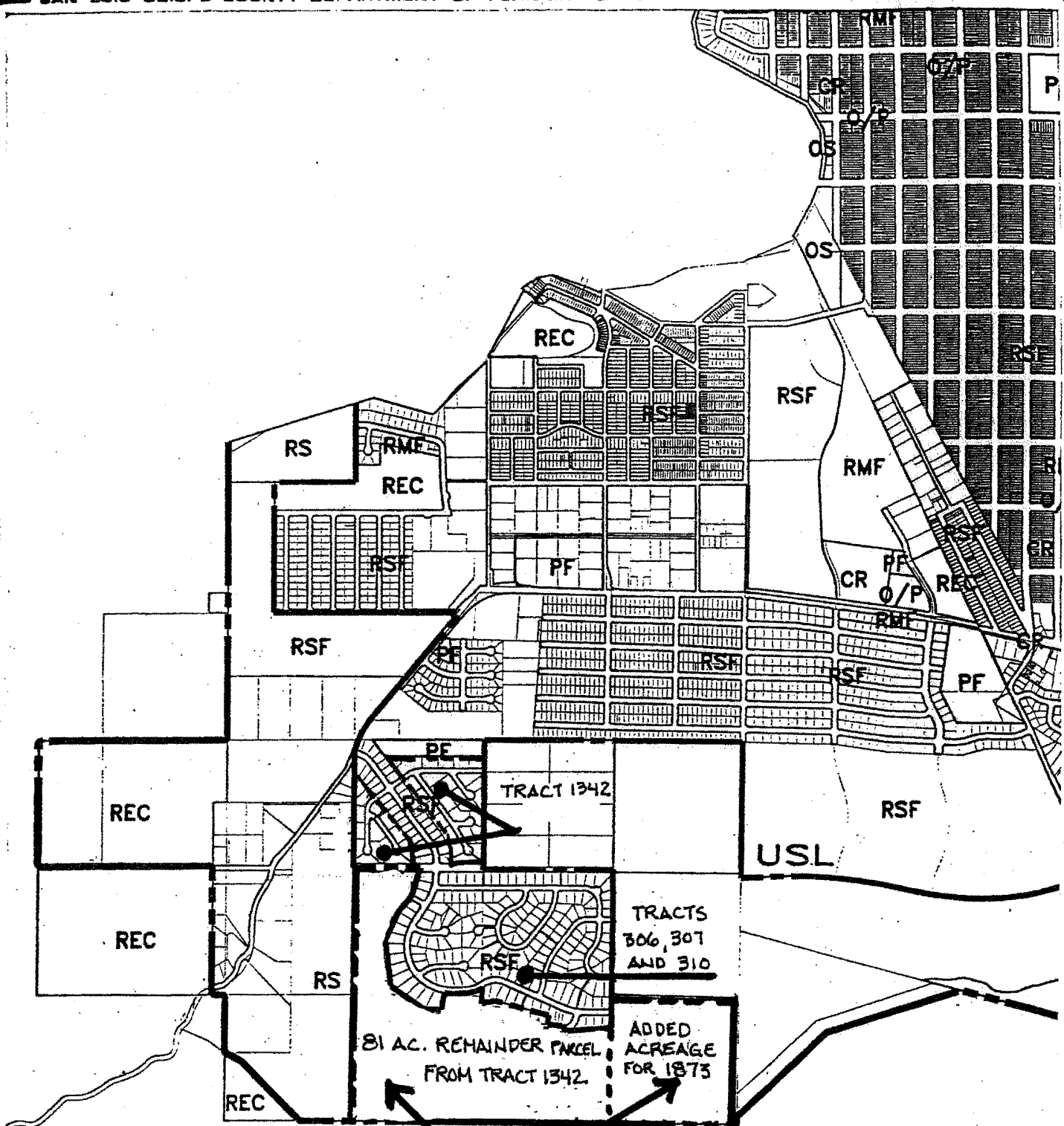
EXHIBIT 1



FROM U.S. TOPO. QUAD: MORRO BAY SOUTH

EXHIBIT I

6-11



**TRACT 1873, 124 ACRES
41 RES. LOTS, 3 O/S LOTS**

PROJECT

**CABRILLO ASSOCIATES
TRACT 1873**



EXHIBIT

LAND USE CATEGORY MAP

EXHIBIT 1

Figure III-3
PROJECT MAP

PROPOSED PROJECT

DERAINAGE BASIN

TRANSIS DR.

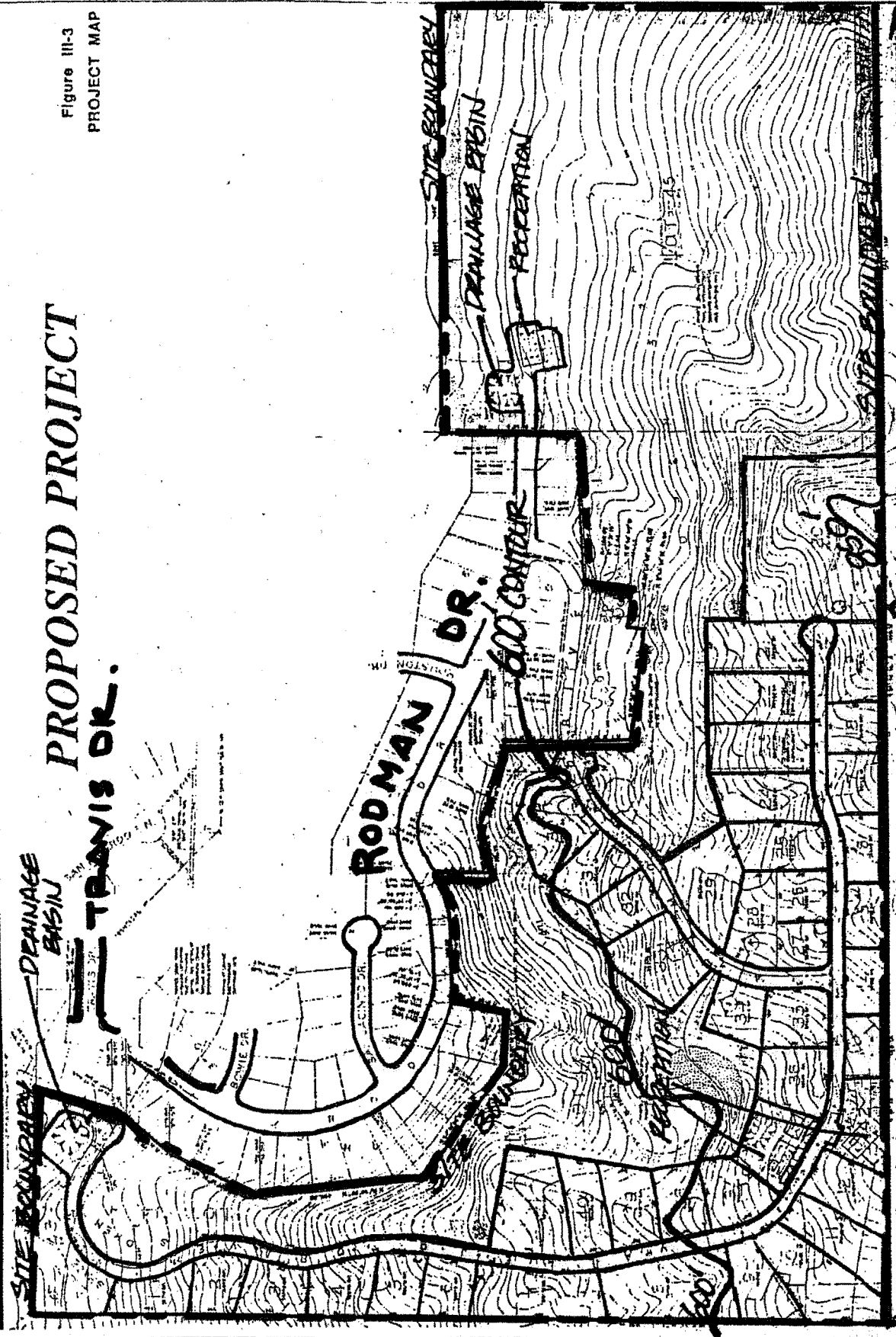
ROD MAN DR.

600' CONTOUR

DERAINAGE BASIN

RECREATION

MONTANA DE ORO STATE PARK



PROJECT

CABRILLO ASSOCIATES
TRACT 1873



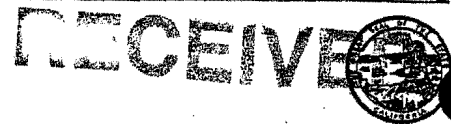
EXHIBIT

APPLICANT'S PROPOSED
PROJECT

EXHIBIT I

CALIFORNIA COASTAL COMMISSION

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



JUL 01 1999

CLAIM OF VESTED RIGHTS

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

NOTE: Documentation of the information requested, such as permits, receipts, building department inspection reports, and photographs, must be attached.

1. Name of claimant, address, telephone number:

Charles A. Pratt Construction Co., Inc.

P.O. Box 1295, San Luis Obispo, CA 93406

(zip code) (area code) (telephone number)

2. Name, address and telephone number of claimant's representative, if any:

William S. Walter, Esq., Walter & Bornholdt

679 Monterey Street, San Luis Obispo, CA 93401 (805) 541-6601

Ben Maddalena, Central Coast Engineering

396 Buckley Road, Suite 1, San Luis Obispo, CA 93401 (805) 544-3278

(zip code) (area code) (telephone number)

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

See Expanded Answer to Question 3.

4. California Environmental Quality Act/Project Status.

Check one of the following:

- a. Categorically exempt _____. Class: _____ Item: _____.

Describe exempted status and date granted: _____.

- b. Date Negative Declaration Status Granted: _____.

- c. Date Environmental Impact Report Approved: May 7, 1973 regarding Exemption/Vested Rights Claims 1 and 2, Tract 308; and, Final Environmental Impact Report Tract 1873, September 1, 1998.
Attach environmental impact report or negative declaration.

See Exhibits 4A and 4B respectively.

FOR COASTAL COMMISSION USE:

Claim Number _____

Date Submitted _____

Date Filed _____

EXHIBIT 2

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

See Expanded Answer to Question 5.

6. List any governmental approvals which have not yet been obtained and anticipated dates of approval.

See Expanded Answer to Question 6.

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.
The expected date of completion of any and all of the above conditions is contingent upon the date upon when the Commission resolves the pending appeal and this Claim of Exemption/Vested Rights. The Claimant would hope that such conditions for each of the three Vested Rights Claims could be resolved prior to October 15, 1999. See Expanded Answer to Question 7.
-

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1977; (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals).

See Expanded Answer to Question 8.

9. Describe those portions of development remaining to be constructed.

See Expanded Answer to Question 9.

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

See Expanded Answer to Question 10.

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses.

See Expanded Answer to Question 11.

12. Is the development planned as a series of phases or segments? If so, explain.

Originally Tract 308 was approved as one phase, and was subsequently developed as Unit I and Unit II.

13. When is it anticipated that the total development would be completed?

One year after approvals are complete.

14. Authorization of Agent.

I hereby authorize Charles A. Pratt to act as my representative and bind me in all matters concerning this application.

CHARLES A. PRATT CONSTRUCTION CO., INC.

By: [Signature]
Signature of Claimant CHARLES A. PRATT

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

CHARLES A. PRATT CONSTRUCTION CO., INC.

By: [Signature]
Signature of Claimant(s) or Agent
CHARLES A. PRATT

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

A. Expanded Answer to 3: Describe the development claimed to be exempt and its location.

1. Overview Of Claimant's Three Claims Of Exemption/Vested Rights.

The Claimant asserts three claims of exemption/vested rights:

- (1) The right to complete the off-site improvements for Unit II of Tract 308 for 152 lots;
- (2) The right to record a Final Map Unit II of Tract 308 for 152 lots as original approved by the County of San Luis Obispo, or, in the alternative;
- (3) The right to complete and record Tract 1873, Development Plan/Coastal Development Permit D890423D, and Variance D960112V, which is presently pending on appeal before the Commission, on the grounds that the Court of Appeal has found that "the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act. Pratt, infra., 128 Cal.App.3d at 848. Tentative Tract 1873 comports with the land density requirements of the Coastal Act as established by the certified Local Coastal Program.

These three claims are hereinafter referred to by claim number (e.g., "Claim 1," etc.)

2. Relationship of claims of exemption/vested rights to prior Appellate Court decision.

The Claimant contends that with regard to Unit II of Tract 308, the Court of Appeal's decision in South Central Coast Regional Com. v. Charles A. Pratt Construction Co. (1982) 128 Cal.App.3d 830, is applicable to both Unit I and Unit II of Tract 308, that Pratt expended approximately twice as much for the off-site improvements for Unit II of Tract 308 as compared to Unit I of Tract 308 and that, therefore, Claimant, at a minimum, has a vested right to complete and record a Final Subdivision Map which comports with the Local Coastal Program's determination of allowable density for this site, which density is, at a minimum, established by Tract 1873. This claim is based upon express language in the prior Court of Appeal's decision that:

3A
3B
3C
3D
3E
3F
3G
3H

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

"The Commission thus found that Pratt had a vested right to complete the off-site improvements, although he had no vested right to record the final subdivision map. ... Because Pratt was allowed to complete the offsite improvements, the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act."
128 Cal.App.3d at 848 (emphasis added)

The Claimant contends that the rationale of the Court of Appeal's decision is applicable to Unit II of Tract 308, and notes that the Court of Appeal's decision references Tract 308, without differentiating its two Units.

The Staff of the Commission has taken the position that this Court of Appeal decision applies only to Unit I of Tract 308, and not to Unit II of Tract 308. Based upon that position, the Claimant submits this claim for exemption for Unit II of Tract 308, and asserts that if the prior Court of Appeal's decision does not apply to Unit II of Tract 308, then the Claimant is entitled to a de novo review of its claim of exemption of for Unit II of Tract 308, since the issue of Claimant's vested rights would not have been determined by the prior Court of Appeal's decision. The Claimant maintains that, at a minimum, since more work was done on the off-site improvements for Unit II of Tract 308 than for Unit I of Tract 308, it is a necessary conclusion that the Claimant has a vested right to complete the off-site improvements for Unit II of Tract 308 and, therefore, at a minimum, the Commission is "committed" to allow the Claimant to record a Final Map which is either consistent with the LCP's land density requirements per the Court of Appeal's decision, or, alternatively, consistent with the density of the originally approved Tract 308, Unit II.

The consequence of the Commission Staff's position that Unit I of Tract 308 was not determined by the Court of Appeal's decision is that the Claimant is entitled to apply herein for a vested right to record Unit II of Tract 308 according to its original density, and entitled to a full exemption for then recordation of a Final Map from the provisions of the Coastal Act (Claim 2). If the Commission Staff's interpretation is correct, then there is no res judicata or collateral estoppel from the prior Court of Appeal's decision with regard to Unit II of Tract 308. As discussed below, the California Supreme Court has subsequently criticized the result in the prior Pratt Court of Appeal decision, and if decided under current law, would uphold a complete vested right and claim of exemption from the Coastal Act. The prior

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

denial of Pratt's claim for a full exemption under the Coastal Act to record a Final Map for Tract 308 is based upon the following holding from the Court of Appeal's decision that:

"we specifically reject the 'final discretionary approval' test proffered by the subdividers in this case. Although approval of the tentative map may be the last discretionary act by the local governing agency under the Subdivision Map Act, [cite omitted], we believe the overriding environmental policies of the coastal act, including a narrow scrutiny of claims of exemption, support our holding that more is required to obtain a vested right than mere tentative map approval."
(Emphasis added)

This rationale for the prior Pratt Court of Appeal's decision was subsequently rejected by the California Supreme Court in Santa Monica Pines, Ltd. v. Rent Control Board (1984) 35 C.3d. 858, 868, which held that all that is required to establish a vested right is something akin to a "building permit" in terms of the implied promise to complete an approved development:

"a promise such as that implied by a building permit that the proposed use will not be prohibited by a class of restrictions that includes the regulation in question."

See also Conway v. City of Imperial Beach (1997) 53 Cal.App.4th 78; Consaul v. City of San Diego (1992) 6 Cal.App.4th 178.

The California Supreme Court rejected the rationale behind the Pratt Court of Appeal's decision to allow a vested-right to record the Final Map for Tract 308 in Santa Monica Pines, Ltd. v. Rent Control Board, supra, 35 Cal.3d at 864, where it stated:

"We are aware of several recent decisions which decline to recognize tentative map approvals as a 'final approval' which may be relied upon under Avco Community Developers, Inc. v. South Coast Regional Com., supra, 17 C.3d 788, some requiring final subdivision map approval [cites omitted], others requiring only fulfillment of all the conditions set out in the tentative map approval (South Central Coast Regional Com. v. Charles A. Pratt Construction Co. (1982) 128 C.A.3d 830, 845 [cites omitted]. These decisions have not focused, though, on the character of the tentative map approval itself as a representation that a property may be subdivided upon

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

satisfaction of stated conditions in the same way as a building permit represents that a building may be."
(Emphasis added)

Therefore, the claim for exemption for Unit II of Tract 308 of the original proposed density would be consistent with the current state of the law.

3. Claimant's Vested Rights Have Not Lapsed.

As a matter of law, the Claimant's vested right to complete Unit II of Tract 308 has not lapsed with the passage of time with regard to any of the claims of exemption. In Pardee Construction v. California Coastal Com. (1979) 95 C.A.3d 471, 157 Cal.Rptr. 184, the developer had obtained building permits for the construction of a condominium project in San Diego. It then acquired a vested right through issuance of the permits and performance of substantial work and incurrence of substantial liabilities in reliance on the permit: e.g., "rough grading, desilting basin, drainage system and foundations for all 231 units," and actual construction of 152 of the units. That vested right was provided an exemption from the 1973 Coastal Act permit requirements. However, due to an economic downturn, the developer delayed the construction of the last 79 units and, as a result, the building permits expired. When Pardee applied for new building permits and then sought an exemption from the 1977 Coastal Act relative thereto, the Coastal Commission denied the claim for exemption, claiming:

"that Pardee's 'vested right' could not outlive the government approvals -- the city building permits upon which it was based." 95 C.A.3d, at 476.

Both the trial court and Court of Appeal rejected that argument. Specifically, the Court found that:

"the right possessed by Pardee was in the nature of a property right. [Cite omitted.] Pardee's failure to exercise that vested right to its fullest extent before the enactment of the 1976 coastal act does not affect its vested character. [Cite omitted.]" Id. at 479.

The Claimant's vested rights herein are also property rights which, as in Pardee Construction, simply do not cease to exist. Indeed, it should be noted that taking action in derogation of the vested right amounts to a legally impermissible takings. Miller v.

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

McKenna (1944) 23 C.2d 774, 783 (an action involving a vested right and after-enacted legislation).

Tract 308 has been in continuous process since its original approval by the County prior to the adoption of the California Coastal Act. Tract 308 as approved, included the areas which have been referred to as Unit I and Unit II. After the claimed expiration of Tract 308 by the County, Pratt resubmitted Unit I of the project which was designated as Tract 1342. Unit II of Tract 308 is included in the area of Tract 1873. Tract 1342 was approved by the Coastal Commission and recorded in 1989. The application for Tract 1873 was submitted in 1989 to the County of San Luis Obispo, and was deemed complete on July 10, 1990. The only differences regarding Tract 1873 from Unit II of Tract 308 is that Tract 1873 was enlarged to include an additional 41 acres, which are to be dedicated as permanent open space, and a substantial reduction in density. The continuous processing of the project is supported by the title of the environmental review document certified by the County of San Luis Obispo for Tract 1873, which is "Final Supplemental Environmental Impact Report." (See Exhibit 4B) The environmental review for Tract 1873 is "Supplemental" to the original Environmental Impact Report prepared for Tract 308.

4. If The Commission Rejects A Full Exemption For Unit II Of Tract 308, Then The Commission Is Still Required To Allow The Claimant To Make A Beneficial Use Of The Off-site Improvements For Unit II Of Tract 308, And Is "Committed" To Approving A Subdivision Which Comports To The Land Density Requirements Of The Coastal Act As Established By The Certified Local Coastal Program.

If the Commission rejects a full exemption for Unit II of Tract 308, then the Commission is "committed" to allow the Claimant to make a beneficial use of the off-site improvements, and to record a Final Map which is consistent with the density requirements of the Certified Local Coastal Program.

The reason why the Court of Appeals held that the Commission is committed to granting a permit to complete the subdivision "provided it comports with the land density requirements of the Coastal Act is explained by reference to the appellate record itself. The appeal to this Commission from the Regional Commission's acknowledgement that Pratt had a vested right to complete the off-site improvements, but no vested right to record the final map recognized the property owner's contention that this created a paradox: "The paradox which has been created is this.

Expanded Answer to Question 3
Att Claim of Exemption/Vested Rights

to the present day, the applicant has spent over \$200,000 to construct the off-site improvements required by the tentative map approval by the County. ...The Regional Commission has recognized that the applicant had a vested right to perform this work without the necessity of obtaining a coastal permit."

"By denying the applicant's request for a permit to record a final subdivision map, the Regional Commission has effectively denied the applicant any use whatsoever of its off-site improvements and the expenditures made in relation thereto. ...It is further contended that if the applicant is denied a right to make a reasonable use of its valuable off-site improvements, such denial amounts to a taking of the applicant's property without compensation."^{1/}

In response to these concerns of the Applicant, the State Commission found:

"The Regional Commission did not deny the applicant the right to make reasonable use of the off-site improvements but only denied the applicant's two specific proposed uses, which were 86-lot and 72-lot subdivisions. The Regional Commission expressed interest in reviewing an application for a project with a substantially-reduced density for this project site." (Id., p. 192)

When the State Commission upheld the position of the Regional Commission on November 15, 1977, the Executive Director of the Commission reiterated the fact that if the property came forward with a substantially reduced project, which is the very project which is now before this Commission, stating:

1/ Appeal Summary, California Coastal Commission, Appeal No. 392-77, Administrative Record, Vol. 1, p. 189 (Exhibit 3H). The Claimant hereby requests that the Commission take official notice of the full Administrative Record, and Court of Appeal's records in the Claimant's prior claim of exemption. The Commission is also asked to take official notice of all of the records and environmental documents presented in the pending appeal before the Commission A-3-SLO-98-087, which is incorporated herein by this reference.

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

"The Regional Commission made clear that an application for a substantially reduced density for the site would be appropriate under the Coastal Act, and that the remedy to the problem was not to try to persist with this very large number of lots, but rather to come in with a re-design with a smaller number of lots that would indeed reflect the fact that there had been the expenditure for the offsite improvements.

"It seems to us that that's a perfectly sensible determination by the Regional Commission and one entirely consistent with the Coastal Act, and we believe that the remedy is for the Pratt Construction Company to resolve the question of the proper number of lots with the Regional Commission." (Administrative Record, pp. 200-201; emphasis added.)

Based upon these statements in the Record presented to the Court of Appeals, it is no wonder that the Court concluded that the Commission is "committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act." Some 20 years later, the project before the Commission has fulfilled that promise by substantially reducing densities to conform with the Certified Local Coastal Program.

The general location of the development is depicted on the following maps (reduced from full size):

| <u>Item</u> | <u>Exhibits</u> |
|---|-----------------|
| a. Tract 308 Government USGS Topo Map. | 3A |
| b. Zoning Map showing Urban Reserve Line. | 3B |

Expanded Answer to Question 3
Pratt Claim of Exemption/Vested Rights

- B. Expanded Answer to 3: Attach a site plan, development plan, grading plan, and construction or architectural plans.

The following plans are attached as the identified Exhibits (reduced from full size).

| <u>Item</u> | <u>Exhibits</u> |
|--|-----------------|
| c. Approved Tentative Map | 3C |
| d. Street Improvement Plans (4 sheets) | 3D |
| e. Approved Lot and Street Grading Plan (3 sheets) | 3E |
| f. Enlargment of signed Approval of Grading Plan described in e, above. | 3F |

(See also, separate Oversized Map Submittal. List attached as Exhibit 3G.)

Expanded Answer to Question 5
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 5: List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval.

With regard to Claimant's Vested Rights Claims 1 and 2:

| <u>Item</u> | <u>Exhibits</u> |
|--|-----------------|
| a. County Subdivision Review Board Approval, February 21, 1973. | 5A |
| b. Los Osos South Bay Advisory Group Approval of Tentative Map. | Not Available |
| c. County Planning Commission Approval of Tentative Subdivision Map and Environmental Impact Statement - Tract 308, Cabrillo Estates (Rodman - Central Coast Engineering), April 24, 1973. | 5C |
| d. County Board of Supervisors Approval of Planning Commission Action, Resolution Approving Exceptions To Section 11-351.1402.A.3, B.2., C.1. and E (Standard Improvement Specifications and Drawings) for Tract 308, Cabrillo Estates, May 7, 1973. | 5D |
| e. County Board of Supervisors Approval of Planning Commission's Recommendation to Approve Tract 308, In the Matter of Tentative Subdivision Map, Tract 308, Cabrillo Estates, May 7, 1973. | 5E |
| f. County Board of Supervisors Renewal of Tentative Map, September 28, 1976. | 5F |
| g. Approvals for Unit II of Tract 308 upon which substantial construction was commenced: Street Grading Plan County Planning, August 4, 1976, and Street Grading Plan County Engineering, August 5, 1976. | 5G |

Expanded Answer to Question 7
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 7: With regard to Claimant's Vested Rights Claims 1 and 2, the conditions of approval are set forth in the following approvals, and based upon which the commencement of substantial construction occurred. These approval documents are identified below, and the supporting documents are listed as Exhibits in the Expanded Answer to Question 5:

| <u>Item</u> | <u>Exhibits</u> |
|--|-----------------|
| a. County Board of Supervisors Approval of Planning Commission Action, Resolution Approving Exceptions To Section 11-351.1402.A.3, B.2., C.1. and E (Standard Improvement Specifications and Drawings) for Tract 308, Cabrillo Estates, May 7, 1973. | 5D |
| b. County Board of Supervisors Approval of Planning Commission's Recommendation to Approve Tract 308, In the Matter of Tentative Subdivision Map, Tract 308, Cabrillo Estates, May 7, 1973. | 5E |
| c. County Board of Supervisors Renewal of Tentative Map, September 28, 1976. | 5F |
| d. Approvals for Unit II of Tract 308 upon which substantial construction was commenced: Street Grading Plan County Planning, August 4, 1976, and Street Grading Plan County Engineering, August 5, 1976. | 5G |

With regard to Claimant's Vested Rights Claim 3, the conditions of approval are voluminous and detailed, and are set forth in detail in the following documents, which documents are listed as Exhibits in the Expanded Answer to Question 5: It is expected that those conditions can be satisfied within one year of final action by the Commission on the pending appeal and this Claim of Exemption:

| | |
|--|----|
| e. Board of Supervisors Final Action, Tract 1873, September 1, 1998. | 5H |
|--|----|

Expanded Answer to Question 8
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 8: The following description and documents are in response to Question 8(a), specifying the nature and extent of work in progress or completed concerning Vested Rights Claims 1 and 2, including the date that each portion was commenced:

| <u>Item</u> | <u>Date</u> | <u>Exhibits</u> |
|--|-------------|-----------------|
| (1) Recording of Initial Cabrillo Estates Phases | 1963 | 8B |
| (2) Stub streets (including curbs, gutters, paving, water lines and utilities) from adjacent tract to Tract 308 | 1963 | 8B |
| (3) Site grading roads | 1963 | 8B |
| (4) Central storm drain system | 1963 | 8B |
| (5) Central water system | 1963 | 8B |
| (6) Central power, gas, phone and cable T.V. system | 1963 | 8B |
| (7) Design engineering - Unit II, Tract 308* | 5/7/73 | 8K |
| (8) Survey work - Unit II, Tract 308 | 8/76 | |
| (9) Re-engineering roads and utilities - Unit II, Tract 308* | 8/76 | |
| (10) Clearing, grubbing and street grading - Unit II, Tract 308, 7,400 lineal feet, 50± feet wide | 8/76 | 8M |
| (11) Storm drainage - Unit II, Tract 308 | | 8K3 |

*(See Oversized Map Submittal, Exhibits 3C-3F, listed in Exhibit 3G.)

Expanded Answer to Question 8
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 8: The following description and documents are in response to Question 8(b), specifying the nature and extent of work in progress or completed concerning Vested Rights Claims 1 and 2, including governmental approval pursuant to which portion was commenced:

| <u>Item</u> | <u>Date</u> | <u>Exhibits</u> |
|---|------------------|-----------------|
| a. County Subdivision Review Board Approval. | 2/21/73 | 5A |
| b. Los Osos South Bay Advisory Group Approval of Tentative Map. | Not Available | |
| c. County Planning Commission Approval of Tentative Subdivision Map and Environmental Impact Statement - Tract 308, Cabrillo Estates (Rodman - Central Coast Engineering). | 4/24/73 | 5C |
| d. County Board of Supervisors Approval of Planning Commission Action, Resolution Approving Exceptions To Section 11-351.1402.A.3, B.2., C.1. and E (Standard Improvement Specifications and Drawings) for Tract 308, Cabrillo Estates. | 5/7/73 | 5D |
| e. County Board of Supervisors Approval of Planning Commission's Recommendation to Approve Tract 308, In the Matter of Tentative Subdivision Map, Tract 308, Cabrillo Estates. | 5/7/73 | 5E |
| f. County Board of Supervisors Renewal of Tentative Map. | 9/28/76 | 5F |
| g. Approvals for Unit II of Tract 308 upon which substantial construction was commenced: Street Grading Plan County Planning, August 4, 1976, and Street Grading Plan County Engineering, August 5, 1976. | 8/4/76 8/5/76 | 5G |

Expanded Answer to Question 8
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 8: The following description and documents are in response to Question 8(c), specifying the nature and extent of work in progress or completed concerning Vested Rights Claims 1 and 2, including portions completed and date on which completed:

| <u>Item</u> | <u>Date</u> | <u>Exhibits</u> |
|--|---------------------------|-----------------------------|
| (1) Recording of Initial Cabrillo Estates Phases | 1963 | 8B |
| (2) Stub streets (including curbs, gutters, paving, water lines and utilities) from adjacent tract to Tract 308 | 8/24/70 | 8B |
| (3) Site grading roads | 8/24/70 | 8B |
| (4) Central storm drain system | 8/24/70 | 8B |
| (5) Central water system | 8/24/70 | 8B |
| (6) Central power, gas, phone and cable T.V. system | 8/24/70 | 8B |
| (7) Design engineering - Unit II, Tract 308 | 12/76 | 8K |
| (8) Survey work - Unit II, Tract 308 | 5/73 | |
| (9) Re-engineering roads and utilities - Unit II, Tract 308 | 3/75 | |
| (10) Clearing, grubbing and street grading - Unit II, Tract 308, 7,400 lineal feet, 50± feet wide | 10/76 through 12/24/76 | 8M (See Declarations) |
| (11) Storm drainage - Unit II, Tract 308 | 12/76 | 8K3 |

Expanded Answer to Question 8
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 8: The following description and documents are in response to Question 8(d), specifying the nature and extent of work in progress or completed concerning Vested Rights Claims 1 and 2, including the status of each portion on January 1, 1977:

| <u>Item</u> | <u>%</u> | <u>Exhibits</u> |
|--|----------|-----------------|
| (1) Recording of Initial Cabrillo Estates Phases | 100% | 8B |
| (2) Stub streets (including curbs, gutters, paving, water lines and utilities) from adjacent tract to Tract 308 | 100% | 8B |
| (3) Site grading roads | 100% | 8B |
| (4) Central storm drain system | 100% | 8B |
| (5) Central water system | 100% | 8B |
| (6) Central power, gas, phone and cable T.V. system | 100% | 8B |
| (7) Design engineering - Unit II, Tract 308, to record Final Map | 80% | 8K |
| (8) Survey work - Unit II, Tract 308, to record Final Map | 100% | |
| (9) Re-engineering roads and utilities - Unit II, Tract 308 | 80% | |
| (10) Clearing, grubbing | 100% | 8M |
| Street grading - Unit II, Tract 308, 7,400 lineal feet, 50± feet wide | 60% | 8M |
| (11) Storm drainage - Unit II, Tract 308 | 80% | 8K3 |

Attached hereto are the Declarations of Charles A. Pratt, Jack S. Foster, Randy Houg, and Ben Maddalena.

Expanded Answer to Question 9
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 9: With regard to Claimant's Vested Rights Claims 1 and 2, the following portions of development remain to be constructed:

- a. Continuation of utilities from existing stubs.
- b. Construction and continuation of street paving, curbs, and gutters.
- c. Completion of storm drain system per Plan.

Expanded Answer to Question 10
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 10:

With regard to Claimant's Vested Rights Claims 1 and 2, the following is the amount and nature of liabilities incurred that are not covered above and dates incurred:

| | |
|--|-----------|
| Cost of land (in 1974 dollars, excluding interest): | \$339,130 |
|--|-----------|

| | |
|------------|----------------|
| Purchased: | February, 1974 |
|------------|----------------|

With regard to Claimant's Vested Rights Claims 1 and 2, the remaining liabilities to be incurred and the dates these are anticipated to be incurred:

| | |
|---|-----------|
| Estimated cost of completing construction of 152 lots, excluding clearing and grading (in 1976 dollars), 1 year after project approval: | \$253,451 |
|---|-----------|

Expanded Answer to Question 11
Pratt Claim of Exemption/Vested Rights

Expanded Answer to 11: The expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses, in 1976 dollars, is comprised of the following sums:

| | |
|---|------------------|
| Cost of land: | \$339,130 |
| Total cost of constructing 152 lots, with streets, including the cost of completed work in progress (in 1976 dollars): | <u>350,751</u> |
| TOTAL COST | <u>\$689,881</u> |

CALIFORNIA COASTAL COMMISSION

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



August 2, 1999

William Walter, Esq.
Walter and Bornholdt
679 Monterey Street
San Luis Obispo, Ca.
93401

Dear Mr. Walter,

This letter is in response to the Vested Right Claims you submitted on behalf of Charles Pratt on July 1, 1999 for Tract 308, Unit II, located in the Los Osos-Baywood Park area of San Luis Obispo County. (3-99-048-VRC) .You have requested that the Commission acknowledge the following claims :

1. The right to complete off-site improvements for Unit II for 152 lots.
2. The right to record a Final Map for the 152 lots, or
3. The right to record the Final Map for Tract 1873, currently on appeal to the Commission.

I have reviewed the two volume submittal and the numerous plans and cannot file any of the claims for the reasons detailed in the following paragraphs.

CLAIM #1: COMPLETION OF OFF-SITE IMPROVEMENTS

This claim proposes that the "off site" improvements for Unit II of Tract 308 be exempt from the Coastal Development Permit required for new development in the Coastal Zone (Public Resources Code 30601). It is my understanding that the development proposed for exemption is actually *on the site* of the proposed subdivision and would be more accurately characterized as subdivision improvements for Tract 308 (grading, roads, utilities and similar infrastructure to serve the proposed 152 lots). If the development proposed for exemption is truly not within the boundaries of Tract 308, please advise.

This claim cannot be filed for the following reasons:

Development is not clearly identified: You have asked that the Commission acknowledge a Claim of Vested Right to complete off-site improvements for 152 lots and have submitted a number of drawings, Plans and Maps for Tract 308 and other nearby sub-divisions. In order to analyze your claim, you must specify the various elements characterized as "off-site" improvements and identify them on the approved plans (e.g. the cubic yards of grading, cut and fill, length and width of roads, road surfacing, utilities

such as wastewater treatment facilities, water lines, driveway cuts, building pads, tree removal). A clear map at an appropriate scale which identifies the improvements, proposed lots and geographic area of Tract 308, Unit II as approved by the County is also needed.

County approval record for Tract 308: A key element in the analysis of your vested right claim is evidence of the pre-1977, valid, governmental approvals on which you base the claim. You are therefore required to submit copies of valid county approvals that clearly are applicable to the project you claim is exempt. Although you have submitted some County approvals, they do not clearly authorize the project for which you are claiming a vested right because they do not describe the project, some do not appear to be final actions and none indicate whether the approval is still valid.

You have submitted a number of documents memorializing various county actions that may be relevant to Tract 308, however, they are all inadequate for one or more of the reasons summarized above. For example, Exhibit 5a, Subdivision Review Board action of February 21, 1973 describes a 235 lot subdivision on 129 acres. This is inconsistent with the project description provided in the body of your claim for Tract 308. The Planning Commission approval (Exhibit 5c, April 24, 1973) does not include a map and simply identifies the project as Tract 308. The Board of Supervisors action of May 7, 1973 likewise does not offer a specific description or map of Tract 308. I note also that this action was essentially an approval in concept pending receipt and approval of grading and erosion control plans and satisfaction of several other conditions. Finally, Exhibit 5g is a one page resolution from the Board of Supervisors approving Tract 308. As with the other documents, this resolution does not describe the project, does not include all of the conditions attached to the approval of this subdivision and does not state when the approval expires.

Appropriate and complete documentation from the County records in connection with the applicable approvals are needed to process your claim.

Current status of the Tentative Map for Tract 308: You have stated in your claim that the Tentative Map for Tract 308 is still valid. Government Code Section 66452.6 (a) provides that Tentative Maps shall expire after two years unless they are extended. Evidence in your submittal seems to indicate that the map has expired. For example, the EIR prepared for Tract 1873 states that the map for Tract 308 is "long expired" (EIR, page X-34). You have not provided any documentation in your submittal to support your contention that the Tentative Map for Tract 308 has been extended pursuant to applicable law for these past twenty three years. A letter from county planning documenting the various extensions of Tract 308 and including a statement that the Tentative Map for this tract is still valid could provide the needed evidence.

The environmental documents for Tract 308 do not support your claim that the project had all necessary governmental approvals prior to January 1, 1977: You have offered two EIR documents in support of your claim. Exhibit 4a of your submittal is an undated EIR for Tract 308 (no unit number given). This report was prepared by Central Coast Engineering and shows a project location different than that shown on other maps identified as Tract 308. Furthermore, this EIR was apparently prepared well after the date this site came into the Coastal Zone on January 1, 1977. References in the Traffic Section cite information published in 1980 and 1984 (page C-1). The preliminary assessment of endangered wildlife habitats prepared for the EIR was written in November of 1984 (page D-1). Ordinarily, EIR's are prepared before project approval, it is therefore unclear how *this* EIR, which was prepared in the mid- 1980's supports your claim.

The EIR for Tract 1873 was also included in your submittal (Exhibit 4b). This document was prepared in 1996 for a 45 lot subdivision on a 124 acre site, part of which includes e land originally included in Tract 308. It is, however, a different project with fewer lots, different street alignment, larger site area etc. It is unclear why this EIR has been included and how it supports your claim for Tract 308. Please clarify your response to Question 4 on the Vested Rights Claim Form.

County approvals for work claimed as basis of exemption not included: As you know, to establish a claim of vested right in this case, you must demonstrate that substantial work on the project was completed, pursuant to a valid permit (or provide evidence that no permit was needed) prior to January 1, 1977. It is clear that you are relying on grading done during the fall of 1976 to establish your claim, however, there is no evidence in your submittal of a county grading permit for this work. Please submit this permit or provide evidence that a grading permit was not needed to perform the work.

Additional evidence of substantial work is needed: Declarations from Randy Houg, Jack Foster, Charles Pratt and Ben Maddalena state that certain grading work was accomplished on this site. The Pratt and Maddalena declarations state that this work occurred in the fall of 1976. An undated air photo is also submitted as evidence of pre 1977 grading. While Declarations are certainly given appropriate weight, more objective evidence would be helpful in establishing the amount and timing of pre- 1977 grading on this site. County inspectors records or invoices for the grading would be the type of material that could provide this objective support .

Total cost of project and pre-1977 expenditures are unclear: You have submitted several pages outlining a number of tasks and actions in response to question number eight on the Vested Rights Claim form. This question requests information on *construction* costs incurred pursuant to valid county approvals, for work done on the site prior to January 1, 1977. Only those costs incurred to actually construct development

authorized by a valid governmental approval (i.e. Grading permit, subdivision approval) can be included. Expenditures associated with *obtaining* governmental approvals (permit fees, EIR costs, design, engineering) may not be counted as expenses for this purpose, nor may land acquisition costs. Your list includes a number of items that are not relevant to establishing pre- 1977 construction costs. In addition, the local approvals cited in support of the expenditures are, as discussed in a preceding paragraph, missing or inadequate. The listing is also flawed because of the lack of specificity regarding the elements of the project. Finally, the projected cost of completion is extremely low and based on 1976 dollars. As part of the analysis of your claim, staff will adjust the pre-1977 grading expenditures to be expressed in current dollars. Estimates for work remaining to be accomplished should therefore be given in current dollars as well.

In order to properly analyze your claim, please submit the approved subdivision map showing all required improvements (water lines, sewage facilities, paved roads, drainage improvements, erosion control devices, gas and electrical lines, grading etc.) as required by the county. Also include a list which specifies each item (i.e. paving of x many feet of roads) , cites the county approval for undertaking the work and provide a cost of that work item. Clearly indicate which items were completed prior to 1977 and which items remain uncompleted or partially completed. Do not include work undertaken to complete other projects. Finally, include invoices or job orders for work completed prior to January 1, 1977 and estimates, by a qualified person, for the remaining construction needed to complete the subdivision improvements and file the Final Map

CLAIM #2 : FILING OF THE FINAL MAP FOR TRACT 308, UNIT II

You have requested that the Commission acknowledge a claim of exemption for the Final Map for Tract 308, Unit II. A 152 lot subdivision. As discussed in earlier sections of this letter, there is insufficient information in your submittal to analyze whether the Final Map for Tract 308, Unit II can be exempted from the coastal permit requirement. At a minimum, the project description defects have to be addressed, total cost of project estimated and the conditions placed on the Tentative Map must be submitted. The status of the county approval must also be clarified because Tract 308, Unit II was apparently approved 23 years ago and seems to have been abandoned in favor of other, newer, projects.

CLAIM # 3 : FILING THE FINAL MAP FOR TRACT 1873

You have requested that the Commission, as an alternative to acknowledging a claim of vested right for the Final Map for Tract 308, instead grant such an exemption to Tract 1873. Tract 1873 was approved by the county last year and is for a different project than Tract 308, Unit II. Tract 1873 does include some of the land apparently included in Tract

308 (the exact amount will depend on the final, specific description of Tract 308) but is for many fewer lots in a different configuration, different road alignments and a larger site. Public Resources Code Section 30608 states that "no person who has obtained a Vested Right.....shall be required to secure approval pursuant to this chapter, *provided no substantial change may be made In any such project..*" (emphasis added). Tract 1873 is clearly a substantial departure from the subdivision approved as Tract 308. By statute, the substitution of Tract 1873 for Tract 308 cannot be made. Finally, I note that Tract 1873 was approved by San Luis Obispo County well after the date the site came into the coastal zone on January 1, 1977 and thus cannot be considered vested.

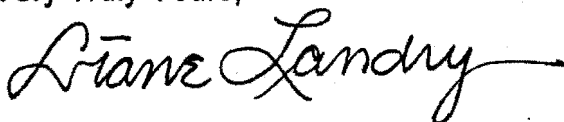
OTHER DEFICIENCIES

Documents may not be incorporated by reference: You have asked that the Commission take notice of a number of documents such as the Trial Court and Appellate Court files on the original Pratt case, the administrative record for the original Pratt Vested Right Claim with the Commission and the file on the appeal pending on Tract 1873. All of these items are very lengthy, complex files. If you believe that portions of these files support specific elements of your claim, please forward the appropriate excerpts with a discussion of why you believe they are relevant.

Authority to represent the owner: As I mentioned in my earlier letter acknowledging receipt of your claim, the authorization section (Number 14) on the claim form was inadvertently filled out incorrectly. Please correct and send along with the other requested items.

Please do not hesitate to call me at our Santa Cruz office if you have any questions or wish to discuss this matter further. To simplify the process and to make the most efficient use of time, please submit all requested material in one package.

Very Truly Yours,



Diane Landry,
Staff Counsel

c.c. Ralph Faust
Charles Lester
Steve Monowitz

KENNETH C. BORNHOLDT
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December 15, 1999

VIA FACSIMILE AND CALIFORNIA OVERNIGHT

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

Re: Charles A. Pratt Construction Company, Inc.
Claim of Exemption/Vested Rights

Dear Ms. Landry:

This letter is in reply to your letter of August 2, 1999, as well as your letter of November 18, 1999, which requested a reply by December 15, 1999. Under separate cover, together with the original of this letter, are various additional maps and other oversized information which you have requested.

It has been difficult to formulate a reply to your letter because it makes general comments without specifically referring to the exhibits or text of the claim form. The Claimant's original submittal consisted of two volumes, together with a 69-sheet oversized map file. Further, it is difficult to reply to those portions of the letter which raise legal arguments, while not being responsive to the case authorities cited in the text of the Claim.

It is the Claimant's position that the original submittal contains all of the information called for on the claim form as provided in Coastal Commission Administrative Regulations Section 13202. With the submittal of this letter and the referenced materials, it would appear as though the Commission "has all information necessary to review" the claim. Section 13205 provides that the Commission may continue the matter "if the circumstances suggest that a claimant may be able to provide additional information to substantiate the claim or other that evidence as pertinent to the claim."

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1. "Terminology Regarding "Off-Site" Improvements" (p. 1)

The improvements concerning Claim No. 1, for completion of the "off-site" improvements, is synonymous with subdivision improvements for finished grading, paving, curbs and gutters, and placement of utilities. These are also subdivision improvements, and the term "off-site" refers to improvements off the building pad for each lot.

The use of this terminology is made clear both in the prior Court of Appeal's decision, and the findings adopted by the Commission. While your letter questions the appropriateness of including the prior appellate and administrative records, many of the questions which you have asked have already been determined by the Commission in upholding the Claimant's claim of exemption to complete the "off-site" improvements. It would appear as though any previously determined issues should be binding upon the parties pursuant to the doctrine of administrative res judicata/collateral estoppel.

The Court of Appeal in South Central Coast Regional Com. v. Charles A. Pratt Construction (1982) 128 Cal.App. 3rd 830, uses the expression "off-site improvements," as follows:

"The Commission thus found that Pratt had a vested right to complete the off-site improvements, although he had no vested right to record the final subdivision map. ... Because Pratt was allowed to complete the offsite improvements, the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act." 128 Cal.App.3d at 848 (emphasis added).^{1/}

It is the Claimant's contention that, at a minimum, the same nature of work was done on Unit II which led to the Commission finding that Pratt had a vested right to complete the "off-site" subdivision improvements. The extent of improvements proposed in Tract 1873 is consistent with the site preparation for road alignments, except for providing greater open space and the reduction of densities which comport "with the land density requirements of the Coastal Act." The Commission is "committed" to approving the project based upon the vested right to complete the "off-site" improvements which comports with the land density requirements of the Coastal Act, and allows the Claimant to make a beneficial use of his vested property rights.

1/ This language is quoted in Expanded Answer to Question 3, p. 2.

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The Court of Appeal used the term "off-site improvements" because this reflected the findings adopted by the Commission in its own findings. On August 12, 1977, in Application No. 128-02 (copy enclosed), the Commission adopted specific findings with regard to the "subdivision off-site improvements," described as Project (B):

"The completion of subdivision off-site improvements including finished grading, paving, curbs and gutters and placement of utilities."

The Staff recommendation was to approve the project, and the Commission adopted the following finding:

"(B) Under California law an entity may acquire a vested right to perform a development if it had lawfully performed substantial work and incurred substantial liabilities in good faith reliance upon an appropriate governmental authorization prior to January 1, 1977. Within these bounds, the applicant has spent \$46,894.35 which represents 22.8% of the total project costs (\$205,400.00). This represents a substantial liability. Further, there are no grounds for finding this to have been done with "unseemly haste."

There are no facts with regard to Unit II which would justify not making the same findings that the Commission made with regard to Unit I.^{2/}

There is a second group of "off-site" improvements that are located outside the boundaries of Unit II of Tract 308. These include the stubbing of utilities to the site, sizing water, storm drain, gas, electrical and roadway access to accommodate the original densities for Unit II of Tract 308. At the time of approval of Tentative Tract 308, Cabrillo Estates contained 214 lots in Tracts 306, 307, and 310. The added 235 units of Tract 308 would bring the total in Cabrillo Estates to 449 units when Tract 308 was built out. In effect, Tract 308 represented 52% of the use for the existing water, storm drain, gas and electrical services, and design capacities. To deny the Claims is to deny the use of 52% of the in place water, storm drain, gas and electrical services. Tract 308 was purchased relying on the presence of this water, storm drain, gas and electrical services.

^{2/} As set forth in Expanded Answer 3, the Claimant contends that the prior Court of Appeal decision is applicable to both Unit I and Unit II of Tract 308 (see Expanded Answer to Question 3). For the purposes of this letter, we will assume the Court of Appeal decision only applied to Unit I.

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2. "Development is not clearly Identified" (pp. 1-2)

We are somewhat puzzled by the statement in your letter that the off-site improvements are not clearly identified. The original submittal includes the following as set forth on page 8 of the Expanded Answer to Question 3:

| <u>Item</u> | <u>Exhibits</u> |
|---|-----------------|
| c. Approved Tentative Map | 3C |
| d. Street Improvement Plans (4 sheets) | 3D |
| e. Approved Lot and Street Grading Plan (3 sheets) | 3E |
| f. Enlargement of signed Approval of Grading Plan described in e, above. | 3F |

The Oversized Map Submittal also includes 18 Maps (69 sheets) and is certainly at "an appropriate scale." (See also, separate Oversized Map Submittal. List attached as Exhibit 3G.)

In order to facilitate your review, enclosed with correspondence from Central Coast Engineering, are reduced versions of these various Oversized Maps, with a description for the work.

These approved Plans are attached and verify the following:

- Cubic yards grading: 25,000
- Length and Width of Roads: 7,000 lineal ft., width per Plans
- Square Feet of Clearing: 350,000
- Road Surfacing: See attached Plans
- Shared 120,000 gallons storage tank and pump delivery system, shared pump house
- Water Lines: 2,400 lineal ft. of 8" diameter shared water main
- Shared Storm Drain: 2,400 lineal ft. of 24" diameter shared storm drains
- Shared Detention Storm Water Basin
- Shared 24" diameter storm drain along Rodman Drive
- Special storm water inlet for Tract 308
- Shared 24" diameter storm drain at Rodman Drive
- 650 lineal ft. for Alamo Drive and 8" water line, Stub Street for access to Unit II of Tract 308

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- 150 ft. of paved roadway for Vallejo Road; 150 feet Stub Street for Tract 308 for Vallejo Road; 120 lineal ft. of 2" gas main at Vallejo Road
- Shared electrical service from Rodman Drive to Vallejo Road

These items have been summarized by the project engineer, Central Coast Engineering.

Please see the attached analysis prepared by Central Coast Engineering, the engineers for the project when the work was completed, for further explanation.

3. "County approval record for Tract 308" (p.2)

Your letter raises a number of issues concerning the County approval record for Tract 308. Your questions with regard o "valid County approvals" illustrate the need to include the appellate record, and indeed, the administrative record of the Commission's prior actions on this matter. I would note that nowhere in the Attorney General's prior analysis was there any question with regard to the validity of the County's approvals. For your information, in the Commission's own Administrative Record No. 392-77, of which we have requested incorporation into this current record, at page 127, is a copy of the approved Tentative Map of Tract 308, showing the areas of both Unit I and Unit II. Further, at page 77, is the Board of Supervisors' approval of Tract 308 and the Environmental Impact Statement for Tract 308; on May 7, 1973, a resolution approving the subdivision, p. 79-80; the approval document of Tract 308 by the Board of Supervisors dated May 7, 1973, at p.82-83; the September 28, 1978 action of the Board of Supervisors approving Unit II of Tract 308, at p. 83; and, the Final Environmental Impact Report for Tract 308, at p. 84, et seq.

Your observation that Tract 308 is not specifically attached to the various County approvals is specious. There has never been any question of the content of Tract 308 in the form of the tentative tract. To expect an oversized tract map to necessarily be appended to the resolution is inconsistent and not the practice at the time, nor would it be done now. Tract 308 is so clearly a part of all prior Commission actions, that there is no basis to deny its content. The Claimant must completely reject the basis of your claim, and strongly suggests that you carefully review the file and the prior actions undertaken by the Commission. You will soon discover that the issues that you raise have no basis. Appropriate, full, and complete documentation of the approval of Tract 308 has clearly been submitted, and is otherwise available in the Commission's own records for more than 20 years.

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4. "Current status of the Tentative Map for Tract 308" (p 2)

The issues which you raise concerning the current status of Tract 308 were expressly addressed in Expanded Answer to Question 3, on pp. 4-5. In essence, Tract 308 has been in continuous process and is currently in process through approved Tentative Map 1873, which reflects current, valid governmental approvals consistent with the Court of Appeal's decision. Tract 1873 is the Claimant's proposal to make a beneficial use of the "off-site" improvements completed for Tract 308, and which was expressly authorized in the prior proceedings before the Commission as discussed in Expanded Answer to Question 3, pp. 5-7.

Expanded Answer to Question 3, heading 3, "Claimant's Vested Rights Have Not Lapsed," responds to the suggestion in your letter that the Claimant's vested rights to complete "off-site" improvements have lapsed.

As we have previously explained, as a matter of law, the Claimant's vested right to complete Unit II of Tract 308 has not lapsed with the passage of time with regard to any of the claims of exemption. In Pardee Construction v. California Coastal Com. (1979) 95 C.A.3d 471, 157 Cal.Rptr. 184, the developer had obtained building permits for the construction of a condominium project in San Diego. It then acquired a vested right through issuance of the permits and performance of substantial work and incurrence of substantial liabilities in reliance on the permit: e.g., "rough grading, desilting basin, drainage system and foundations for all 231 units," and actual construction of 152 of the units. That vested right was provided an exemption from the 1973 Coastal Act permit requirements. However, due to an economic downturn, the developer delayed the construction of the last 79 units and, as a result, the building permits expired. When Pardee applied for new building permits and then sought an exemption from the 1977 Coastal Act relative thereto, the Coastal Commission denied the claim for exemption, claiming:

"that Pardee's 'vested right' could not outlive the government approvals -- the city building permits upon which it was based." 95 C.A.3d, at 476.

Both the trial court and Court of Appeal rejected that argument. Specifically, the Court found that:

"the right possessed by Pardee was in the nature of a property right. [Cite omitted.] Pardee's failure to exercise that vested right to its fullest extent before the enactment of the

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1976 coastal act does not affect its vested character. [Cite omitted.]" Id. at 479.

The Claimant's vested rights herein are also property rights which, as in Pardee Construction, simply do not cease to exist. Indeed, it should be noted that taking action in derogation of the vested right amounts to a legally impermissible takings. Miller v. McKenna (1944) 23 C.2d 774, 783 (an action involving a vested right and after-enacted legislation).

5. "The environmental documents for Tract 308 do not support your claim that the project had all necessary governmental approvals prior to January 1, 1977" (p. 3)

The Claimant is surprised that such a foundational question regarding the EIR for the project is being raised, in light of the clear records of the Commission itself. Your complaint is, apparently, that the EIR is undated. However, the approving resolutions of the Board of Supervisors clearly approved the EIR and this Environmental Impact Report included with the submittal is the proper approval for all of Tract 308, Unit I and Unit II. I would refer you to the Commission's file and own Administrative Record which includes the EIR for Tract 308, together with all attachments, commencing on page 84 through page 127, and which includes a copy of the Tentative Tract of 308, clearly establishing that the environmental approval was for the entirety of Tract 308, Unit I and Unit II. Both the authenticity and the adequacy of the environmental review for Tract 308 has been fully determined by prior Commission actions. It should not be necessary to completely "reinvent the wheel," and to raise issues which are answered by the existing record in the Commission's own files. The Attorney General never raised any similar questions the adequacy of County approvals or environmental review for Tract 308. We would suggest that those issues were not raised since it was clear that there is no grounds of substantial evidence to have raised those objections.

Further, the relationship between the environmental documents is explained in Expanded Answer to Question 3:

Tract 308 has been in continuous process since its original approval by the County prior to the adoption of the California Coastal Act. Tract 308 as approved, included the areas which have been referred to as Unit I and Unit II. After the claimed expiration of Tract 308 by the County, Pratt resubmitted Unit I of the project which was designated as Tract 1342. Unit II of Tract 308 is included in the area of Tract 1873. Tract 1342 was approved by the Coastal Commission and recorded in 1989. The application

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for Tract 1873 was submitted in 1989 to the County of San Luis Obispo, and was deemed complete on July 10, 1990. The only differences regarding Tract 1873 from Unit II of Tract 308 is that Tract 1873 was enlarged to include an additional 41 acres, which are to be dedicated as permanent open space, and a substantial reduction in density. The continuous processing of the project is supported by the title of the environmental review document certified by the County of San Luis Obispo for Tract 1873, which is "Final Supplemental Environmental Impact Report." (See Exhibit 4B) The environmental review for Tract 1873 is "Supplemental" to the original Environmental Impact Report prepared for Tract 308.

It might be possible that some of the pages are out of sequence, but you should be able to identify them based upon page numbering. We must assume that you have a complete copy of the EIR approved for Tract 1873 as part of the substantive file documents for the pending appeal. We would request that those documents be specifically included in this Administrative Record pertaining to the approval of Tract 1873, including the certified Supplemental EIR.

You have asked how the subsequent Environmental Impact Report for Tract 1873 supports Claimant's claim. Please recall that the Claimant is asserting three separate claims. Claim No. 3 is the right to record Tract 1873 in order to make a beneficial use of Claimant's vested right to complete the "off-site" improvements, the substantial alignment of which has been preserved by Tract 1873. Pursuant to the Court of Appeal's decision, the Commission is committed to allow the recordation of a tract which complies with the land density requirements of the certified Local Coastal Program. Tract 1873 is exactly what both the Commission and the Court of Appeal anticipated and encouraged. There has been full and complete CEQA compliance to support Claim 3.

6. "County approvals for work claimed as basis of exemption not Included" (p. 3)

We must respectfully disagree with your conclusion that there is no evidence of a County grading permit for the work done prior to January 1, 1977. The work is consistent with Exhibits 8A and 8M. The grading permit is described in Exhibits 3F and 3G.

7. "Additional evidence of substantial work is needed" (p. 3)

The present submittal is more extensive than the Unit I improvements documentation which the Commission approved. The Declarations from percipient witnesses would appear to be the

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strongest form of evidence concerning substantial work done by an owner/contractor. The aerial photographs reflects the pre-1977 substantial construction described above, but was taken in 1990, or approximately 13 years after the vested work was completed. Enclosed are Unit II Engineering billings.

As you may be aware, the Commission actually commenced litigation against the Claimant in an effort to seek to prevent recordation of Tract 308. In that litigation, there was never any allegation that substantial work was done without authorization under valid local approval. If the extent of work on 7,000 ft. of new streets was not permitted or known to be under an approved process by the County, then we would presume that a violation would have been filed and work stopped before the completion of the preliminary street excavation. The property is adjacent hundreds of existing homes, all of which would have been aware of any illegal grading activity.

There is no substantial evidence of any kind in this record or the prior record to indicate that this work was not conducted during the Fall, 1976. The prior Commission finding is that the work done on Tract 308 was not done with "unseemly haste." Central Coast Engineering informs us that there are no County inspection records that would have been maintained at that time. Under this set of facts, it would appear as though the doctrine of res ipsa loquitur or, "the thing speaks for itself," would indicate that currently perceived evidence of this grading activity was legally conducted pursuant to the County's approval of the preliminary grading as required by the Tentative Map conditions. Under any scenario, this constitutes work pursuant to the County authorization that were required at the time.

8. "Total cost of project and pre-1977 expenditures are unclear"
(p. 3)

Concurrently herewith is correspondence from Central Coast Engineering adjusting the dollar figures as you requested. The figures to establish the vested work are shown in Exhibit 8M and are listed below:

| | |
|-------------------------------------|-----------------|
| Grading Permit Approval Engineering | \$ 20,635.07 |
| Grading, Tree and Root Removal | 97,000.00 |
| Administration and Supervision | <u>8,111.00</u> |
| Total | \$125,746.07 |

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The local approval of grading is shown as Exhibits 3E and 3F.

Concerning the specificity of the project and the process, please refer to Exhibit 5H and Declaration of Ben Maddalena.

Concerning the cost basis for calculations, because the work was completed in 1976, the dollars were all based on 1976 dollars.

The comparison of costs in 1976 and 1999 dollars is given below using a factor of 3.5 for the increase in value of the dollar:

| | <u>\$1976</u> | <u>\$1999</u> |
|--------------------------------|-----------------|------------------|
| Grading Permit Approval | \$ 20,635 | \$ 772,222 |
| Grading, Tree and Root Removal | \$ 97,300 | \$340,550 |
| Administration and Supervision | <u>\$ 8,111</u> | <u>\$ 28,388</u> |
| | \$126,046 | \$441,160 |
| Cost of Completion | \$253,451 | \$887,078 |

We have listed expenditures associated with obtaining governmental approvals because we are unaware of any statute or case authority which compels the exclusion of those additional costs. After all, a vested rights claim is one based upon equity, with the present project being in continuous process since the early 1970's, requiring the expenditure of substantial sums in order to at last be able to make a beneficial use of Claimant's property and vested rights.

Even if you exclude certain items, it is clear that the work completed during 1976 was more extensive and expensive than the work completed for Unit I of Tract 308, concerning which the Commission, even in your interpretation, found a vested right.

The local approvals pursuant to which this work was completed have been identified again and again. Please see the oversized blow-up of Exhibit 3F, being the signature on the grading plans pursuant to which this work was completed, in addition to which it was authorized and required by the Tentative Map conditions of approval.

I would respectfully suggest that the balance of the somewhat disjointed comments can be answered by again reviewing the application submittals and the other Commission files and records in connection with this matter.

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9. "Claim #2: FILING OF THE FINAL MAP FOR TRACT 308, UNIT II"
(P. 4)

This issue was specifically addressed and was answered in Expanded Answer to Question 3. As discussed above, the expiration of the permit is irrelevant to establishing any alleged expiration of the Tentative Map does not affect Claimant's vested right.

The consequence of the Commission Staff's position that Unit II of Tract 308 was not determined by the Court of Appeal's decision is that the Claimant is entitled to apply herein for a vested right to record Unit II of Tract 308 according to its original density, and entitled to a full exemption for then recordation of a Final Map from the provisions of the Coastal Act (Claim 2). If the Commission Staff's interpretation is correct, then there is no res judicata or collateral estoppel from the prior Court of Appeal's decision with regard to Unit II of Tract 308. As discussed below, the California Supreme Court has subsequently criticized the result in the prior Pratt Court of Appeal decision, and if decided under current law, would uphold a complete vested right and claim of exemption from the Coastal Act. The prior denial of Pratt's claim for a full exemption under the Coastal Act to record a Final Map for Tract 308 is based upon the following holding from the Court of Appeal's decision that:

"we specifically reject the 'final discretionary approval' test proffered by the subdividers in this case. Although approval of the tentative map may be the last discretionary act by the local governing agency under the Subdivision Map Act, [cite omitted], we believe the overriding environmental policies of the coastal act, including a narrow scrutiny of claims of exemption, support our holding that more is required to obtain a vested right than mere tentative map approval."
(Emphasis added)

This rationale for the prior Pratt Court of Appeal's decision was subsequently rejected by the California Supreme Court in Santa Monica Pines, Ltd. v. Rent Control Board (1984) 35 C.3d. 858, 868, which held that all that is required to establish a vested right is something akin to a "building permit" in terms of the implied promise to complete an approved development:

"a promise such as that implied by a building permit that the proposed use will not be prohibited by a class of restrictions that includes the regulation in question."

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See also Conway v. City of Imperial Beach (1997) 53 Cal.App.4th 78;
Consaul v. City of San Diego (1992) 6 Cal.App.4th 178.

The California Supreme Court rejected the rationale behind the Pratt Court of Appeal's decision to allow a vested right to record the Final Map for Tract 308 in Santa Monica Pines, Ltd. v. Rent Control Board, supra, 35 Cal.3d at 864, where it stated:

"We are aware of several recent decisions which decline to recognize tentative map approvals as a 'final approval' which may be relied upon under Avco Community Developers, Inc. v. South Coast Regional Com., supra, 17 C.3d 788, some requiring final subdivision map approval [cites omitted], others requiring only fulfillment of all the conditions set out in the tentative map approval (South Central Coast Regional Com. v. Charles A. Pratt Construction Co. (1982) 128 C.A.3d 830, 845 [cites omitted]). These decisions have not focused, though, on the character of the tentative map approval itself as a representation that a property may be subdivided upon satisfaction of stated conditions in the same way as a building permit represents that a building may be." (Emphasis added)

Therefore, the claim for exemption for Unit II of Tract 308 of the original proposed density would be consistent with the current state of the law.

10. "CLAIM #3: FILING THE FINAL MAP FOR TRACT 1873" (P. 4)

At the very least, Tract 1873 represents the Claimant's efforts of more than 20 years of continuous processing, to fulfill the directives given by the Commission in ruling on both the vested rights and development applications during the 1970's. Tract 1873 is a project by which the Claimant is able to make a beneficial use of his property and preliminary subdivision improvements. Tract 1873 fully satisfies what the Court of Appeal long ago determined, that the Commission is "committed" to approve a subdivision which complies with the density requirements of the certified LCP.

The only changes to the project are of such a nature as to establish no legitimate nexus between those changes and the denial of the vested right. Specifically, 40 additional acres of land are offered in perpetual dedication as open space as part of Tract 1873. Such a change, which is required as a project condition, represents the dedication of substantial property rights, and forms no legal nexus upon which to deny a vested right.

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The second change in Tract 1873 is to substantially reduce the density. Your statement is incorrect that road alignments are entirely different. In fact, they are substantially the same except that Tract 1873 would not complete the construction of the streets shown on Unit II of Tract 308 beyond the approved extent of Tract 1873. Indeed, the Claimant has continued in this 20+ year process in response to both the Court of Appeal decision, and also to the findings of denial when the Claimant requested the permission to record the Final Map for Tract 308, on the grounds that the Claimant would thereby be denied a right to make a beneficial use of the subdivision improvements for which the Commission had recognized a vested right. In response to this concern, the State Commission found:

"The Regional Commission did not deny the applicant the right to make reasonable use of the off-site improvements but only denied the applicant's two specific proposed uses, which were 86-lot and 72-lot subdivisions. The Regional Commission expressed interest in reviewing an application for a project with a substantially-reduced density for this project site." (Appeal Summary, California Coastal Commission, Appeal No. 392-77, Administrative Record, Vol. 1, p. 192, Exhibit 3H.)

When the State Commission upheld the position of the Regional Commission on November 15, 1977, the Executive Director of the Commission reiterated the fact that if the property came forward with a substantially reduced project, which the Claimant contends that Tract 1873 is such a project, stating:

"The Regional Commission made clear that an application for a substantially reduced density for the site would be appropriate under the Coastal Act, and that the remedy to the problem was not to try to persist with this very large number of lots, but rather to come in with a re-design with a smaller number of lots that would indeed reflect the fact that there had been the expenditure for the offsite improvements.

"It seems to us that that's a perfectly sensible determination by the Regional Commission and one entirely consistent with the Coastal Act, and we believe that the remedy is for the Pratt Construction Company to resolve the question of the proper number of lots with the Regional Commission." (Administrative Record, pp. 200-201; emphasis added.)

Tract 1873 is in fact the very project which the Commission invited and which the Court of Appeal's concluded that the Commission is "committed" to approve.

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11. "OTHER DEFICIENCIES - Documents may not be incorporated by reference" (p. 5)

With regard to the trial and appellate court files, we would continue to request that they be made a part of this record. They are obviously relevant, as the references above clearly indicate. It is clear, therefore, that the entire appellate record should be included within this file. If you require, we will provide copies of those files, but we would recommend that the Commission's files on these matters, to avoid any errors, be made a part of this record. As suggested above, a further review of that record would have provided answers to many of the questions raised in your correspondence.

12. "Authority to represent the owner" (p. 5)

As far as we know, the form was filled out correctly. The form appears to be filled out correctly since the corporation is authorizing Mr. Pratt individually to, "bind it."

We would appreciate your scheduling of the vested rights hearing at the earliest possible convenience. I am not certain that a great deal will be achieved by further debating points which we have set out in great detail, concerning which there appears to be no factual basis for opposition.

Very truly yours,



William S. Walter

WSW:ckb
Enclosures

cc: Charles A. Pratt (w/encls.)
Ben Maddalena (w/encls.)

EX.2

BOARD OF SUPERVISORS

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Mon day May 7

MAY 14 1973
San Luis Obispo County
Department

PRESENT: Supervisors Hans Heilmann, Elston L. Kidwell, Kurt P. Kupper, Richard J. Krejsa, and Chairman Howard E. Mankins

SENT: None

Resolution No. 73-265

RESOLUTION APPROVING EXCEPTIONS TO SECTION 11-351.1402.A.3., B.2., C.1. and E (STANDARD IMPROVEMENT SPECIFICATIONS AND DRAWINGS) FOR TRACT 308, CABRILLO ESTATES

WHEREAS, The Planning Commission has recommended approval of exceptions to the Subdivision Ordinance of the County of San Luis Obispo pursuant to Ordinance Sections 21.20.030 with respect to Tract 308 - Cabrillo Estates, and

WHEREAS, In recommending such exceptions the Planning Commission has made the findings required by Ordinance Section 21.20.030 and has made its report to this Board as required by Ordinance Section 21.20.030, and

WHEREAS, This Board has heard said report and its explanation thereof, the Planning Director and has heard testimony from the Staff and representatives of the developer regarding the need for such exceptions, and

WHEREAS, This Board is in agreement with the recommendations of the Planning Commission and the County Engineer insofar as are concerned exceptions to Section 11-351.1402.A.3, B.2, C.1 and E (Standard Improvement Specifications and Drawings),

EXHIBIT 3

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

That the Planning Commission is hereby authorized to approve the Map of Tract 308 with the exceptions and conditions set forth below, which exceptions and conditions this Board has adopted in order to substantially secure the objectives of the Subdivision Ordinance.

Cabrillo Estates

Specifically, north of South Bay Boulevard the General Plan indicates 3-7 families per acre and south of South Bay Boulevard the General Plan indicates 0-2 families per acre.

NOTE: The staff would like to point out to the Planning Commission that by the use of the BV zones, density is actually determined by the slopes within the project area, with the General Plan setting maximum densities allowed. Due to the steep slopes in the area south of South Bay Boulevard, the density will be less than the maximum of 2 families per acre as provided by the General Plan; however, it is within the range set by the General Plan for density, being 0-2 families per acre.

RECOMMENDATIONS

It is recommended that Tentative Tract 308 be approved by the Planning Commission subject to the following conditions:

1. That the proposal be brought into compliance with the BV zone requirements, with the addition of 8 acres of open space as per agreement stated above or by the elimination of lots in the steep areas of the tract, thereby eliminating the open space requirements for said lots.
2. That the Planning Commission approve the Tentative Map in concept only in regard to the number of lots, lot layout, and street configuration, subject to further review of said items upon submission of a grading plan and erosion control plan. Said plan is to be to a scale of 1" equals 50' and contain the following information:
 - a. All cuts and fills necessary to complete said subdivision.
 - b. All lot grading.
 - c. Proposed driveway provisions for lots south of South Bay Boulevard.
 - d. Disruption of natural terrain outside road rights-of-way necessary to provide utilities.
 - e. Natural vegetation to be removed and remain. Notation shall be made of all trees proposed for removal.
 - f. All proposed measures to reduce erosion, including designation of plant species and temporary erosion control methods during construction. NOTE: The applicant shall consult with the Soil Conservation Service in preparation of the erosion control plan, and a copy of the completed plan shall be submitted to the Soil Conservation Service for review.

Cabrillo Estates

Further, said plans are to be submitted to the Planning Department at which time an evaluation based on the information shown on said plans as to lot layout, lot number, erosion control and street configuration, will be made by the Department and transmitted to the applicant. If there are disagreements that result in unresolvable problems, the matter will be submitted to the Planning Commission for final action.

NOTE: This requirements will give the applicant a chance to show that his mitigation measures will eliminate or lessen the impact on the environmental concerns. Also, if lots are eliminated, the open space requirement may also be reduced accordingly.

3. Drainage

- a. The subdivider's engineer must furnish a complete drainage plan with hydraulic design computation to substantiate all hydraulic structures and gutter flows. This should be submitted to and approved by the County Engineer's Office.
- b. All easements required for drainage purposes should be so designated on the Final Map, separate and apart from other utility easements.
- c. Off-site drainage facilities and/or natural channels must be included in the drainage plan.
- d. Must meet requirements of Zone 5-A Flood Control District.

4. Water

- a. Evidence of a potable source of water satisfactory in both quantity and quality must be submitted to the County Engineer.
- b. Complete plans of the proposed water system, prepared by a registered civil engineer, must be submitted to the County Engineer for approval.
- c. Fire protection must be provided in such a way as to meet County standards.

5. Sewage

- a. Complete plans of the proposed sewer system, prepared by a registered civil engineer, must be submitted to the County Engineer and Health Department for review and approval.

Required sewer easements must be shown on the Final Map.

That a report of waste discharge be prepared by a registered civil engineer and submitted to the Water Quality Control Board to set waste discharge requirements.

EXHIBIT 3

Gabrillo Estates

Utilities

- a. All utilities must be shown on the improvement plans and will be subject to the approval of the County Engineer.
- b. All utility easements, as required by the utility companies, must be shown on the Final Map.
- c. All utilities, including cable television lines, are to be installed underground in keeping with Section 21.28.040 of the Subdivision Ordinance.

7. Grading

- a. All grading to be done as part of the development of the subject property shall be shown on a grading plan and submitted to the County Engineer for approval.
- b. Cut and fill slope easements will be required for road work extending outside of the street right-of-way lines.

8. Streets

- a. Standard Street Section A-4-A must be used throughout the tract.
- b. Complete street improvement plan must be submitted to the County Engineer for approval.

9. General

All improvement plans shall be per County Standard Drawings and Specifications and will be subject to the approval of the County Engineer..

10. Open Space

All lots designated as open space be so designated on the Final Map, Owner's Certificate, and reserved for recreational and permanent open space use. A viable homeowner's association capable of providing proper maintenance of open space areas shall be established. Legal documents relating to the homeowner's association shall be approved by the District Attorney's Office prior to approval of the Final Map. Further, that the Owner's Certificate provide for dedication of the open space in the event the homeowner's association fails to perform maintenance required to maintain open space lots.

Fire Protection

Fire control plan shall be prepared by the applicant and approved by the Planning Department prior to filing of the Final Map. This should preferably be combined with erosion control and grading.

Sabrillo Estates

Plans: The applicant shall consult with (1) the State Department of Parks and Recreation regarding fire control along the south border of the property; (2) the State Division of Forestry; and (3) the South Bay Fire District, in preparation of the plan. Emphasis shall be placed on fire prevention measures which keep environmental damage to a minimum. Access points for fire equipment shall be provided as necessary.

12. Street Names

The South Bay Fire District has stated that the proposed road names are not satisfactory. Revised street names shall be approved by the Planning Department prior to filing of the Final Map.

13. Sidewalks

Sidewalks suitable for a residential area shall be installed on one side of all streets.

14. Design

- a. Maximum building heights for each lot shall be submitted by the applicant and approved by the Planning Department prior to approval of the Final Map. Maximum heights in all cases shall not exceed the maximum permitted by existing zoning.
- b. Building setbacks as authorized by zoning or any subsequent variances shall be shown on the Final Map.

CORRESPONDENCE RECEIVED

The Regional Water Quality Board questioned the advisability of allowing such a large subdivision until a public utility system is available to provide for waste water treatment and disposal.

A letter from the Local Agency Formation Commission stated that the project is included in County Service Area No. 9 (recently approved); this area will be established as a zone of benefit for drainage, lighting, and street maintenance.

A letter from John T. Buri, adjoining property owner to the west of the site, expressed concern over the probable cutting of large eucalyptus trees, and requested high standards for construction of effluent disposal sites adjoining his property.

The California Consolidated Water Company stated that they will furnish water to the subdivision.

Board of Supervisors

1973

ached hereto is a copy of the Subdivision Review Board
commendations of March 6, 1973.

pectfully submitted,

Patricia Hannigan

Patricia Hannigan, Secretary
Planning Commission

r
(3)

Morro View Company
E. C. Holland
Orville Poler

CALIFORNIA COASTAL COMMISSIONS
SOUTH CENTRAL COAST REGION

HEARING NO. 7
Friday

MEETING AT SANTA BARBARA COUNTY ADMIN. BLDG.

105 E. Anapamu St., Bd. of Supervisors Hearing Rm. S.B.

HEARING AGENDA - AUGUST 12, 1977, FRIDAY.

APPLICATION NO. 128-02 9:30 a/m.

APPLICANT: CHARLES A. PRATT Construction Co. Inc.
P.O. Box 1295
San Luis Obispo, CA. 93401

LOCATION: East of Pecho Rd., with access from Rodman Dr., Cabrillo
Estates, Co. of San Luis Obispo (APN 74-022-31 & 74-022-32)

- PROJECT: (A) Subdivision of Tract 308, Cabrillo Estates, into 86
individual lots for single family residences.
- (B) The completion of subdivision off-site improvements
including finished grading, paving, curbs and gutters
and placement of utilities.
- (c) Drilling of a water well.

RECOMMENDATION: Denial of A & C, approval of B.

Findings:

(A) Under the Subdivision Map Act section 66410, et seq. of the Government Code, the act of subdividing land or splitting a lot is not complete if the final map has not been recorded. Thus, the Commission concludes that a permit is required under the Act where a final map was not recorded prior to January 1, 1977. This is the conclusion which the State Commission has reached in each of the subdivision exemptions which it has considered. Since the final map has not been recorded, it is not exempt.

(B) Under California law an entity may acquire a vested right to perform a development if it had lawfully performed substantial work and incurred substantial liabilities in good faith reliance upon an appropriate governmental authorization prior to January 1, 1977. Within these bounds, the applicant has spent \$46,894.35 which represents 22.8% of the total project costs (\$205,400.00). This represents a substantial liability. Further, there are no grounds for finding this to have been done with "unseemly haste."

(C) Subsequent to the completion of the Attorney General's report on this claim the applicant submitted information regarding expenditures on the water well. According to the applicant, 7% of the total costs of the well (\$11,283.00) were expended between December 28 (the date of final County approval) and Jan. 1, 1977. The \$789.81 spent does not constitute a substantial liability and therefore the claim on the water well should be denied.

EXHIBIT 4

CHARLES A. PRATT
Appl. #128-02
Page 2

(The Findings of Fact and conclusions of law contained in the Attorney General's report dated 7-19-77 are incorporated herein by reference))

JBL

RECEIVED JUL 21 1977

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

3580 WILSHIRE BLVD.
LOS ANGELES, CALIFORNIA 90010
(213) 736-2130

July 19, 1977

SOUTH CENTRAL COAST
REGIONAL COMMISSION

Claim of Exemption No. 128-2

Attorney General's Report

CLAIMANT: Charles A. Pratt Construction Co., Inc.
Post Office Box 1295
San Luis Obispo, California 93401

PROJECT CLAIMED
TO BE EXEMPT:

- (A) The subdivision of Tract 308, Cabrillo Estates, into 86 individual lots suitable for the construction of single family residences.
- (B) The completion of subdivision improvements and grading for Tract 308, Cabrillo Estates.
- (C) The drilling of a water well on the subject property.

FACTS

From the information submitted by the claimant and from our investigation it appears:

1. That Tract 308, Cabrillo Estates, was originally owned by a joint venture of which claimant held a 40% ownership interest;

2. That subsequent to January 1, 1977, the remaining 60% interest in Tract 308, Cabrillo Estates, was transferred to claimant;

EX. 4

3. That the final map for Tract 308, Cabrillo Estates, was not recorded prior to January 1, 1977;

4. That a tentative tract map for Tract 308, Cabrillo Estates, was approved by the San Luis Obispo County Board of Supervisors on May 7, 1973; which required the grading and subdivision improvements involved herein;

5. That on October 1, 1974, the County Planning Commission granted the claimant and other owners a two-year extension to complete the work required by the tentative tract map;

6. That on September 28, 1976, the County Board of Supervisors approved revisions to the tentative tract map which required individual septic tank systems to be developed for each individual lot as opposed to the previously required central sanitary sewer system. At the same time, the Board renewed this map for an additional one-and-a-half years;

7. That San Luis Obispo County ordinances require that before any grading and construction of subdivision improvements required for the filing of a final subdivision map may take place, the county surveyor (who, in that county is the same as the county engineer) must approve specific grading plans and specific improvement plans for conformity with the tentative tract map conditions and any appropriate county ordinances;

8. That a permit from the Department of Health of San Luis Obispo County was required for the installation of a water well on the subject property;

9. That on October 12, 1976, grading and improvement plans were approved by the county engineer;

10. That in reliance on the above grading and improvement approvals, the claimant and the 60% owner performed the following work prior to January 1, 1977:

- a. Rough grading which consisted of the removal and clearing of vegetation and the grubbing for street rights of way; and
- b. The removal of 6,000 cubic yards of dirt for the construction of a storm drain basin;

11. That the permit for the water well was applied for on December 22, 1976, and was approved on December 28, 1976;

12. That the applicant has indicated that 10% of the work to be done on the water well was performed between December 22 and December 31, 1976;

13. That it is not clear from the material submitted and our investigation, how much work was performed on the water well subsequent to the county approval issued on December 28, 1976;

14. That the recognizable overall cost of grading and completing the subdivision improvements for Tract 308 is approximately \$205,400.00, broken down as follows:

| | |
|---------------------------|--------------|
| a. Grading..... | \$ 50,000.00 |
| b. Water System..... | 45,400.00 |
| c. Curbs and Gutters..... | 41,500.00 |
| d. Utilities..... | 9,000.00 |
| e. Base and Paving..... | 47,500.00 |
| f. Administration..... | 12,000.00 |

15. That the overall cost of drilling the water well is \$11,283.00;

16. That the recognizable liabilities incurred for the grading and the completion of the subdivision improvements, prior to January 1, 1977, amount to approximately \$46,894.35, broken down as follows:

| | |
|------------------------|--------------|
| a. Grading..... | \$ 40,000.00 |
| b. Administrative..... | 6,894.35 |

17. That the liabilities incurred for the water well installation between December 22, 1976 and December 28, 1976 amounted to \$1,128.30;

18. That it is not clear from the material submitted whether any of this \$1,128.30 was incurred subsequent to December 28, 1976; and

19. That the work which remained to be performed to complete the subdivision improvements, grading and water well installation subsequent to January 1, 1977, consisted of \$10,000.00 worth of grading, the installation of a water system at a cost of \$45,400.00, the construction of curbs and gutters at a cost of \$41,500.00, utility installation at a cost of \$9,000.00, the laying of base and paving for the roads within the subdivision at a cost of \$47,500.00 and completion of the well installation at a cost of \$10,154.70.

ANALYSIS

The claimant has applied for an exemption from the permit requirements of the Act for three distinct developments. The first is the recordation of a final subdivision map, the second is the completion of the grading and subdivision improvements for the subject tract, and the third is the installation of a water well on that tract. Because these three projects raise separate issues insofar as the Commission's ability to exempt them from the permit requirements of the Act is concerned, they will be treated separately.

THE SUBDIVISION MAP RECORDATION

Under California law, as expressed in Hill v. City of Manhattan Beach, 6 Cal. 3d 274, 285-86 (1971); Gisler v. County of Madera, 38 Cal. App. 3d 303, 308-09 (1974); and Kappadahl v. Alcan Pacific Co., 222 Cal. App. 2d 626, 633-34 (1963), an individual may not acquire a vested right in lot lines drawn on a parcel map until there has been some use of the property within those lines. As a result, inasmuch as there can be no vested right to the lots created by a recorded map, absent any use of these lots, there obviously can be no vested right to have those lines created in the first place.

In short, for each case in which a subdivision or lot split is purportedly exempt from the permit requirements of the Act, the question is not of exemption but rather whether the act of splitting the lot or subdividing the land has been completed such that the Act does not apply at all.

Under the Subdivision Map Act section 66410, et seq. of the Government Code, it appears that the act of subdividing land or splitting a lot is not complete if the final map has not been recorded. Thus, the Commission could conclude that a permit is required under the Act where a final map was not recorded prior to January 1, 1977. This is the conclusion which the State Commission has reached in each of the subdivision exemptions which it has considered.

THE COMPLETION OF IMPROVEMENTS REQUIRED BY THE TENTATIVE TRACT MAP

Under California law an entity may acquire a vested right to perform a development if it had lawfully performed substantial work and incurred substantial liabilities in good faith reliance

upon an appropriate governmental authorization prior to January 1, 1977. In addition, under California law, if a vested right to perform a development has been acquired by an individual or entity, that right, inasmuch as it is a property right, Trans-Ocean Oil Corp. v. City of Santa Barbara, 85 Cal. App. 2d 776 (1948), may be transferred with the land it is related to, Elsinore Property Owners Ass'n. v. Morwand Homes, 146 N.Y.S.2d (App. Div. 1955); Trans-Oceanic Corp. v. City of Santa Barbara, supra, 101 C.J.S., Zoning § 242, SO 75/33 I.L., February 13, 1975, if that transfer does not violate some public policy. Harris v. Alcoholic Bev. etc. Appeals Bd., 61 Cal. 2d 305 (1964), SO 75/33 I.L., February 13, 1975.

In the present case, a tentative tract map for Tract 308, Cabrillo Estates, was approved on May 7, 1973, by the San Luis Obispo County Board of Supervisors. This map was extended by the San Luis Obispo County Planning Commission on October 1, 1974, and was revised and extended by the Board of Supervisors of San Luis Obispo County on September 28, 1976. Though in some circumstances, a tentative tract map may constitute the appropriate governmental authorization for the lawful initiation of work required to fulfill the conditions of final subdivision map approval, it appears that in San Luis Obispo County, no construction of subdivision improvements or grading may take place prior to the approval of plans for such work by the county engineer. Indeed, on the Improvements Plan for Tract 308, Cabrillo Estates, it is specifically stated that any work done by a contractor or owner prior to county engineer approval will be rejected and done at that individual's own risk.

The applicant nonetheless contends that the tentative tract map was a specific approval for the improvements and that the approvals necessary from the County Engineer were merely routine and ministerial. The Commission need not decide whether the approvals were merely routine and ministerial, however, since the tentative map shows only the basic configuration of the proposed lots and improvements and does not include specific improvement or grading plans. Hence, the Commission could properly conclude that the approval of the tentative subdivision map did not constitute a specific and precise approval of the proposed grading and subdivision improvements and that a vested right to complete them could arise only after the applicant had obtained the approvals necessary from the County Engineer. This result would be analogous to that reached by the Supreme Court in Avco Community Developers v. South Coast Regional Commission, supra, 17 Cal. 3d 785, 793-95, where the court concluded that no vested rights to build houses could exist in the absence of specific and detailed plans, notwithstanding prior specific approvals of other portions of the subdivision project.

As a result, in this instance, the appropriate governmental authorizations for the grading and the subdivision improvements did not occur until the county engineer approved original or revised plans therefor. Consequently, only work and liabilities performed and incurred subsequent to the approval of these plans may be counted towards the establishment of any vested right to complete the grading and subdivision improvements involved herein. Aries Dev. Co. v. California Coastal Zone Conservation Com., 48 Cal. App. 3d 534, 549 (1975); Russian Hill Improvement Assn. v. Board of Permit Appeals, 66 Cal. 2d 34, 40 (1967).

Having reached this point, the remaining questions for the Commission with respect to this exemption claim are (1) whether the claimant by virtue of its 40% participation in the joint venture which owned the subject property prior to January 1, 1977, may be said to have obtained any vested right acquired by that joint venture; (2) if not, whether any vested right acquired by the joint venture may be said to have been transferred to the claimant; and (3) whether, in fact, substantial work was performed and substantial liabilities were incurred in good faith with respect to the grading and subdivision improvements for Tract 308, Cabrillo Estates, such that a vested right may be said to have been acquired to complete that work.

With reference to the first question, it would seem that as a part owner of the property, the claimant acquired the right to claim the benefit of any property rights which inured to that property and therefore that if any vested right can be found, the claimant may be said to be entitled to its benefits. However, assuming that this is not the case, and that the claimant could only benefit from any vested right by virtue of the transfer of the remaining joint venture interest to it, nonetheless, the claimant still may be entitled to claim that it is exempt from the permit requirements of the Act if the Commission finds that no public policy would be violated by acknowledging an exemption based on such a transfer. In this instance, there does not appear to be anything in the material submitted which would indicate that the transfer would violate public policy or that there was any attempt by any party to exploit the exemption provisions of the Act. Consequently, there does not appear to be any reason why the Commission could not find that the claimant is entitled to the benefit of any vested right which may have been acquired to complete the grading and subdivision improvements for Tract 308, Cabrillo Estates.

Having answered those questions, the issue then becomes whether any vested right was acquired by virtue of substantial lawful work performed and substantial liabilities incurred in reliance on the county engineer's approval.

Generally speaking, the determination with respect to what constitutes performing substantial work and incurring substantial liabilities is a question of fact entrusted to the discretion of the Commission. However, in one case where the amount of work performed and liabilities incurred were found to be very small in comparison to the whole project, it was ruled that those activities were insubstantial as a matter of law. Aries Dev. Co. v. California Coastal Zone Conservation Com., 48 Cal. App. 3d 534, 549-50 (1976). In this case, the work performed and liabilities incurred at \$46,894.35, were not so minute in relation to the whole development that a court would find that they were insubstantial as a matter of law. As a consequence, it is up to this Commission to determine, as a matter of fact, whether it believes the work performed and the liabilities incurred were substantial enough to entitle the claimant to an exemption from the Act.

In exercising its discretion in this regard, the Commission should give consideration to:

- (1) the physical size and significance of any work performed;
- (2) the absolute dollar cost of the work performed and liabilities incurred; and
- (3) the percentage of the total project represented by the work and expenditure.

While there is no fixed rule, it would be fair to say that the case law seems to have established that where a project is small, the higher the percentage of work and expense in relation to the total project, the more likely it is that a reviewing court will find substantiality. On the other hand, where the project is quite large, the percentages become less important as the size increases, and a court might be persuaded to find substantiality by looking solely at the work performed and costs incurred in absolute terms. In the present case, the project at \$205,400.00 is of moderate size and it would seem appropriate to rely on a percentage analysis.

Finally, even if the Commission should find that the work performed and the costs incurred were substantial, it still is not required to acknowledge an exemption if it does not believe that the work was performed and the costs were incurred in good faith. Aries Dev. Co. v. California Coastal Zone Conservation Com., 48 Cal. App. 3d 534 (1975); Russian Hill Improvement Assn. v. Board of Permit Appeals, 66 Cal. 2d 34, 39 (1967). Lack of good faith

can be shown where an individual proceeds with "unseemly haste" to perform work or to incur liabilities because there is a substantial doubt about his legal position and because the belief is held that proceeding rapidly to the conclusion of the project will fortify a legal argument that reliance in good faith has, in fact, occurred. Russian Hill, supra, at p. 39.

Here, the plans were approved on October 12, 1976, and the Commission must decide if the pace at which the work was performed between that time and January 1, 1977, was undertaken in the ordinary course of construction or was extraordinary in the sense that it was designed solely to bolster the present claim of exemption.

THE WATER WELL

Insofar as the water well is concerned, as mentioned in the statement of facts above, the county health department must issue a permit before work may be undertaken on any drilling. The claimant's submissions and the health department's records show that a permit was applied for on December 22, 1976. However, telephone contact with the health department established that actual approval of the well did not take place until December 28, 1976. Though we are informed that it is common practice in San Luis Obispo County for individuals to begin drilling once they have applied for a permit, it seems clear that such work is undertaken at the driller's risk. As a consequence, the only work and liabilities which may be counted insofar as the well is concerned is that work which was undertaken subsequent to the county approval on December 28, 1976.

In the present case, the information submitted does not indicate and we have not been able to ascertain prior to the submission of this report, exactly how much, if any, of the work was performed and how much, if any, of the \$1,128.30 in liabilities were incurred subsequent to December 28, 1976. However, it is our understanding that this information will be submitted to the staff prior to the hearing on this claim. Therefore, when the information in this regard is submitted, the amount and cost of work shown to have been done subsequent to the approval on the 28th of December should be compared to the overall amount of work to be done and costs to be expended. In this case, given the small size of the project, a percentage analysis would seem appropriate. Finally, should the amount of work performed and money expended appear substantial, the question still remains as to whether the work was done in good faith, e.g., not solely for the purpose of obtaining an exemption or when the claimant's legal position with respect to the work was in doubt.

CONCLUSION

Based on the foregoing the Commission:

1. Should deny the claim of exemption for the filing of the final subdivision map.
2. Could acknowledge the claim of exemption for the grading and subdivision improvements based on findings that the work performed and liabilities incurred on the project as listed in the attached statement of facts constituted substantial work performed and substantial liabilities incurred in good faith reliance on the county engineer's approvals and that the transfer of the vested right to claimant to complete this grading and the subdivision improvements would not violate public policy and was not an attempt to exploit the exemption provisions of the Act.
3. Could deny the claim of exemption for the grading and the subdivision improvements on the grounds, either that it could not find substantiality, or that a transfer of the vested right for this work to claimant would be against public policy or was an attempt to exploit the exemption provisions of the Act.
4. Could, if it approved the transfer of the vested right to claimant and if it found that the work shown to have been performed and the liabilities shown to have been incurred subsequent to the county inspector's approval of the well were substantial and performed and incurred in good faith, acknowledge a claim of exemption for the drilling of the water well.
5. Could deny the claim of exemption for the well based on an inability to make the above findings.



PETER H. KAUFMAN
Deputy Attorney General

PHK:rs

EX.4

CALIFORNIA COASTAL COMMISSIONSOUTH CENTRAL COAST REGIONAL COMMISSIONTENTATIVE CLAIM OF EXEMPTION FORM

NOTE: Application may be submitted to the Regional Commission Offices but no application may be officially filed until the new California Coastal Commission has adopted organizational regulations, tentatively scheduled for mid-January, 1977. This application form has been issued on a temporary basis by the Commission staff and is subject to revision and expansion by the Commission. Documentation of the information requested, such as permits, receipts, building department inspection reports, and photographs, should be attached.

1. Name of applicant for exemption, address, telephone number:

Charles A. Pratt Construction Company, Inc.

P. O. Box 1295, San Luis Obispo, CA 93401

805

543-0647

(Zip Code)

(Area Code) (Telephone No.)

2. Name, address and telephone number of applicant's representative, if any:

Andrew G. Merriam, Meyer, Merriam & Associates, Inc.

979 Osos Street, Suite F

San Luis Obispo, California

93401

805

543-7057

(Zip Code)

(Area Code) (Telephone No.)

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, roads, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

Exemption claimed for recordation of final map and completing

off site improvements for Tract 308 of Cabrillo Estates,

for 86 single-family homesites. See Attachment #1.

4. Describe those portions of the development that are completed, and give the dates of completion.

See attachment #2, item 4.

5. Describe those portions of the development that were under construction as of January 1, 1977 and describe the state of construction on that date.

See attachment #2, Item 5.

6. Describe those portions of the development remaining to be constructed.

See attachment #2, item 6.

EXHIBIT 5

On what date did actual work on the development commence? If grading, foundation work, structures or similar items are involved, list separately the dates on which work on each of these items commenced.

See attachment 2, Item 7.

List all required approvals from any public agencies, including federal agencies, and list which of those approvals have been obtained and when. List those approvals which remain to be obtained. List any conditions attached to approvals that have not been satisfied. Include copies of all approvals obtained.

See attachment 2, Item 7 and Exhibit E through I.

California Environmental Quality Act/Project Status.

Check one of the following:

a. Categorically exempt _____ Class: _____ Item _____

Describe exemption status and date granted: _____

b. Date Negative Declaration Status Granted: _____

c. Date Environmental Impact Report Approved: May 7, 1973, See Exhibit J

Attach Environmental Impact Report or negative declaration.

State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental approvals.

\$526,400

State the amount of money which had been expended on the development (excluding all expenses incurred in securing any necessary governmental approvals) by January 1, 1977.

\$164,000

List the amount and nature of all liabilities incurred and when they were incurred. List any remaining liabilities to be incurred and when these are anticipated to be incurred.

\$193,400 in off-site contracts incurred 9/76, except well contract incurred

12/76. \$169,000 balance due on land incurred 8/76.

Is the development planned as a series of phases or segments? Explain.

No; tract completed in one phase.

When is it anticipated that the total development would be completed?

6 months after approvals are complete.

EXHIBIT 5

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested, shall be grounds for denying the exemption for suspending or revoking an exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Andrew J. Merriam

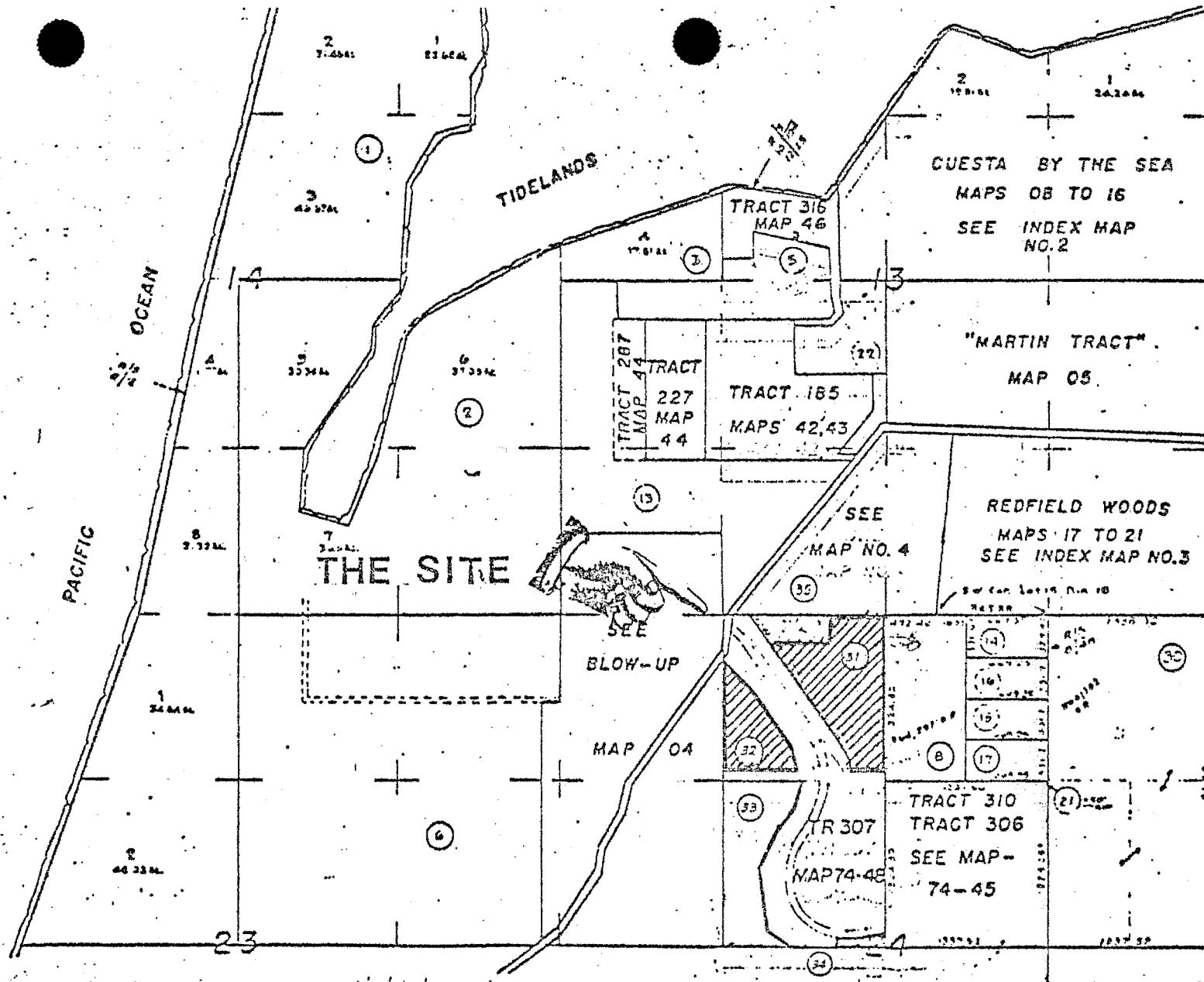
Signature of Applicant(s) or Agent

Authorization of Agent

16. I hereby authorize Andrew G. Merriam to act as my representative and bind me in all matters concerning this application.

[Signature]
Signature of Applicant(s)

EXHIBIT 5



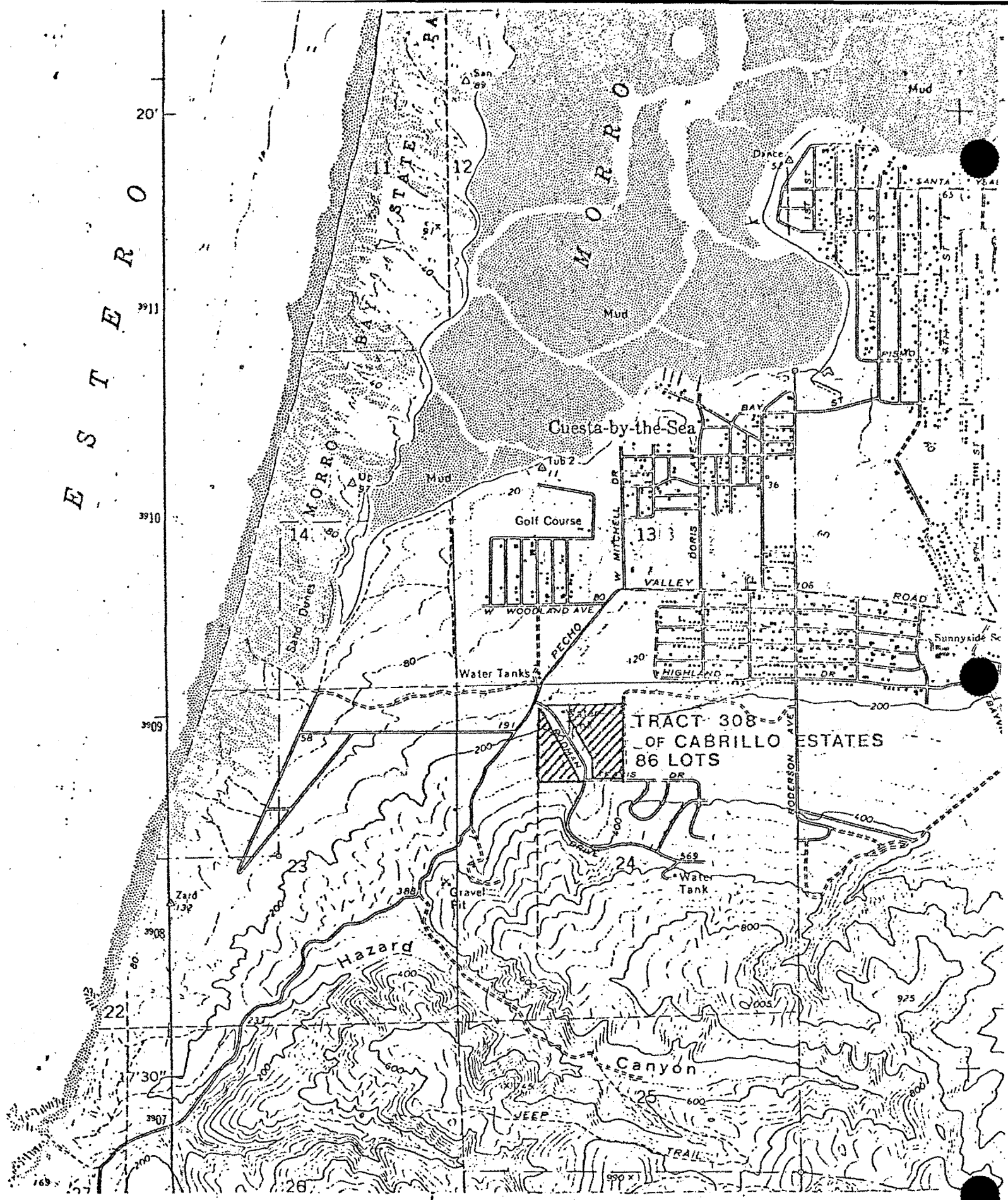
T. 30, R. 10E.
SAN LUIS OBISPO COUNTY
CALIFORNIA

74-022-08 has been divided into 74-022-39, 41, 42, and 43.

This is a copy of the County Tax Assessor's map. While this plat is for your aid in locating your land with reference to streets and other parcels, the Company assumes no liability for any loss occurring by reason of reliance thereon.

TITLE INSURANCE AND TRUST COMPANY

EX. 5



FROM U.S. TOPO. QUAD: MORRO BAY SOUTH

EX.5

EXEMPTION CLAIM: ATTACHMENT NO. 2

4. Portions of Development completed as of January 1, 1977.
 - a. Surveying and construction staking for roads and utility lines.
 - b. Stub streets (including curbs, gutters, paving, water lines and utilities) from adjacent tract.
 - c. Site grading (including all clearing, grubbing cuts and fills).
 - d. Central storm drain system.
 - e. Central water system.
 - f. Central power, gas, phone and cable T.V. system.
5. Portions of development under construction as of January 1, 1977.
 - a. Drilling water well (finished 2nd week of January).
 - b. Secondary storm drainage system, completed first week of January.
6. Portions remaining to be constructed.
 - a. Continuation of utilities from stubs.
 - b. Continuation of paving, curbs and gutters.
7. Project chronology (giving dates of completion).
 - a. Recording of original map 1964
 - b. Design engineering 9/72

EX. 5

- | | |
|--|-------|
| c. Survey work | 5/73 |
| d. Re-engineering of roads and utilities | 3/75 |
| e. Clearing, grubbing and street grading | 11/76 |
| f. Storm drainage and well | 12/76 |

8. Public approvals obtained related to Tract 308:

| <u>Item</u> | <u>Exhibit</u> |
|--|----------------|
| a. Planning Dept. Subdivision Review Board Approval, February 21, 1973. | E |
| b. Los Osos South Bay Advisory Group Approval of Tentative Map. | |
| c. County Planning Commission Approval of Tentative Map, April 24, 1973. | F |
| d. County Board of Supervisors Approval of Environmental Impact Report, May 7, 1973. | G |
| e. County Board of Supervisors Approval of Tentative Map, May 7, 1973. | G |
| f. County Board of Supervisors Renewal of Tentative Map, September 28, 1976. | H |
| g. Approvals for Unit I of Tract 308: (See dates on plans) | |
| 1) Street, Sewer, Water Improvement Plans. | I |
| 2) Approval by California Cities Water Co. | I |
| 3) Approval by Pacific Gas & Electric Co. | I |
| 4) Approval by Pacific Telephone | I |
| 5) Approval by Cable Television | I |
| 6) Approval by County Service District 9. | I |

EX. 5

12. Amount, nature and date of liabilities incurred.

a. \$193,400 in off-site contracts (complete roads and utilities).

b. \$169,000 balance due on hand.

There are no remaining liabilities to be incurred except for refundable deposit to PG&E of \$41,000 and deposit to Southern California Gas Company of \$22,000±.

EX. 5



OFFICE OF THE

COUNTY COUNSEL

COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER, ROOM 388
SAN LUIS OBISPO, CA 93408
TELEPHONE 781-5400, 781-5401
FAX 781-4221
(AREA CODE 805)

JAMES B. LINDHOLM, JR.
COUNTY COUNSEL

ASSISTANT
JAC A. CRAWFORD

CHIEF DEPUTY
R. WYATT CASH

DEPUTIES
JON M. JENKINS
JAMES B. ORTON
WARREN R. JENSEN
MARY A. TOEPKE
RAYMOND A. BIERING
A. EDWIN OLPIN
PATRICIA A. STEVENS
KATHY BOUCHARD
TIMOTHY MCNULTY
ANN CATHERINE DUGGAN

May 22, 1998

William S. Walter, Esq.
Walter & Bornholdt
679 Monterey Street
San Luis Obispo, CA 93401

Re: Appeal of Planning Commission's Approval of Variance D960112V;
Development Plan/Coastal Development Permit D890423D; and Denial
of a Vesting Tentative Map for Tract 1873
(Cabrillo Associates/Central Coast Engineering)

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Dear Mr. Walter:

We have received your letter of May 14, 1998, discussing what you consider are two sets of outstanding issues particularly important at this time. We believe that these issues have already been addressed in the Staff Report prepared for the continued public hearing, which was delivered to your office on May 19, 1998.

As I indicated in our preliminary discussions in advance of the continuance of the public hearing, it appears to us that the Court of Appeal's decision only applied to Unit 1 of Tract 308. This conclusion is based upon the Court of Appeal's own description of the project as "25 acres of real property" described as "tract 308," and approval of a "tentative map for tract 308 which delineated the property into 86 residential lots." *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.* (1982) 128 Cal.App. 32 830, 835. The Court further says: "On October 12, 1976, grading and improvement plans were approved by the county engineer." Our research indicates that the only Improvement Plans that were approved for Tract 308 were those approved for Unit 1 (the 86 residential lots) by the County Engineer on October 12, 1976. No Improvement Plans were ever approved for Tract 308 (Unit II).

As we previously discussed in March, it is our view that the subdivider's Petition for Writ of Mandamus supports this conclusion that the Court of Appeal decision only applies to Unit 1 of Tract 308. The subdivider, in Paragraphs 7 and 8 of the enclosed Petition, describes his ownership of "approximately 25 acres," refers to the property that is the subject of litigation as "Tract 308," and describes the project approval of "a tentative tract map for Tract 308 which

EXHIBIT 6

William S. Walter, Esq.

Re: Appeal of Planning Commission's Approval of Variance D960112V;
Development Plan/Coastal Development Permit D890423D; and Denial
of a Vesting Tentative Map for Tract 1873 (Cabrillo Associates/Central Coast
Engineering)

May 22, 1998

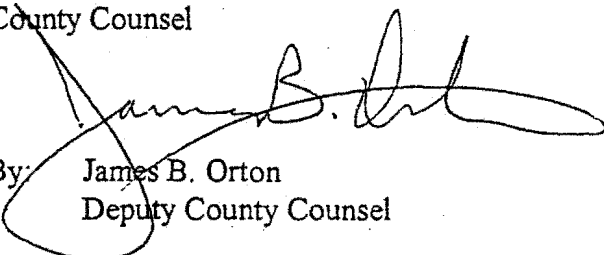
divided the property into 86 residential lots." This same description was used by the Court of Appeal in its decision.

The second issue you raised is also addressed in the Staff Report. The County is only applying to your client's project those ordinances, policies, and standards that were in effect at the date the application was accepted as complete (July 10, 1990).

If you have other comments to make on these issues, please feel free to make them at the continued public hearing.

Very truly yours,

JAMES B. LINDHOLM, JR.
County Counsel

By: 
James B. Orton
Deputy County Counsel

JBO:kt

cc: Supervisor Michael P. Ryan (w/enclosure)
Supervisor Harry L. Ovitt (w/enclosure)
Supervisor Laurence-L. Laurent (w/enclosure)
Supervisor Peg Pinard (w/enclosure)
Supervisor Ruth Brackett (w/enclosure)
Terry Wahler (w/enclosure) ✓

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[Civ. No. 5645. Fifth Dist. Feb. 16, 1982.]

SOUTH CENTRAL COAST REGIONAL COMMISSION et al.,
Plaintiffs and Appellants, v.
CHARLES A. PRATT CONSTRUCTION COMPANY, INC., et al.,
Defendants and Respondents.

JACK A. FRANKLIN et al., Plaintiffs and Respondents, v.
CALIFORNIA COASTAL COMMISSION, Defendant and Appellant.

CHARLES A. PRATT CONSTRUCTION COMPANY, INC.,
Plaintiff and Respondent, v.
CALIFORNIA COASTAL COMMISSION et al., Defendants and
Appellants.

SUMMARY

In two civil actions, the superior court ordered the California Coastal Commission to set aside its decisions denying two subdividers' claims of exemption from the permit requirements of the coastal act (Pub. Resources Code, § 30000 et seq.). In another related action, the court denied the commission's request for an injunction to restrain one subdivider from recording a final subdivision map and to restrain the other subdivider from selling any parcels of land without a coastal permit. The trial court found that both subdividers had obtained tentative subdivision map approvals and that both had incurred liabilities and made expenditures in reliance thereon before the effective date of the act. The court determined that both subdividers had vested rights in their subdivisions prior to the effective date of the act and were therefore exempt from the permit requirements as provided by Pub. Resources Code, § 30608. The trial court also concluded that the commission was estopped from denying exemptions to the subdividers based on evidence that they could have recorded final subdivision maps prior to the effective date of the act but did not do so, relying on information from persons associated with the commission that they would be exempt from

[Feb. 1982]

EXHIBIT 7

the act on a vested rights basis. (Superior Court of San Luis Obispo County, Nos. 51175, 49228, and 49300, Richard C. Kirkpatrick and Warren C. Conklin,* Judges.†)

The Court of Appeal reversed the judgments. The court held that a vested right to an exemption from the permit requirements of the coastal act arises only when the subdivider is entitled to final map approval according to the requirements of the Subdivision Map Act (Gov. Code, § 66410 et seq.). The court also held that the commission was not estopped to deny the subdividers' applications for exemptions, since the overriding public interest in environmental regulation evidenced by the coastal act far outweighed any injustice which the subdividers would suffer by being required to obtain a permit from the commission. (Opinion by Franson, Acting P. J., with Andreen, J., concurring. Separate dissenting opinion by Pettitt, J.*)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a, 1b) Pollution and Conservation Laws § 11—Conservation—Land Conservation Act—Coastal Act—Exemption From Permit Requirements—Subdivisions—Vested Rights.—A vested right to an exemption from the permit requirements of the coastal act (Pub. Resources Code, § 30000 et seq.) arises only when the subdivider is entitled to final map approval according to the requirements of the Subdivision Map Act (Gov. Code, § 66410 et seq.). This means the subdivider must satisfy all conditions of tentative map approval including the completion or agreement with the local government body for the completion of the offsite improvements. Thus, two subdividers did not have vested rights in their respective subdivisions prior to the effective date of the coastal act so as to be entitled to exemptions from the act under Pub. Resources Code, § 30608, although both subdividers had obtained tentative subdivision map approvals and had incurred liabilities and made expenditures of monies in reliance on their tentative map approvals

*Assigned by the Chairperson of the Judicial Council.

†Judge Kirkpatrick was the trial judge, Judge Conklin signed the judgments.

[Feb. 1982]

[Feb. 1982]

prior to the effective date of the act, where they had not performed the conditions necessary to fulfill the requirements of their respective tentative maps.

[See Cal.Jur.3d, Pollution and Conservation Laws, § 216; Am. Jur.2d, Pollution Control, § 48.]

- (2) **Zoning and Planning § 6—Operation and Effect of Plans and Regulations—Vested Rights Rule.**—The vested rights rule is predicated upon an estoppel of the governing body and protects property owners from changes in zoning or other land use regulations which occur before the completion of the owner's project. A vested right to complete a project arises only after the property owner has performed substantial work, incurred substantial liabilities, and has shown good faith reliance upon a governmental permit.
- (3) **Pollution and Conservation Laws § 11—Conservation—Land Conservation Act—Coastal Act.**—The 1976 coastal act and its predecessor, the Coastal Zone Conservation Act of 1972, represent a major statement of overriding public policy regarding the need to preserve the state's coastal resources, not only on behalf of the people of our state, but on behalf of the people of our nation. The coastal act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone and to insure that any development which occurs within the zone will be consistent with this overall objective. To that end, substantial doubts regarding the meaning and effect of exemption provisions should be resolved against the person seeking exemption. An expansive view of the rule giving property owners a vested right to complete projects on their property would result in serious impairment of the government's right to control land use policy.
- (4) **Real Estate Sales § 118—Subdivisions—Subdivision Map Act.**—The fundamental purposes of the Subdivision Map Act (Gov. Code, § 66410 et seq.) are to facilitate orderly community development by regulating and controlling the design and improvement of subdivisions and to protect the buying public from exploitation.
- (5a, 5b) **Pollution and Conservation Laws § 11—Conservation—Land Conservation Act—Coastal Act—Permit Requirement—Denial of**

[Feb. 1982]

EX. 7

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Exemption—Estoppel.—The coastal commission was not estopped to deny two subdividers' applications for exemptions from the permit requirements of the coastal act, even though there was evidence that the subdividers could have recorded final subdivision maps prior to the effective date of the act but did not do so, relying on representations made by members of the regional commission staff that they would be exempt from the act on a vested rights basis. The overriding public interest in environmental regulation evidenced by the coastal act far outweighed any injustice which the subdividers would suffer by being required to obtain a permit from the commission. Neither subdivider showed that he would suffer irreparable detriment if he was required to obtain a coastal permit. Because one subdivider was allowed to complete offsite improvements, the commission was committed to granting a permit to complete the subdivision provided it comported with the land density requirements of the act. As to the other subdivider, if, in fact, the proposed subdivision was not inconsistent with the policies of the act, the subdivider would presumably experience little difficulty in securing the requisite permits and proceeding in an expeditious manner with the completion of the project.

- (6) **Estoppel and Waiver § 13—Parties Affected—Estoppel Against Public Entities.**—The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present, and in the considered view of a court of equity the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon the public interest or policy which would result from the raising of an estoppel.

COUNSEL

George Deukmejian, Attorney General, N. Gregory Taylor, Assistant Attorney General, and Richard C. Jacobs, Deputy Attorney General, for Plaintiffs and Appellants and for Defendants and Appellants.

Ogle, Gallo & Merzon, James B. Merzon and Martin J. Tangeman for Plaintiffs and Respondents and for Defendants and Respondents.

[Feb. 1982]

OPINION

FRANSON, Acting P. J.—

INTRODUCTION

The basic question posed by this appeal is at what point in the subdivision process does a subdivider acquire a vested right to complete his subdivision without a permit from the California Coastal Commission. (1a) We hold that a vested right to an exemption from the permit requirements of the coastal act (Pub. Resources Code, § 30000 et seq.) arises only when the subdivider is entitled to final map approval according to the requirements of the California Subdivision Map Act (Gov. Code, § 66410 et seq.). This means the subdivider must satisfy all conditions of tentative map approval including the completion or agreement with the local governing body for the completion of the offsite improvements. Since neither subdivider in the instant case had reached the point of entitlement to final map approval by January 1, 1977, the effective date of the coastal act, the judgments must be reversed.

PROCEDURAL CHRONOLOGY

The California Coastal Commission (Commission) appeals from three judgments involving the respondent subdividers' right to continue the development of their respective properties without a coastal permit. In actions No. 49228 and 49300, the superior court ordered the Commission to set aside its decisions denying the subdividers' claims of exemption from the permit requirements of the 1976 California Coastal Act (Pub. Resources Code, § 30000 et seq.). In action No. 51175, the court denied the Commission's request for an injunction to restrain the respondent Pratt from recording a final map and denied the Commission's request to restrain respondents Franklin and Shultz from selling any parcels of their land without a coastal permit.

The trial court found both subdividers had obtained tentative map approval by the county board of supervisors prior to January 1, 1977, the effective date of the 1976 Coastal Act, and both subdividers had incurred liabilities and made expenditures of monies in reliance on the tentative map approval before January 1, 1977.

Citing cases which recognize that under the California Subdivision Map Act, tentative map approval is the final discretionary approval by

[Feb. 1982]

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the local governing body, thereby giving the subdivider the right to a final map when all conditions of the tentative map approval have been satisfied (*Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644 [150 Cal.Rptr. 242, 586 P.2d 556]; *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403 [107 Cal.Rptr. 359]), the subdividers persuaded the court below they were exempt from the permit requirements of the coastal act as provided by Public Resources Code section 30608.¹

For the reasons to be explained, we hold the trial court erred in finding the developers had a vested right in their subdivisions for exemption purposes under the coastal act. We reverse the judgments.

FACTS

Pratt v. Coastal Commission, Superior Court No. 49300

Pratt owns 25 acres of real property in San Luis Obispo County described as tract 308 Cabrillo Heights Development. On January 1, 1977, the coastal act became effective and Pratt's land fell within the Commission's jurisdiction.

On May 4, 1973, the San Luis Obispo County Board of Supervisors approved a tentative map for tract 308 which delineated the property into 86 residential lots. The tentative map was subject to certain conditions relating to street grading, paving, driveways, gutters, water, utility extensions, water and sewer lines and extensions, all of which are known as "offsite improvements." The tentative map approval was extended by the county planning commission on October 1, 1974, for two years and was further extended by the board of supervisors on September 28, 1976, for an additional one and one-half years.

On October 12, 1976, grading and improvement plans were approved by the county engineer.

¹Public Resources Code section 30608 provides: "(a) No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division."

Unless otherwise indicated, all references will be to the Public Resources Code.

[Feb. 1982]

well upon Tract 308 in good faith reliance upon the permit for the drilling of such well."

The administrative record reveals that the permit for the well was applied for on December 22, 1976, and was approved on December 28, 1976.

Pratt's attorney indicated at the Commission hearing that the contract for the water well installation was approximately \$10,000 and that money "spent prior to the first of the year [was] approximately \$700 or \$800."

Pratt and a civil engineer associated with the project, one Ben Maddalena, filed declarations in support of the claim of exemption. The gist of the declarations was that all discretionary approvals had been obtained from the county no later than September 1976 and that a final subdivision map could have been recorded prior to January 1, 1977. However, Pratt did not record a final map based on and in reliance on information obtained by Maddalena from the Regional Commission staff that "completion of off-site improvements and recordation of a final subdivision map would be exempt from the new coastal act so long as all discretionary approvals, i.e., the tentative map, were established by the County prior to the end of the year."

In denying the application for a total exemption under the coastal act, the Regional Commission found: "(A) Under the Subdivision Map Act section 66410, et seq. of the Government Code, the act of subdividing land or splitting a lot is not complete if the final map has not been recorded. Thus, the Commission concludes that a permit is required under the Act where a final map was not recorded prior to January 1, 1977. This is the conclusion which the State Commission has reached in each of the subdivision exemptions which it has considered. Since the final map has not been recorded, it is not exempt.

"(C) Subsequent to the completion of the Attorney General's report on this claim the applicant submitted information regarding expenditures on the water well. According to the applicant, 7% of the total costs of the well (\$11,283.00) were expended between December 28 (the date of final County approval) and Jan. 1, 1977. The \$789.81

spent does not constitute a substantial liability and therefore the claim on the water well should be denied."

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However, the Regional Commission did grant Pratt the exemption in part: "(B) Under California law an entity may acquire a vested right to perform a development if it [has] lawfully performed substantial work and incurred substantial liabilities in good faith reliance upon an appropriate governmental authorization prior to January 1, 1977. Within these bounds, the applicant has spent \$46,894.35 which represents 22.8% of the total [offsite improvements] costs (\$205,400.00). This represents a substantial liability. Further, there are no grounds for finding this to have been done with 'unseemly haste.'"

permit denied

We also note the Regional Commission denied Pratt's claim for a permit because "the proposed project was inconsistent with section 30250(a) on land divisions outside of existing developed areas because only 43% of the useable lots in the area were developed and the created parcels (1/4 acre) would be smaller than the average size (1 acre) of the surrounding rural lots." Section 30250, subdivision (a) provides in part "New development . . . shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it In addition, land divisions . . . outside existing developed areas shall be permitted only where 50 percent of the useable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels." No appeal has been taken from that determination. The Commission thus found that Pratt had a vested right to complete the offsite improvements although he had no vested right to record the final subdivision map.³

On the basis of the foregoing facts, the trial court concluded as a matter of law the Pratt subdivision was exempt from the coastal act permit requirements, and the Commission was estopped from denying that exemption.

³The Commission's action giving Pratt the right to complete the offsite improvements appears to have been a gratuity. Section 30608 does not appear to authorize a "partial" exemption from the coastal act requirements. Nevertheless, the Commission's action appears reasonable in light of Pratt's expenditures and the clear forewarning to Pratt that the proposed subdivision of 86 lots violated the Commission's land density policies. Pratt understandably asserts no claim to a blanket permit for full development based on the Commission's granting a partial exemption. Pratt had only commenced grading and dirt removal by January 1, 1977; thus, he was not at that time irrevocably committed to a one-quarter acre per lot subdivision rather than a one acre per lot subdivision.

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Franklin and Schultz v. The Commission, Superior Court No. 49228

Respondents Jack Franklin and E. Lee Schultz (hereinafter Franklin) were the owners of 173 acres of hilly grazing land in San Luis Obispo County situated approximately two and one-half miles east of the City of Morro Bay and four miles east of the Pacific Ocean. On January 1, 1977, the land came within the Commission's jurisdiction.

Desiring to divide his property into 6 parcels ranging from 23 to 35 acres in size on October 25, 1976, Franklin obtained the approval of San Luis Obispo County for a tentative map permitting the subdivision. According to Franklin's attorney, the conditions of approval for the tentative map did not require any physical development of the property as the conditions merely amounted to "map notations." However, the record reveals there were also conditions regarding dedication, preparation of a title report, and that the existing reservoirs and any private easements be shown on the parcel map. In addition, there was a condition "that a practical plan and profile for access be submitted to the County Engineering and Planning Departments for approval." It was also stated that compliance with the conditions would bring the proposed subdivision in conformance with the Subdivision Map Act and local ordinances and that a "Final Parcel Map"⁴ shall be filed in accordance with the Subdivision Map Act prior to any sale, lease or financing of the subject property within one year from the approval date of the tentative map. The board of supervisors approved the tentative parcel map based on the above conditions.

In his exemption application, Franklin stated the "expected total cost of the development would be \$1500 to survey the split and prepare the map work." Franklin also listed as liabilities in October and December 1976, a total of \$121.50. Nevertheless, in a declaration filed at the hearing Franklin stated that in reliance upon his ability to proceed with the lot division without a coastal permit, he had made approximately \$3,749 in expenditures prior to January 1, 1977. Franklin also stated he had spent approximately 200 hours of his own time which "would not

⁴Government Code section 66426 provides that a tentative and final map shall be required for all subdivisions creating five or more parcels, except where "(b) each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway." Since each parcel of Franklin's proposed subdivision apparently does not have approved access to a public street or highway, a final map will be required.

[Feb. 1982]

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have been necessary if [he] did not feel that the land would be divided without applying for a coastal permit."

Franklin also filed declarations in the administrative proceedings to support a claim of estoppel. Franklin's engineer, Terence Orton, stated he had attended a Land Surveyor's Association meeting in Buellton, California, on December 8, 1976. At the meeting, a Mr. Hetrick (the Executive Director of the Regional Commission) was the speaker and during "the meeting, and in response to a concern shown by the members, Mr. Hetrick stated that in the normal land split situation any land which came within the extended boundaries of the Coastal Act which was to go into effect January 1, 1977, would not need a coastal permit for a land division so long as a tentative map approval had been obtained from the local authorities prior to the end of 1976. Mr. Hetrick stated that any land divisions which had a tentative map approval prior to the end of 1976 could record a final map after the end of 1976 on an exempt basis unless special or unusual conditions existed with respect to the land division."

Franklin's attorney also read a declaration of Orton into the record at the Regional Commission hearing to the effect that there was no reason why a final map could not have been recorded prior to 1977 as the conditions did not involve construction, and the only reason the work was not done for recordation was on account of the assurances that no coastal permit would be needed to record the map after January 1, 1977, so long as the tentative map had been approved prior to the first of the year.

In his declaration, Franklin stated all tentative approvals had been secured in October 1976, and it was not until February 9, 1977, that Orton informed him the coastal staff had taken a different position and now required a coastal permit for land divisions regardless of the fact that all discretionary approvals had been obtained prior to 1977.

Executive Director Hetrick's version of what he said at the Buellton meeting conflicted with Orton's version. At the Regional Commission hearing Hetrick (who is not an attorney) stated: "During a question and answer period following that dinner meeting, a hypothetical question was asked, as, in effect, of how one went about acquiring a vested right for a land division. My response to that was that our *current advice*, from the Attorney General's office, is, that if you have your Tentative Map approved, and have made some *unknown degree of progress* for

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meeting any conditions, that their present advice is that . . . *might* establish a vested right. But, in any case, since this was only early December, and the action [*sic*] didn't take effect until January 1st, *they ought to check back to get something firmer.*" (Italics added.)

There was also unsworn testimony from a "researcher" for the Regional Commission that it would have been impossible for Franklin to have received the final map approval and recordation prior to December 31, 1976, and thereby qualify for a vested right.

Neither the Commission nor the Regional Commission was persuaded by the estoppel claim. However, the trial court was and specifically found: "On December 8, 1976, [Franklin's] civil engineer who was in charge of the processing of the tentative and final maps for [Franklin] was advised by the Executive Director of the South Central Coast Regional Commission (a subsidiary of respondent) that any proposed land division would be exempt from the provisions of the Coastal Act of 1976 on a vested rights basis if a tentative map approval had been obtained from the local authorities prior to January 1, 1977. In reliance upon this advice, and for no other reason, [Franklin's] final subdivision map was not recorded until after January 1, 1977. Were it not for such advice, [Franklin] could have and would have had the final subdivision map recorded prior to January 1, 1977."

The trial court also concluded as a matter of law the Commission was estopped from determining Franklin was not exempt from the coastal act.

DISCUSSION

Vested Rights Under the California Coastal Act

(2) The vested rights rule is predicated upon an estoppel of the governing body and protects property owners from changes in zoning or other land use regulations which occur before the completion of the owner's project. (*Billings v. California Coastal Com.* (1980) 103 Cal. App.3d 729, 735 [163 Cal.Rptr. 288]; *Spindler Realty Corp. v. Monning* (1966) 243 Cal.App.2d 255, 269 [53 Cal.Rptr. 7], quoting from *Anderson v. City Council* (1964) 229 Cal.App.2d 79, 89 [40 Cal.Rptr. 41]; see *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 793 [132 Cal.Rptr. 386, 553 P.2d 546].) A vested right to complete a project arises only after the property owner

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has performed substantial work, incurred substantial liabilities, and has shown good faith reliance upon a governmental permit. (*Id.*, at p. 791.)

Historically, the California cases have imposed a *building permit* requirement as the exclusive threshold of a vested right. (See Cunningham & Kremer, *Vested Rights, Estoppel and the Land Development Process* (1978) 29 Hastings L.J. 623; *Avco Community Developers, Inc. v. South Coast Regional Com.*, *supra*, 17 Cal.3d 785.) In keeping with this precedent, the building permit requirement was incorporated into the 1972 California Coastal Zone Conservation Act.⁵

The statutory exemption of section 30608 is written in more general terms than its predecessor section 27404 in that section 30608 grants an exemption to any person "who has obtained a vested right in a *development* prior to the effective date of this division" (Emphasis added.) ("Development" is defined in § 30106 as including a subdivision pursuant to the Subdivision Map Act.) Thus, the developers in the present case argue that since a building permit requirement is not expressly included in section 30608, a vested right to complete a project may arise prior to the granting of a building permit.

Several courts in construing section 27404 have acknowledged that "a building permit may no longer be the *sine qua non* of a vested right if preliminary public permits are sufficiently definitive and manifest all final discretionary approvals required for completion of specific buildings." (See *Tosh v. California Coastal Com.* (1979) 99 Cal.App.3d 388, 393 [160 Cal.Rptr. 170]; *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 975, fn. 5 [137 Cal.Rptr. 699]; see *Avco Community Developers, Inc. v. South Coast Regional Com.*, *supra*, 17 Cal.3d 785, 793-794; *Aries Dev. Co. v. California Coastal Zone Conservation Com.* (1975) 48 Cal.App.3d 534, 544 [122 Cal.Rptr. 315].)

⁵Section 27404 provided: "If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material."

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As noted in *Tosh, supra*, 99 Cal.App.3d at page 394 "[i]n determin-
ing which governmental permits other than a building permit may
possibly afford the developer a vested right, some courts have applied
the final discretionary approval test while others have disregarded
whether the final act is discretionary or ministerial and simply look to
[whether] the final governmental approval [was obtained]." For exam-
ple, in *Aries Dev. Co. v. California Coastal Zone Conservation Com.*,
supra, 48 Cal.App.3d 534, the court said the tentative subdivision map
approval was the final discretionary approval in determining that the
developer had *not* acquired a vested right to develop his property due to
lack of good faith reliance. (See also *Tosh v. California Coastal Com.*,
supra, 99 Cal.App.3d at p. 394.) We have been unable to find any case
and none has been cited to us where the court has recognized a blanket
exemption under the coastal act, or its predecessor, the California
Coastal Zone Conservation Act, based on tentative map approval.

On the other hand, several cases have held that without final map ap-
proval or other final governmental approvals the developer does not
qualify for a vested right as against the California Coastal Commission.
(See *Oceanic California, Inc. v. North Central Coast Regional Com.*
(1976) 63 Cal.App.3d 57, 75 [133 Cal.Rptr. 664]; *Billings v. Califor-
nia Coastal Com.* (1980) 103 Cal.App.3d 729, 736 [163 Cal.Rptr.
288], citing *Tosh v. California Coastal Com.*, *supra*, 99 Cal.App.3d
388, 394 [160 Cal.Rptr. 170].)

Respondent developers cite *Youngblood v. Board of Supervisors, su-
pra*, 22 Cal.3d 644 and *Great Western Sav. & Loan Assn. v. City of
Los Angeles, supra*, 31 Cal.App.3d 403 for the proposition that the fi-
nal discretionary act in allowing a developer to subdivide his land is the
tentative map approval; that final map approval is purely ministerial.
However, neither *Youngblood* nor *Great Western* involved the question
of vested rights under the coastal act. Those cases stand only for the
rule that a local governing body does not have absolute discretion to ap-
prove or disapprove a final subdivision map. Where the developer has
relied on a tentative map approval with conditions and has produced a
final tract map *which satisfies the conditions*, he is entitled to accep-
tance and approval of that final map without the imposition of new or
altered conditions by the local governing agency. (See also Gov. Code,
§ 66474.1.)

In determining the point where the developer acquires the right to
complete his subdivision without obtaining a permit from the Coastal

Commission, we must distinguish the underlying policy requirements of the coastal act from those of the Subdivision Map Act. (3) The 1976 Coastal Act and its predecessor, the California Coastal Zone Conservation Act of 1972, represent a major statement of overriding public policy regarding the need to preserve the state's coastal resources not only on behalf of the people of our state, but on behalf of the people of our nation. Section 30001 sets forth the legislative findings and declarations: "(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. [¶] (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of *the state and nation*. [¶] (c) That to promote the public safety, health, and welfare, and to protect public and private property, wild life, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."⁶ (Italics added.)

As forcefully explained by our Supreme Court: "The Coastal Act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone and to insure that any development which occurs within the zone will be consistent with this overall objective. [Citation.] To that end, *substantial doubts regarding the meaning and effect of the exemption provision [citation] should be resolved against the person seeking exemption.*..." (Italics added, *Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 588 [125 Cal.Rptr. 485, 542 P.2d 645].)

The Supreme Court has also stated that an expansive view of vested rights would result in "serious impairment of the government's right to control land use policy." (*Avco Community Developers, Inc. v. South Coast Regional Com.*, *supra*, 17 Cal.3d 785, 797.)

(4) Unlike the coastal act, the fundamental purposes of the Subdivision Map Act are to facilitate orderly community development by regulating and controlling the design and improvement of subdivisions

⁶Section 30001 was amended by Statutes 1979, chapter 1090, section 1, page 3940 to add subdivision (d) which provides, "That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well being of the people of this state and especially to working persons employed within the coastal zone."

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and to protect the buying public from exploitation. (*Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 157-158 [154 Cal.Rptr. 676]; *City of Tiburon v. Northwestern Pac. R.R. Co.* (1970) 4 Cal.App.3d 160, 175 [84 Cal.Rptr. 469]; 62 Ops.Cal.Atty.Gen. 147, 148 (1979).) Generally, with respect to subdivisions of five or more parcels, both a tentative and a final map are required to be filed and approved. (Gov. Code, § 66426.)

Government Code section 66473 provides: "A local agency *shall* disapprove a map for failure to meet or perform any of the requirements or conditions imposed by this division or local ordinance enacted pursuant thereto" Government Code section 66419, subdivision (a) provides: "'Improvement' refers to such street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as *a condition precedent to the approval and acceptance of the final map thereof.*" (Italics added.)

As explained in 2 Bowman, Ogden's Revised California Real Property Law (Cont.Ed.Bar 1975) section 25.9, page 1212: "Before approval of the final map, the subdivider is required to improve or agree to improve portions of land for public or private streets, highways, ways, and easements necessary for the use of lot owners in the subdivision and for local traffic and drainage needs. See definition of improvement in [Gov. Code, §] 66419. If the subdivider agrees to improve, the governing body must require that the agreement be secured by a bond or a cash deposit. A contract may be executed between the governing body and the subdivider to initiate proceedings to create a special assessment district for financing and constructing required improvements. Such a contract is secured by a faithful performance bond or a cash deposit, if required by the governing body. See [Gov. Code, §] 66462."

Thus, until the subdivider proves that he has performed the requirements and conditions imposed by the local governing body's approval of the tentative map, the local agency must disapprove the final map. As a result, there can be no subdivision under the map act until the conditions are satisfied and no vested right under the coastal act.

In so holding, we specifically reject the "final discretionary approval" test proffered by the subdividers in this case. Although approval of the tentative map may be the last discretionary act by the local governing

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agency under the Subdivision Map Act (*Youngblood v. Board of Supervisors, supra*, 22 Cal.3d 644), we believe the overriding environmental policies of the coastal act, including a narrow scrutiny of claims of exemption, support our holding that more is required to obtain a vested right than mere tentative map approval. Moreover, requiring a subdivision which has at least progressed to the point that approval of a final map is truly ministerial accords with the principles of vested rights, i.e., substantial reliance based on governmental permits. And as we have shown under the Subdivision Map Act, tentative map approval without more does not entitle a subdivider to a final map.

(1b) In the present case, the record shows that Pratt had not satisfied the conditions of the tentative map approval pertaining to offsite improvements before January 1, 1977. (The trial court made no finding that Pratt had completed any of the tentative map conditions.) Mr. Pratt's own declaration of April 14, 1977, and the Attorney General's report to the Regional Commission demonstrate that extensive work remained to be done to complete the offsite improvements after January 1, 1977. Nor had Pratt entered into an agreement with the local agency before January 1, 1977, to complete the improvements as required by Government Code section 66462. We also note that Pratt's architect Merriam wrote a letter to the Commission dated April 18, 1977 (attached as an exhibit to request for exemption). It frankly states, "The applicant is specifically requesting exemption for recordation of his final map *and the performance of conditions necessary to fulfill the requirements of the tentative subdivision map.*" (Italics added.)

Furthermore, the self-serving conclusory declarations by Pratt and his agents to the effect that all discretionary approvals by county officials were obtained before January 1, 1977, cannot suffice for evidentiary proof that the conditions of tentative map approval in fact were satisfied.

well
Pratt's last minute attempt to acquire a vested right by obtaining a permit and contracting to drill a water well on his property is hardly deserving of discussion. Suffice it to say, the well drilling efforts are irrelevant to the vested rights question since the conditions of tentative map approval were not met, and the well was not one of the required conditions.

The record also shows Franklin's tentative map approval was subject to many conditions requiring local agency approval, such as: "A practi-

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cal plan and profile for access be submitted to the county engineering and planning departments for approval." Another condition required that the applicant offer for dedication a strip of land for road widening purposes; that "if the applicant desires serving more than one parcel or lot with domestic water, application must be made to the Health Department for a Domestic Water Supply Permit." Each of these conditions had to be completed before a final subdivision map could be submitted to the county engineer for approval. The record does not disclose whether these conditions had been fulfilled by January 1, 1977.⁷ Instead, Franklin and Schultz argued to the trial court the only prerequisite for a claim of vested rights to subdivide their land was approval of the tentative subdivision map plus some relatively minor expenditures of money because this was the final discretionary approval required by the county.

Thus, the trial court's finding that "the approval of [Franklin and Schultz'] tentative map . . . was the final discretionary approval required by law for the proposed division of petitioners' property" is erroneous as a matter of law. Also erroneous is the trial court's conclusory finding that "prior to January 1, 1977, petitioners had obtained all final discretionary approvals required by law for the proposed division of their property."

*The Commission Was Not Estopped to Deny the
Applications for Exemptions*

(5a) Both subdividers claim the Commission was estopped to deny their applications for exemptions because of representations made by members of the Regional Commission staff. However, the estoppel argument fails because the overriding public interest in environmental regulation evidenced by the coastal act far outweighs any injustice which the developers would suffer by being required to obtain a permit from the Commission.

(6) The general standard for equitable estoppel against a governmental agency has been postulated by our Supreme Court as follows: "The government may be bound by an equitable estoppel in the same

⁷In his appeal to the Commission, Franklin states, "Prior to January 1, 1977, all conditions of the tentative map were met except those which related to later construction on the lots *because there were no conditions to meet for the lot split.*" (Italics added.) As we have explained, the record shows several conditions were attached to tentative map approval.

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manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497 [91 Cal.Rptr. 23, 476 P.2d 423].)

(5b) As we have explained, the California Coastal Act reflects an important public policy to protect the coastal environment on behalf of the people of our state and nation. The granting of a total exemption to the developers in this case would frustrate that policy to a significant degree. (See *Avco Community Developers, Inc. v. South Coast Regional Com.*, *supra*, 17 Cal.3d 785, 797-798.)

Neither subdivider has shown it will suffer irreparable detriment if it is required to obtain a coastal permit. Because Pratt was allowed to complete the offsite improvements, the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the coastal act.

As to Franklin's claim to exemption, if, in fact, the proposed subdivision is not inconsistent with the policies of the act, the developer "presumably will experience little difficulty in securing the requisite permits and proceeding in an expeditious manner with the completion of the project." (*Urban Renewal Agency v. California Coastal Zone Conservation Com.*, *supra*, 15 Cal.3d 577, 588.)

The judgments are reversed.

Andreen, J., concurred.

PETTITT, J.*—I dissent. Not only would I construe the facts to support the judgment of the trial court, but I believe an unjustified emphasis is placed by the majority on the stated purpose of the coastal act as it applies to the facts of these consolidated actions. In balancing equities, I would recognize the nonrecurring rights of the individual landowners who had begun their projects in reliance on tentative map approvals before the coastal act became effective as to them. I would not deny the California Coastal Commission its powers as set out in the

*Assigned by the Chairperson of the Judicial Council.

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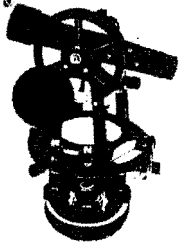
coastal act (Pub. Resources Code, § 30000 et seq.), but I would expect them to be applied prospectively in these actions.

Such a holding does not dilute the long range integrity of the coastal act. It merely recognizes the preexisting rights of individuals acquired before the coastal act became effective as opposed to what amounts to an ex post facto application of a new state imposed mandate. Pratt and Franklin got tentative approval for their developments from the one layer of state mandated bureaucracy which had jurisdiction at that time. They incurred liabilities and made expenditures of monies in reliance on those approvals. Thereafter, a new state authority is superimposed which, in effect, seeks to change the rules retroactively.

Under such circumstances, I find more logic and fairness in applying the rule of law set out in *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644 [150 Cal.Rptr. 242, 586 P.2d 556], and in *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403 [107 Cal.Rptr. 359]. Applying the law of those cases comports with the recognition of existing individual rights as expressed in the coastal act itself (Pub. Resources Code, § 30608) without doing violence to newly pronounced and laudable goals of the coastal act. The landowners should be allowed to complete their projects in compliance with conditions imposed under the laws applicable when they started. In this case that is the Subdivision Map Act (Gov. Code, § 66410 et seq.). I would hold Pratt and Franklin acquired vested rights under that act.

A petition for a rehearing was denied March 15, 1982, and the opinion was modified to read as printed above. Pettit, J.,* was of the opinion that the petition should be granted. Respondents' petition for a hearing by the Supreme Court was denied May 20, 1982.

*Assigned by the Chairperson of the Judicial Council.



CENTRAL COAST
ENGINEERING

396 Buckley Road, Suite 1
San Luis Obispo
California 93401
(805) 544-3278
FAX (805) 541-3137

December 15, 1999
E349

Walter & Bornholdt
679 Monterey Street
San Luis Obispo, CA 93401
Attn: Bill Walter

Subject: Response to Coastal Commission letter from Diane Landry

Dear Bill,

As requested by Coastal Staff, the following are estimated quantities of work performed by Charles Pratt Construction in 1976 for Unit II of Tract 308.

1. Estimated Quantity

GRADING FOR TRACT 308 152 LOTS

| Item | Quantity |
|-----------------------|------------------------|
| Clearing and Disposal | 350,000 SF |
| Grading | 25,000 yd ³ |
| Total Cost | \$97,000 |

Refer to the Exhibit 3-G1 that is the 1963 Planning Commission Approved Master Plan. An 8.5"x11" is attached showing this work.

2. Prior Subdivision Improvements

At the time of approval of Tentative Tract 308, Cabrillo Estates contained 214 lots in Tract 306, 307, 310. The added 235 units of Tract 308 would bring the total in Cabrillo Estates to 449 units when Tract 308 was built out. In effect, Tract 308 represented 52% of the use for the existing water, storm drain, gas and electrical service. To deny the developer of Tract 308 is to deny the use of 52% of the in place water, storm drain, gas and electrical service. Tract 308 was purchased relying on the presence of this water, storm drain, gas and electrical

service. The following is an estimate of the 1976 dollar valuation of the existing off-site improvements. Multiply by a factor of 3.5 to obtain 1999 dollar value.

| Item | Approximate Quantity | Approximate Cost 1976 Dollars |
|---|-------------------------|-------------------------------------|
| 21 to 36" Storm Drain with 17 MH | 2,400 L.F. | \$20/L.F. \$48,000 |
| 8" Water Main | 4,700 L.F. | \$10/L.F. \$47,000 |
| Stub Streets | 800 L.F. | \$30 \$24,000 |
| Gas Main | 4,700 L.F. | \$3 \$15,000 |
| 120,000 Water Tank | | \$25,000 |
| Pump House and Pump | | \$21,000 |
| | | <hr/> \$180,000 |
| 52% Allotted to 152 Lots Total Tract 308 | | <hr/> \$95,400 |

Refer to attached 8.5"x11" reductions of the large drawings in Exhibit 3G. Multiply by a factor of 3.5 to obtain 1999 dollar valuation.

3. Costs of Subdivision Improvements, Unit II

Valid costs as defined above to establish vesting are shown in Exhibit 8M and are listed below:

| | |
|-------------------------------------|--------------------|
| Grading Permit Approval Engineering | \$20,635.07. |
| Grading, Tree and Root Removal | \$97,000.00 |
| Administration and Supervision | \$8,111.00 |
| | <hr/> \$125,746.07 |

Local approval of Grading is shown on Exhibits 3E, 3F

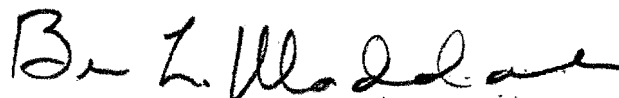
Concerning specificity of the project and the process, refer to Exhibit 5H, Declaration of Ben Maddalena.

Concerning the cost basis for calculations, because the work was completed in 1976, the dollars were all based on 1976 dollars.

The comparison of costs in 1976 and 1999 dollars is given below using a factor of 3.5 for the increase in value of the dollar.

| | 1976 | 1999 |
|--------------------------------|------------------|------------------|
| Grading Permit Approval | \$20,635 | \$72,222 |
| Grading, Tree and Root Removal | \$97,300 | \$340,550 |
| Administration and Supervision | \$8,111 | 28,388 |
| | <u>\$126,046</u> | <u>\$441,160</u> |

Thank you,



Ben L. Maddalena

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



TO: Diane Landry
FROM: Lesley Ewing , April 20, 2000
SUBJECT: Estimates for Finishing Preliminary Subdivision Work for Pratte Property

Attached is a spreadsheet for costs of various components of work necessary to complete the minimal subdivision work that was identified on your list received on March 30, 2000. I was unable to find cost estimates for several of the items on the provided list. The water tank, booster pumps and spillway would all be costly items, but were not covered by the estimate sheets I could obtain quickly. The total spillway costs would include engineering and design, and construction costs cannot be estimated until after the design work.

Using the Cost Sheet from San Luis Obispo County, for the City of Morro Bay, for 1994, the additional subdivision work, without water tank, booster pumps, spillway, and site grading would have cost **\$2,572,283**. This cost includes 20% for contingencies and short-term inflation, and 15% for engineering, staking and inspections. It has not been adjusted to current values. Using rough estimates from a large construction firm in Monterey County, the additional subdivision work, without sidewalks, water tank, booster pumps, spillway and site grading would cost **\$2,406,595**. Again, this cost includes overhead and profit.

The site was graded in the 1970's and you provided as estimate that there had been 25,000 cubic yards of balanced cut and fill. Granite Construction was in business in the mid-1970's and Mr. Mazzia, with Granite Construction, estimated that grading in then would have cost between \$1.00 and \$1.50 per cubic yard. This 25,000 c.y. of grading would have cost between \$25,000 and \$37,500 in 1975. Grading in 1994 cost about \$4.50 per cubic yard and today costs between \$6.00 and \$8.00 per cubic yard. So 25,000 c.y of grading today would cost between \$150,000 and \$200,000. Based on your estimate that most of the original site grading will have to be redone, due to continued erosion and other natural disturbances, the total site work estimates should be increased to **\$2,724,158**, based on the 1994 estimates, or **\$2,556,595** for the 2000 estimate. (Neither estimate includes the water tank, booster pumps or spillway; additionally the 2000 estimate does not include the sidewalks.)

EXHIBIT 9

Averages road costs were obtained for two current projects before the Commission, both in Orange County. The Irvine Company uses a rough estimate of \$200 per foot for a 40' wide road, and \$220 for a 56' wide road. In both cases, these roads would service a housing subdivision, have sidewalks on both sides and provide major utilities. The Athens Company uses an estimate of \$209 per foot for a 24' wide road, with sidewalks on both sides, utilities and 6' wide low profile landscaping with irrigation. Based on these rough estimates, a 7,175' road would cost from **\$1,937,250** to **\$2,130,975**, includes 20% for contingencies and short-term inflation, and 15% for engineering, staking and inspections. As with all other road estimates, these do not include the water tank, booster pumps, spillway or grading.

Cost Estimates for Major Improvements to Pratt Project Site

| Work Element | Quantity | Units | Unit Cost: SLO Co.(1) | Estimate #1 | #1 with overhead (2) | Unit Cost: Granite Co.(3) | Estimate #2 |
|-----------------------|----------|--------|-----------------------|-----------------------|-----------------------|---------------------------|-----------------------|
| Road - 6" base, 2" ac | 358750 | sq.ft. | \$2.50 | \$896,875.00 | \$1,210,781.25 | \$3.50 | \$1,255,625.00 |
| Curbs & Gutters -6" | 7175 | ft. | \$14.00 | \$100,450.00 | \$135,607.50 | \$22.00 | \$157,850.00 |
| Sidewalks - 4' wide | 57400 | sq.ft. | \$3.50 | \$200,900.00 | \$271,215.00 | | \$0.00 |
| Sidewalks - grinding | 7175 | ft. | \$8.00 | \$57,400.00 | \$77,490.00 | | \$0.00 |
| Water Lines - 6" | 7175 | ft. | \$23.00 | \$165,025.00 | \$222,783.75 | \$36.00 | \$258,300.00 |
| Man Holes (approx.) | 4 | | \$2,300.00 | \$9,200.00 | \$12,420.00 | \$4,000.00 | \$16,000.00 |
| Sewer - 6" | 7175 | ft. | \$15.00 | \$107,625.00 | \$145,293.75 | \$30.00 | \$215,250.00 |
| Other Utilities (4) | 7175 | ft. | \$20.00 | \$143,500.00 | \$193,725.00 | \$40.00 | \$287,000.00 |
| Water Tank (5) | 84000 | Gal. | | \$0.00 | \$0.00 | | \$0.00 |
| Booster pumps (5) | 14 | | | \$0.00 | \$0.00 | | \$0.00 |
| 12" CMP (5) | 200 | ft. | | \$0.00 | \$0.00 | | \$0.00 |
| Chain Link Fence | 115 | ft. | \$12.00 | \$1,380.00 | \$1,863.00 | | \$0.00 |
| Percolation Basin | 220 | cu.ft. | \$4.50 | \$990.00 | \$1,336.50 | \$6.00 | \$1,320.00 |
| Spillway (5) | 1 | | | \$0.00 | \$0.00 | | \$0.00 |
| Storm Drains - 18" | 7175 | ft. | \$30.00 | \$215,250.00 | \$290,587.50 | \$30.00 | \$215,250.00 |
| Storm Runoff Inlets | 4 | | \$1,700.00 | \$6,800.00 | \$9,180.00 | | \$0.00 |
| TOTALS | | | | \$1,905,395.00 | \$2,572,283.25 | | \$2,406,595.00 |

Grading, assuming Cut and Fill Balanced On-Site

| | | | | | | | |
|--|--------|-------|--------|-----------------------|-----------------------|--------|-----------------------|
| Grading in 1975 | 25,000 | cu.yd | | \$0.00 | \$0.00 | \$1.50 | \$37,500.00 |
| Grading in 1994 | 25,000 | cu.yd | \$4.50 | \$112,500.00 | \$151,875.00 | | \$0.00 |
| Grading in 2000 | 25,000 | cu.yd | | \$0.00 | \$0.00 | \$6.00 | \$150,000.00 |
| TOTAL Grading Plus Improvements - Current | | | | \$2,017,895.00 | \$2,724,158.25 | | \$2,556,595.00 |

Recent Estimates from The Irvine Company for roads, double wide sidewalks, wet and dry utilities: \$200/ft. 40' wide road; \$220/ft. 56' wide road
7,175' road, with wet and dry utilities only, \$1,435,000 to \$1,578,500.

Recent estimate from the Athens Group for 24' wide road, sidewalks and utilities, in Laguna Beach: \$209/ft., excluding grading (7)

(1) Item Costs from the City of Morro Bay, July 4, 1994. When a range of estimates were provided the least expensive was used.

(2) Contingencies and Inflation 20%, Engineering 15%

(3) Item Cost Estimates for Monterey County. Estimates include overhead and profit. Not provided for bid purposes.

(4) Trenching only, all lines, cables, etc. supplies by others.

(5) Estimates were not available, at this time, for all subdivision items listed.

(6) Personal Communication from Roberta Marshall, The Irvine Company, 12 April, 2000.

(7) April 10, 2000 Letter from Sean Finnegan, The Athens Group

Prepared 20 April 2000

EXHIBIT 9