

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

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STAFF REPORT: APPEAL DE NOVO HEARING

Local government:San Luis Obispo County

Local Decision:(C00-0166) Approval

Appeal NumberA-3-SLO-01-108

Applicant.....Albert Schoenfield; Greg Saunders, Representative

Appellants:.....Janice Rohn, Mike Monegan, Commissioners Sara Wan and Dave Potter

Project Location2731 Pecho Road, Los Osos, San Luis Obispo County

Project DescriptionApproval of two Certificates of Compliance for a 1 acre parcel and a 3.2 acre parcel.

File DocumentsCounty File #C00-0166; "Commission Determination of Applicable Hearing and Notice Requirements pursuant to CCR Title 14, Section 13569" adopted August 7, 2001; "Staff Report: Appeal Substantial Issue Determination" for Coastal Development Permit Appeal A-3-SLO-01-108 adopted January 9, 2002

Staff Recommendation: **Approval with Conditions**

Summary of Staff Recommendation:

Staff recommends that the Commission **deny** a coastal development permit for two conditional certificates of compliance creating two parcels from an existing 4.2 acre parcel because the proposed land division is inconsistent with the requirements of the San Luis Obispo County Local Coastal Program regarding density, protection of environmentally sensitive habitats, demonstration of adequate public services, and preservation of visual resources.

Specifically, the certificates would create a one-acre parcel in conflict with the two and one half acre minimum parcel size established by the LCP. Moreover, approval of the certificates would create a new parcel comprised entirely of environmentally sensitive habitats and within a highly scenic public view corridor, inconsistent with LCP provisions prohibiting land divisions that create building sites in such areas. Finally, there are significant outstanding questions regarding the capacity of the Los Osos groundwater basin to provide a sustainable water supply for the buildout of existing lots. As a result, Conditional Certificates of Compliance cannot be issued

consistent with LCP Public Works standards that prioritize service to existing lots of record and require new development to demonstrate adequate water supplies.

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I. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve proposed amendment to Coastal Development Permit No. A-3-SLO-01-108 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location / Description

The proposed parcels are located at 2731 Pecho Road in Los Osos, San Luis Obispo County. The 4.2 acre site, which contains one single family home near the western property line, is bounded by Morro Bay Dunes Nature Preserve on the west and is located between the first public road and the sea. Surrounding land use includes single family residential development to the north, south and east and park/open space uses to the west. The site is located outside the "Urban Service Line" but within the "Urban Reserve Line" and is zoned "Residential Suburban

with a minimum lot size of 2.5 acres. Land use and development in this area are regulated by the policies and ordinances of the Certified San Luis Obispo LCP, including the "Estero Area Plan". (Please see Exhibit Three, Location Map)

The proposed project is for the recognition of two parcels (1 acre and 3.2 acres) through the Certificate of Compliance process found in Section 66499.35 of the Subdivision Map Act (Government Code). The proposed one acre parcel contains an existing one story approximately 3000 sq. ft. single family home sited near the western boundary and accessed by a driveway off Pecho Road. The proposed approximately 3.2 acre parcel lies adjacent to Pecho Road and is currently undeveloped. (Please see Exhibit Four, Site Plan) The site is gently rolling and contains coastal scrub vegetation and other sensitive habitat values described in subsequent findings of this report.

2. Background on Parcel Creation and Permit Review Procedures

Subdivision Map Act and Coastal Act / LCP Requirements

The Subdivision Map Act provides for the approval of Certificates of Compliance and Conditional Certificates of Compliance (Gov't. Code Section 66499.35) Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A Conditional Certificate of Compliance is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, Certificates of Compliance do not create new parcels, they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions (if the illegal subdivider is still the owner) or the subdivision rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35 (b)).

Since Conditional Certificates of Compliance create new parcels, their recordation constitutes development under the Coastal Act (Public Resources Code Section 30106) and San Luis Obispo County certified LCP. Conditional Certificates of Compliance therefore must also obtain a Coastal Development Permit prior to being recorded. The standard of review for the issuance of such a permit is whether the land division complies with the certified Local Coastal Program in effect at that the time that the coastal development permit application is submitted. Since this project is located between the first public road and the sea, it must also comply with the public access and recreation policies of the Coastal Act.

The County's action on the Coastal Development Permit required for the requested certificates of compliance are appealable to the Coastal Commission because the project is located between the first public road and the sea, is in an area that has been designated as a Sensitive Resource Area by the San Luis Obispo County LCP (Coastal Act Section 30603 and Section 23.01.043c of the

San Luis Obispo County Coastal Zone Land Use Ordinance), and is not a principally-permitted use (conditional certificates are subdivisions).

San Luis Obispo LCP

The certified LCP identifies Conditional Certificates of Compliance as a type of subdivision development (21.08.020(a)) and establishes a procedure for considering Conditional Certificates of Compliance that includes application, notice, hearing and appeal provisions. Action on Conditional Certificates of Compliance for property located in the coastal zone appeal areas is appealable to the Coastal Commission (Title 21, Section 21.02.020). Section 21.01.010 (d) of Title 21 provides that action on a Conditional Certificate of Compliance constitutes action on the Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the applicable policies, implementing ordinances, and Area Plan standards of the LCP.

Original Creation of the Parcels

As detailed in the staff report regarding the "Commission's Determination of Applicable Hearing and Notice Requirements" (Agenda item Tu11a, Adopted August 7, 2001), the subject parcels were created by a series of conveyances beginning with the original land grant in 1893. Most of these conveyances complied with the relevant law at the time they were accomplished. In 1949, however, a previous owner, Mr. Martin, created six parcels without complying with the requirements of the Subdivision Map Act in effect at that time. (Please See Exhibit Five, pages 9 through 12 for a complete discussion). Subsequent conveyances resulted in the present parcel configuration.

1976 Certificate of Compliance

In 1976, Mr. Willfong owned the property and obtained a single Certificate of Compliance for this site as presently configured. The legal description of the property included both of the lots, and did not describe them as separate parcels. The parcel was identified by one Assessor's Parcel Number (APN). This Certificate pre-dated Coastal Commission jurisdiction in the area because it was outside the 1000 yard Coastal Zone Boundary.

1989 Approval of a Single Family Home

The applicant, Mr. Schoenfield, acquired the property in 1987. In 1989, he applied for and was granted a coastal development permit for the construction of a single family home on the site. The existing house is located within a few feet of the proposed new property line between proposed parcel one and parcel two and thus will become nonconforming for reasons of inadequate set backs if the present proposed parcel configurations go forward. The application and staff report prepared for the project lists the lot size as 4.4 acres. Based on this assertion regarding parcel size, the County found that the project was consistent with LCP provisions regarding the 2 ½ acre minimum lot size. Potential impacts on habitat were discussed in the staff report and the project was conditioned to require easements to protect habitat values on the western portion of the property. The project was not appealed to the Coastal Commission.

1995 Land Division

In 1995 Mr. Schoenfield applied for a land division to divide his parcel into two parcels of 1 and 3.2 acres configured exactly as the lots recently authorized by the County's action on the Certificates of Compliance. The staff report for this project included a letter from USFWS that stated there would be adverse impacts on habitat values if the land division was approved and an additional house built on the site. The land division was denied by the Planning Commission as recommended by county staff because one of the resulting lots could not meet the minimum parcel size of two and one half acres. This denial was appealed to the Board of Supervisors who subsequently approved the land division for two lots of 2 and 2.2 acres. The map was never recorded and the permit for this land division expired.

2000 Application for Two Certificates of Compliance

In 2000, Mr. Schoenfield applied for two unconditional Certificates of Compliance (C00-0166). In October, the County staff prepared a staff report on the proposal and recommended that only one Certificate of Compliance be issued for the entire site. (See Exhibit One, County Staff Report). The staff report inferred that although the two claimed lots had been created illegally in 1949, the approval of a development permit for the house in 1989 entitled the applicant to one certificate for the entire parcel under Section 66499.35(c) of the Map Act. On November 14, 2001, the Planning Director authorized the issuance of one, unconditional Certificate of Compliance.

The applicant appealed the decision of the Planning Director to the Board of Supervisors (under the terms of the County Real Property Ordinance (Title 21) only the applicant may appeal the Planning Director's decision on Certificates of Compliance) and a hearing on the matter was scheduled for March of 2001. A staff report recommending that the Planning Director's decision should be upheld was prepared. A copy of this report was sent to Commission staff with a cover memo indicating that "[s]taff fully expects that if the Board overturns the Director's decision and approves two certificates both would be conditional certificates of compliance." The report also notes that the project is in a "coastal appeal zone".

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the applicant's parcels had not been illegally created in 1949 and he was therefore, entitled to two, unconditional Certificates of Compliance. Since the Board had determined that the outcome of the appeal was a ministerial act, no notice was sent to the Commission. Nonetheless, an appeal of the action was made by Janice Rohn and received in the Commission's office on April 30, 2001. Ms. Rohn was advised by Commission staff that no Notice of Final Local Action on this item had been received and an appeal could not be initiated until such receipt. She then asked the County to request an Executive Director's determination pursuant to CCR Title 14, Section 13569 of the Commission's regulations.

A parallel dispute resolution process is found in the County's Certified LCP in Title 23, Section 23.01.041(g)(1) and (2).

2001 Section 13569 Determination

Ten days after the receipt of Ms. Rohn's request for an Executive Director's Determination, the County responded by stating that such a request would not be forthcoming, inconsistent with the provisions of the County's ordinance relevant to this issue and with Section 13569 of the Commission regulations. The Executive Director stated that, in his opinion, the dispute resolution process was applicable and determined that the County had effectively issued two Conditional Certificates of Compliance which were appealable to the Commission. (Please see Exhibit Six, Executive Director's Determination). The County disagreed with this determination and, pursuant to 13569(d), the item was scheduled for hearing by the Coastal Commission.

The Commission heard the item on August 7, 2001 and voted to uphold the Executive Director's determination that the County had effectively issued two Conditional Certificates of Compliance that were appealable to the Coastal Commission.

The County was advised of the Commission's action by letter dated September 13, 2001. The letter requested the County to forward a Final Notice of Local Action to the Commission's Santa Cruz Office so that an appeal period could be started. The letter also informed the County, that if the notice was not sent, the Commission would unilaterally initiate an appeal period. In a letter received on October 15, 2001, the County advised that a Final Notice of Local Action would not be sent. The ten working day appeal period was initiated on October 25, 2001. Timely appeals were filed on November 6, 2001.

2002 Substantial Issue Determination

At the request of the applicant, a hearing on the appeal was postponed from the December 2001 Coastal Commission meeting. On January 9, 2002, the Coastal Commission determined that the appeals raised a substantial issue. This determination was based on project inconsistencies with LCP processing and permitting requirements; LCP provisions protecting environmentally sensitive habitats and visual resources; land use density standards established by the LCP's Estero Area Plan; and, LCP requirements that development demonstrate adequate public service capacities. The Commission then continued the De Novo hearing on the project, which is the subject of this staff report. The findings for Substantial Issue are incorporated into this report by reference (see Exhibit 8).

Standards for De Novo Review

At this stage in the process, the Commission must consider whether the issuance a coastal development permit for Conditional Certificates of Compliance that recognize the proposed land division is consistent with the San Luis Obispo County certified LCP and the access and recreation policies of the Coastal Act.

B. Analysis of Project Consistency with the LCP

1. Land Use Density

a. LCP Density Provisions:

The site is located within the geographical area governed by the provisions of the "Estero Area Plan". The Estero Area Plan includes the following policy relevant to minimum parcel sizes for land, such as the subject parcel, that is located outside the Urban Services Line.

Estero Area Plan South Bay Urban Area Community wide Standard 2:

Interim Service Capacity Allocations

(f) Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay area standards, shall not be less than two and one half acres.

The Estero Area Plan explains, as follows, the weight given to these standards and how they are to be interpreted in light of any conflicting LCP provisions.

Chapter 8: Planning Area Standards

This chapter contains special "standards" for the Estero Planning Area. Standards are mandatory requirements for development, designed to handle identified problems in a particular rural area or to respond to concerns in an individual community...

These requirements apply to proposed projects in addition to provisions of the Land Use Ordinance (LUO) or Coastal Land Use Ordinance (CZLUO). Where these standards conflict with the LUO or the CZLUO, these standards control...

b. Density Analysis:

The 4.2 acre site is located west of Pecho Road in the South Bay Planning Area. The "Land Use Categories" map included in the Estero Area Plan show this parcel to be *outside* the Urban Service Line by several hundred feet and just within the boundary of the Urban Reserve Line. (Please see Exhibit Seven). South Bay Urban Standard 2 (f) thus applies to land divisions of this site unless there is specific policy direction elsewhere in the South Bay standards that provide for a different minimum parcel size. A review of the South Bay standards does not reveal any other specific policy that would change the density provisions of two and one half acres as minimum parcel sizes for this site.

The proposed creation of a new 3.2 acre site on an existing parcel of 4.2 acres results in a 1 acre remainder parcel that does not conform to the 2.5 acre minimum required by the LCP. The creation of a non-conforming parcel raises significant issues of concern. The creation of parcels

that are inconsistent with minimum parcel sizes undermines the primary way in which the LCP plans and regulates development densities. Managing development density is a critical tool for ensuring adequate public services and protecting coastal resources. This is particularly important within the Los Osos area, where there are significant concerns about the adequacy of water supplies wastewater treatment methods, and where the biological continuance of numerous rare and sensitive species is threatened by development.

The development densities established by the LCP also provide a means to manage the transition of urban to rural, thereby protecting the agricultural, scenic, and habitat values of coastal open space. The proposed new parcel is located in an area where the urban environment of Los Osos transitions to the natural dune and chaparral environment of the adjacent Montana de Oro State Park. The area west of Pecho Road, where the proposed parcel would be created, is a highly scenic and biologically significant rural area. Maintaining minimum parcel sizes of 2.5 acres is essential to protect these coastal resources, as further discussed in subsequent findings of this report.

c. Density Conclusion:

The proposed project is inconsistent with LCP density standards because it will create a one acre lot that does not conform to the 2.5 acre minimum parcel size established by the Estero Area Plan. There is inadequate area within the existing 4.2 acre parcel to create two lots that comply with the 2.5 acre minimum lot size standard. The project must therefore be denied.

2. Environmentally Sensitive Habitat (ESHA)

a. LCP ESHA Provisions:

LCP Combining Designations

The LCP includes a Combining Designation component that identifies Sensitive Resource Areas (SRA) and environmentally sensitive habitats. Environmentally sensitive habitat Combining Designation and include Terrestrial Habitats (TH), Wetlands (WET), Streams and Riparian habitats (SRV), and Marine habitats (MAR). As shown by Exhibit 9, the project site is designated by LCP Maps as both a Sensitive Resource Area and Terrestrial Habitat.

23.07.160 – Sensitive Resource Area (SRA):

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:

- 23.07.162 *Applicability of Standards*
- 23.07.164 *SRA Permit and Processing Requirements*
- 23.07.166 *Minimum Site Design and Development Standards*
- 23.07.170 *Environmentally Sensitive Habitats*
- 23.07.172 *Wetlands*
- 23.07.174 *Streams and Riparian Vegetation*
- 23.07.176 *Terrestrial Habitat Protection*
- 23.07.178 *Marine Habitats*

23.07.162 – Applicability of Standards:

The standards of Sections 23.07.160 through 23.07.166 apply to all uses requiring a land use permit that are located within a Sensitive Resource Area combining designation.

23.07.164 – SRA Permit and Processing Requirements:

The land use permit requirements established by Chapters 23.03 (Permit Requirements), and 23.08 (Special Uses), are modified for the SRA combining designation as follows:

...

(e) Required Findings: *Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:*

- (1) *The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
- (2) *Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
- (3) *Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.*
- (4) *The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

23.11.030. Environmentally Sensitive Habitat. *A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.*

23.07.170 – Environmentally Sensitive Habitats:

The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.

(a) Application content: *A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:*

(1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.

(2) Recommends conditions of approval for the restoration of damaged habitats, where feasible.

(3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.

(4) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.

(b) Required findings: *Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:*

(1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.

(2) The proposed use will not significantly disrupt the habitat.

(c) Land divisions: *No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.*

(d) Development standards for environmentally sensitive habitats:

(1) New development within or adjacent to the habitat shall not significantly disrupt the resource.

- (2) *New development within the habitat shall be limited to those uses that are dependent upon the resource.*
- (3) *Where feasible, damaged habitats shall be restored as a condition of development approval.*
- (4) *Development shall be consistent with the biological continuance of the habitat.*
- (5) *Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards.)*

23.07.176 – Terrestrial Habitat Protection:

The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

- a. *Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*
- b. *Terrestrial habitat development standards:*
 - (1) *Revegetation. Native plants shall be used where vegetation is removed.*
 - (2) *Area of disturbance. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
 - (3) *Trails. Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

POLICIES FOR ENVIRONMENTALLY SENSITIVE HABITATS

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

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 2: Permit Requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

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

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

Policy 33: Protection of Vegetation

Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO]

b. ESHA Analysis**The Entire Project Site is Environmentally Sensitive Habitat**

The site is located within an area identified and mapped by the LCP as a "Special Resource Area: Terrestrial Habitat" (SRA, TH). These Combining Designations, or overlays, delineate environmentally sensitive habitat areas (ESHA) recognized at the time of LCP certification. As discussed in the following findings, these designations remain applicable in light of the current state of habitat resources on the site. As discussed, there is little question that the project area meets the LCP definition of ESHA as "a type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development."

There are numerous reasons why the project site and surrounding area is designated and protected as ESHA by the LCP. These include the fact that it provides critical habitat for two endangered species (the Morro Bay kangaroo rat [*Dipodomys heermanni morroensis*] and the Morro shoulderband snail [*Helminthoglypta walkeriana*]), and supports important native vegetation communities (Central Dune Scrub and Maritime Chaparral) that include rare plants

such as Morro Manzanita (*Arctostaphylos morroensis*) listed as threatened under the federal Endangered Species Act.

A defining feature of Los Osos terrestrial habitats and the project site is the presence of Baywood fine sands, a soil type unique to the stabilized sand dunes of the Los Osos. These soils support a series of the dune scrub and maritime chaparral plant communities classified as rare and threatened by the California Department of Fish and Game¹. Accordingly, the Department of Fish and Game has declared the dune habitats of Los Osos a "Significant Natural Area"². The project site is an important component of this natural area, both in terms of its location and the biological resources it supports, as further discussed below.

The presence of sensitive biological resources on the site has been documented on numerous occasions. In 1989, San Luis Obispo County reviewed and approved a development application for the existing residence on the 4.2 acre parcel. During that permit review, it was identified that the site provides habitat for the endangered Morro Bay Kangaroo Rat, as well as habitat for the Morro shoulderband snail, which at that time was a candidate for listing under the federal Endangered Species Act (it is currently listed as endangered). The County's review also identified the presence of vegetation including sensitive Morro manzanita and Dune bush lupine, which provides habitat for the Morro blue butterfly (*Icaricia icarioides moroensis*). To protect these resources, the local approval limited site disturbance and vegetation removal to a specified area; committed the developer's participation in County implementation of a Habitat Conservation Plan for the Morro Bay Kangaroo Rat; required recordation of 6,427 square foot scenic preservation/open space easement along the western edge of the property to retain this area in a natural state; called for the developer to record a deed restriction prohibiting the removal of pygmy oaks from the property; required a landscape plan that provides for the retention of all Morro manzanita, dune bush lupine, and pygmy oaks found on the site; and, necessitated additional surveys and actions to protect Morro Bay Kangaroo Rats and the Morro shoulderband snail.

The biological sensitivity of the site was again documented in 1995, when the applicant proposed a land division to create two lots of 1 and 3.2 acres. The Initial Study/Negative Declaration for the project identified potential impacts on the Morro Bay Kangaroo Rat and the Morro shoulderband snail (listed as federally endangered in January 1995). Although project surveys did not find Shoulderband snails or Kangaroo rats on the site, comments from the U.S Fish and Wildlife Service regarding the project indicated that proper surveys were not conducted for the snail. Moreover, the letter from the Service stated that future development of the subdivided

¹ The California Department of Fish and Game (CDFG) ranked central dune scrub as having "highest inventory priority" in 1986. In 1994, DFG found Central dune scrub to be limited in range and threatened. In a more recent analysis of plant communities of California, the type of dune scrub habitat found in Los Osos has been classified as the Dune Lupine-Golden Bush Series (Sawyer and Keeler-Wolf 1995), which is considered rare by the Department of Fish and Game.

² The Significant Natural Areas Program was established to identify high-priority sites for the conservation of California's biological diversity and to inform resource decision-makers about the importance of these sites. The programs goals include: 1) identifying the most significant natural areas in California; 2) ensuring the recognition of these areas; and 3) seeking the long-term perpetuation of these areas.

parcel would reduce and fragment the remaining habitat for both the Shoulderband snail and the Kangaroo rat.

The subdivision proposed in 1995 also raised concerns regarding impacts to Morro manzanita, which was confirmed as occurring on the project site. Morro manzanita was listed as a threatened species pursuant to the federal Endangered Species Act in 1994. Historic habitat for Morro Manzanita has been estimated at between 2,000 and 2,700 acres. Currently, it is estimated that 840 to 890 acres of habitat for this species remain. Indian knob mountain balm, another sensitive species unique to the area, was also identified as an important coastal resource that could be impacted by the subdivision.

In 2001 the U.S. Fish and Wildlife Service developed a Recovery Plan for the Morro shoulderband snail. As part of this plan the service designated Critical Habitat for the snail. The project site is included in this Critical Habitat designation.

On April 3, 2002 the Commission staff observed the site from Pecho Road and confirmed the continued presence of dune scrub and maritime chaparral (morro manzanita) habitat. Central dune scrub³, which provides prime habitat for the Morro shoulderband snail, appears to be the dominant plant community on the project site. Shrub species that were observed include California goldenbush (*Ericameria ericoides*), black sage (*Salvia mellifera*), dune bush lupine (*Lupinus chamissonis*), and coastal sage brush (*Artemisia californica*). Suffrutescent wallflower (*Erysimum insulare* ssp. *suffrutescens*) was also observed. The California Native Plant Society has classified this showy, yellow flowered, perennial plant species as a List 4 species. Species on List 4 are plants of limited distribution and are considered significant locally.

Veldt grass (*Erharta calycina*), a non-native invasive grass species, was also seen growing on the property. Although this exotic species has altered the natural conditions of the site, it has not significantly diminished the site's biological productivity and regional importance. Shoulderband snails have been found within veldt grass. Moreover, areas of veldt grass can be easily restored to native dune scrub and maritime chaparral habitat, either through natural succession or human intervention. Native dune plants are superbly adapted to life in a harsh environment that is subject to periodic disturbance; wind blown sand changes the contours of the ground and buries vegetation; rainfall rapidly percolates out of reach; and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Accordingly, the particular locations of dune species change over time as site conditions change. For this reason the entire dune surface, not just the particular locations of sensitive plants and animals at one point in time, must be considered and protected as ESHA. Thus, in addition to the fact that the site supports numerous rare and important plant and animal species (as described above), the site must be considered ESHA because it is part of the limited area containing Baywood fine soils, the essential ingredient to the recovery and survival of the biological resources unique to Los Osos.

³ The Central dune scrub plant community is characterized by medium to low shrubs on exposed slopes of poor soil (Holland 1986).

In addition to dune scrub and maritime chaparral habitats, Commission staff field observations and a review of the topographic map for the site indicate that a small drainage swale crosses the site (on the proposed 3.2 acre parcel) from south to north, parallel to Pecho Road. The drainage is characterized by woody plant species including holly-leaved cherry (*Prunus ilicifolia*), Coast live oak (*Quercus agrifolia*), leomade berry (*Rhus integrifolia*), and sand buckbrush (*Ceanothus cuneatus* var. *fascicularis*). The swale appears to be at least 3 feet deep. While the drainage may only conduct run-off seasonally, it is considered an important natural feature on the property that may contain riparian habitat resources. No local review of this potential resource was conducted.

Based on the information contained in the County's review of previous development proposals on this site and the observations of the Commission staff it is clear that the site is entirely ESHA, albeit degraded in places due to the invasion of non-native veldt grass. The entire site is mapped and protected as ESHA by the LCP's Combining Designation program. Moreover, the habitat types that have been documented and observed throughout the site provide evidence that rare and especially valuable biological resources are present. Finally, the site is comprised of Baywood fine soils, the defining characteristic of the stabilize dune terrestrial habitats in Los Osos that support the sensitive species of the area. Overall, the site's location within a Critical Habitat designation for the morro shoulderband snail, and its role in the preservation of important biological resources of the Los Osos subregion, unquestionably supports its designation as ESHA. The LCP ESHA protection standards cited above are therefore applicable to the proposed development, and must be addressed as part of the coastal development permit review.

The Issuance of COC's is Inconsistent with LCP ESHA Protections

A fundamental way in which the LCP protects ESHA is by prohibiting land divisions that create new development potential within sensitive habitat. LCP Policy 4 and CZLUO Section 23.07.170 specifically prohibit the division of parcels having environmentally sensitive unless the buildable area(s) (which must be shown on the parcel map) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These provisions complement ESHA Policy 1 and CZLUO Section 23.07.170(d)(2), which limit development within ESHA to resource dependent uses.

Section 21.08.020 of the San Luis Obispo County Real Property Division Ordinance defines Subdivision Development as including the issuance of Conditional Certificates of Compliance. Accordingly, a critical step in evaluating the project's consistency with LCP ESHA standards is to evaluate whether the new 3.2 acre lot that would be created by the requested Certificates of Compliance contains a location that could support future development outside of ESHA and its setback. As described above, the entire site is Environmentally Sensitive Habitat, and therefore cannot be divided consistent with LCP Policy 4 for ESHA or CZLUO Section 23.07.170. Furthermore, the proposed creation of a new private parcel sets the stage for future residential development, inconsistent with LCP Policy 1 for ESHA and CZLUO Section 23.07.170(d)(2) limiting development within ESHA to uses that are dependent upon the resource.

In addition, as established in the Land Use Density findings of this report, the project is inconsistent with the LCP's 2.5 acre minimum lot size requirement. The effective protection of

ESHA necessitates strict adherence to LCP density standards, which have been designed to control the intensity of development in a manner that protects biological and other coastal resources. By creating additional development potential beyond the intensity permitted by the LCP, the project is inconsistent with LCP requirements to prevent adverse impacts to ESHA and ensure its biological continuance (ESHA Policies 1, 2 and 33; CZLUO Sections 23.07.164(e), 23.07.170 (b) and (d)), and 23.07.176(a).

c. ESHA Conclusion

The requested Certificates of Compliance would create a new 3.2 acre lot comprised entirely of ESHA, and substandard size lot of 1 acre inconsistent with LCP density standards designed to protect ESHA. Future development of the proposed 3.2 acre parcel would disrupt sensitive biological resources and jeopardize their continuance. The project is therefore inconsistent with the LCP standards cited above and must be denied.

3. Public Works

a. LCP Public Works Provisions

Policy 1: Availability of Service Capacity

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

The Applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the appropriate service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021 (c) OF THE CZLUO]

Section 23.04.021(c) - Overriding land division requirements. *All applications for land divisions within the Coastal Zone (except condominium conversions) shall satisfy the following requirements...*

(1) Water and sewer capacities-urban areas In communities with limited water or sewage disposal service capacity as defined by Resource Management Level II or III: ...

(ii) A proposed land division between the urban services line and the urban reserve line shall not be approved unless the approval body first finds that sufficient water and sewage disposal services are available to accommodate both existing development within the urban services line and development that would be allowed on presently vacant parcels within the urban services line.

23.04.430 - Availability of Water Supply and Sewage Disposal Services.

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:

- a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line.*
- b. Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.*

23.04.432 - Development Requiring Water or Sewer Service Extensions.

To minimize conflicts between agricultural and urban land uses, development requiring new community water or sewage disposal service extensions beyond the urban services line shall not be approved.

b. Public Works Analysis

The Public Works Policy and Ordinances cited above are intended to ensure that adequate services are available to support approved development. For land divisions such as this one (located outside the Urban Service Line (USL) but within the Urban Reserve Line (URL)) the

LCP specifies that land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal services are available to accommodate both existing development within the urban services line and development that would be allowed on presently vacant parcels within the urban services line.

As noted by Policy One, development outside the USL (Urban Services Line) shall be allowed only if it can be serviced by adequate on site private water and waste disposal systems. In other words, applicants for new development in such areas must demonstrate that a well and septic system that met county health standards could be installed on the site. However, if a new parcel is created as proposed by the applicant, future development on the parcel could be served by the community water system due to the fact that it is adjacent to an existing trunk line.⁴

The Commission notes that one of the reasons the 1996 land division, a proposal identical to the current appeal, was recommended for denial by the county staff and the Planning Commission was because it was "*inconsistent with Section 23.04.021C(3) and Section 21.03.0010I (3) of the Real property Division Ordinance because it states that to: To minimize conflicts between agricultural and urban land uses, land divisions requiring new community water or sewer service extensions beyond the urban services line shall not be approved*"..... and this subdivision would require additional water service outside the urban service boundary." (excerpt from March 4, 1996 County Staff Report).

The ordinance section cited above implies the use of public services for new land divisions between the USL and the URL *may* be allowed, but only if existing services are adequate to serve both the new land division and all development within the USL and all potential development on vacant lots within the USL. The certified Estero Plan (1988) states "*growth in the South Bay area will be limited until alternative water supplies are available*" (page 5-4). In the thirteen years since the Estero Plan was certified, no new water sources for the South Bay have been found. The November 1998 Draft Estero Plan Update states that a Resource Management Level III (the most severe constraint) on water capacity will be reached when the population is over 12,660 people (Estero Area Plan, page 3-5). The population of Los Osos area as of 1996 is given in the draft plan as 14,568, well above the figure triggering a Level III of severity.

Indeed, the County, the recently formed Los Osos Community Services District, the Coastal Commission, and the Central Coast Regional Water Quality Control Board have all identified significant outstanding issues regarding the adequacy of the public infrastructure needed to serve existing lots (let alone new lots) in the Los Osos area. In particular, the Coastal Commission's concerns regarding the safe-yield of the Los Osos Groundwater Basin and the environmental problems created by the current practice of using septic systems to dispose of wastewater have been thoroughly documented in the Commission's *Periodic Review of the San Luis Obispo County Local Coastal Program* (adopted July 12, 1991) and in Commission staff reports

⁴ CZLUO Section 23.04.430 allows development of a single-family dwelling on an existing parcel located outside of the urban services line to connect with a community water system if such service exists adjacent to the subject parcel and lateral extension can be accomplished without trunk line extension.

regarding the wastewater treatment facility previously proposed by San Luis Obispo County (Coastal Development Permit Appeal No. A-3-SLO-97-40). In light of these critical outstanding issues, the Commission denied a request to subdivide an existing parcel within Los Osos (Coastal Development Permit Appeal A-3-SLO-99-79), even though the proposed subdivision complied with LCP density standards.

In this case, the proposed project would create two parcels, one of which is currently developed with a single family home and one of which is vacant. The creation of a new parcel will place additional demands on local water supplies by increasing the number of parcels in the Los Osos area available for future development. Whether water for such development is provided by a private well or by connecting to the municipal system, it represents an additional withdrawal from the highly constrained Los Osos groundwater basin. Because existing withdrawals exceed the safe yield of the groundwater basin estimated by the certified LCP, it cannot be found that there are adequate water supplies to support the creation of new lots at this time. The Commission recognizes that there is significant debate regarding the accuracy of the safe-yield estimated by the LCP, and notes that the Los Osos Community Services District is in the process of evaluating this issue. However, until the Commission is presented with more definitive data to establish that more water can be extracted to support additional development potential beyond currently existing lots, consistent with the protection of coastal resources, a precautionary approach must be taken.

The additional wastewater that would be generated by future development is also of concern. Although the proposed parcel is outside of the septic tank prohibition area established by the Regional Water Quality Control Board, there has been no evidence provided that the geologic conditions of the site would accommodate future development dependent upon a septic system in a manner that would effectively protect coastal water quality and aquatic habitats. Again a precautionary approach must be followed given the significant outstanding issues regarding the impact that septic systems are having on the coastal resources and water supplies of Los Osos.

The problems of maintaining a sustainable water supply and developing an adequate wastewater treatment system for the Los Osos area would be exacerbated by the project, not only because it would create a new parcel that places additional demands on these public services, but because these demands would be in excess of the level of development allowed by the LCP. Density standards established by the LCP provide the fundamental means by which levels of development are balanced with available services and resource constraints. The proposed project creates the potential for two residences to be developed on a site that can only be developed with one residence in accordance with existing LCP density standards. Thus, the project results in a level of development beyond that allowed by the LCP or that can be supported by existing public service capacities.

c. Public Works Conclusion:

There are significant outstanding issues regarding the adequacy of Los Osos water supplies that preclude the creation of new parcels from being consistent with LCP Policy 1 for Public Works

and Sections 23.04.021 and 23.04.430 of the certified LCP. The creation of a new lot with future development potential would place additional demands on public services beyond their current capacities. As a result, the project is inconsistent with the LCP provisions cited above and the Certificates of Compliance must be denied.

4. Visual Resources

a. LCP Visual Resource Protection Provisions

Policy 1: Protection of Visual and Scenic Resources

Unique and attractive features of the landscape including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]

Policy 2: Site Selection for New Development

Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 7: Preservation of Trees and Native Vegetation

The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]

CZLUO Section 23.04.021c(6) – Overriding land division requirements

c. Overriding land division requirements. *All applications for land division within the Coastal Zone (except condominium conversion) shall satisfy the following requirements, as applicable, in addition to all applicable provisions of Sections 23.04.024 through 23.04.036. In the event of any conflict between the provisions of this section and those of Sections 23.04.024 through 23.04.036, this section shall prevail. ...*

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

CZLUO Section 23.05.064 - Tree Removal Standards.

Applications for tree removal in accordance with Section 23.05.062 are to be approved only when the following conditions are satisfied:

- a. Tagging required. Trees proposed for removal shall be identified for field inspection by means of flagging, staking, paint spotting or other means readily visible but not detrimental to a healthy tree.*
- b. Removal criteria. A tree may be removed only when the tree is any of the following:*
 - (1) Dead, diseased beyond reclamation, or hazardous;*
 - (2) Crowded, with good horticultural practices dictating thinning;*
 - (3) Interfering with existing utilities, structures or right-of-way improvements;*
 - (4) Obstructing existing or proposed improvements that cannot be reasonably designed to avoid the need for tree removal;*
 - (5) Inhibiting sunlight needed for either active or passive solar heating or cooling, and the building or solar collectors cannot be oriented to collect sufficient sunlight without total removal of the tree;*
 - (6) In conflict with an approved fire safety plan where required by Section 23.05.08*
 - (7) To be replaced by a tree that will provide equal or better shade, screening, solar efficiency or visual amenity within a 10-year period, as verified in writing by a registered landscape architect, licensed landscaping contractor or certified nurseryman.*
- c. Replacement. Any tree removed to accommodate new development or because it is a safety hazard shall be replaced, in a location on the site and with a species common to the community, as approved by the Planning Director.*
- d. Tree removal within public view corridors. Tree removal within public view corridors (areas visible from collector or arterial roads) shall be minimized in accordance with Visual and Scenic Resources Policy 5.*
- e. Preservation of trees and natural vegetation. New development shall incorporate design techniques and methods that minimize the need for tree removal.*

b. Visual Resource Analysis:

The site of the proposed project is located on the west side of Pecho Road, which provides primary access to nearby Montano de Oro State Park and scenic views of the Pacific Ocean and the Los Osos dune environments. The sloping site is fully visible from Pecho Road and is currently developed with a single story home located towards the rear of the parcel. As discussed in the Finding on Environmentally Sensitive Habitat, the site contains a variety of native vegetation. The vicinity of the project site has an attractive rural character of rolling hills and scattered homes. The proposed project will create an additional building site in this area.

An overriding LCP requirement designed to ensure that land divisions protect scenic coastal resources consistent with Visual Policy 1 prohibits the creation of new parcels where the only feasible building site would be on a slope of a ridge top where a building would be silhouetted against the skyline when viewed from a public road. No specific analysis of this issue is provided in the administrative record provided by the County. However, a preliminary assessment by Commission staff indicates that future development on the new parcel created by the Certificates would indeed silhouette against the skyline. This is based on the fact that the existing residences to the west of the proposed parcel extend above the ridgeline. The encroachment of such development within public views of the ocean and dune habitats would have an adverse impact on the highly scenic quality of the area, inconsistent with CZLUO Section 23.04.021c(6) and Policy 1 for Visual Resources.

Policies 2 and 7 generally apply to the development of *existing* lots (as opposed to the creation of *new* lots). Policy Two requires that new development in scenic areas such as this to be sited to minimize visual intrusion into the public viewshed. Policy Seven and its implementing ordinance (CZLUO Section 23.05.064) require the protection of native vegetation, such as the coastal dune scrub and maritime chaparral plant communities contained on the site. Strict application of these requirements to future development on the proposed 3.2 acre parcel would minimize, but not avoid visual impacts. Such development could not be accommodated on the site without some removal of native vegetation, and would encroach within the public viewshed due to the site's topography and orientation. Thus, LCP objectives to protect scenic coastal views are best achieved by prohibiting the creation of new lots in highly scenic areas such as the project site.

c. Visual Resources Conclusion

The proposed project will create a new lot in a visually sensitive area where scenic views of the Pacific Ocean and Los Osos dune habitat are available to the public from Pecho Road, the highly traveled access route to Montana de Oro State Park. The future development facilitated by the creation of this lot would encroach within these scenic corridors, block views of the sensitive dune habitats and/or the Pacific Ocean, and necessitate the removal of native vegetation. As a result, the project is inconsistent with LCP Policy 1 for Visual Resources and CZLUO Section 23.04.021c(6). The requested Certificates of Compliance must therefore be denied.

5. Analysis of Project Consistency with Coastal Act Access and Recreation Policies

The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. In this case, the project will not have any impact on the public's ability to physically access the coast. However, the project will have impacts on visual access. Please refer to the Visual Resource findings of this report for an analysis of this issue.

6. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

As detailed in the findings of this staff report, the Commission has identified that the project is inconsistent with land use density standards; will adversely impact biological and scenic resources; and, will place demands on public services beyond their existing capacities. As a result, the Commission has denied the project. This action will avoid significant adverse effects on the environment consistent with the California Environmental Quality Act.



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

FORREST WERMUTH
CHIEF BUILDING OFFICIAL

October 30, 2000

John L. Wallace and Assoc.
4115 Broad Street, Suite B-5
San Luis Obispo, Ca. 93401
Attn: Kerry Margason

SUBJECT: Approval of Schoenfield
Certificate of Compliance C2000-166

Dear Mrs. Margason:

The Department of Planning and Building has reviewed all of the materials submitted in conjunction with the Schoenfield application for certificates of compliance. We will act to reissue and approve One (1) certificate of compliance for the entire property on November 14, 2000. That review and approval is based on the following **findings of facts** in this matter:

1. A grant deed from Wilcoxon to Thorbergsson dated December 11, 1958 (Deed: 977/OR/284) created the parcel as a remainder from the property conveyed. The parcel was thereafter separately conveyed in its current configuration in a grant deed from Wilcoxon to Willfong dated June 28, 1968 (Deed: 1487/OR/637). The purpose of these conveyances was to create parcels with access to Pecho Road.
2. On April 30, 1976, upon the request of Donald and Alice Willfong (the previous owners of the parcel) and based upon the grant deed from Henry and Joan Wilcoxon to Donald and Alice Willfong dated June 28, 1968 referred to above, the Planning Department issued, approved and recorded one certificate of compliance for the entire property based upon a determination that the parcel was determined to be one parcel in compliance with the applicable provisions of the Subdivision Map Act and the County's ordinances enacted pursuant thereto (Document No. 16678 recorded April 30, 1976). The County's decision was not appealed nor challenged by the property owners.
3. Thereafter, through intermediate conveyances, the parcel was separately conveyed by grant deed from Krongeld to Schoenfield dated April 15, 1987 (Deed: 2984/OR/881). The same legal description was used in this grant deed as was used in the 1968 deed when this property was first conveyed.

EXHIBIT 1

4. The problem with the applicant's method of analysis of parcel creation is that the grant deed from Martin to Wilcoxon dated February 24, 1949 (Deed: 510/OR/395) would have been in violation of the Subdivision Map Act because it would have created five or more parcels within a one-year period without the required filing of a final map (1943 version of the Subdivision Map Act). Consequently, the 1949 grant deed did not create legal parcels which could be later divided.
5. The existence of two separate assessor parcel numbers created for assessment and taxation purposes does not create separate legal parcels for purposes of the Subdivision Map Act.
6. On June 9, 1989, at the request of the applicant Schoenfield, the Zoning Administrator of the County of San Luis Obispo (the Hearing Officer) conditionally approved Minor Use Permit/Coastal Development Permit D880127P authorizing the construction of a new single-family residence with attached garage and driveway on the property. Thereafter, on August 18, 1989, the County's Chief Building Inspector issued Building Permit No. B881755 to the applicant, Schoenfield, authorizing the construction of a single-family residence on the property in accordance with the approved minor use permit/coastal development permit.
7. Approval of the minor use permit/coastal development permit and issuance of the building permit for the property as described in Paragraph 6 above constitutes real property "approved for development" pursuant to the provisions of Government Code section 66499.34. As a result of being approved for development, the property is entitled to the issuance of one certificate of compliance, for the entire property as a single legal parcel, under the provisions of Government Code section 66499.35(c).
8. The property was first separately conveyed as a single legal parcel by grant deed dated June 28, 1968 (1487/OR/637). Based upon this conveyance, a single unconditional certificate of compliance was issued on April 30, 1976, recognizing the entire property as a single legal parcel (1894/OR/847). There has been no documentation submitted showing that the configuration of the property has been changed by merger or other means from the time of its creation to the present. As a result, the property is entitled to the re-issuance of one certificate of compliance, recognizing the property, as a whole, as a single legal parcel.

Attached for your review is the legal description for the re-issued certificate of compliance that will be recorded by the County to finalize your application. Review the legal description carefully and please contact our office if you have any concerns or questions regarding the description on the certificate.

Schoenfield Cert. of Comp.

October 30, 2000

Page 3.

The cost for recording the document is \$ 23.00, which includes a \$10.00 transfer fee. Please transmit a check made out to the **County of San Luis Obispo** to:

Barbara Spann, Accounting
Department of Planning and Building
County Government Center
San Luis Obispo, California 93408

Please also clearly mark that this payment is for C2000-166 to assure that it is credited to the appropriate project. A Statement of Fees has been enclosed with this letter for your use. You may submit the statement with your payment to further insure proper crediting.

If you do not agree with the decision made by the department, you may appeal this determination to the County Board of Supervisors. You must appeal the decision within 14 days from the action date, which is the date of this correspondence. If you wish to appeal, please submit the request to the Planning Commission Secretary with the appropriate appeal fee.

If you have any questions concerning your project or this notice please contact me at (805) 781-5600.

Sincerely,

Victor Holanda, AICP, Director Department of Planning and Building

By



Larry W. Kelly, Senior Planner
Supervisor, Information Services Group

Enclosures

Statement of Fees
Certificates of Compliance

cc: Albert Schoenfield



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

FORREST WERMUTH
CHIEF BUILDING OFFICIAL

TO: BOARD OF SUPERVISORS

FROM: LARRY W. KELLY, INFORMATION SERVICES GROUP

VIA: BRYCE TINGLE, ASSISTANT DIRECTOR PLANNING AND BUILDING

DATE: MARCH 6, 2001

SUBJECT: HEARING TO CONSIDER AN APPEAL BY ALBERT SCHOENFIELD OF THE PLANNING DIRECTOR'S APPROVAL OF CERTIFICATE OF COMPLIANCE, C00-0166, (S990330C) FOR AN APPROXIMATE 4.2 ACRE PROPERTY IN THE RESIDENTIAL SUBURBAN LAND USE CATEGORY, LOCATED IN THE COUNTY AT 2731 PECHO VALLEY ROAD, IN THE COMMUNITY OF LOS OSOS; SUPERVISORIAL DISTRICT 2

RECOMMENDATION

Adopt the attached resolution upholding the Planning Director's approval of Certificate of Compliance, C00-0166, (S990330C) as one certificate and deny Albert Schoenfield's appeal based on the findings in Exhibit A.

DISCUSSION

A grant deed from Wilcoxon to Thorbergsson dated December 11, 1958 (Deed: 977/OR/284) created the parcel as a remainder from the property conveyed. The parcel was thereafter separately conveyed in its current configuration in a grant deed from Wilcoxon to Willfong dated June 28, 1968 (Deed: 1487/OR/637). The purpose of these conveyances was to create parcels with access to Pecho Road. Merger is not an issue because there were no legal lots previously created.

On April 30, 1976, upon the request of Donald and Alice Willfong (the previous owners of the parcel) and based upon the grant deed from Henry and Joan Wilcoxon to Donald and Alice Willfong dated June 28, 1968 referred to above, the Planning Department issued, approved and recorded one certificate of compliance for the entire property based upon a determination that the parcel was determined to be one parcel in compliance with the applicable provisions of the Subdivision Map Act and the County's ordinances enacted pursuant thereto (Document No. 16678 recorded April 30,

1976). The County's decision was not appealed nor challenged by the property owners and the time to do so has run.

The County does not contend this certificate of compliance merged legal parcels. Instead, the certificate of compliance recognized the legal parcel that was created by remainder by the grant deed from Wilcoxon to Thorbergsson dated December 11, 1958.

Thereafter, through intermediate conveyances, the parcel was separately conveyed by grant deed from Krongeld to Schoenfield dated April 15, 1987 (Deed: 2984/OR/881). The same legal description was used in this grant deed as was used in the 1968 deed when this property was first conveyed.

The problem with the applicant's method of analysis of parcel creation is that the grant deed from Martin to Wilcoxon dated February 24, 1949 (Deed: 510/OR395) would have been in violation of the Subdivision Map Act because it would have created five or more parcels within a one-year period without the required filing of a final map (1943 version of the Subdivision Map Act - Business and Professions Code Section 11535). Consequently, the 1949 grant deed did not create legal parcels which could be later divided.

The existence of two separate assessor parcel numbers created for assessment and taxation purposes does not create separate legal parcels for purposes of the Subdivision Map Act.

On June 9, 1989, at the request of the applicant Schoenfield, the Zoning Administrator of the County of San Luis Obispo (the Hearing Officer) conditionally approved Minor Use Permit/Coastal Development Permit D880127P authorizing the construction of a new single-family residence with attached garage and driveway on the property. Thereafter, on August 18, 1989, the County's Chief Building Inspector issued Building Permit No. B881755 to the applicant, Schoenfield, authorizing the construction of a single-family residence on the property in accordance with the approved minor use permit/coastal development permit.

Approval of the minor use permit/coastal development permit and issuance of the building permit for the property as described in the previous paragraph above constitutes real property "approved for development" pursuant to the provisions of Government Code section 66499.34. As a result of being approved for development, the property is entitled to the issuance of one certificate of compliance, for the entire property as a single legal parcel, under the provisions of Government Code Section 66499.35(c).

Approval of the minor use permit and building permit did not merge parcels (as the applicant misconstrues the County's position). Instead, these approvals authorized "development" on a single legal parcel owned by the applicant. Multiple legal parcels were never created and, therefore, merger never took place.

The property was first separately conveyed as a single legal parcel by grant deed dated June 28, 1968 (1487/OR/637). Based upon this conveyance, a single unconditional certificate of compliance was issued on April 30, 1976, recognizing the entire property as a single legal parcel (1894/OR/847). There has been no documentation submitted showing that the configuration of the property has been changed by merger or other means from the time of its creation to the present. As a result, the property is entitled to the re-issuance of one certificate of compliance, recognizing the property, as a whole, as a single legal parcel.

OTHER AGENCY INVOLVEMENT/IMPACT

None.

FINANCIAL CONSIDERATIONS

The Applicant submitted an appeal fee payment of \$474.00 to cover associated staff costs.

RESULTS

Should the Board of Supervisors approve the staff recommendation to deny the appeal by Albert Schoenfield and approve the issuance of one certificate of compliance for the approximate 4.2 acre property, Certificate of Compliance, C00-0166, would be issued in accordance with the Board's resolution recognizing the property, as a whole, as a single legal parcel.



JAMES B. LINDHOLM, JR.
COUNTY COUNSEL

OFFICE OF THE
COUNTY COUNSEL

COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER, ROOM 386
SAN LUIS OBISPO, CA 93408
TELEPHONE 781-5400, 781-5401
FAX 781-4221
(AREA CODE 805)

DL

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
PATRICK J. FORAN
LESLIE H. KRAUT
RITA L. SCIARONI

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April 23, 2001

APR 25 2001

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Via Facsimile

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

Re: Certificates of Compliance C00-0166
(Albert Schoenfield)

Dear Ms. Landry:

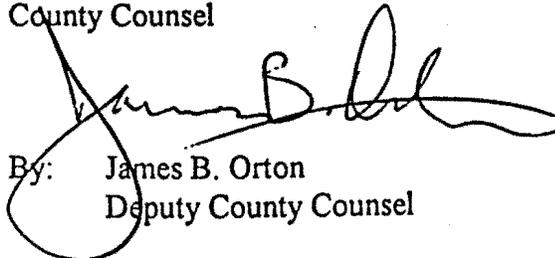
The Board of Supervisors held a continued hearing on the application of Albert Schoenfield for the issuance of two unconditional certificates of compliance under Government Code section 66499.35(a). At the conclusion of the hearing, the Board deliberated on the matter and then decided to uphold the appeal and issue two unconditional certificates of compliance as requested by the applicant. Enclosed is a copy of Resolution No. 2001-148 setting forth the Board's final action in this matter.

Also enclosed as you requested is a copy of Business and Professions Code section 11535 (Stats. 1943, chapter 128) that was effective in 1949 at the time of the grant deed from Martin to Wilcoxon.

Should you need anything further, please give me a call.

Very truly yours,

JAMES B. LINDHOLM, JR.
County Counsel


By: James B. Orton
Deputy County Counsel

JBO:kt
Enclosure
cc: Pat Beck (w/enclosure)
010706
7846kltr.wpd PLN

EXHIBIT 1
Page 7 of 11

PRESENT: Supervisors Harry L. Ovitt, Shirley Bianchi, Peg Pinard,
Michael P. Ryan, Chairperson K.H. 'Katcho' Achadjian

ABSENT: None

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APR 25 2001

RESOLUTION NO. 2001-148

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESOLUTION UPHOLDING THE APPEAL AND REVERSING
THE DECISION OF THE DIRECTOR OF PLANNING AND BUILDING
AND APPROVING THE ISSUANCE OF TWO (2)
UNCONDITIONAL CERTIFICATES OF COMPLIANCE PURSUANT
TO THE APPLICATION OF ALBERT SCHOENFIELD FOR
CERTIFICATE OF COMPLIANCE C00-0166

The following resolution is now offered and read:

WHEREAS, on November 14, 2000, the Director of Planning and Building of the County of San Luis Obispo (hereinafter referred to as the "Planning Director") duly considered and approved the issuance of one (1) unconditional certificate of compliance pursuant to the application of Albert Schoenfield for Certificate of Compliance C00-0166; and

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

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on March 6, 2001, and the matter was continued to and determination and decision was made on April 10, 2001; and

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

WHEREAS, the Board of Supervisors has duly considered the appeal and determined that the appeal should be upheld and the decision of the Planning Director should be reversed and that two (2) unconditional certificates of compliance should be issued based upon the findings set forth below.

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

1. That the recitals set forth hereinabove are true, correct, and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That the issuance of unconditional certificates of compliance is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(1), which provides that CEQA does not apply to ministerial projects.
4. That the appeal filed by Albert Schoenfeld is hereby upheld and the decision of the Planning Director is reversed and that issuance of two (2) unconditional certificates of compliance is hereby approved pursuant to the application of Albert Schoenfeld for Certificate of Compliance C00-0166 based upon the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Bianchi, seconded by Supervisor Ovitt, and on the following roll call vote, to wit:

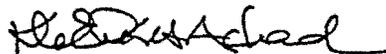
AYES: Supervisors Bianchi, Ovitt, Pinard, Ryan, Chairperson Achadjian

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.



Chairman of the Board of Supervisors of the County of San Luis Obispo

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors
BY: Vicki McNeill
Deputy Clerk

[SEAL]

VED

2 5 2001

EXHIBIT A
Findings - C00-0166 (S99033C)

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

1. A conveyance of a patent from the U.S. Government to Tobias Kennan (D/Patents/277) dated September 25, 1890, created a separate legal parcel.
2. A conveyance of a patent of contiguous property from the U.S. Government to Charlotte Redecker (F/Patents/36) dated November 9, 1891, created a separate legal parcel.
3. The two patents described above share a common property line running between them from north to south.
4. Subsequently, legal parcels were conveyed out of each patent by the owners of the patent properties reducing the acreage (and size) of each patent property.
5. On January 11, 1949, a grant deed from Vermazen to Martin (502/OR/301) conveyed two contiguous legal parcels separated by the "patent line" described above.
6. On February 24, 1949, Martin conveyed to Wilcoxon (510/OR/395) the central part of Martin's property containing all property located east and west of the "patent line." This conveyance from Martin to Wilcoxon was the first conveyance out of the Martin property described in paragraph 5 above and created two separate legal parcels divided by the old "patent line."
7. There were no other conveyances of the remaining Martin property located north and south of the Wilcoxon property made within one year of the Martin deed to Wilcoxon. Consequently, the Martin conveyance of two parcels to Wilcoxon did not require the filing of a final map (i.e., less than five parcels were conveyed by Martin within one year).
8. On December 11, 1958, a grant deed from Wilcoxon to Thorbergson (977/OR/284) further divided the Wilcoxon properties creating the parcels by remainder which are the subject of this application. The remainder parcels were then subsequently conveyed by grant deed from Wilcoxon to Willfong (1487/OR/637) dated June 28, 1968.
9. Thereafter, through intermediate conveyances, the remainder parcels were conveyed by a grant deed from Krongeld to Schoenfield (2987/OR/881) dated April 15, 1987.
10. The remainder parcels now owned by the applicant are separate legal parcels and are entitled to the issuance of two unconditional certificates of compliance under the provisions of Government Code section 66499.35(a) and Real Property Division Ordinance Section 21.02.020 (Title 21 of the San Luis Obispo County Code).
11. Further development of the applicant's parcels will be subject to the permitting requirements and provisions of the Coastal Zone Land Use Ordinance (Title 23 of the San Luis Obispo County Code) and will be subject to the applicable provisions of the California Environmental Quality Act.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 297-4863

**COMMISSION NOTIFICATION OF APPEAL**

DATE: November 6, 2001
TO: Pat Beck, Chief Of Permitting
County of San Luis Obispo, Planning & Building Department
County Government Center
San Luis Obispo, CA 93408
FROM: Rick Hyman, District Chief Planner
RE: Commission Appeal No. A-3-SLO-01-108

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: C00-0166/S990330C
Applicant(s): Albert Schoenfield
Description: Appeal by Janice Rohn, Michael Monegan, Commissioners Wan and Potter from decision of San Luis Obispo County granting two, unconditional certificates of compliance to Albert Schoenfield for a one acre and a 3.2 acre parcel located at 2731 Pecho Road, Los Osos, San Luis Obispo County
Location: Pecho Valley Road, Los Osos (San Luis Obispo County)
Local Decision: Approved w/ Conditions
Appellant(s): Janice A Rohn & Michael D Monegan; California Coastal Commission, Attn: Commissioner Sara Wan; California Coastal Commission, Attn: Commissioner Dave Potter
Date Appeal Filed: 11/06/2001

The Commission appeal number assigned to this appeal is A-3-SLO-01-108. The Commission hearing date has been tentatively set for December 11-14, 2001 in San Francisco. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Luis Obispo's consideration of this coastal development permit must be delivered to the Central Coast Area office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Diane Landry at the Central Coast Area office.

EXHIBIT 2
A-3-SLO-01-108
Text of Appeals
Page 1 of 13

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 45 FREMONT STREET, SUITE 300
 SAN FRANCISCO, CA 94105
 (415) 427-4863



APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Sara Wan, Chair
 California Coastal Commission
 45 Fremont Street, Suite 2000
 San Francisco, CA 94105-2219
 (415) 904-5200

Commissioner Dave Potter
 California Coastal Commission
 45 Fremont Street, Suite 2000
 San Francisco, CA 94105-2219
 (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: San Luis Obispo County

2. Brief description of development being appealed:
Decision of San Luis Obispo County granting two, unconditional certificates of compliance for a one acre and a 3.2 acre parcel.

3. Development's location (street address, assessor's parcel number, cross street, etc.):
2731 Pecho Road, Los Osos, San Luis Obispo County APN 067-131-002

4. Description of decision being appealed:

- a. Approval; no special conditions: XX
 b. Approval with special conditions: _____
 c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-01-108
 DATE FILED: November 6, 2001
 DISTRICT: Central

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EXHIBIT 2
 Page 2 of 13

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other: _____
6. Date of local government's decision: April 10, 2001
7. Local government's file number: C00-0166/S990330C

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Albert Schoenfeld
2731 Pecho Valley Road
Los Osos, CA 93402

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

- | | |
|---|--|
| (1) JANICE ROHN & MICHAEL MONEGAN
2710 PECHO VALLEY ROAD
LOS OSOS, CA 93402 | (2) SHIRLEY BIANCHI, SUPERVISOR
SLO BOARD OF SUPERVISORS
COUNTY GOVERNMENT CENTER RM 370
SAN LUIS OBISPO, CA 93408-2040 |
| (3) GREG SAUNDERS
NOSSAMAN, GUNTHER, KNOX AND ELLIOT

18101 VON KARMAN AVE., STE. 1800
IRVINE, CA 92612 | (4) BABAK NAFICY
ENVIRONMENTAL DEFENSE CENTER
864 OSOS ST "A"
SAN LUIS OBISPO, CA 93401 |
| (5) MARK MASSARA
SIERRA CLUB
1642 GREAT HIGHWAY
SAN FRANCISCO, CA 94122 | (6) PAT BECK, CHIEF OF PERMITS
DEPT OF PLANNING & BUILDING
COUNTY GOVERNMENT CENTER RM 310
SAN LUIS OBISPO, CA 93408-2040 |
| (7) SUSAN JORDAN
CCPN
120 WEST MISSION ST
SANTA BARBARA CA 93101 | |

SECTION IV. Reasons Supporting Appeal

NOTE: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section which continues on the next page.

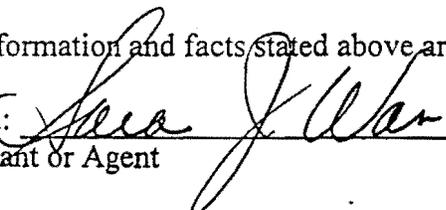
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED: REASONS FOR THIS APPEAL.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: November 6, 2001

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED: REASONS FOR THIS APPEAL.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Dave Potter
Appellant or Agent

Date: November 6, 2001

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

I am appealing this project because it is inconsistent with the following policies and ordinances of the certified San Luis Obispo County Local Coastal Program:

Title 21, Real Property Division Ordinance;

Section 21.01.010 states that a Coastal Development Permit is required for Conditional Certificates of Compliance, land divisions must implement the LCP, promote the orderly development of real property and must not circumvent the requirements of Title 23. The County's action to approve two unconditional Certificates of Compliance (COC) is inconsistent with this section of the LCP because at least one of the approved COC's should have been a Conditional Certificate of Compliance subject to the Coastal Development Permit (CDP) process. Failure to follow the CDP process resulted in the approval of a land division that does not implement the LCP and circumvents the requirements for new development found in Title 23, the Zoning Code.

Section 21.02.020 states that Conditional Certificates of Compliance require public notice and hearing and that Conditional Certificates of Compliance must, if approved, include appropriate conditions. The County did not provide adequate notice for this project. No conditions were attached to the County approval because the County found, on appeal to the Board of Supervisors, that the applicant was erroneously entitled to two unconditional Certificates of Compliance.

Section 21.08.020 (a) states that for appeal and notice purposes, Conditional Certificates of Compliance are considered to be subdivision development in the Coastal Zone. In this case, the approval of a Conditional Certificate of Compliance is, by virtue of the location of the property, appealable to the Coastal Commission and thus subject to the notice and hearing requirements found in Title 23 of the LCP. County action on the application was inconsistent with these notice and hearing requirements.

Title 23, Coastal Zone Land Use Ordinance:

Section 23.01.031, states that all development in the Coastal Zone of the County requires a Coastal Development Permit. The preceding cite from the Real Property Division (Section 21.08.020) states that Conditional Certificates of Compliance are considered subdivision development and therefore subject to the CDP process. The County action is inconsistent with these ordinance sections because it approved a Conditional Certificate of Compliance without any compliance with the CDP process.

Sections 23.07.160, 23.07.162, 23.07.164 and 23.07.170. provide standards for approving new development, including land divisions, in Special Resource Areas [SRA's], Terrestrial Habitats. The project site is located in an SRA (Terrestrial Habitat) identified on the LCP Maps certified as part of the County's

Coastal Plan. The preceding ordinance sections require evaluations of the site for habitat identification and protection, standards for development in or near identified habitats and a specific requirement that a development "envelope" be identified and recorded with the subdivision or parcel map for new land divisions. *None* of these requirements were addressed by the County because it did not require a Coastal Development Permit for the project.

Estero Area Plan:

South Bay Urban Standard 2 (d), requires that parcels created by new land divisions must be appropriate size and have adequate services available. The County action approved two parcels of one acre and 3.2 acres. The minimum parcel size for the area is 2 and ½ acres and it is unknown if services are available for the new vacant lot.

Land Use Element:

Sensitive Habitats Policy One (page 6-7) states that there shall be no disruption of habitat, and only habitat dependent uses are allowed within ESHA's.

Sensitive Habitat Policy Two (page 6-8) provides that new development shall not significantly impact sensitive habitats, and requires evaluation of the site by a qualified biologist prior to permit approval and adequate mitigation.

Sensitive Habitat Policy Four (page 6-8) prohibits land divisions within habitat areas unless buildable areas are outside of the minimum setbacks for the habitat and are recorded on the subdivision or parcel map.

The site is located within an area identified in the LCP as providing terrestrial habitat. Earlier permit actions for development on the site stated that the property was located within the critical habitat identified by USFW for the Morro Bay Kangaroo Rat, an endangered species. The site also contains Morro Manzanita, an endangered plant species. The project approved by the County does not address any of these LCP requirements for habitat protection because the Board did not require a CDP for the Certificates.

Public Works Policy One (page 8-7) requires that new development, including land divisions must demonstrate adequate public or private services are available in order to be approvable. The County action created two parcels, one of which is developed with a single family home but one of which is vacant. There is no information regarding the availability of sewer or water services to the newly created vacant parcel because the County did not require an LCP analysis through CDP process for this project.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

CALIFORNIA COASTAL COMMISSION

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



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OCT 09 2001

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

JANICE ROHN & MIKE MONEGAN
2710 PECHO VALLEY ROAD
LOS OSOS, CA 93402
Zip (805) 528-0495 Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

SAN LUIS OBISPO

2. Brief description of development being appealed:

SINGLE PARCEL REQUESTING THE APPROVAL OF TWO PARCELS
THROUGH THE ISSUANCE OF TWO UNCONDITIONAL CERTIFICATES
OF COMPLIANCE

3. Development's location (street address, assessor's parcel number, cross street, etc.):

2731 PECHO VALLEY ROAD, LOS OSOS, CA 93402

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
 - b. Approval with special conditions: _____
 - c. Denial: _____
- AT THE AUGUST 7 CA COASTAL COMMISSION MEETING, THE DECISION WAS DETERMINED TO BE APPEALABLE

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-01-108
DATE FILED: November 6, 2001
DISTRICT: Central

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other: _____

6. Date of local government's decision: APRIL 10, 2001

7. Local government's file number: COO-0166/S990330C

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

ALBERT SCHOENFELD
2731 PECHO VALLEY ROAD
LOS OSOS, CA 93402

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) JAWICE ROHO & MIKE MONESANO
2710 PECHO VALLEY ROAD
LOS OSOS, CA 93402

(2) MET WITH SUPERVISOR BIANCHI ON MARCH 2, SENT LETTER TO
MS. BIANCHI AND LARRY KELLY ON FEBRUARY 24 TO BE
READ AT HEARINGS - HOWEVER THEY DID NOT READ STAFF
THE HEARINGS, DESPITE OUR SUBMITTED PRISON TO
HEARINGS

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- THE MINIMUM PARCEL SIZE REQUIRED BY THE LCP IN THIS SECTION OF PECHO ROAD IS 2.5 ACRES. THE TOTAL PROPERTY SIZE IS 4.2 ACRES, AND IS THUS TOO SMALL TO CONSIDER AS SEPARATE PARCELS.
- THIS PROPERTY IS IN AN LCP-IDENTIFIED SCENIC CORRIDOR LEADING TO MONTANA DE ORO STATE PARK, AND AS SUCH, CREATING NEW PARCELS AND DEVELOPMENT SHOULD NOT BE GRANTED WITHOUT REVIEW AND APPROVAL BY THE COASTAL COMMISSION AND OTHER IMPACTED ORGANIZATIONS AND PARTIES.
- LOS OSOS HAS BEEN IDENTIFIED AS A THREATENED AREA WITH RESPECT TO THE URBAN-RURAL BOUNDARY.
- THIS IS IN DIRECT CONFLICT WITH LCP DIRECTIVES ON: ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT, THE PRESERVATION OF SCENIC RURAL CHARACTER, SENSITIVE COASTAL HABITAT PROTECTION, AND THE PRESERVATION OF VISUAL RESOURCES.
- THIS REGION ALSO SUPPORTS BOTH IDENTIFIED THREATENED AND ENDANGERED SPECIES.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Janice A. Rohn Michael P. Morgan
Signature of Appellant(s) or Authorized Agent

Date 10/3/01

NOTE: If signed by agent, appellant(s) must also sign below.

SECTION VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
MARIETTA, CA 95060
(415) 427-4663



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

RECEIVED

SECTION I. Appellant(s):

APR 30 2001

Name, mailing address and telephone number of appellant(s):

JANICE ROHN & MIKE MONEGAN
8710 PECHO VALLEY ROAD
LOS OSOS, CA 93402

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

(805) 508-0495

Zip

Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

SAN LUIS OBISPO COUNTY

2. Brief description of development being appealed:

SINGLE PARCEL AND HOUSE REQUESTING TO BE LEGALLY 2 PARCELS
IN ORDER TO BUILD A SECOND HOUSE

3. Development's location (street address, assessor's parcel number, cross street, etc.):

8731 PECHO VALLEY ROAD, LOS OSOS
APN: 074-024-019 & 020

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special conditions: STRAIGHT COMPLIANCE OF COMPLIANCE

c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-01-108

DATE FILED: November 6, 2001

DISTRICT: Central

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning Administrator

c. Planning Commission

b. City Council/Board of Supervisors

d. Other: _____

6. Date of local government's decision: APRIL 10, 2001

7. Local government's file number: C00-0166/S990330C

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

THIS APPEAL IS BASED ON THE APPARENT DISREGARD OF THE LCP IN MANY WAYS. AL SCHODDERS APPEALED TO THE SLO COUNTY BOARD OF SUPERVISORS TO OBTAIN A CERTIFICATE OF COMPLIANCE IN ORDER TO BUILD A SECOND HOME. BUILDING ANOTHER HOME IN THIS AREA IS IN DIRECT CONFLICT WITH ENVIRONMENTALLY-SUSTAINABLE DEVELOPMENT, PRESERVATION OF SCENIC RURAL CHARACTER, SENSITIVE COASTAL HABITAT PROTECTION, AND PRESERVATION OF VISUAL RESOURCES. THIS PROPERTY IS IN AN LCP IDENTIFIED SCENIC CORRIDOR LEADING TO MOUNTAINA DE ORO STATE PARK. THE MINIMUM PARCEL SIZE REQUIRED BY THE LCP IS 2.5 ACRES, AND THE PROPERTY IN QUESTION IS 4.2 ACRES. AS SUCH, THE APPEAL SHOULD NOT HAVE BEEN GRANTED. THIS IS AN AREA CONTAINING BOTH THREATENED AND ENDANGERED SPECIES, AND THIS APPEAL WAS GRANTED BY THE SLO COUNTY SUPERVISORS WITH APPARENT DISREGARD TO THESE LEGALLY PROTECTED SPECIES.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

James A. Adams & Michael Morgan
Signature of Appellant(s) or Authorized Agent

Date April 25, 2001

NOTE: If signed by agent, appellant(s) must also sign below.

SECTION VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

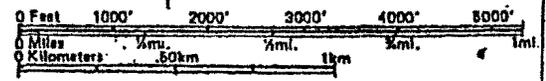
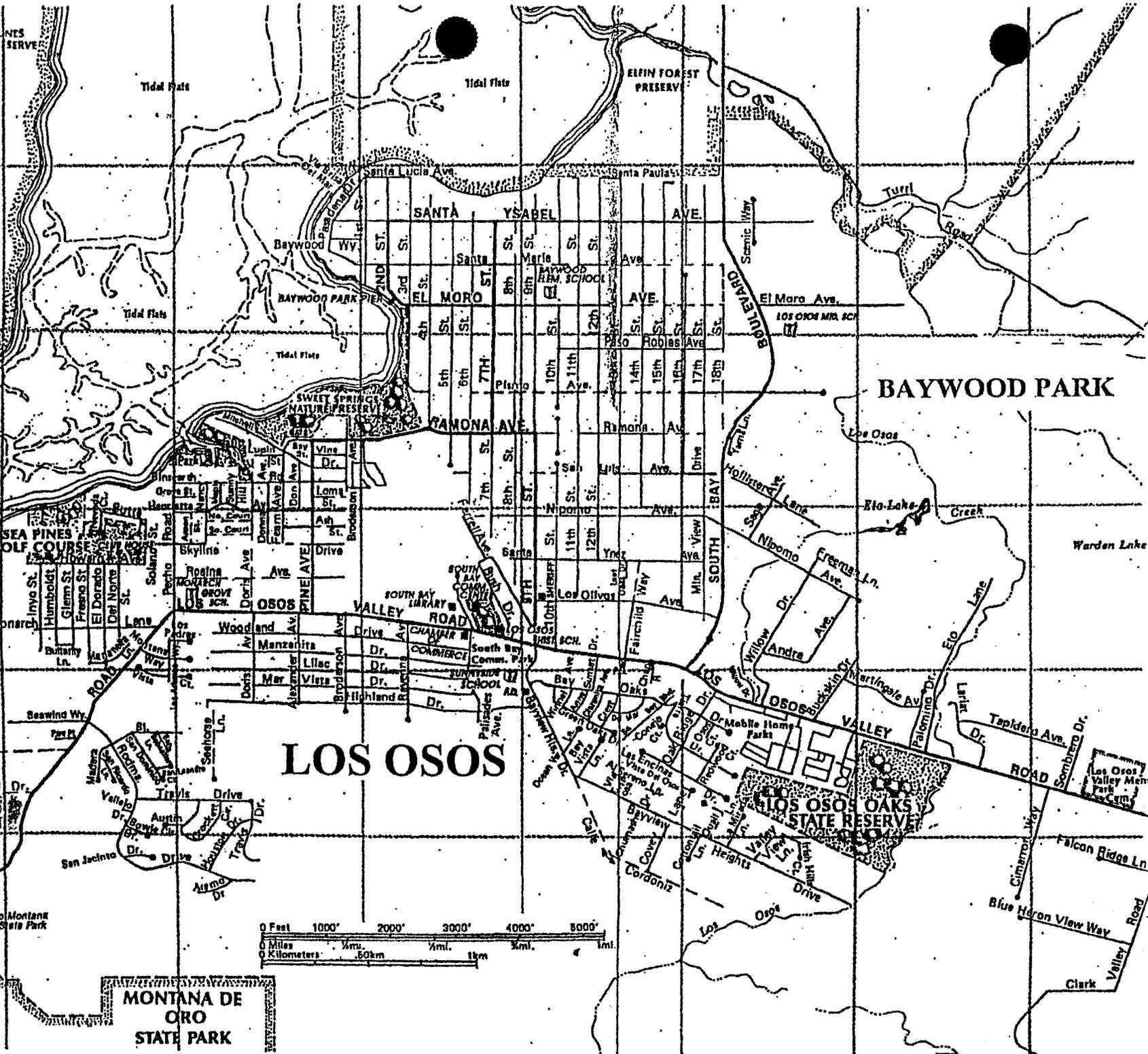
SCHOENFELD SITE LOCATION

SITE

EXHIBIT 3
A-3-SLO-01-108
Location Map

MONTANA DE ORO STATE PARK

MONTANA DE ORO STATE PARK



MORRO DUNES NATURE PRESERVE

Tidal Flats

ELFIN FOREST PRESERVE

BAYWOOD PARK

SEA PINES GOLF COURSE

LOS OSOS OAKS STATE RESERVE

MONTANA DE ORO STATE PARK

PECHEO ROAD

COSTA AZUL DR.

VALLEY ROAD

SANTA LUCIA AVE

MORO AVE

RAMONA AVE

VALLEY ROAD

LOS OSOS

LOS OSOS OAKS STATE RESERVE

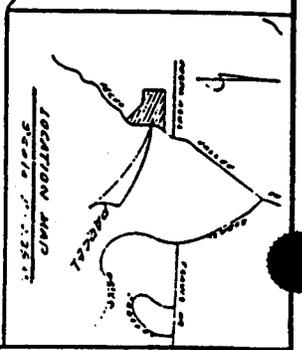
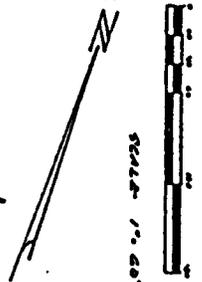
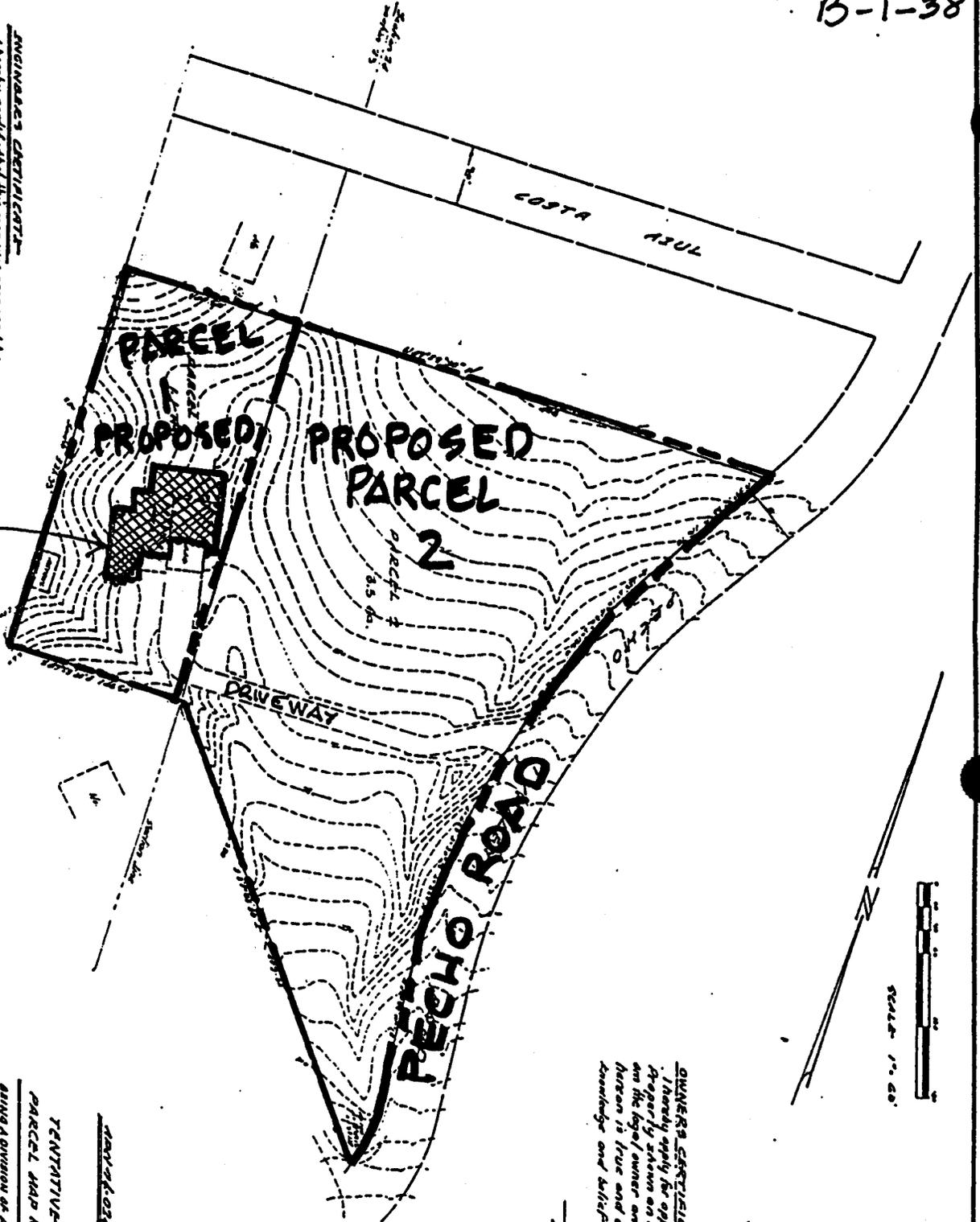
MONTANA DE ORO STATE PARK



ENGINEER'S CERTIFICATE
I hereby certify that this map was prepared by me or under my direction and that to the best of my knowledge conforms to the Land Division Ordinance of the County of San Luis Obispo.

David E. ...
Arch. 7700
June 1, 1934

EXISTING HOME



DIVISION'S CERTIFICATE
I hereby apply for approval of the Division of Land Property shown on this map and certify that I am the legal owner and that the information shown hereon is true and correct to the best of my knowledge and belief.

Walter ...
Legal Owner, ...

NAVY/AR-031 030

TENTATIVE PARCEL MAP
PARCEL MAP NUMBER CO-94-076

BEING A DIVISION OF A SECTION OF THE SE 1/4 OF THE NW 1/4 OF SECTION 28 AND A PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 27 TOWNSHIP 20 SOUTH, RANGE 10 EAST, 180214 IN THE COUNTY OF SAN LUIS OBISPO STATE OF CALIFORNIA

JUNE 1, 1934

EXHIBIT 4: SITE PLAN

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

427-4863

**ADOPTED**

Prepared May 30, 2001

To: Coastal Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Tami Grove, Deputy Director
Diane Landry, Staff Counsel

TU11a

Subject: Commission Determination of Applicable Hearing and Notice Provisions (pursuant to California Code of Regulations, Title 14, Section 13569) for the issuance of two Certificates of Compliance to Albert Schoenfield for one acre and 3.2 acre parcels located at 2731 Pecho Valley Road, Los Osos by the San Luis Obispo County Board of Supervisors. Commission determination of the applicable hearing and notice provisions for development authorized, on appeal from the decision of the Planning Director, by the San Luis Obispo County Board of Supervisors for the approval of two parcels through the issuance of two, unconditional Certificates of Compliance. The approved project creates an additional vacant parcel in an area designated as a Sensitive Resource Area in the LCP and causes one of the newly created parcels, which contains an existing single family home, to be below the minimum parcel size for the area.

Summary

The San Luis Obispo County Local Coastal Plan (LCP) was certified on July 8, 1987. The County assumed authority over the issuance of Coastal development Permits on March 31, 1988. After certification of a Local Coastal Program, the Coastal Commission is authorized under CCR Title 14, §13569 to resolve disputes concerning a local government's proposed processing of development proposals for purposes of Coastal Development Permit requirements (i.e., is the development categorically excluded, non-appealable, or appealable). In this case, the Planning Director's decision to approve only one Certificate of Compliance was appealed to the Board of Supervisors by the Applicant. The county staff prepared a recommendation to the Board that the Planning Directors decision should be upheld and suggested in a memo to Commission staff that if the decision was overturned, they expected the Board would grant two, Conditional Certificates of Compliance. Subsequent to the Board's action, a local resident, Janice Rohn, contended that the April 10, 2001 approval should be appealable to the Coastal Commission. She requested the county to ask for an Executive Directors Determination pursuant to CCR, Title 14, Section 13569 and Section 23.01.041 (g) (1) and (2) of Title 23 of the County Code. (Please see Exhibit 1)

Commission Staff had also received a copy of the request, and, in a letter dated May 7, 2001, advised the County and applicant to immediately request the determination. (Please see Exhibit 2). On May 17, 2001, the County notified Commission staff that it had chosen not to



California Coastal Commis

June 2001 Meeting

Staff: Diane Landry Approved by: *D.L. 5/30/01*

13569 Determination for Schoenfield Certificates of Compliance 5. 25. 01.doc

EXHIBIT 5

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Adopted Findings for 13569 Determination

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request a determination because "...the Schoenfield application was not an application for development, it was unnecessary for the County to make a determination under Section 13569 as to what type of development was being proposed....." (Please see Exhibit 3 for the full text of the County response) The Executive Director of the Coastal Commission replied to the County the next day stating that the dispute resolution process outlined in Section 13569 was appropriate and that his determination was that the County had effectively approved two Conditional Certificates of Compliance that, under the terms of the certified LCP, were appealable to the Coastal Commission. (Please See Exhibit 4) The County disputes the Executive Director's Determination.

Under §13569, when the local jurisdiction does not agree with the Executive Director's determination regarding the appropriate permitting status of a particular proposal, the Commission is required to hold a hearing and make the determination at the next meeting in the appropriate geographic region of the state following the Executive Director's determination, which in this case is the June 13, 2001 meeting in Los Angeles.

Executive Director's Recommendation

The Executive Director recommends that the Commission adopt the attached findings and resolution to determine that the project authorized by the San Luis Obispo County Board of Supervisors was effectively the approval of two Conditional Certificates of Compliance and as such, constitute appealable Coastal Development Permits.

Motion. I move that the Commission determine that the development authorized by San Luis Obispo County Board of Supervisors on April 10, 2001 to create two parcels through the Certificate of Compliance process constitutes Coastal Development Permits that are appealable to the Coastal Commission.

Staff Recommendation. Staff recommends a **YES** vote. Passage of this motion will require that these Coastal Development Permits are processed as appealable items. A majority of the Commissioners present is necessary to pass the motion and adopt the following resolution and findings.

Resolution. The Commission, by adoption of the attached findings, determines, pursuant to Section 13569 of Title 14 of the California Code of Regulations, that the appropriate designation for the development approved by the San Luis Obispo County Board of Supervisors on April 10, 2001 is that it constitutes appealable Coastal Development Permits.



California Coastal Commission

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Recommended Findings and Declarations

The Commission finds and declares as follows:

1. Project History and Background

The gently rolling 4.2 acre site is located on the seaward side of Pecho Valley Road between the first public road and the sea on the edge of the developed portion of Los Osos. It is outside the defined "Urban Services Area" and just within the "Urban Reserve " line. Most of the nearby lots are developed with single family homes and range in size from over four acres to less than one half an acre. (Please see Exhibit 5). The LCP designation for the site is suburban residential with a minimum parcel size of two and one half acres. The site is identified as a "Sensitive Resource Area" for terrestrial habitat.

The current Applicant purchased the site in 1987 and in 1989, the County approved a Coastal Development Permit for the construction of a 3500 square foot home on the westerly portion of the parcel. The Staff Report prepared for the project identified existing and potential habitat on the site coastal scrub, Morro Bay Kangaroo Rat and Morro Manzanita). Various conditions were attached to the approval including requirements for an open space easement on a portion of the property and deed restrictions to protect habitat values and native vegetation. At the time the project was approved, it was anticipated that a Habitat Conservation Plan would be prepared in the near future. It has not been determined whether this HCP has been prepared to date. The project was not appealed to the Coastal Commission and has been constructed.

In 1995, Mr. Schoenfield applied for a land division to divide his parcel into two parcels of 1+ and 3+ acres configured exactly as the parcels recently authorized by the Board's action. The land division was denied by the County because the resulting lots did not meet the minimum parcel size for the area of two and one half acres. The Staff Report for this project included a letter from the United States Fish and Wildlife Service (USFWS) that stated there would be adverse impacts on habitat values if the land division was approved and an additional house built on the site.

In 2000, Mr. Schoenfield applied for two Unconditional Certificates of Compliance (C00-0166). In October of 2000, County staff prepared a report on the proposal and recommended that only one certificate for the entire site be approved . The report stated that the Applicant was not entitled to two Unconditional Certificates of Compliance as the lots had been created illegally in 1949 and were thus not eligible to receive *Unconditional* Certificates pursuant to Map Act and County requirements. (Please se Exhibit 6) On November 14, 2000, the Planning Director approved the issuance of one, unconditional Certificate of Compliance.

The Planning Director's decision was challenged by the Applicant and a hearing before the



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Board of Supervisors was set for March of 2001. A staff report recommending that the Planning Director's decision be upheld was prepared. In March, a copy of this report was sent to Commission staff with a cover memo indicating that if the Director's decision was overruled " *Staff fully expects that if the Board overturns the Director's decision and approves two certificates then both would be conditional certificates of compliance.*" The memo also notes that the " *project is in a coastal appeal zone*". (Please see Exhibit 7, County Staff Report., Memo and Board of Supervisor's action on the Appeal)

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the Applicant's parcels had not been created illegally in 1949 and were therefore entitled to two, unconditional Certificates of Compliance. Since the Board had determined this was a ministerial act, no notice of their action was sent to the Commission, nonetheless, an appeal of the action was made by Janice Rohn and received at the Commission offices on April 30, 2001. Ms. Rohn was advised by Commission staff that no Notice of Final Local Action on this item had been received and an appeal period could not be initiated until such receipt. She then asked the County to request an Executive Director's Determination pursuant to CCR Title 14, Section 13569 of the Commission's regulations. Ten days later, the County indicated that such a request would not be forthcoming. In response, the Executive Director, stated that, in his opinion, the dispute resolution process outlined in Section 13569 was applicable in this case and determined that the County had effectively issued two Conditional Certificates of Compliance which were appealable to the Coastal Commission. The County disagrees with this determination and therefore the Commission must decide whether the Board's April 10 action to approve these certificates constitutes appealable development.

2. Authority for Determination

The authority for the Commission's determination stems from California Code of Regulations, Title 14, Section 13569 (Determination of Applicable Notice and Hearing Procedures) that states:

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

(a) The local government shall make its determination as to what type of development



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is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

San Luis Obispo County LCP implementation plan also includes a dispute resolution process. Section 23.01.041 (g) (1) and (2) of the County Code, a portion of the certified LCP states:

(g) Determination of applicable notice and hearing procedures. The determination of whether a development is categorically excluded, non appealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the County at the time the application for development within the Coastal Zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and provisions of this title which are adopted as part of the Local Coastal Program. Where an applicant, Interested person or the county has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non appealable or appealable :

- (1) The Planning Director shall make his/her determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non appealable) and shall inform the applicant of the notice and hearing requirement for that particular development.*
- (2) If the determination of the Planning Director is challenged by the applicant or*



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interested person, or if the county wishes to have a determination by the Coastal Commission as to the appropriate designation, the Planning Director shall notify the Coastal Commission by telephone of the dispute/question and shall request an Executive Director's opinion.

After the certification of a LCP, the Commission is authorized to determine the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable) when requested to do so. The purpose of the regulation and companion LCP provision is to provide for an administrative process for the resolution of disputes over the status of a particular project. Such a process is important when two agencies, here the County of San Luis Obispo and the Coastal Commission both have jurisdiction over a given project. The Coastal Act was set up to give certified local governments the primary permitting authority over projects proposed in the Coastal Zone but to allow the Commission oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding the status of a particular project and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. The local government may initiate the request or forward a request made by an applicant or other interested party. The first step in this process is to request a determination from the Commission's Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

In this case, the County received a request for an Executive Director's Determination on the Board approval of two Certificates of Compliance but chose not to ask for one. The applicable regulations and ordinance sections do not offer the County this option but rather state that *"the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion."* (CCR, Title 14, Section 13569 (b)) and *"...the Planning Director shall notify the Coastal Commission by telephone of the dispute/question and shall request an Executive Director's opinion"* (San Luis Obispo County Code, Title 23 Section 23.01.041 (g) (2)). Likewise, the Executive Director is required to render a determination (CCR Title 14, Section 13569 (c)) and, in the event the local government disagrees with the opinion, *" the Commission shall hold a hearing for purposes of determining the appropriate designation for the area "* (CCR, Title 14, Section 13569 (d)). It is clear from a plain reading of the regulation, that, once a request is made, participation is not optional and that if a system for dispute resolution is to be effective, the requirements for implementation of the process must be observed by both the Coastal Commission and the local government. The Executive Director has, therefore made a determination, the County disagrees and the matter will be heard by the Commission.

3. Executive Directors Determination Disputed by the County

In response to the request by Ms. Rohn and the Commission's letter asking that the request be forwarded, the County replied, on May 17, that such a request was unnecessary because



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the application submitted to the county was for two **unconditional** Certificates of Compliance. The County asserts that since unconditional certificates are not considered development under the definition in the LCP, the project is outside the Commission's jurisdiction and therefore no determination regarding the appeal status is needed. Furthermore, the County response noted that *"disputes over what type of development is being proposed are to be resolved at the beginning of the process when the application is submitted so that the matter can be properly noticed and processed for hearing."*

The Commission finds that the fact that Mr. Schoenfield may have applied for unconditional certificates should not be determinative of the actual status of the proposed project. It is the County's responsibility to determine whether a particular proposal is either exempt from the Coastal Development Permit requirement, or is appealable or not appealable to the Coastal Commission. In this case, County staff, in response to the application for two certificates, determined that only **one** unconditional Certificate of Compliance could be granted to Mr. Schoenfield. Since one unconditional Certificate of Compliance for the entire 4.2 acre site had already been granted to a previous owner in 1976, prior to Coastal Commission authority over the area, the re-affirmation of a single certificate was appropriate. On November 14, 2000, the Planning Director approved the application, but for only **one**, unconditional certificate.

The Applicant appealed this discretionary decision of the Planning Director to the Board of Supervisors in November of 2000. In March, Commission staff was notified by the County that a hearing on the appeal was scheduled for March 6, 2001. The attached County Staff report recommended that the Planning Director's decision should be up held. A cover memo to Commission Staff stated that the project was in the Coastal Commission appeal area and County staff expected that if the Director's decision was overturned, two **Conditional** Certificates of Compliance would be awarded. The Commission believes this correspondence supports the contention that the County had determined that if two certificates were to be granted they must be conditional and would be appealable. Therefore, the County's observation suggesting disputes over the status of a particular development should be dealt with earlier in the process is, in this case, inapplicable because until the time of the Board hearing, the application was correctly identified as to its appeal status and there was no need to request a determination under Section 13569. The Commission notes that when it became apparent that the Board action differed so significantly from the recommendation, a timely request for a determination was made by a county resident. The last minute discretionary Board decision to declare that a project, that would otherwise be subject to appeal, did not constitute "development" has a tremendous adverse effect on the public and other agencies ability to participate in the regulatory process. It is precisely this kind of situation that is properly addressed by the dispute resolution provisions in Section 13569 of the Commission's regulations. If the process for administratively resolving these disputes is not followed, the only alternative remaining is time consuming and expensive litigation.



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4. Commission's Determination of Applicable Hearing and Notice Requirements for the Board's Action on C00-0166

Background

Commission staff has reviewed the San Luis Obispo County Board of Supervisor's April 10, 2001 action to approve two Certificates of Compliance for two parcels of land (one acre and 3.2 acres respectively) on the west side of Pecho Road in Los Osos. Staff has traced the chain of title on this property and analyzed the Applicant's supporting documentation prepared by John Wallace and Associates, the current version of the Subdivision Map Act (Government Code Section 66410 et seq. and specifically Section 66499.35), the 1943 version of the Map Act (Business and Professions Code 11535), the County Staff Reports on the application for the certificates, for a denied land division (1996) and for the construction of a single family home on the site (1989), Section 21.02.020 of Title 21 of the County Code, and the "Subdivision Regulation Matrix" prepared by the County to assist in the analysis of applications for Certificates of Compliance. Based on a review of this information, the Commission finds that the Applicant was not entitled to two Certificates of Compliance and the County should have either denied the request or approved two Conditional Certificates if conditions could bring the proposed parcels into conformity with the requirements of the LCP.

Subdivision Map Act and Coastal Act / LCP Requirements: The Subdivision Map Act provides for the approval of Certificates of Compliance and Conditional Certificates of Compliance (Gov't. Code Section 66499.35) Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A Conditional Certificate of Compliance is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, Certificates of Compliance do not create new parcels, they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions (if the illegal subdivider is still the owner) or the rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35 (b)). The newly created parcels constitute development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit.

San Luis Obispo LCP: The certified LCP provides a procedure for considering Conditional Certificates of Compliance that includes notice, hearing and appeal provisions. Action on Conditional Certificates of Compliance for property located in the coastal zone appeal areas is



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appealable to the Coastal Commission (Title 21, Section 21.02.020). (Please see Exhibit 8) Section 21.01.010 (d) of Title 21 provides that action on a Conditional Certificate of Compliance constitutes action on the Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the applicable policies and implementing ordinances of the LCP. The Board action to erroneously grant unconditional Certificates of Compliance circumvented this process to mitigate the impacts on coastal resources that occur by legitimizing illegal parcels and impermissibly restrains the rights of the public and the Commission to appeal the decision.

Analysis of the Schoenfield Proposal

The following analysis of the Applicant's proposal to obtain unconditional Certificates of Compliance demonstrates that the parcels he sought to have recognized were in fact illegally created in 1949 and were not entitled to unconditional Certificates.

History of the Property The Applicant's representative submitted a lengthy, detailed chain of title for this property tracing the conveyances from the original land grants in the late 1800's to the present time. Staff has reviewed all of this material and checked and mapped each conveyance. For each conveyance, staff consulted the County's "Subdivision Regulation Matrix" and other information to determine if the conveyance was consistent with the land division regulations in effect at the time. Up until the 1949 conveyance from Martin to Wilcox, which created six parcels, the conveyances were consistent with the rules for creating and conveying parcels. The critical conveyances that occurred in 1949 are discussed in the following sections of this determination.

Vermazen to Martin In February of 1949, Vermazen deeded two parcels of land to Martin. Parcel One was approximately 8 acres in size and Parcel Two was a little over 4 acres (See Exhibit 9). Parcel 1 was located entirely with the south west quarter of the northwest quarter of Section 24, T 30 S, R 10 E. Parcel Two was contiguous to Parcel One but located entirely within the South east quarter of the north east quarter of Section 23, T 30 S, R. 10 E. At that time, the Subdivision Map Act of 1943 as amended in 1949 provided the regulations for subdivisions. Land divisions not defined as subdivisions did not fall under these rules and could, in 1949, be accomplished by deed with a specific property description. Business And Professional Code Section 11535 (1943 Act) defined a subdivision as the division of a unit of land or contiguous units of land into five or more parcels within a one year period. The deed from Vermazen to Martin is specific and clearly describes each parcel according to Township, Range and Section coordinates. Staff followed the descriptions and they are accurate to the properties in question. Thus, in February of 1949, there were two, legal parcels west of Pecho Road owned by Martin.



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Martin to Wilcox In March of 1949, Martin deeded out a portion of the property described above to Wilcox. The property deeded to Wilcox totaled 6.6 acres and was made up of a 4+ acre portion of Martin's original Parcel One and a 2+ acre portion of Martin's Parcel Two (See Exhibit 10). The property was not described as separate parcels but was identified by Township, Range and Section coordinates.

The effect of conveyance of the property to Wilcox resulted in the division of Martin's Parcel One into three lots and Martin's Parcel Two into three lots for a total of six lots out of the original two, contiguous parcels. Martin retained two lots north of Wilcox and two lots south of the deeded out land. The north lots were sold to Andersen in 1955 and the south lots were ultimately sold and resubdivided. In their Staff Report, the County Staff correctly asserted that this conveyance to Wilcox was illegal because a Tract Map was required in 1949 for the creation of five or more lots within a year by the same person. The law in effect at the time was the Map Act of 1943 as amended up to 1949. The relevant regulation is found in the 1949 Act in the Business and Professions Code Section 11535 (a) as follows:

Section 11535 (a) " Subdivision" refers to any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units (emphasis added), which is divided for the purposes of sale, whether immediate or future, by any subdivider into five or more parcels within any one year period.

The Map Act thus provides that if a person has a parcel or two or more contiguous parcels and divides the parcel, or group of parcels into five or more lots within any one year period, that division constitutes a subdivision and comes under the authority of the Map Act.. Section 11538 provides that *" It is unlawful for any person to offer to sell, to contract to sell or to sell any subdivision or any part thereof until a final map.....in full compliance with the provisions of this chapter and any local ordinance has been duly recorded."* Therefore in order to legally create five or more parcels in 1949, the subdivider would have had to comply with the procedure for processing a final map as laid out in the Map Act. In this case, no Final Map was ever applied for or filed.

In 1949, Martin owned two contiguous parcels, Parcel One and Parcel Two. As detailed in the previous paragraph, the Map Act of 1943 required that, if the division of these two contiguous parcels, for immediate or future sale, resulted in five or more parcels, then a Final Map was required. It can be presumed that Martin created the parcels for sale because within the next few years, he in fact sold the parcels. He sold two to Wilcox shortly after he acquired the original two parcels from Vermazen, sold two more to Andersen six years later and the last two sometime after that. Note also, that the language of the 1943 Map Act does not count only the *additional* parcels created by the division, it simply provides that if, after the division is done, there are more than five parcels, then the provisions for Tract Maps must be complied with.



San Luis Obispo County LCP 13569 Determination

Schoenfield Certificates of Compliance

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The question then becomes how many parcels were created when Martin, through his sale to Wilcoxn I 1949, described the new property lines that separated Wilcoxn's property from Martin's lots to the north and south. If we accept the Applicant's contention that this sale transferred *two* lots to his predecessor Wilcoxn, then the same rationale must apply to the creation of *two* lots on the north and *two* lots on the south. The fact that Martin didn't sell these other lots immediately has no effect on the fact that they were created by the property lines defining Wilcoxn's parcels. The County Findings in support of the Boards action argue that somehow the situation whereby Martin conveyed out two of the lots by deed to Wilcoxn did not have the immediate result of creating six lots because Martin didn't sell the other four lots within a year. This assertion is inconsistent with the plain language of the 1949 Map Act. The Map Act effective at the time simply says if five or more lots, "*divided for the purpose of sale, whether immediate or future*" are created within a year, then the Map Act applies. A review of Exhibit 11 clearly shows that six lots were created at the moment Wilcoxn's north and south property boundaries were defined. In conclusion, Martin created six lots in March of 1949 and did not comply with the regulations for land divisions of more than five lots in a single year as required by the 1943 Map Act. The lots were created illegally are, therefore not entitled to Certificates of Compliance under Section 66499.35 (a) of the current Subdivision Map Act.

The 1943 Map Act does include the following exemptions from its requirements in Section 11535 (b) (1) and (2) :

Business and Professions Code Section 11535 (b) " Subdivision " does not include either of the following;

(1) Any parcel or parcels of land in which all (emphasis added) of the following conditions are present: (i) which contain less than five acres (ii) which abut upon dedicated streets or highways, (iii) in which street opening or widening is not required by the governing body in dividing the land into lots or parcels, and (iv) the lot design meets the approval of the governing body.

(2) Any parcel or parcels of land divided into lots or parcels each of a net area of one acre or more, a tentative map of which has been submitted to the governing body and has been approved by it as to street alignment and widths, drainage provisions and lot design.

The lots created by Martin in March of 1949 do not meet these criteria for exemption found in Section 11535 (b) (1) because they do not all abut on a dedicated street, a street opening would be required to serve at least one of the lots, and there is no evidence that the lot design was approved by the governing authority (San Luis County Board of Supervisors).



San Luis Obispo County LCP 13569 Determination

Schoenfield Certificates of Compliance
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The lots created by Martin also do not meet any of the criteria for exemption found in Section 11535 (b) (2) because only four of the parcels created are greater than one acre in size with two of the lots being less than one acre each. There is also no evidence that Martin submitted a tentative map to the governing body and that the map was approved.

In conclusion, Martin divided two contiguous parcel into six lots in 1949 and did not comply with the subdivision requirements in place at that time nor were the lots exempt from the provisions of the Map Act. All of the resulting lots were therefore created illegally.

Wilcoxn to Thorbergsson In January of 1959, Wilcoxn conveyed a 2.2 acre portion of his 6.6 acre site to Thorbergsson. Overlooking the fact that the Wilcoxn parcel was created illegally, this conveyance was otherwise consistent with the land division rules at the time and resulted in the present configuration of the property.

Willfong Certificate of Compliance In 1976, a subsequent owner, Willfong obtained a single Certificate of Compliance for this site as presently configured. The legal description of the property included both of the lots, but did not describe them as different parcels. The parcel was identified by one APN. This Certificate predated Coastal Commission jurisdiction in this area.

Conclusion

The Applicant's lots were illegally created in 1949 and should not have been processed as unconditional Certificates of Compliance. The Commission therefore determines that the County's action effectively granted two Conditional Certificates of Compliance to Mr. Schoenfield. Because the affected property is located within a "Special Resource Area " and between the first public road and the sea, the County's action is appealable to the Coastal Commission pursuant to Coastal Act Section 30603 (a) (1) (3) (4) and the provisions of Title 21, Section 23.01.043 (c) (1) (3) and (4). The County is requested to forward a Notice of Final Local Action to the Santa Cruz District office that states that this item -- an effective grant of two Conditional Certificates of Compliance -- is appealable to the Coastal Commission. Until the corrected notice is received and the appeal period has run without an appeal being filed the County action to approve this project is suspended pursuant to CCR Title 14 Section 13572 .



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
FRONT STREET, SUITE 300
SAN LUIS OBISPO, CA 95060
(805) 427-4863



May 18, 2001

Pat Beck
San Luis Obispo County Planning
County Government Center
San Luis Obispo, California 93408

***Subject: Request for Executive Director's Determination on the County's Action
on C00-0166, Schoenfield Certificates of Compliance***

Dear Ms. Beck,

I am writing in response to your letter of May 16, in which you state that the County has chosen not to respond to the request of Janice Rohn for an Executive Director's determination, pursuant to CCR Title 14 Section 13569, regarding the appealability of the County Board of Supervisors action of April 10, 2001 to approve two Certificates of Compliance for property owned by Mr. Albert Schoenfield at 2731 Pecho Valley Road in Los Osos. In your letter you state that the Schoenfeld application was for unconditional Certificates of Compliance and, because an unconditional certificate is not development under the definition in the LCP, the project is outside the Commission's jurisdiction and thus any determination on the appeal status is unnecessary. As discussed below, I have determined that the dispute resolution provisions of CCR 13569 do apply to this case. Further, I determined that if any certificates were issued, they should have been Conditional Certificates and properly noticed to the Commission as appealable Coastal Development Permits.

First, the fact that Mr. Schoenfield may have applied for unconditional certificates should not be determinative of the actual status of the proposed project. It is the County's responsibility to determine whether a particular proposal is either exempt from the Coastal Development Permit requirement, or is appealable or not appealable to the Coastal Commission. In this case, County staff, in response to the application for two certificates, determined that only one unconditional Certificate of Compliance could be granted to Mr. Schoenfield. Since one unconditional Certificate of Compliance for the entire 4.2 acre site had already been granted to a previous owner in 1976, prior to Coastal Commission authority over the area, the re-affirmation of a single certificate was appropriate. On October 30, 2000, the Planning Director approved the application, but for only one, unconditional certificate.

The Applicant appealed this discretionary decision of the Planning Director to the Board of Supervisors in November of 2000. In February, Commission staff was notified by the County that a hearing on the appeal was scheduled for March 6, 2001. The attached County Staff report recommended that the Planning Director's decision should be upheld. A cover memo to Commission Staff stated that the project was in the Coastal

Commission appeal area and County staff expected that if the Director's decision was overturned, two Conditional Certificates of Compliance would be awarded. Commission staff believes this correspondence supports the contention that the County had determined that if two certificates were to be granted they must be conditional and would be appealable to the Commission. Therefore, your observation suggesting disputes over the status of a particular development should be dealt with earlier in the process is, in this case, inapplicable because until the time of the Board hearing, the application was correctly identified as to its appeal status and there was no need to request a determination under Section 13569. I note that when it became apparent that the Board action differed so significantly from the recommendation, a timely request for a determination was made by a County resident. The last minute discretionary Board decision to declare that a project, that would otherwise be subject to appeal, did not constitute "development" has a tremendous adverse effect on the public and other agencies ability to participate in the regulatory process. It is precisely this kind of situation that is properly addressed by the dispute resolution provisions in Section 13569 of the Commission's regulations. If the process for administratively resolving these disputes is not followed, the only alternative remaining is time consuming and expensive litigation.

Second, in keeping with the intent of Section 13569, I am providing a response to Ms. Rohn's request for an Executive Director's determination regarding this project. For the reasons detailed in the following sections of my letter, I have determined that the Board action to approve two Certificates was inconsistent with the Local Coastal Program provisions for legalizing illegal parcels and, if any certificates were to be approved, Conditional Certificates would have been the proper procedure to carry out the requirements of both the Subdivision Map Act and the Coastal Act/LCP. Conditional Certificates of Compliance for Mr. Schoenfield's property are appealable to the Coastal Commission.

Background

Commission staff has reviewed the San Luis Obispo County Board of Supervisor's April 10, 2001 action to approve two Certificates of Compliance for two parcels of land (one acre and 3.2 acres respectively) on the west side of Pecho Road in Los Osos. Staff has traced the chain of title on this property and analyzed the Applicant's supporting documentation prepared by John Wallace and Associates, the current version of the Subdivision Map Act (Government Code Section 66410 et seq and specifically Section 66499.35), the 1943 version of the Map Act (Business and Professions Code 11535), the County Staff Reports on the application for the certificates, for a denied land division (1996) and for the construction of a single family home on the site (1989), Section 21.02.020 of Title 21 of the County Code, and the "Subdivision Regulation Matrix" prepared by the County to assist in the analysis of applications for Certificates of Compliance. Based on a review of this information, the Applicant was not entitled to two Certificates of Compliance and the County should have either denied the request or

approved two Conditional Certificates if conditions could bring the proposed parcels into conformity with the requirements of the LCP.

Subdivision Map Act and Coastal Act / LCP Requirements: The Subdivision Map Act provides for the approval of Certificates of Compliance and Conditional Certificates of Compliance (Gov't. Code Section 66499.35) Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A Conditional Certificate of Compliance is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, Certificates of Compliance do not create new parcels, they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions (if the illegal subdivider is still the owner) or the rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35 (b)). The newly created parcels constitute development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit.

San Luis Obispo LCP: The certified LCP provides a procedure for considering Conditional Certificates of Compliance that includes notice, hearing and appeal provisions. Action on Conditional Certificates of Compliance for property located in the coastal zone appeal areas is appealable to the Coastal Commission (Title 21, Section 21.02.020). Section 21.01.010 (d) of Title 21 provides that action on a Conditional Certificate of Compliance constitutes action on the Coastal development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the applicable policies and implementing ordinances of the LCP. The Board action to erroneously grant unconditional Certificates of Compliance circumvented this process to mitigate the impacts on coastal resources that occur by legitimizing illegal parcels and impermissibly cut off the rights of the public and the Commission to appeal the decision.

Analysis of the Schoenfield Proposal

The following analysis of the Applicant's proposal to obtain unconditional Certificates of Compliance demonstrates that the parcels he sought to have recognized were in fact illegally created in 1949 and were not entitled to unconditional Certificates.

History of the Property The Applicant's representative submitted a lengthy, detailed chain of title for this property tracing the conveyances from the original land grants in the late 1800's to the present time. Staff has reviewed all of this material and checked and mapped each conveyance. For each conveyance, staff consulted the County's

"Subdivision Regulation Matrix" and other information to determine if the conveyance was consistent with the land division regulations in effect at the time. Up until the 1949 conveyance from Martin to Wilcox, which created six parcels, the conveyances were consistent with the rules for creating and conveying parcels. The critical conveyances which occurred in 1949 are discussed in the following sections of this determination.

Vermazen to Martin In February of 1949, Vermazen deeded two parcels of land to Martin. Parcel One was approximately 8 acres in size and Parcel Two was a little over 4 acres (See Exhibit 1). Parcel 1 was located entirely with the south west quarter of the northwest quarter of Section 24, T 30 S, R 10 E. Parcel Two was contiguous to Parcel One but located entirely within the South east quarter of the north east quarter of Section 23, T 30 S, R. 10 E. At that time, the Subdivision Map Act of 1943 provided the regulations for subdivisions. Land divisions not defined as subdivisions did not fall under these rules and could, in 1949, be accomplished by deed with a specific property description. Business And Professional Code Section 11535 (1943 Act) defined a subdivision as the division of a unit of land or contiguous units of land into five or more parcels within a one year period. The deed from Vermazen to Martin is specific and clearly describes each parcel according to Township, Range and Section coordinates. Staff followed the descriptions and they are accurate to the properties in question. Thus, in February of 1949, there were two, legal parcels west of Pecho Road owned by Martin. (Exhibit 1)

Martin to Wilcox In March of 1949, Martin deeded out a portion of the property described above to Wilcox. The property deeded to Wilcox totaled 6.6 acres and was made up of a 4+ acre portion of Martin's original Parcel One and a 2+ acre portion of Martin's Parcel Two (See Exhibit 2). The property was not described as separate parcels but was identified by Township, Range and Section coordinates. The effect of conveyance of the property to Wilcox resulted in the division of Martin's Parcel One into three lots and Martin's Parcel Two into three lots for a total of six lots out of the original two, contiguous parcels. Martin retained two lots north of Wilcox and two lots south of the deeded out land. The north lots were sold to Andersen in 1955 and the south lots were ultimately sold and resubdivided. In their Staff Report, the County Staff correctly asserted that this conveyance to Wilcox was illegal because a Tract Map was required in 1949 for the creation of five or more lots within a year by the same person. The law in effect at the time was the Map Act of 1943 as amended up to 1949. The relevant regulation is found in the 1949 Act in the Business and Professions Code Section 11535 (a) as follows:

Section 11535 (a) " Subdivision" refers to any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units (emphasis added), which is divided for the purposes of sale, whether immediate or future, by any subdivider into five or more parcels within any one year period.

The Map Act thus provides that if a person has a parcel or two or more contiguous parcels and divides the parcel, or group of parcels into five or more lots within any one year period, that division constitutes a subdivision and comes under the authority of the Map Act. Section 11538 provides that *"It is unlawful for any person to offer to sell, to contract to sell or to sell any subdivision or any part thereof until a final map.....in full compliance with the provisions of this chapter and any local ordinance has been duly recorded."* Therefore in order to legally create five or more parcels in 1949, the subdivider would have had to comply with the procedure for processing a final map as laid out in the Map Act. In this case, no Final Map was ever applied for or filed.

In 1949, Martin owned two contiguous parcels, Parcel One and Parcel Two. As detailed in the previous paragraph, the Map Act of 1943 required that, if the division of these two contiguous parcels, for immediate or future sale, resulted in five or more parcels, then a Final Map was required. It can be presumed that Martin created the parcels for sale because within the next few years, he in fact sold the parcels. He sold two to Wilcoxn shortly after he acquired the original two parcels from Vermazen, sold two more to Andersen six years later and the last two sometime after that. Note also, that the language of the 1943 Map Act does not count only the *additional* parcels created by the division, it simply provides that if, after the division is done, there are more than five parcels, then the provisions for Tract Maps must be complied with.

The question then becomes how many parcels were created when Martin, through his sale to Wilcoxn in 1949, described the new property lines that separated Wilcoxn's property from Martin's lots to the north and south. If we accept the Applicant's contention that this sale transferred two lots to his predecessor Wilcoxn, then the same rationale must apply to the creation of two lots on the north and two lots on the south. The fact that Martin didn't sell these other lots immediately has no effect on the fact that they were created by the property lines defining Wilcoxn's parcels. The County Findings in support of the Board's action argue that somehow the situation whereby Martin conveyed out two of the lots by deed to Wilcoxn did not have the immediate result of creating six lots because Martin didn't sell the other four lots within a year. This assertion is inconsistent with the plain language of the 1949 Map Act. The Map Act effective at the time simply says if five or more lots, *"divided for the purpose of sale, whether immediate or future"* are created within a year, then the Map Act applies. A review of Exhibit 3 clearly shows that six lots were created at the moment Wilcoxn's north and south property boundaries were defined. In conclusion, Martin created six lots in March of 1949 and did not comply with the regulations for land divisions of more than five lots in a single year as required by the 1943 Map Act. The lots were created illegally and are, therefore not entitled to Certificates of Compliance under Section 66499.35 (a) of the current Subdivision Map Act.

The 1943 Map Act does include the following exemptions from its requirements in Section 11535 (b) (1) and (2) :

Business and Professions Code Section 11535 (b) " Subdivision "
does not include either of the following;

(1)Any parcel or parcels of land in which all (emphasis added) of the following conditions are present: (i) which contain less than five acres (ii) which abut upon dedicated streets or highways, (iii) in which street opening or widening is not required by the governing body in dividing the land into lots or parcels, and (iv) the lot design meets the approval of the governing body.

(2) Any parcel or parcels of land divided into lots or parcels each of a net area of one acre or more, a tentative map of which has been submitted to the governing body and has been approved by it as to street alignment and widths, drainage provisions and lot design.

The lots created by Martin in March of 1949 do not meet these criteria for exemption found in Section 11535 (b) (1) because they do not all abut on a dedicated street, a street opening would be required to serve at least one of the lots, and there is no evidence that the lot design was approved by the governing authority (San Luis County Board of Supervisors).

The lots created by Martin also do not meet any of the criteria for exemption found in Section 11535 (b) (2) because only four of the parcels created are greater than one acre in size with two of the lots being less than one acre each. There is also no evidence that Martin submitted a tentative map to the governing body and that the map was approved.

In conclusion, Martin divided two contiguous parcel into six lots in 1949 and did not comply with the subdivision requirements in place at that time nor were the lots exempt from the provisions of the Map Act. All of the resulting lots were therefore created illegally.

Wilcoxn to Thorbergsson In January of 1959, Wilcoxn conveyed a 2.2 acre portion of his 6.6 acre site to Thorbergsson. Overlooking the fact that the Wilcoxn parcel was created illegally, this conveyance was otherwise consistent with the land division rules at the time and resulted in the present configuration of the property.

Willfong Certificate of Compliance In 1976, a subsequent owner, Willfong obtained a single Certificate of Compliance for this site as presently configured. The legal description of the property included both of the lots, but did not describe them as different parcels. The parcel was identified by one APN. This Certificate predated Coastal Commission jurisdiction in this area.

Conclusion

The Applicant's lots were illegally created in 1949 and are not, as a matter of law, eligible to be processed as unconditional Certificates of Compliance. I have determined therefore that the County's action effectively granted two Conditional Certificates of Compliance to Mr. Schoenfield. Because the affected property is located within a "Special Resource Area " and between the first public road and the sea, the County's action is appealable to the Coastal Commission pursuant to Coastal Act Section 30603 (a) (1) (3) (4) and the provisions of Title 21, Section 23.01.043 (c) (1) (3) and (4). By way of this letter, I am requesting the County to forward a Notice of Final Local Action to the Santa Cruz District office that states that this item -- an effective grant of two Conditional Certificates of Compliance -- is appealable to the Coastal Commission.

If the County does not agree with this determination, CCR Title 14, Section 13569 (d) provides that "*the Commission shall hold a hearing for purposes of determining the appropriate designation*" and "*shall schedule the hearing....for the next Commission meeting (in the appropriate geographic region of the state)..*". Please advise me by May 24 of the County's position in this matter. If we do not hear from you by this date or if the County disagrees with this determination, we will schedule the determination for Commission hearing and action at the June meeting.

Sincerely,


for Peter Douglas
Executive Director
California Coastal Commission

c.c. Chair Achadjian
James Orton, Deputy County Counsel
Albert Schoenfield
Janice Rohn
Kerry Margason, John Wallace Associates
William Walter, Esq.
Ralph Faust, Chief Counsel

CALIFORNIA COASTAL COMMISSION

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W22d



ADOPTED

Filed: 11/6/01
49th day: 12/25/01
49 day waiver: 12/6/01
90th Day: 2/04/02
120th Day: 3/6/02
Staff: D. Landry
Staff report: 12/20/01
Hearing date: 1/09/02

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION**

Local government:..... San Luis Obispo County

Local Decision: (C00-0166) Approval

Appeal Number A-3-SLO-01-108

Applicant Albert Schoenfield Greg Saunders, Representative

Appellants: Janice Rohn

..... Mike Monegan

..... Commissioners Sara Wan and Dave Potter

Project Location..... 2731 Pecho Road, Los Osos, San Luis Obispo County

Project Description.... Approval of two Certificates of Compliance for a 1 acre parcel and a 3.2 acre parcel.

File Documents..... County File #C00-0166, "Commission Determination of Applicable Hearing and Notice Requirements pursuant to CCR Title 14, Section 13569" adopted August 7, 2001.

Staff Recommendation: Project raises a Substantial Issue.

Summary of Staff Recommendation:

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which an appeal has been filed.

The County's approval of two certificates of compliance for the parcel on Pecho Road is inconsistent with LCP policies that require coastal development permits for the project and with substantive policies and ordinances that require a minimum two and one half acre parcel size, protect environmentally sensitive habitat and require a demonstration that adequate private sewer and water services are available. The project did not receive a coastal development permit from the County, one of the parcels is well below



California Coastal Commission
January 9, 2002 Meeting in Los Angeles

Staff: D. Landry Approved by: *GL* 12/20/01

CCC Exhibit 8
(page 1 **of** 21 **pages)**

the minimum parcel size, no findings were made regarding the availability of services and, although the site is designated as "Terrestrial Habitat" (Morro Manzanita, and Morro Bay Kangaroo Rat) and no findings were made regarding the creation of an additional building site within this habitat. For these reasons, a substantial issue regarding consistency with the certified LCP exists.

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 Appellants Wan and Potter contend that the Board's action to approve two Certificates of Compliance without a coastal permit is inconsistent with the provisions of the Certified LCP that require new development in the Coastal Zone to be subject to the coastal development permit process. 9

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VIII. Exhibits

 Exhibit 1: County Certificate of Compliance Staff Report

 Exhibit 2: Text of Appeals

 Exhibit 3: Location Map

 Exhibit 4: Site Plan

 Exhibit 5: 13569 Adopted Findings

 Exhibit 6: Executive Director's Determination

 Exhibit 7: Urban Services and Urban Reserve Lines in South Bay

Staff Note: Staff notes that this report is only for the Substantial Issue question on this appeal. It is expected that if the Commission takes jurisdiction over this item, the de novo staff report will fully analyze the, in some cases, novel issues presented by this project. Due to the fact that the County approved this project outside of the required Coastal Development Permit process, Commission staff did not have the usual advantage of the County's analysis for LCP consistency. Because of this procedural anomaly, staff thus could only find that because all analysis was omitted, the project



appears on several levels to be inconsistent with cited LCP provisions. A full analysis in the de novo staff report must be done in order to make a final determination on the project.

I. Local Government Action

In 2000, Mr. Schoenfield applied for two Unconditional Certificates of Compliance (C00-0166). In October of 2000, County staff prepared a report on the proposal and recommended that only one certificate for the entire site be approved. The report stated that the Applicant was not entitled to two Unconditional Certificates of Compliance as the lots had been created illegally in 1949 and were thus not eligible to receive *Unconditional* Certificates pursuant to Map Act and County requirements. (Please see Exhibit One, County Staff Reports and Board action) On November 14, 2000, the Planning Director approved the issuance of **one**, unconditional Certificate of Compliance.

The Planning Director's decision was challenged by the Applicant and a hearing before the Board of Supervisors was set for March of 2001. A staff report recommending that the Planning Director's decision be upheld was prepared.

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the Applicant's parcels had not been created illegally in 1949 and he was, therefore entitled to two, unconditional Certificates of Compliance. Since the Board had determined this was a ministerial act, no notice of their action was sent to the Commission,

II. Commission 13569 Determination

After the Board's action to approve two unconditional Certificates of Compliance, an appeal of the decision was made by Janice Rohn and received at the Commission offices on April 30, 2001. Ms. Rohn was advised by Commission staff that no "Notice of Final Local Action" on this item had been received and an appeal period could not be initiated until such receipt. She then asked the County to request an Executive Director's Determination pursuant to CCR Title 14, Section 13569 of the Commission's regulations. Ten days later, the County indicated that such a request would not be forthcoming. In response, the Executive Director, stated that, in his opinion, the dispute resolution process outlined in Section 13569 was applicable in this case and determined that the County had effectively issued two Conditional Certificates of Compliance which were appealable to the Coastal Commission. The County disagreed



with this determination and the matter was set for hearing before the Coastal Commission to determine whether the Board's April 10 action constituted appealable development.

A staff report regarding the dispute was prepared for Commission consideration as outlined in CCR Title 14, Section 13569 of the regulations. The hearing was originally set for June 2001 but was postponed twice, once at the request of the applicant (June) and once at the request of the San Luis Obispo County Counsel (July). The issue was presented to the Commission at the August meeting. The Commission unanimously determined that the project was appealable because the process for conditional, rather than unconditional Certificates of Compliance requires coastal development permits because Conditional Certificates are considered "development" under the terms of the Coastal Act and LCP definition of development. Due to the location of the project, between the first public road and the sea and within a mapped "Special Resources Area" (SRA), the Commission found the project was appealable to the Commission.

Subsequent to the Commission's August action, the County was advised by letter that a notice of final local action should be forwarded to the Commission in order to begin the ten working day appeal period. In the absence of a timely notice, Commission staff stated an appeal period would be unilaterally initiated. A letter from the County was received on October 15, 2001, stating that a local notice would not be forthcoming. On October 25, the ten day appeal period was commenced.

III. Summary of Appellants' Contentions

Appeals by Commissioners Wan and Potter and local citizens Rohn and Monegan were timely filed on November 6, 2001.

Appellants Rohn and Monegan contend that the action taken by San Luis Obispo County is inconsistent with provisions of the certified LCP relevant to minimum parcel sizes, scenic corridors, urban/rural boundary, scenic resources and environmentally sensitive habitats.

Commissioners Wan and Potter contend the action is inconsistent with LCP policies and ordinances that require a coastal development permit for the project, minimum parcel size, consideration of the availability of sewer and water services and the protection of identified habitat areas. The complete text of the appellant's contentions is found in Exhibit Two.



IV. Standard of Review for Appeals

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

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.

V. Staff Recommendation on Substantial Issue

The Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "NO" vote on the following motion:

"I move that the Commission determine that Appeal No. A-3-SLO-01-108 raises no substantial issue with respect to the grounds on which the appeal has been filed."

A majority of the Commissioners present is required to pass the motion, failure of the motion, as recommended by staff, will result in Commission jurisdiction over the project and adoption of the following findings.

VI. Recommended Findings and Declarations

The Commission finds and declares as follows:



A. Project Location

The proposed parcels are located at 2731 Pecho Road in Los Osos, San Luis Obispo County. The 4.2 acre site, which contains one single family home near the western property line, is bounded by Morro Bay Dunes Nature Preserve on the west and is located between the first public road and the sea. Surrounding land use includes single family residential development to the north, south and east and park/open space uses to the west. The site is located outside the "Urban Service Line" but within the "Urban Reserve Line" and is zoned "Residential Suburban with a minimum lot size of 2.5 acres. Land use and development in this area are regulated by the policies and ordinances of the Certified San Luis Obispo LCP, including the "Estero Area Plan". (Please see Exhibit Three, Location Map)

B. Project Description and Background

The proposed project is for the recognition of two parcels (1 acre and 3.2 acres) through the Certificate of Compliance process found in Section 66499.35 of the Map Act (Government Code). The proposed one acre parcel contains an existing one story approx. 3000 sq. ft. single family home sited near the western boundary and accessed by a driveway off Pecho Road. The proposed approx. 3.2 acre parcel lies adjacent to Pecho Road and is currently undeveloped. (Please see Exhibit Four, Site Plan) The site is gently rolling and contains coastal scrub vegetation. It has been identified in the LCP as providing habitat for the Morro Bay Kangaroo Rat and Morro Manzanita. The United States Fish and Wildlife Service have included the site within the critical habitat for the Morro Bay Kangaroo Rat.

C. Background

Subdivision Map Act and Coastal Act / LCP Requirements: The Subdivision Map Act provides for the approval of Certificates of Compliance and Conditional Certificates of Compliance (Gov't. Code Section 66499.35) Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A Conditional Certificate of Compliance is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, Certificates of Compliance do not create new parcels, they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions (if the illegal subdivider is still the owner) or the rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35 (b)). The creation of the new parcels constitute development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit.



San Luis Obispo LCP: The certified LCP provides a procedure for considering Conditional Certificates of Compliance that includes notice, hearing and appeal provisions. Action on Conditional Certificates of Compliance for property located in the coastal zone appeal areas is appealable to the Coastal Commission (Title 21, Section 21.02.020). Section 21.01.010 (d) of Title 21 provides that action on a Conditional Certificate of Compliance constitutes action on the Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the applicable policies and implementing ordinances of the LCP.

Original Creation of the Parcels: As detailed in the staff report regarding the "Commission's Determination of Applicable Hearing and Notice Requirements" (Agenda item Tu11a, Adopted August 7, 2001), the subject parcels were created by a series of conveyances beginning with the original land grant in 1893. Most of these conveyances complied with the relevant law at the time they were accomplished. In 1949, however, a previous owner, Mr. Martin, created six parcels without complying with the requirements of the Subdivision Map Act in effect at that time. (Please See Exhibit Five, pages 9 through 12 for a complete discussion). Subsequent conveyances resulted in the present parcel configuration.

1976 Certificate of Compliance

In 1976, Mr. Willfong owned the property and obtained a single Certificate of Compliance for this site as presently configured. The legal description of the property included both of the lots, but did not describe them as separate parcels. The parcel was identified by one Assessor's Parcel Number (APN). This Certificate pre-dated Coastal Commission jurisdiction in the area because it was outside the 1000yard Coastal Zone Boundary.

1989 Approval of a Single Family Home

The applicant, Mr. Schoenfield, acquired the property in 1987. In 1989, he applied for and was granted a coastal development permit for the construction of a single family home on the site. The existing house is located within a few feet of the proposed new property line between proposed parcel one and parcel two and thus will become non conforming for reasons of inadequate set backs if the present proposed parcel configurations go forward. The application and staff report prepared for the project lists the lot size as 4.4 acres. Based on this assertion regarding parcel size, the County found that the project was consistent with LCP provisions regarding the 2 ½ acre minimum lot size. Potential impacts on habitat were discussed in the staff report and the project was conditioned to require easements to protect habitat values on the western portion of the property. The project was not appealed to the Coastal Commission.



1995 Land Division

In 1995 Mr. Schoenfield applied for a land division to divide his parcel into two parcels of 1 and 3.2 acres configured exactly as the lots recently authorized by the County's action on the Certificates of Compliance. The staff report for this project included a letter from USFWS that stated there would be adverse impacts on habitat values if the land division was approved and an additional house built on the site. The land division was denied by the Planning Commission as recommended by county staff because one of the resulting lots could not meet the minimum parcel size of two and one half acres. This denial was appealed to the Board of Supervisors who subsequently approved the land division for two lots of 2 and 2.2 acres. The map was never recorded and the permit for this land division expired.

2000 Application for Two Certificates of Compliance

In 2000, Mr. Schoenfield applied for two unconditional Certificates of Compliance (C00-0166). In October, the County staff prepared a staff report on the proposal and recommended that only one Certificate of Compliance be issued for the entire site. (See Exhibit One, County Staff Report). The staff report inferred that although the two claimed lots had been created illegally in 1949, the approval of a development permit for the house in 1989 entitled the applicant to one certificate for the entire parcel under Section 66499.35(c) of the Map Act. On November 14, 2001, the Planning Director authorized the issuance of one, unconditional Certificate of Compliance.

The applicant appealed the decision of the Planning Director to the Board of Supervisors (under the terms of the County Real Property Ordinance (Title 21) only the applicant may appeal the Planning Director's decision on Certificates of Compliance) and a hearing on the matter was scheduled for March of 2001. A staff report recommending that the Planning Director's decision should be upheld was prepared. A copy of this report was sent to Commission staff with a cover memo indicating that if the Director's decision was over-ruled, "Staff fully expects that if the Board overturns the Director's decision and approves two certificates both would be conditional certificates of compliance." The report also notes that the project is in a "coastal appeal zone".

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the applicant's parcels had not been illegally created in 1949 and he was therefore, entitled to two, unconditional Certificates of Compliance. Since the Board had determined that the outcome of the appeal was a ministerial act, no notice was sent to the Commission. Nonetheless, an appeal of the action was made by Janice Rohn and received in the Commission's office on April 30, 2001. Ms. Rohn was advised by Commission staff that no Notice of Final Local Action on this item had been received and an appeal could not be initiated until such receipt. She then asked the County to request an Executive Director's determination pursuant to CCR Title 14, Section 13569 of the Commission's regulations.



A parallel dispute resolution process is found in the County's Certified LCP in Title 23, Section 23.01.041(g)(1) and (2).

2001 Section 13569 Determination

Ten days after the receipt of Ms. Rohn's request for an Executive Director's Determination, the County responded by stating that such a request would not be forthcoming inconsistent with the provisions of the County's ordinance relevant to this issue and with Section 13569 of the Commission regulations. The Executive Director stated that, in his opinion, the dispute resolution process was applicable and determined that the County had effectively issued two Conditional Certificates of Compliance which were appealable to the Commission. (Please see Exhibit Six, Executive Director's Determination). The County disagreed with this determination and, pursuant to 13569(d), the item was scheduled for hearing by the Coastal Commission.

The Commission heard the item on August 7, 2001 and voted to uphold the Executive Director's determination that the County had effectively issued two Conditional Certificates of Compliance that were appealable to the Coastal Commission.

The County was advised of the Commission's action by letter dated September 13, 2001. The letter requested the County to forward a Final Notice of Local Action to the Commission's Santa Cruz Office so that an appeal period could be started. The letter also informed the County, that if the notice was not sent, the Commission would unilaterally initiate an appeal period. In a letter received on October 15, 2001, the County advised that a Final Notice of Local Action would not be sent. The ten working day appeal period was initiated on October 25, 2001. Timely appeals were filed on November 6, 2001.

D. Substantial Issue Analysis

1. Procedural Requirements for the Issuance of Conditional Certificates of Compliance

Appellants Contentions:

Appellants Wan and Potter contend that the Board's action to approve two Certificates of Compliance without a coastal permit is inconsistent with the provisions of the Certified LCP that require new development in the Coastal Zone to be subject to the coastal development permit process.

Local Coastal Plan Provisions:

The certified San Luis Obispo Co. LCP requires that all development undertaken within the coastal zone is subject to the coastal development permit process. The proposed project is located within the County's coastal zone, is defined as development in the



LCP and thus must obtain a coastal development permit. The relevant ordinances are as follows:

21.01.010 – Title – Purpose.

- (c) *It is further the purpose of this title to regulate divisions of land to promote the orderly development of real property; to protect purchasers and surrounding landowners; to prevent circumvention of existing real property division, zoning and building ordinances and regulations; and to insure adequate services.*
- (d) *It is further the purpose of this title to implement the county general plan and certified local coastal program. Approval of a lot line adjustment, tentative parcel map, tentative tract map, vesting tentative map, reversion to acreage, determination that public policy does not necessitate the filing of a parcel map, modification of a recorded parcel or tract map, or conditional certificate of compliance under Government Code section 66499.35(b) shall constitute approval of a coastal development permit as a local government equivalent in accordance with the certified local coastal program and the California Coastal Act of 1976.*

21.01.020 – Definitions. *In addition to those set forth in the Subdivision Map Act and Title 22 and Title 23 of this code, the following definitions shall be used in interpreting this title:*

- (r) **“Subdivision development”** *within the coastal zone of the county is defined in Section 21.08.020 of this title.*

21.08.020 – Special notice and appeal requirement for the coastal zone. *Sections 21.08.020 through 21.08.038, inclusive, establish special notice, appeal, and hearing requirements which apply to subdivision development in the coastal zone of the county.*

- (a) **Subdivision development defined.** *For purposes of Sections 21.08.020 through 21.08.038, inclusive, subdivision development means lot line adjustments, tentative parcel maps, tentative tract maps, vesting tentative maps, reversions to acreage, determinations that public policy does not necessitate the filing of a parcel map, modifications of a recorded parcel or tract map, conditional certificates of compliance under Government Code section 66499.35(b), when located in the coastal zone of the county.*

Substantial Issue Analysis and Conclusion

The Commission has determined that the County effectively issued two Conditional Certificates of Compliance to the applicant, but did not require compliance with the



coastal development permit process. Failure to follow the coastal development permit process resulted in the approval of a land division that does not implement the LCP and circumvents the requirements of Title 23 contrary to the provisions of Title 21.01.010. County action on the project was also inconsistent with the hearing and notice requirements for appealable development in the County's coastal zone as laid out in Title 21.08.020(a) because the notice provisions found in Title 23 were not followed. The County approval of new development in the coastal zone without subjecting the project to the coastal development process does; therefore, raise a substantial issue regarding consistency with the certified LCP.

2. Environmentally Sensitive Habitat (ESHA)

Appellants Contentions:

Commissioners Wan and Potter and Appellants Rohn and Monegan contend that the proposed project is located within an identified terrestrial habitat area but the required evaluation of the project for compliance with LCP policies that provide standards for new development in or near ESHA was not undertaken.

Local Coastal Plan Provisions

23.07.160 – Sensitive Resource Area (SRA):

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:

- 23.07.162 *Applicability of Standards*
- 23.07.164 *SRA Permit and Processing Requirements*
- 23.07.166 *Minimum Site Design and Development Standards*
- 23.07.170 *Environmentally Sensitive Habitats*
- 23.07.172 *Wetlands*
- 23.07.174 *Streams and Riparian Vegetation*
- 23.07.176 *Terrestrial Habitat Protection*
- 23.07.178 *Marine Habitats*



23.07.162 – Applicability of Standards:

The standards of Sections 23.07.160 through 23.07.166 apply to all uses requiring a land use permit that are located within a Sensitive Resource Area combining designation.

23.07.164 – SRA Permit and Processing Requirements:

The land use permit requirements established by Chapters 23.03 (Permit Requirements), and 23.08 (Special Uses), are modified for the SRA combining designation as follows:

- (a) **Initial submittal:** The type of land use permit application to be submitted is to be as required by Chapter 23.03 (Permit Requirements), Chapter 23.08 (Special Uses), or by planning area standards. That application will be used as the basis for an environmental determination as set forth in subsection c of this section, and depending on the result of the environmental determination, the applicant may be required to amend the application to a Development Plan application as a condition of further processing of the request (see subsection d).
- (b) **Application content:** Land use permit applications for projects within a Sensitive Resource Area shall include a description of measures proposed to protect the resource identified by the Land Use Element (Part II) area plan.
- (c) **Environmental Determination:**
 - (1) When a land use permit application has been accepted for processing as set forth in Section 23.02.022 (Determination of Completeness), it shall be transmitted to the Environmental Coordinator for completion of an environmental determination pursuant to the California Environmental Quality Act (CEQA).
 - (2) The initial study of the environmental determination is to evaluate the potential effect of the proposed project upon the particular features of the site or vicinity that are identified by the Land Use Element as the reason for the sensitive resource designation.
 - (3) Following transmittal of an application to the Environmental Coordinator, the Planning Department shall not further process the application until it is:
 - (i) Returned with a statement by the environmental coordinator that the project is exempt from the provision of the CEQA; or
 - (ii) Returned to the Planning Department accompanied by a duly issued and effective negative declaration which finds that the



proposed project will create no significant effect upon the identified sensitive resource; or

- (iii) Returned to the Planning Department accompanied by a final environmental impact report approved by the Environmental Coordinator.

(d) Final permit requirement and processing:

- (1) *If an environmental determination results in the issuance of a proposed negative declaration, the land use permit requirement shall remain as established for the initial submittal.*
- (2) *If an environmental impact report is required, the project shall be processed and authorized only through Development Plan approval (Section 23.02.034).*

(e) Required Findings: *Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:*

- (1) *The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
- (2) *Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
- (3) *Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.*
- (4) *The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

23.07.170 – Environmentally Sensitive Habitats:

The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.



- (a) **Application content:** A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
- (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.
 - (2) Recommends conditions of approval for the restoration of damaged habitats, where feasible.
 - (3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.
 - (4) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.
- (b) **Required findings:** Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:
- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
 - (2) The proposed use will not significantly disrupt the habitat.
- (c) **Land divisions:** No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.
- (d) **Development standards for environmentally sensitive habitats:**
- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
 - (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.



- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4) Development shall be consistent with the biological continuance of the habitat.
- (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards.)

POLICIES FOR ENVIRONMENTALLY SENSITIVE HABITATS

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

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 2: Permit Requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

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

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

Substantial Issue Analysis and Conclusion

The site is located within an area identified in the LCP as a "Special Resource Area: Terrestrial Habitat". Earlier permit actions for development of the site stated that the property was located within the "critical habitat" identified by the United States Fish and



Wildlife Service (USFWS) for the Morro Bay Kangaroo Rat, an endangered species. The initial study prepared by the County for a land division proposed in 1995 stated that the project could result in significant environmental impacts on the endangered banded dune snail, Indian Knob Mountain balm and Morro Manzanita, an endangered plant species that exists on the site. In response to the County's concerns regarding habitat values on the site, the applicant proposed a number of mitigations to address the issue. (Please see Exhibit Seven, 1995 County staff report, ED95-106 (S940127P/C094-076). Diane Noda, Field Supervisor with the USFWS wrote in a letter dated October 12, 1995 expressing concerns regarding the biological survey methods used and recommended additional mitigation measures.

Based on the information contained in the previous County actions on development proposals for the site and on the specific identification as a "SRA" in the LCP, it is clear that the site contains ESHA. The policies and ordinances cited above provide the standards for new development proposed within or adjacent to environmentally sensitive habitat areas in the coastal zone of San Luis Obispo County. Typically these LCP provisions would be analyzed and addressed in the course of the County's coastal development permit deliberations as was the case with the three previous CDP applications submitted by the Applicant for new development on this site (1989 application for a single family home, 1995 application for land divisions). In the most recent county action, which is the subject of this appeal, the coastal development permit process was not followed and therefore none of the relevant ESHA policies or ordinances were considered nor, of course, were any mitigations that would have ordinarily been applied to land divisions within and near ESHA required as a condition of approval. Based on the facts that the County has, in the recent past, found that the site contains environmental sensitive habitat, Commission staff has found no information to indicate that the habitat values on the site have been altered and the Commission has determined that a coastal development permit is required for the project, the County's failure to perform the analysis needed to determine if the project was consistent with the resource protection policies cited above represents a substantial issue regarding consistency with the certified LCP.

3. Public Works

Appellants Contentions:

Commissioners Wan and Potter contend that the proposed project is inconsistent with Public Works Policy One (Certified Land Use Element, page 8-7) that requires a demonstration that adequate public or private services are available for new development, including land divisions.

Local Coastal Program Provisions:

The Certified LCP contains the following policy relevant to the provision of public or private public services for new development:



Policy 1: Availability of Service Capacity

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

The Applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the appropriate service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021 © OF THE CZLUO]

Section 23.04.021(c) Overriding land division requirements, All applications for land divisions within the Coastal Zone (except condominium conversions) shall satisfy the following requirements...

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

(ii) A proposed land division between the urban services line and the urban reserve line shall not be approved unless the approval body first finds that sufficient water and sewage disposal services are available to accommodate both existing development within the urban services line and development that would be allowed on presently vacant parcels within the urban services line.

Substantial Issue Analysis and Conclusion

The Public Works Policy and Ordinance cited above ensure that new development, including land divisions, will not be approved unless it can be shown that adequate services are available to support the additional development. For projects like this one that are located outside the Urban Service Line (USL) but within the Urban Reserve Line (URL), Policy One seems to require that the Applicant must demonstrate that the new development can be adequately served by *private*, on site, water and waste



disposal systems as the use of municipal services are not permitted beyond the USL. Typically, adequate private services would be demonstrated by showing that a well and septic system that met county health standards could be installed on the site. The Commission notes that one of the reasons the 1996 land division, a proposal identical to the current appeal, was recommended for denial by the county staff and the Planning Commission was because it was *"inconsistent with Section 23.04.021C(3) and Section 21.03.00101 (3) of the Real property Division Ordinance because it states that to: To minimize conflicts between agricultural and urban land uses, land divisions requiring new community water or sewer service extensions beyond the urban services line shall not be approved"..... and this subdivision would require additional water service outside the urban service boundary.*" (excerpt from March 4, 1996 County Staff Report)

The ordinance section cited above implies the use of public services for new land divisions between the USL and the URL *may* be allowed, but only if existing services are adequate to serve both the new land division and all development within the USL and all potential development on vacant lots within the USL. The certified Estero Plan (1988) states that *"growth in the South Bay area will be limited until alternative water supplies are available"*. (page 5-4) In the thirteen years since the Estero Plan was certified, no new water sources for the South Bay have been found. The November 1998 Draft Estero Plan Update states that a Resource Management Level III (the most severe constraint) on water capacity will be reached when the population is over 12,660 people. (page 3-5) The population of Los Osos area as of 1996 is given in the draft plan as 14,568, well above the figure triggering a Level III of severity.

In this case, the recent county action created two parcels, one of which is currently developed with a single family home but one of which is vacant. There is, however, no finding in the record to demonstrate that the newly created, vacant parcel has adequate private services and therefore the county action raises a substantial issue regarding consistency with Public Works Policy One of the Certified LCP. There is also no finding that public services are available to serve the newly created lot as well as all development (existing and potential) within the South Bay USL which raises a substantial issue relevant to consistency with Title 23, Section 23.04. 021 of the certified LCP, Implementation Plan.

4. Land Use Density

Appellant's Contentions:

Appellants Wan, Potter, Rohn and Monegan contend that the proposed project to create two parcels of 1 and 3.2 acres is inconsistent with the Certified South Bay Urban Area Standard 2 (f) that limits the minimum parcel size on this site to two and one half acres.



Local Coastal Program Provisions:

The site is located within the geographical area governed by the provisions of the "Estero Area Plan". The Estero Area Plan includes the following policy relevant to minimum parcel sizes for land, such as the subject parcel, that is located outside the Urban Services Line.

2. Interim Service Capacity Allocations

(f) Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay area standards, shall not be less than two and one half acres.

The Estero Area Plan explains, as follows, the weight given to these standards and how they are to be interpreted in light of any conflicting LCP provisions.

"Chapter 8; Planning Area Standards

This chapter contains special "standards" for the Estero Planning Area. Standards are mandatory requirements for development, designed to handle identified problems in a particular rural area or to respond to concerns in an individual community...

These requirements apply to proposed projects in addition to provisions of the Land Use Ordinance (LUO) or Coastal Land Use Ordinance (CZLUO). Where these standards conflict with the LUO or the CZLUO, these standards control...

Substantial Issue Analysis and Conclusion

The 4.2 acre site is located west of Pecho Road in the South Bay Planning Area. The "Land Use Categories" map included in the Estero Area Plan show this parcel to be *outside* the Urban Service Line by several hundred feet and just within the boundary of the Urban Reserve Line. (Please see Exhibit Seven). South Bay Urban Standard 2 (f) thus applies to land divisions of this site unless there is specific policy direction elsewhere in the South Bay standards that provide for a different minimum parcel size. A review of the South Bay standards does not reveal any other specific policy that would change the density provisions of two and one half acres as minimum parcel sizes for this site. The county action to create a one acre parcel therefore raises a substantial issue regarding conformity with South Bay Area Standard 2 (f), part of the Certified San Luis Obispo County LCP.



Visual Resources

Appellant's Contentions:

Appellants Rohn and Monegan contend that approval of the project conflicts with LCP policies relevant to the preservation of scenic corridors and visual resources.

Local Coastal Plan Provisions:

The Certified LCP does not contain any visual resource policies specifically relevant to land divisions in this part of the Estero Planning Area. The Land Use Element (LUE) however contains general visual resources policies applicable throughout the County's Coastal Zone. The following LUE policies should be considered in an analysis of the proposed project to ensure consistency with the LCP.

Policy 2: Site Selection for New Development

Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 7: Preservation of Trees and Native Vegetation

The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]

Substantial Issue Analysis:

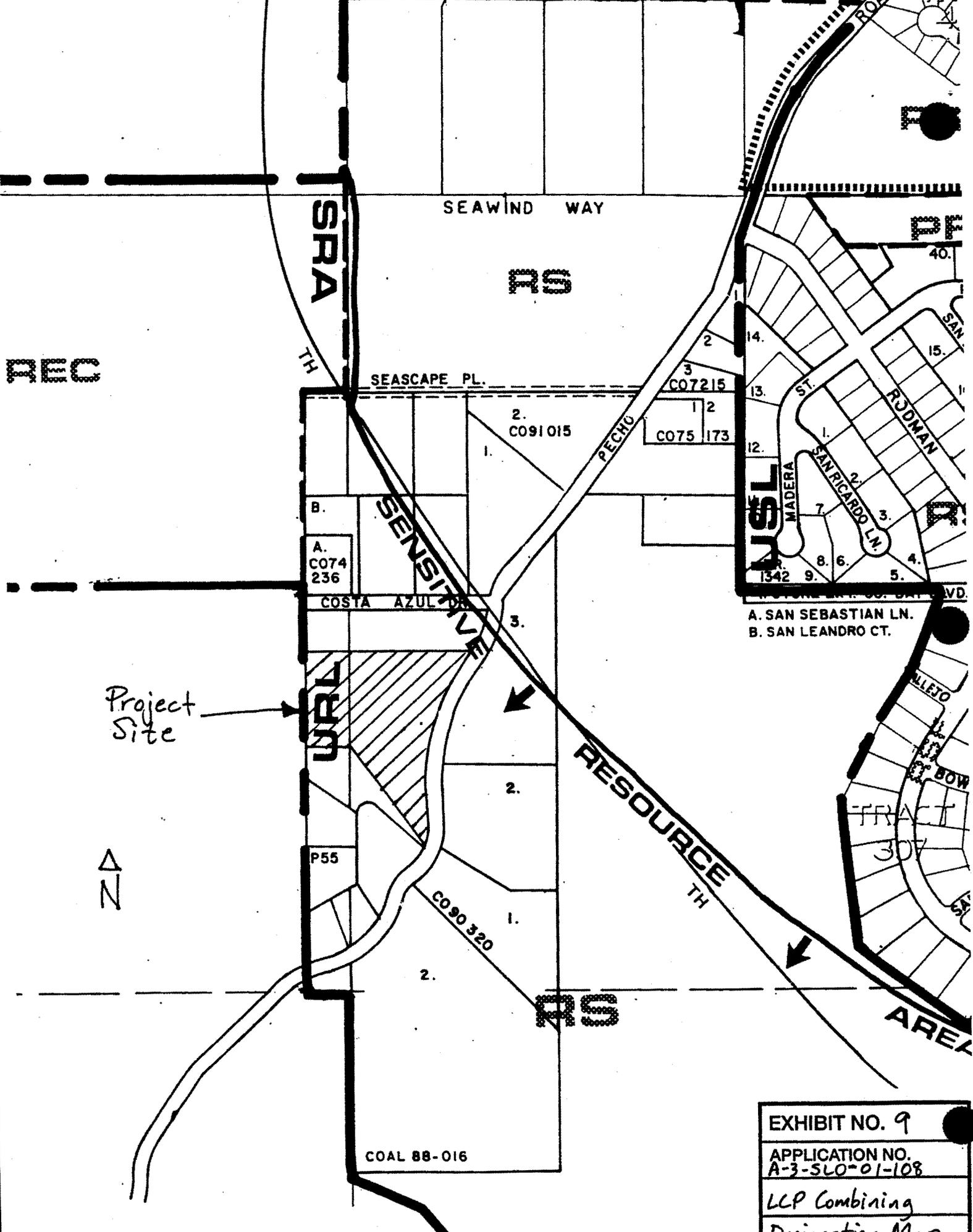
The site of the proposed project is located on the west side of Pecho Road, which provides primary access to nearby Montano de Oro State Park. The sloping site is fully visible from Pecho Road and is currently developed with a single story home located towards the rear of the parcel. As discussed in the Finding on Environmentally Sensitive Habitat, the site contains a variety of native vegetation as well as non native landscaping materials. The vicinity of the project site has an attractive rural character of rolling hills and scattered homes. The proposed project will create an additional building site in this area.

Policy Two requires that new development in scenic areas such as this should be sited to minimize visual intrusion into the public viewshed. In this case, the impact of an additional home on views from Pecho Road should be considered as part of the analysis of the project. The County action did not include any analysis of the potential impacts on the public viewshed and therefore presents a substantial issue regarding consistency of the project with the Visual Resource Policies of the certified LCP. Policy



Seven requires the protection of native vegetation. This site contains considerable native vegetation and there was no analysis of the potential impact of an additional home on this resource. This analytical omission also raises a substantial issue regarding conformance with the certified LCP.





REC

SRA

SEAWIND WAY

AS

SEASCAPE PL.

SENSITIV TH

CO91015

A. CO74 236

CO7215

CO75 173

COSTA AZUL DR

3.

A. SAN SEBASTIAN LN.
B. SAN LEANDRO CT.

Project Site

TRM

2.

RESOURCE TH

N

P55

CO90320

1.

2.

AS

COAL 88-016

EXHIBIT NO. 9
APPLICATION NO.
A-3-SLO-01-108
LLP Combining
Designation Map