STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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APPEAL STAFF REPORT
SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....**A-3-SLO-03-017; Barker-Delp SFD**

Applicant.....Glenn Barker & Sharon Delp

Appellants.....Ken Renshaw; Lila Evans

Local government.....San Luis Obispo County

Local decision.....Approved with conditions (January 14, 2003)

Project location.....St. Thomas Ave. (approx. 600 ft. southeast of St. James), Cambria, San Luis Obispo County (APN(s) 023-163-014, 023-163-031).

Project description.....Construct a single family residence with a 2,240 sq. ft. footprint and 3,795 sq. ft. of gross structural area.

File documents.....San Luis Obispo County Certified Local Coastal Program (LCP); Local Permit # D000482P.

Staff recommendation...**No Substantial Issue**

EXECUTIVE SUMMARY

San Luis Obispo County approved the construction of a 3,795 square foot single-family residence in the community of Cambria, San Luis Obispo County. New development in Cambria being permitted by the County is generally limited to those projects that the Cambria Community Service District (CCSD) committed to serving prior to the declaration of the water supply emergency, otherwise referred to as "pipeline projects". The proposed development that is the subject of this appeal is an example of such a pipeline project.

At the December 2002 Commission meeting in San Francisco, the Commission established criteria that would be required in order to approve the remaining "pipeline" projects. Namely, the Commission required the inclusion of a special water retrofitting condition that is designed to offset the increase in water demand within the service area in an amount equal or greater to the anticipated water use of the project. At that same meeting, the Commission instructed Staff to work with the County to incorporate the special retrofitting condition into all "pipeline" project approvals as a way to avoid future appeals.

The appellants claim that the approved project: (1) is inconsistent with the requirements of the LCP regarding water availability; (2) disregards the Commission's requirement for "prior to issuance retrofitting", and; (3) will apply a more lenient standard of approval than has previously been applied by the Commission due to the timing and method of special condition compliance.

These contentions do not raise a substantial issue of conformity of the County-approved project with the certified LCP because: (1) the County-approved project retains the relevant provisions of the Commission's previously approved special retrofit condition for "pipeline" water projects; (2) the purpose of the provision, which is to achieve "no net increase in water demand", is maintained through the County-approved project, and; (3) the County-approved project will not impact coastal resources

Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to this project's conformance with the certified San Luis Obispo County Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project.

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1. Project Vicinity Map
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3. County Conditions of Approval
4. Appellants' Contentions
5. Applicants Statement

I. Local Government Action

The County of San Luis Board of Supervisors unanimously approved the proposed development on January 14, 2002, subject to 26 conditions (see Exhibit 3 for the County's conditions). The County also approved a Mitigated Negative Declaration under the California Environmental Quality Act.

II. Summary Of Appellants' Contentions

Please see Exhibit 4 for the full text of the appeal.

The appellants, Ken Renshaw and Lila Evans, have appealed the final action taken by the County on the basis that approval of the project does not impose the Commission's adopted water retrofitting provision for determining water availability under the LCP. They also contend that the manner in which condition compliance is carried out through the County's process is inadequate and undermines the purpose of the retrofitting condition.

III. Standard of Review for Appeals

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

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

IV. Staff Recommendation On Substantial Issue

MOTION: ***I move that the Commission determine that Appeal No. A-3-SLO-03-017 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and the adoption of the following resolution and findings, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the

appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-SLO-03-017 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

A. Project Location and Description

The project is located on the north side of St. Thomas Avenue, approximately 600 feet southeast of St. James Way, in the Community of Cambria in the North Coast planning area. The project site is a triple lot of approximately 10,443 square feet (please see Exhibit 2 for project plans). The County approval authorizes the construction of a new single-family residence with a 2,240 square feet footprint, and 3,795 square feet of gross structural area. The overall height of the proposed residence is 28 feet, as measured from the average natural grade.

B. Substantial Issue Determination

1. Public Services

a. Relevant Local Coastal Program Provisions

As required by Public Works Policy 1, all new development must demonstrate that there is sufficient water supply to serve the development:

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

This policy is implemented by CZLUO 23.04.430:

> ***CZLUO Section 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 . . .

b. County Action

On January 14, 2003 the San Luis Obispo County Board of Supervisors approved the Minor Use/Coastal Development Permit D000482P subject to 26 conditions. The staff report indicates that water is to be provided by Cambria Community Service District (CCSD), which extracts underflow (shallow groundwater) from both Santa Rosa and San Simeon Creeks. The County made no specific findings with regard to water availability, but rather, states that the CCSD's Intent-to-Serve letter is document attesting to the District's capabilities. The County accepted this document as evidence of adequate water to serve the proposed project.

On December 12, 2002, the Commission heard on appeal two "pipeline projects" (Hudzinski and Monaco). The Commission approved both projects subject to a special retrofitting condition that offsets the additional water withdrawals caused by the project. Only with the inclusion of this special condition could the Commission approve the proposed developments. At that hearing, the Commission stated that future Cambria "pipeline" projects incorporating the same conditions would not warrant an appeal and would receive a Commission staff recommendation of "no substantial issue" if appealed by another party.

In this case, the County has included the special retrofitting provision as a condition of approval. However, the County condition requires evidence of the offsetting retrofit "prior to the issuance of the building permit" approved by the "Planning Director", rather than "prior to issuance of the coastal development permit" approved by the "Executive Director". According to the County, the language was modified to allow condition compliance to be performed through the existing local government process.

c. Analysis

1. History/Background

1977 Coastal Development Permit

The Coastal Commission has been concerned with the lack of water to support new development in Cambria since the adoption of the Coastal Act. As early as 1977, in a coastal permit to allow the Cambria Community Services District (CCSD) to begin drawing water from San Simeon Creek, the Commission expressed concern about overdrafting this groundwater basin. In that permit, the Commission limited the urban service areas for this new water supply and identified the maximum number of dwelling units that could be served as 3,800[1]. A condition of that 1977 coastal development permit stated that:

> *use of all District wells on Santa Rosa Creek shall be discontinued when water production from San Simeon Creek has been established. Any continued permitted use of the Santa Rosa Creek wells shall be limited to the*

[1] Application 132-18.

supplementing of San Simeon Creek well production in years when the 1230 acre feet cannot be safely removed. Except in the emergency situations defined below, the withdrawal of water from Santa Rosa Creek shall not exceed 260 acre feet during the dry season which normally extends from July 1 through November 20 and shall not exceed 147 acre feet per month at any other time. At no time shall the combined withdrawal from San Simeon Creek and Santa Rosa Creek exceed the 1230 acre feet annually. In addition, the following emergency situations shall be permitted: fire or any emergency use authorized by the State Water Resources Control Board or the State Health Department. Until the San Simeon Creek wells are functioning, no new water permits shall be permitted in the District.

LCP Certification

When the Land Use Plan of the County's LCP was certified in 1984, the concern remained that there was inadequate water to serve existing parcels within Cambria. The findings regarding Cambria stated that based on the land uses and intensities designated in the LUP for subdivided and un-subdivided land, 8,150 dwelling units could be developed; however, it was estimated that the community of Cambria had adequate water and sewage capacities to serve 5,200 dwelling units (in 1984). The findings continue to state:

Buildout of the existing subdivided parcels alone within the USL [Urban Services Line] would result in a number of dwelling units for which there is inadequate sewer and water capacity. Clearly the community does not have adequate services to supply the LUP proposed development within the USL without severely overcommitting its water supplies and sewage treatment facilities.

1998 North Coast Area Plan

More recently, the Commission evaluated available water supply for Cambria in its review of the County's North Coast Area Plan update. After evaluating the availability of water in San Simeon and Santa Rosa Creek, the Commission found that existing development (1997) may be overdrafting these creeks, and adversely affecting wetlands and riparian habitats. Thus, the Commission adopted findings and a suggested modification that would require completion of three performance standards prior to January 1, 2001: completion of an instream flow management study for Santa Rosa and San Simeon Creek; completion of a water management strategy which includes water conservation, reuse of wastewater, alternative water supply, and potential off stream impoundments; and cooperation of the County and CCSD to place a lot reduction ballot measure before the Cambria electorate. If these standards were not performed by January 1, 2001, the modification required a moratorium on further withdrawals from San Simeon and Santa Rosa Creeks.

Although the County never accepted the modified amendment and this development is therefore not subject to the moratorium provision, the severity of the measures proposed reflects the gravity of the community's future if development continues to be permitted at its existing rate.

2001 Periodic Review

The Coastal Act requires that every certified LCP be reviewed periodically to determine whether the LCP is being effectively implemented in conformity with the policies of the Coastal Act. On July 12, 2001 the Commission adopted the *Periodic Review of the San Luis Obispo County LCP.* In this report, the Commission made a number of recommendations related to environmentally-sustainable urban development in Cambria. In terms of specific findings, the Preliminary Report highlights the problems of short and long-term growth in Cambria. The report concludes that Cambria has serious concerns related to limited groundwater supply and the protection of sensitive habitat areas with respect to the sustainability of existing and future development in an area with limited water supplies. The Commission adopted the following recommendation in its July, 2001 Periodic Review action:

> *Recommendation 2.13. Continue implementation of the 1% growth rate in Cambria until 1/1/02, after which time coastal development permits for new development that would require a new water connection or that would otherwise create additional water withdrawals from Santa Rosa or San Simeon Creeks should not be approved unless the Board of Supervisors can make findings that (1) water withdrawals are limited to assure protection of instream flows that support sensitive species and habitats; (2) there is adequate water supply reserved for the Coastal Act priority uses of agricultural production, and increased visitors and new visitor-serving development; (3) a water management implementation plan is incorporated into the LCP, including measures for water conservation, reuse of wastewater, alternative water supplies, etc., that will assure adequate water supply for the planned build-out of Cambria or that will guarantee no net increase in water usage through new water connections (e.g. by actual retrofitting or retirement of existing water use); (4) substantial progress has been made by the County and the CCSD on achieving implementation of buildout reduction plan for Cambria; and (5) there is adequate water supply and distribution capacity to provide emergency response for existing development.*

CCSD Water Moratorium

Most recently, the Cambria Community Service District (CCSD) has taken more programmatic steps towards resolving the unsustainable development trends in Cambria. On October 25, 2001 the CCSD Board of Directors considered whether to pursue the declaration of a water shortage emergency. At that meeting, the Board of Directors determined that sufficient evidence existed to consider the declaration of a water shortage emergency based on an inability to accommodate the anticipated growth of the community in the near future. At that same meeting, an additional 38 intent-to-serve letters were approved by the CCSD Board of Directors.

On November 15, 2001 the CCSD Board of Directors declared a water emergency. Part of this

action included not allowing any additional intent-to-serve letters to be issued (i.e. anything beyond those that were issued during the October 25, 2001 meeting). The following list includes additional actions adopted by the CCSD to accompany the declaration of a water emergency:

- Reactivate the retro-fit program as contained in the CCSD Ordinances 1-98, 2-98, and 2-99;
- Investigate additional opportunities to implement water saving measures through the retro-fit program;
- Enforce Ordinance 4-2000 (water waste provision);
- Identify any additional opportunities to improve Ordinance 4-2000;
- Request that the County of San Luis Obispo adopt restrictions on the installation of landscaping within the Cambria CSD to minimize the impact or irrigation on water supplies;
- Develop a plan to ensure the enforcement of all restrictions and regulations regarding water usage in Cambria;
- Pursue the development of water master plan;
- Evaluate the current rate structure and develop changes and improvements.

Through the declaration of a moratorium on new water connections, the CCSD has taken a critical step in curbing short-term development potential in Cambria. Since October 25, 2001 no new intent-to-serve letters have been issued by the CCSD. The moratorium effectively limits new development in Cambria until the uncertainty with respect to water supplies can be resolved. However, the moratorium does not limit those projects declared "in the pipeline" by the CCSD. "Pipeline projects" are defined as projects that have development applications accepted for processing by the County, and are also accompanied by an intent-to-serve letter or some other form of evidence that the CCSD has committed to providing the development with water.

As of August 21, 2002, the CCSD has indicated that there were a number of "intent-to-serve" letters currently outstanding from the CCSD that have yet to complete the County permit process. These outstanding commitments include both residential and commercial development totaling 102 "Equivalent Dwelling Units" (EDU's), or approximately 9,000 gallons of water per day. The total average current daily water production by the CCSD equals 720,000 gallons of water. According to these CCSD's figures, the water use attributable to these outstanding intent-to-serve letters represent an approximate 1.25% increase in total water supplies needed to serve these outstanding commitments. There are an additional 45.7 inactive "grandfathered" EDU allocations, 13 single-family active meters in place, but not activated, and 27 connection permits that are being issued for recently processed building permits. Thus, the total increase in water use associated with "pipeline projects" can be estimated to be significantly greater than that represented by the projects holding "intent to serve" letters.

2. Substantial Issue Analysis

The Commission has previously recognized the serious water supply situation in Cambria, and raised concern that currently-available water supplies are not sufficient to support existing and future development without harm to sensitive habitats. This issue has been thoroughly discussed in both the North County Update and the Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program (see History/Background discussion above).

Specifically, Public Works Policy 1 requires that:

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

On December 12, 2002, the Commission heard on appeal two "pipeline projects" (Hudzinski and Monaco)[2]. The Commission approved both projects subject to a special retrofitting condition that offsets the additional water withdrawals caused by the project. At that hearing, the Commission also stated that future Cambria "pipeline" projects that incorporate the same conditions would not warrant a Commission appeal and would receive a Commission staff recommendation of "no substantial issue" if appealed by another party.

The appellants raise similar contentions with respect to water availibilty that were previously addressed in the Monaco and Hudzinski projects. Only with the inclusion of the special retrofitting condition could the Commission approve the proposed developments consistent with LCP Public Works Policy 1. This interim approach is limited only to the finite number of projects deemed in the "pipeline". It is important to recognize that given these circumstances, use of the retrofitting condition for projects not in the "pipeline" isn't appropriate and should not be approved.

The appellants contend that even with the included retrofit condition the County disregarded the Commission's provision for "prior to issuance" retrofitting. This contention is not entirely on point. Put very simply, the compliance trigger for the Commission differs from that of the County. The Commission only issues *one* permit for a project, a coastal development permit. When the Commission approves a coastal development permit, it will often only be issued *after* compliance with various special conditions. In other words, in the Commission's process, if condition compliance is to occur before development is started, condition compliance must occur prior to the issuance of the CDP. On the other hand, San Luis Obispo County issues *two* permits

[2] A-3-SLO-02-050 (Monaco); A-3-SLO-02-073 (Hudzinski).

that must be obtained before work on a project can start. The first permit is the coastal development permit that is issued at the time it is approved, or following the close of the appropriate appeal period. The second permit the county issues is the building permit. In the County process, if condition compliance is to occur prior to commencement of development, compliance must be demonstrated prior to the issuance of the building permit. According to the County, this is the earliest stage following a discretionary approval where compliance with special conditions can be demonstrated. Thus, the County's approval of this project simply adapts the language of the Monaco and Hudzinski projects to fit with the manner in which condition compliance is effectively implemented in their process. The net effect is the same at the County as at the Commission, construction cannot begin until the retro fit condition has been met.

Likewise, there is no substantive difference between the County's condition that the Planning Director approve condition compliance or the Commission's parallel condition that the Executive Director sign off the various conditions. The San Luis Obispo Planning Director is the County counterpart of the Commission's Executive Director and thus, in the *County's* process is the appropriate person to review and approve condition compliance. The result will be the same--a planning professional will review condition compliance to ensure that the requirements of the condition are properly carried out.

d. Substantial Issue Conclusion

In conclusion, no credible evidence has been offered that demonstrates that the County's condition compliance process would result in a different substantive outcome than the Commission's condition compliance process. Indeed, either process requires that development, such as the single family home that is the subject of this appeal, cannot go forward until the permittee meets the requirements of the retro fit condition and can ensure that their project will not require any net increase in water use. As discussed in an earlier section of this report, the Commission has found that projects in Cambria that do not increase water demand will not adversely affect coastal water resources and, as conditioned to comply with the retro fit program can be served by the water district. Therefore, no substantial issue is raised by this appeal with respect to water availability or water resources.

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File documents.....San Luis Obispo County Certified Local Coastal Program (LCP); Local Permit # D000482P.

Staff recommendation...**No Substantial Issue**

EXECUTIVE SUMMARY

San Luis Obispo County approved the construction of a 3,795 square foot single-family residence in the community of Cambria, San Luis Obispo County. New development in Cambria being permitted by the County is generally limited to those projects that the Cambria Community Service District (CCSD) committed to serving prior to the declaration of the water supply emergency, otherwise referred to as "pipeline projects". The proposed development that is the subject of this appeal is an example of such a pipeline project.

At the December 2002 Commission meeting in San Francisco, the Commission established criteria that would be required in order to approve the remaining "pipeline" projects. Namely, the Commission required the inclusion of a special water retrofitting condition that is designed to offset the increase in water demand within the service area in an amount equal or greater to the anticipated water use of the project. At that same meeting, the Commission instructed Staff to work with the County to incorporate the special retrofitting condition into all "pipeline" project approvals as a way to avoid future appeals.

The appellants claim that the approved project: (1) is inconsistent with the requirements of the LCP regarding water availability; (2) disregards the Commission's requirement for "prior to issuance retrofitting", and; (3) will apply a more lenient standard of approval than has previously been applied by the Commission due to the timing and method of special condition compliance.

These contentions do not raise a substantial issue of conformity of the County-approved project with the certified LCP because: (1) the County-approved project retains the relevant provisions of the Commission's previously approved special retrofit condition for "pipeline" water projects; (2) the purpose of the provision, which is to achieve "no net increase in water demand", is maintained through the County-approved project, and; (3) the County-approved project will not impact coastal resources

Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to this project's conformance with the certified San Luis Obispo County Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project.

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II. Summary Of Appellants' Contentions

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The appellants, Ken Renshaw and Lila Evans, have appealed the final action taken by the County on the basis that approval of the project does not impose the Commission's adopted water retrofitting provision for determining water availability under the LCP. They also contend that the manner in which condition compliance is carried out through the County's process is inadequate and undermines the purpose of the retrofitting condition.

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IV. Staff Recommendation On Substantial Issue

> **MOTION:** ***I move that the Commission determine that Appeal No. A-3-SLO-03-017 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and the adoption of the following resolution and findings, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the

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RESOLUTION TO FIND SUBSTANTIAL ISSUE:

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V. Recommended Findings and Declarations

A. Project Location and Description

The project is located on the north side of St. Thomas Avenue, approximately 600 feet southeast of St. James Way, in the Community of Cambria in the North Coast planning area. The project site is a triple lot of approximately 10,443 square feet (please see Exhibit 2 for project plans). The County approval authorizes the construction of a new single-family residence with a 2,240 square feet footprint, and 3,795 square feet of gross structural area. The overall height of the proposed residence is 28 feet, as measured from the average natural grade.

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c. Analysis

1. History/Background

1977 Coastal Development Permit

The Coastal Commission has been concerned with the lack of water to support new development in Cambria since the adoption of the Coastal Act. As early as 1977, in a coastal permit to allow the Cambria Community Services District (CCSD) to begin drawing water from San Simeon Creek, the Commission expressed concern about overdrafting this groundwater basin. In that permit, the Commission limited the urban service areas for this new water supply and identified the maximum number of dwelling units that could be served as 3,800[1]. A condition of that 1977 coastal development permit stated that:

> *use of all District wells on Santa Rosa Creek shall be discontinued when water production from San Simeon Creek has been established. Any continued permitted use of the Santa Rosa Creek wells shall be limited to the*

[1] Application 132-18.

supplementing of San Simeon Creek well production in years when the 1230 acre feet cannot be safely removed. Except in the emergency situations defined below, the withdrawal of water from Santa Rosa Creek shall not exceed 260 acre feet during the dry season which normally extends from July 1 through November 20 and shall not exceed 147 acre feet per month at any other time. At no time shall the combined withdrawal from San Simeon Creek and Santa Rosa Creek exceed the 1230 acre feet annually. In addition, the following emergency situations shall be permitted: fire or any emergency use authorized by the State Water Resources Control Board or the State Health Department. Until the San Simeon Creek wells are functioning, no new water permits shall be permitted in the District.

LCP Certification

When the Land Use Plan of the County's LCP was certified in 1984, the concern remained that there was inadequate water to serve existing parcels within Cambria. The findings regarding Cambria stated that based on the land uses and intensities designated in the LUP for subdivided and un-subdivided land, 8,150 dwelling units could be developed; however, it was estimated that the community of Cambria had adequate water and sewage capacities to serve 5,200 dwelling units (in 1984). The findings continue to state:

Buildout of the existing subdivided parcels alone within the USL [Urban Services Line] would result in a number of dwelling units for which there is inadequate sewer and water capacity. Clearly the community does not have adequate services to supply the LUP proposed development within the USL without severely overcommitting its water supplies and sewage treatment facilities.

1998 North Coast Area Plan

More recently, the Commission evaluated available water supply for Cambria in its review of the County's North Coast Area Plan update. After evaluating the availability of water in San Simeon and Santa Rosa Creek, the Commission found that existing development (1997) may be overdrafting these creeks, and adversely affecting wetlands and riparian habitats. Thus, the Commission adopted findings and a suggested modification that would require completion of three performance standards prior to January 1, 2001: completion of an instream flow management study for Santa Rosa and San Simeon Creek; completion of a water management strategy which includes water conservation, reuse of wastewater, alternative water supply, and potential off stream impoundments; and cooperation of the County and CCSD to place a lot reduction ballot measure before the Cambria electorate. If these standards were not performed by January 1, 2001, the modification required a moratorium on further withdrawals from San Simeon and Santa Rosa Creeks.

Although the County never accepted the modified amendment and this development is therefore not subject to the moratorium provision, the severity of the measures proposed reflects the gravity of the community's future if development continues to be permitted at its existing rate.

2001 Periodic Review

The Coastal Act requires that every certified LCP be reviewed periodically to determine whether the LCP is being effectively implemented in conformity with the policies of the Coastal Act. On July 12, 2001 the Commission adopted the *Periodic Review of the San Luis Obispo County LCP.* In this report, the Commission made a number of recommendations related to environmentally-sustainable urban development in Cambria. In terms of specific findings, the Preliminary Report highlights the problems of short and long-term growth in Cambria. The report concludes that Cambria has serious concerns related to limited groundwater supply and the protection of sensitive habitat areas with respect to the sustainability of existing and future development in an area with limited water supplies. The Commission adopted the following recommendation in its July, 2001 Periodic Review action:

> *Recommendation 2.13. Continue implementation of the 1% growth rate in Cambria until 1/1/02, after which time coastal development permits for new development that would require a new water connection or that would otherwise create additional water withdrawals from Santa Rosa or San Simeon Creeks should not be approved unless the Board of Supervisors can make findings that (1) water withdrawals are limited to assure protection of instream flows that support sensitive species and habitats; (2) there is adequate water supply reserved for the Coastal Act priority uses of agricultural production, and increased visitors and new visitor-serving development; (3) a water management implementation plan is incorporated into the LCP, including measures for water conservation, reuse of wastewater, alternative water supplies, etc., that will assure adequate water supply for the planned build-out of Cambria or that will guarantee no net increase in water usage through new water connections (e.g. by actual retrofitting or retirement of existing water use); (4) substantial progress has been made by the County and the CCSD on achieving implementation of buildout reduction plan for Cambria; and (5) there is adequate water supply and distribution capacity to provide emergency response for existing development.*

CCSD Water Moratorium

Most recently, the Cambria Community Service District (CCSD) has taken more programmatic steps towards resolving the unsustainable development trends in Cambria. On October 25, 2001 the CCSD Board of Directors considered whether to pursue the declaration of a water shortage emergency. At that meeting, the Board of Directors determined that sufficient evidence existed to consider the declaration of a water shortage emergency based on an inability to accommodate the anticipated growth of the community in the near future. At that same meeting, an additional 38 intent-to-serve letters were approved by the CCSD Board of Directors.

On November 15, 2001 the CCSD Board of Directors declared a water emergency. Part of this

action included not allowing any additional intent-to-serve letters to be issued (i.e. anything beyond those that were issued during the October 25, 2001 meeting). The following list includes additional actions adopted by the CCSD to accompany the declaration of a water emergency:

- Reactivate the retro-fit program as contained in the CCSD Ordinances 1-98, 2-98, and 2-99;
- Investigate additional opportunities to implement water saving measures through the retro-fit program;
- Enforce Ordinance 4-2000 (water waste provision);
- Identify any additional opportunities to improve Ordinance 4-2000;
- Request that the County of San Luis Obispo adopt restrictions on the installation of landscaping within the Cambria CSD to minimize the impact or irrigation on water supplies;
- Develop a plan to ensure the enforcement of all restrictions and regulations regarding water usage in Cambria;
- Pursue the development of water master plan;
- Evaluate the current rate structure and develop changes and improvements.

Through the declaration of a moratorium on new water connections, the CCSD has taken a critical step in curbing short-term development potential in Cambria. Since October 25, 2001 no new intent-to-serve letters have been issued by the CCSD. The moratorium effectively limits new development in Cambria until the uncertainty with respect to water supplies can be resolved. However, the moratorium does not limit those projects declared "in the pipeline" by the CCSD. "Pipeline projects" are defined as projects that have development applications accepted for processing by the County, and are also accompanied by an intent-to-serve letter or some other form of evidence that the CCSD has committed to providing the development with water.

As of August 21, 2002, the CCSD has indicated that there were a number of "intent-to-serve" letters currently outstanding from the CCSD that have yet to complete the County permit process. These outstanding commitments include both residential and commercial development totaling 102 "Equivalent Dwelling Units" (EDU's), or approximately 9,000 gallons of water per day. The total average current daily water production by the CCSD equals 720,000 gallons of water. According to these CCSD's figures, the water use attributable to these outstanding intent-to-serve letters represent an approximate 1.25% increase in total water supplies needed to serve these outstanding commitments. There are an additional 45.7 inactive "grandfathered" EDU allocations, 13 single-family active meters in place, but not activated, and 27 connection permits that are being issued for recently processed building permits. Thus, the total increase in water use associated with "pipeline projects" can be estimated to be significantly greater than that represented by the projects holding "intent to serve" letters.

2. Substantial Issue Analysis

The Commission has previously recognized the serious water supply situation in Cambria, and raised concern that currently-available water supplies are not sufficient to support existing and future development without harm to sensitive habitats. This issue has been thoroughly discussed in both the North County Update and the Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program (see History/Background discussion above).

Specifically, Public Works Policy 1 requires that:

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

On December 12, 2002, the Commission heard on appeal two "pipeline projects" (Hudzinski and Monaco)[2]. The Commission approved both projects subject to a special retrofitting condition that offsets the additional water withdrawals caused by the project. At that hearing, the Commission also stated that future Cambria "pipeline" projects that incorporate the same conditions would not warrant a Commission appeal and would receive a Commission staff recommendation of "no substantial issue" if appealed by another party.

The appellants raise similar contentions with respect to water availibilty that were previously addressed in the Monaco and Hudzinski projects. Only with the inclusion of the special retrofitting condition could the Commission approve the proposed developments consistent with LCP Public Works Policy 1. This interim approach is limited only to the finite number of projects deemed in the "pipeline". It is important to recognize that given these circumstances, use of the retrofitting condition for projects not in the "pipeline" isn't appropriate and should not be approved.

The appellants contend that even with the included retrofit condition the County disregarded the Commission's provision for "prior to issuance" retrofitting. This contention is not entirely on point. Put very simply, the compliance trigger for the Commission differs from that of the County. The Commission only issues *one* permit for a project, a coastal development permit. When the Commission approves a coastal development permit, it will often only be issued *after* compliance with various special conditions. In other words, in the Commission's process, if condition compliance is to occur before development is started, condition compliance must occur prior to the issuance of the CDP. On the other hand, San Luis Obispo County issues *two* permits

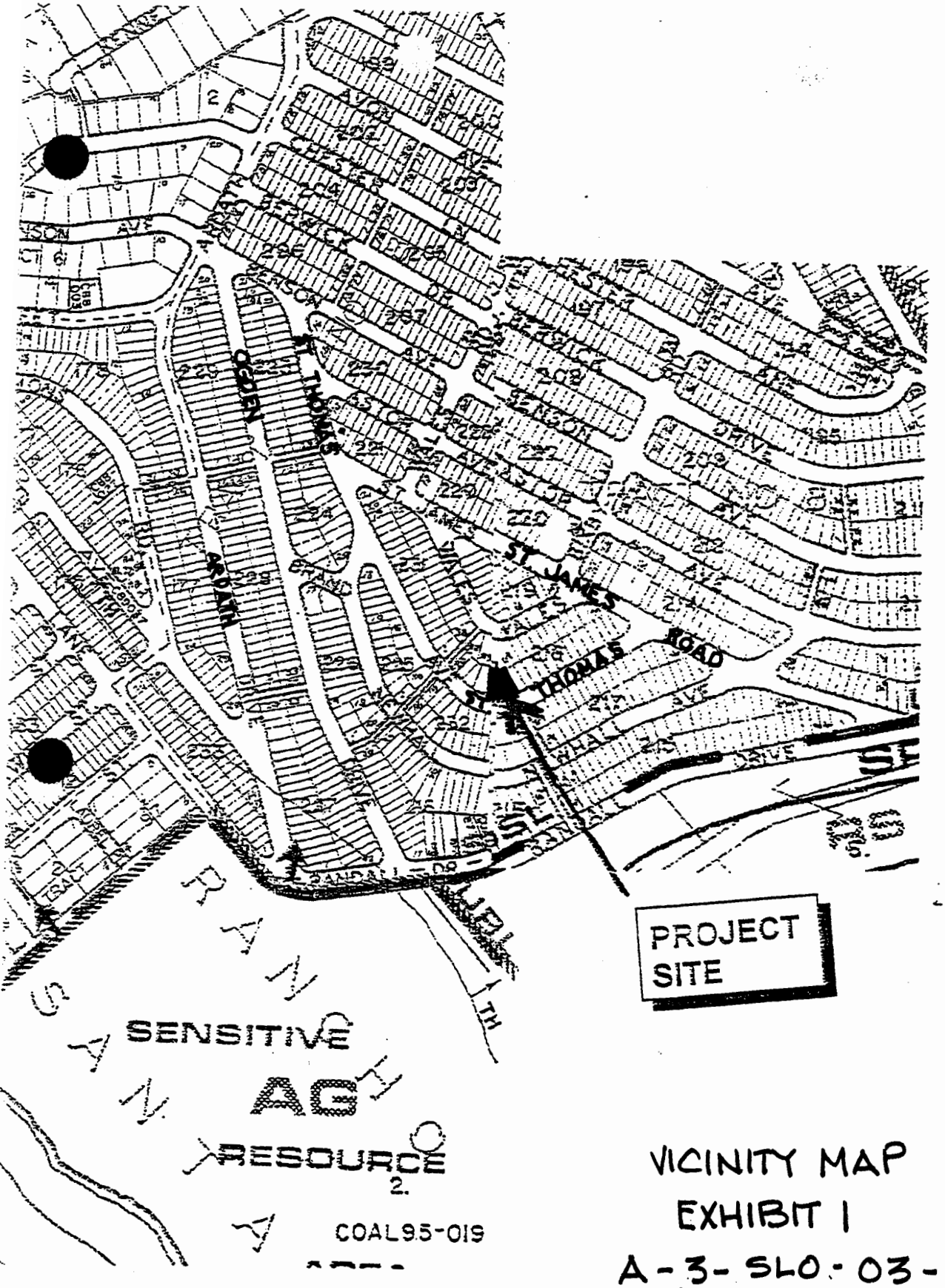
[2] A-3-SLO-02-050 (Monaco); A-3-SLO-02-073 (Hudzinski).

that must be obtained before work on a project can start. The first permit is the coastal development permit that is issued at the time it is approved, or following the close of the appropriate appeal period. The second permit the county issues is the building permit. In the County process, if condition compliance is to occur prior to commencement of development, compliance must be demonstrated prior to the issuance of the building permit. According to the County, this is the earliest stage following a discretionary approval where compliance with special conditions can be demonstrated. Thus, the County's approval of this project simply adapts the language of the Monaco and Hudzinski projects to fit with the manner in which condition compliance is effectively implemented in their process. The net effect is the same at the County as at the Commission, construction cannot begin until the retro fit condition has been met.

Likewise, there is no substantive difference between the County's condition that the Planning Director approve condition compliance or the Commission's parallel condition that the Executive Director sign off the various conditions. The San Luis Obispo Planning Director is the County counterpart of the Commission's Executive Director and thus, in the *County's* process is the appropriate person to review and approve condition compliance. The result will be the same--a planning professional will review condition compliance to ensure that the requirements of the condition are properly carried out.

d. Substantial Issue Conclusion

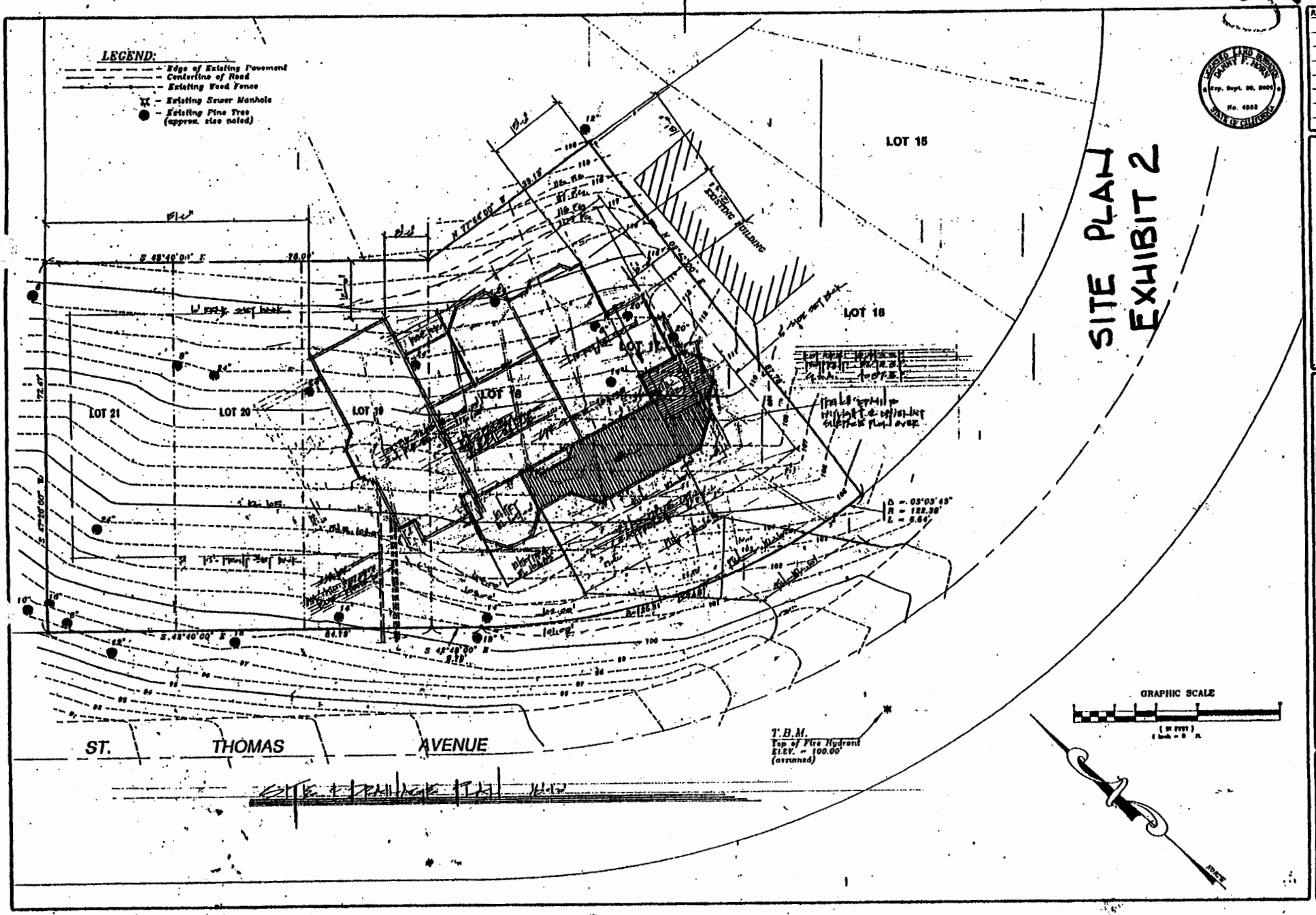
In conclusion, no credible evidence has been offered that demonstrates that the County's condition compliance process would result in a different substantive outcome than the Commission's condition compliance process. Indeed, either process requires that development, such as the single family home that is the subject of this appeal, cannot go forward until the permittee meets the requirements of the retro fit condition and can ensure that their project will not require any net increase in water use. As discussed in an earlier section of this report, the Commission has found that projects in Cambria that do not increase water demand will not adversely affect coastal water resources and, as conditioned to comply with the retro fit program can be served by the water district. Therefore, no substantial issue is raised by this appeal with respect to water availability or water resources.



VICINITY MAP
EXHIBIT 1
A-3-SLO-03-017

BARKER MINOR USE PERMIT
D000482P

LAND USE CATEGORY


LEGEND:
Edge of Existing Pavement
Centerline of Road
Existing Wood Fence
Existing Sewer Manhole
Existing Pine Tree (approx. size noted)
LOT 15
LOT 16
LOT 17
LOT 18
LOT 19
LOT 20
LOT 21
EXISTING BUILDING
SITE PLAN
EXHIBIT 2
S 42°40'00" E
76.00'
Δ = 03°03'43"
R = 122.38'
L = 6.64'
ST. THOMAS AVENUE
T.B.M.
Top of Fire Hydrant
ELEV. = 100.00'
(assumed)
GRAPHIC SCALE
REVISIONS
DANNY F. HORN - Land Surveyor
566 Spring Street
Paso Robles, CA. 93446
TOPOGRAPHICAL SURVEY
LOTS 17-21
BLOCK 218
DRAWN:
J.A.H.
DATE: APRIL
SCALE: 1"=
JOB No:
SHEET
1
OF 1

BARKER MINOR USE PERMIT
D000482P

EXHIBIT TWO
ELEVATIONS

3

EXHIBIT B - CONDITIONS OF APPROVAL

Authorized Use

1. This approval authorizes the construction of a single-family residence with: 2,240 square feet of footprint and 3,795 square feet of gross structural area.

2. Prior to issuance of construction permits the applicant shall submit a revise site plan for review and approval. The revised site plan shall show a reduced driveway to the minimum size necessary for safety and no excavations outside of the foundations.

3. All permits shall be consistent with the approved Site Plan, Floor Plans and Elevations.

Height

4. Maximum height of the project is 28 feet from average natural grade. **Prior to any site disturbance**, a licensed surveyor shall establish average natural grade (high and low corners staked) and set a reference (benchmark) point.

5. **Prior to framing inspection**, the applicant shall provide written verification to the building inspector certifying the building height, including the actual and allowable building heights. The certification shall be done by a licensed surveyor.

Grading, Drainage, Sedimentation and Erosion Control

6. **Prior to issuance of construction permits**, if grading is to occur between October 15 to April 15, a sedimentation and erosion control plan shall be submitted pursuant to Coastal Zone Land Use Ordinance Section 23.05.036.

7. **Prior to issuance of construction permits**, the applicant shall submit a drainage plan for review and approval by the County Public Works Department.

Fire Safety

8. **Prior to issuance of a construction permit**, the applicant shall provide the county Department of Planning and Building with a fire safety plan approved by the Cambria Fire Department.

9. **Prior to occupancy or final inspection**, which ever occurs first, the applicant shall obtain final inspection and approval from Cambria Fire Department of all required fire/life safety measures.

Services

10. **Prior to issuance of construction permit**, the applicant shall provide a letter from CCSD stating they are willing and able to service the property.

EXHIBIT 3
COUNTY CONDITIONS

Water Conservation

11. **Prior to issuance of construction permit**, the applicant shall submit, for the Planning Director review and approval, evidence that the anticipated water use of this development has been completely offset through the retrofit of existing water fixtures within the Cambria Community Service District's service area or other verifiable action to reduce existing water use in the service area (e.g., replacement of irrigated landscaping with xeriscaping). The documentation submitted to the Planning Director shall include written evidence that the Cambria Community Service District (CCSD) has determined that the applicant has complied with CCSD Ordinance 1-98, as approved by the CCSD Board of Directors on January 26, 1998, and further modified by CCSD Board approval on November 14, 2002 (CCSD board item VIII.B), subject to the limitation that no retrofit credits shall have been obtained by any of the following means: a) extinguishing agricultural water use, or b) funding leak detection programs. Evidence of compliance with CCSD Ordinance 1-98 shall be accompanied by written confirmation from the CCSD that any in-lieu fees collected from the applicant have been used to implement projects that have reduced existing water use within the service area in an amount equal or greater to the anticipated water use of the project.

Landscape Plan

12. **Prior to issuance of construction permit**, the applicant shall submit for Planning Director review and approval, a Landscape Plan that provides for the planting of all open areas of the site disturbed by project construction with native, drought and fire resistant species that are compatible with the habitat values of the surrounding forest. In addition, non-native, invasive, and water intensive (e.g. turf grass) landscaping shall be prohibited on the entire site.

Tree Protection/Replacement

13. The applicant shall limit tree removal to no more than 7 pine trees eight inch diameter or larger at four feet from the ground. Construction plans shall clearly delineate all trees within 50 feet of the proposed project, and shall show which trees are to be removed or impacted, and which trees are to remain unharmed.

14. **Prior to final inspection**, the **seven** (7) Monterey pine trees shall be replaced at a 2:1 ratio. A total of **14** Monterey pine trees. Monterey pine replacement trees shall be one gallon saplings grown from the Cambrian stand; *Pinus radiata macrocarpa.*

15. These newly planted trees shall be maintained until successfully established. This shall include caging from animals (e.g., deer, rodents), periodic weeding and adequate watering (e.g., drip-irrigation system). If possible, planting during the warmest, driest months (June through September) shall be avoided. In addition, standard planting procedures (e.g., planting tablets, initial deep watering) shall be used.

EX. 3

16. All trees bordering the proposed project that are to remain shall be marked for protection (e.g., with flagging) and their root zone fenced **prior to any grading**. The outer edge of the tree root zone is 1-1/2 times the distance from the trunk to the drip line of the tree. Grading, utility trenching, compaction of soil, or placement of fill shall be avoided within these fenced areas. If grading in the root zone cannot be avoided, retaining walls shall be constructed to minimize cut and fill impacts. Care shall be taken to avoid surface roots within the top 18 inches of soil.

Cultural Resources

17. **Prior to issuance of construction permits**, the applicant shall submit a "side by side" comparison of disturbance and calculations of volume of cultural materials affected for the review and approval of the Planning Director. The foundation plans shall be revised if necessary to implement the foundation design that results in the least disturbance.

18. **Prior to issuance of construction permits**, the applicant shall submit for the review and approval of the Environmental Coordinator (and possibly subject to peer review), an Archaeological Mitigation Plan. The Plan shall include a detailed research design for a Phase III (date recovery) archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations (Singer 6/14/99, 9/29/01). The Phase III program shall include the following at minimum:

    a. standard archaeological data recovery practices;

    b. recommendation of sample size adequate to mitigate for impacts to archaeological site, including basis and justification of the recommended sample size. Sample size should be between 2 - 7% of the volume of disturbed area. If a smaller sample size is recommended, supporting information shall be presented that justifies the smaller size;

    c. identification of location of sample sites/test units;

    d. detailed description of sampling techniques and material recovery procedures (e.g., how sample is to be excavated, how the material will be screened, screen size, how material will be collected);

    e. disposition of collected materials;

    f. proposed analysis of results of data recovery and collected materials, including time line of final analysis results;

    g. list of personnel involved in sampling and analysis.

EX. 3

In lieu of a portion of the sample, the Plan can recommend a contribution towards the Archaeological Conservancy/Greenspace program for acquisition of the major portion of SLO-177. This would provide off-site mitigation through permanent preservation of a portion of the this archaeological site. If proposed as part of the Plan, the recommended sample size may be reduced by no more than 50%.

19. **Prior to issuance of construction permits**, the applicant shall submit to the Environmental Coordinator, a letter from the consulting archaeologist indicating that all necessary field work as identified in the Phase III program has been completed.

20. **Prior to issuance of construction permits**, the applicant shall submit a monitoring plan prepared by a subsurface qualified archaeologist, for the review and approval of the Environmental Coordinator. The monitoring plan shall include:

    a. List of personnel involved in the monitoring activities;
    b. Description of how the monitoring shall occur;
    c. Description of frequency of monitoring (e.g., full-time, part-time, spot checking);
    d. Description of what resources are expected to be encountered;
    e. Description of circumstances that would result in the halting of work at the project site (e.g., What are considered "significant" archaeological resources?);
    f. Description of procedures for halting work on the site and notification procedures;
    g. Description of monitoring reporting procedures.

21. **During all ground disturbing construction activities**, the applicant shall retain a qualified archaeologist, approved by the Environmental Coordinator, and Native American to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found during monitoring, work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigations as required by the Environmental Coordinator.

22. **Upon completion of all monitoring/mitigation activities, and prior to occupancy or final inspection, whichever occurs first**, the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time final inspection or occupancy will occur, the applicant shall provide to the Environmental Coordinator, proof of obligation to complete the required analysis.

Miscellaneous

23. **Prior to issuance of a construction permit**, the applicant shall submit a Voluntary Merger Application to merge the site of 5 lots. Prior to final building permit inspection, the applicant shall record the merger.

EX. 3

24. **Prior to issuance of a construction permit,** the applicant shall pay all applicable school and public facilities fees.

25. **Prior to occupancy of any structure associated with this approval,** the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

26. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050.

EX. 3

STATE OF CALIFORNIA - THE RESOURCES AGENCY Gray Davis, Govern

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
FEB 10 2003
CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

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):
KEN RENSHAW, 1790 OGDEN RD. CAMBRIA CA 93428
805-927-2202
LILA EVANS, 2862 BUCKINGHAM PL. CAMBRIA CA 93428
805-927-2902 ( )
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:
COUNTY OF SAN LUIS OBISPO

2. Brief description of development being appealed:
BARKER/DELP COASTAL DEVELOPMENT PERMIT FOR SINGLE FAMILY RESIDENCE, 4,057 SQUARE FEET

3. Development's location (street address, assessor's parcel number, cross street, etc.:
ST. THOMAS AVE, APN 023-163-014 & 023-163-031, ST. JAMES WAY CROSS STREET

4. Description of decision being appealed:

a. Approval; no special conditions: ____
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-03-017
DATE FILED: February 10, 2003
DISTRICT: Central

APPELLANTS CONTENTIONS
EXHIBIT 4

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: 1-14-03

7. Local government's file number: D010340P

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:
GLEN BARKER & SHARON DELP

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.

EX. 9

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.)

SEE ATTACHMENT

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.

Signature of Appellant(s) or Authorized Agent

Date Feb 3, 2003

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

EX. 4

Attachment to
Appeal by Ken Renshaw and Lila Evans
And Request for De Novo Hearing on County File No. D000482P

The Commission should provide a de novo hearing on this important test case because the conditions imposed upon the Barker/Delp project by the County of San Luis Obispo failed to incorporate the critical conditions imposed upon the Monaco and Hudzinski projects by the Commission. As approved the project does not conform to the Local Coastal Plan.

The County did not impose the Commission's standard for determining water availability.

Public Works Policy 1 of the San Luis Obispo County LCP requires a finding of water availability prior to issuance of the coastal development permit. The standard required by the Commission for this finding for the Monaco and Hudzinski projects is written documentation from the Cambria Community Services District (CCSD) that the anticipated water use of the project has been completely off set through the retrofit of existing water fixtures in Cambria.

The standard required by the County of San Luis Obispo for a finding of water availability is much lower. The finding of water availability made by the County for the Barker/Delp project was their possession of an Intent to Serve letter from the Cambria Community Services District, a letter that specifically states that it is not a guarantee of water availability.

The County disregarded the Commission's LCP requirement for "prior to issuance" retrofitting.

To maintain compliance LCP Public Works Policy 1, the Commission requires in the "Notice of Intent to Issue Permit" that "Commission staff cannot issue the CDP until the applicant has fulfilled each of the "prior to issuance" Special Conditions".

The County disregarded this requirement in their approval of the Barker/Delp project. Instead, the County approved the CDP before the retrofitting is completed and downgraded the retrofitting requirements to a condition of the building permit.

Retrofit approval for Barker/Delp is ministerial a determination of a building official for a building permit while the Monaco's and Hudzinski's retrofits must receive approval of the Commission's Executive Director for their CDP.

By lowering the retrofitting requirement to a condition of the building permit, the County gutted the purpose of the retrofitting as a method of making the water availability finding and downgraded the approval process to a ministerial review of a building inspector. The Commission requires a higher standard of review and approval by the Executive Director within the CDP approval process of the Coastal Zone Land Use Ordinance. The Monacos and Hudzinskis will be held to this much higher review and approval standard.

Clearly, the timing of the retrofitting – that it must be completed prior to issuance of the CDP to be consistent with the LCP – is the bedrock of "Special Condition 2" and the link to compliance with the San Luis Obispo LCP. By approving the CDP prior to completion of the required

02/10/2003 13:56 8059277530 WODA1GPTAJT PAGE 05

retrofits, the County has undermined the justification for the water availability finding and places the project squarely in violation of the LCP.

All projects must be held to the same standards and requirements..

Because the County did not accurately reproduce the Commissions approval system, separate and more demanding standards and requirements are being imposed on the Monacos and Hudzinskis than upon the Barker/Delps or any projects that follow if the system is not corrected.

Without an appeal, the Baker/Delps have a valuable CDP in hand today while the Monacos and Hudzinskis will have to wait until enough retrofitting has been put into place to completely offset the water they will use for their projects. Even if they pay "in lieu" fees to the Cambria Community Services District, according to "Special Condition 2" the CDP will not be issued until the CCSD has used those fees to complete the required retrofit.

This appeal should be considered at a de novo hearing because the Barker/Delp approval will establish a model for double standards and validate ongoing LCP violations.

The standards and conditional requirements published in the Commission's "Notice of Intent to Issue Permit" and enforcement of "Special Condition 2" must be applied to all applicants. This project offers the Commission the opportunity to clarify with the County of San Luis Obispo what is required and to make sure that all projects will be required to follow the same rules

Every new development means additional strain on Cambria's deepening water deficit. The Commission's requirements under "Special Condition 2" should be strictly enforced and scrupulously incorporated into the County's approval system.

What the CCSD forgot to tell you: There's not enough water in Cambria for current users and Cambria has already been fully retrofitted.

Finally, we wish to bring to your attention some important issues relating to substance of "Special Condition 2". What follows are quotes from the public record that show beyond a doubt that Cambria has no water for growth, that retrofitting has already been completed, and that State law prohibits issuance of new service connections when there isn't enough water.

Staff report statements from the November 15, 2001 CCSD board meeting include the following:

> "We believe that the District has reached a point where a halt must be called to additional service demands .... If this is not accomplished, we do not believe that the District will be able to manage the impact of a multi-year drought condition as was experienced in 1989, 90, and 91."
>
> "While there may be a small amount of water savings available through even more aggressive conservation efforts, it will not be sufficient to offset the additional demands that would occur through the allocation of additional connections..."

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"It is equally unlikely that our wastewater system could sustain a steady decline in per capita water usage without significant improvements."

The CCSD's 2000 "Baseline Water Supply Analysis" which states that

"...[T]he District's current water supplies are marginal to inadequate to provide 90 percent reliability for current water demands and are inadequate to provide a 95 percent reliability level."

CCSD Resolution 02-2002 adopted by the CCSD on January 24, 2002 states that

"The current water availability, storage, and delivery system is insufficient to supply water for the current and future fire protection needs of the District."

"The current finite water supply is not adequate or certain enough to support the current and future water needs of the consumers within the Cambria Community Services District."

The relevant state statutory requirements for measuring water availability. Section 64562 (a) of the California Code of Regulations California Waterworks Standards, promulgated to implement the California Safe Drinking Water Act requires that

"Sufficient water shall be available from the water sources and distribution reservoirs to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions before agreement is made to permit additional service connections to a system."

We point out that according to the District's fire chief, Cambria does not even have enough water to protect the community from fire. When there is not enough water to protect existing businesses, residents, and sensitive forest habitat from fire and drought, any water that can be saved through a retrofit or any other conservation program must be saved for those purposes.

We submit that the Commission should make a determination

(1) that convincing evidence exists that the County's approval of the Barker/Delp coastal development permit fails to conform to the requirements of "Special Condition 2" as imposed by the Commission on the Monaco and Hudzinski projects
(2) that as a result, a significant question exists in relation to the project's consistency with the San Luis Obispo LCP and
(3) that a de novo hearing by the Commission is warranted to ensure that the requirements of "Special Condition 2" are applied to this project and scrupulously incorporated into the County's ongoing approval system.

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February 14, 2003

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

VIA FAX to (831)427-4877

Mr. Jonathan Bishop

Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

SUBJECT: Coastal Development Permit Appeal No. A-3-SLO-017 (Barker - Delp, Cambria): REQUEST FOR DETERMINATION OF "NO SUBSTANTIAL ISSUE" and "FRIVOLOUS APPEAL"

Dear Jonathan:

This firm respectfully requests that you review the filed appeal in the above referenced matter and determine that it both raises "No Substantial Issue" pursuant to Public Resources Code Sections 30625 and 30603(b), and constitutes a patently frivolous appeal pursuant to Public Resources Code Section 30620(d), for the reasons summarized below.

REQUEST FOR DETERMINATION OF "NO SUBSTANTIAL ISSUE"

Commission Policy on "Pipeline" Project Approval. The Coastal Commission directive to Commission staff, San Luis Obispo County, "pipeline" applicants, and the public (including the subject appellants who were represented at the hearings) in the Monaco and Hudzinski appeals was that (1) "pipeline" projects approved by the County that contain the special water conservation and related conditions imposed by the Commission on the Monaco and Hudzinski projects that are otherwise consistent with the certified LCP will not be appealed by the Commission, (2) any such projects that might be appealed by third parties will receive a staff recommendation of "No Substantial Issue" with respect to those water conservation and related issues, and (3) the Commission will find "No Substantial Issue" on those grounds.

Barker-Delp Compliance with Commission Policy. The Barker-Delp project meets the criteria established by the Commission to be treated as a "pipeline" project and, as approved by the County, it incorporates all relevant provisions that were imposed in the Monaco and Hudzinski matters. As approved by the County, the project raises "No Substantial Issue."

Asserted Grounds for Appeal. Appellants raise the same objections that were raised with respect to the Monaco appeal, and with respect to its appeal of the Barker-Delp project before the County, that the County has fully addressed through the imposition of the Monaco-Hudzinski conditions on the Barker-Delp project.

Appellants contend that even though the project has incorporated the required conditions, the Commission must take the appeal because the County's procedural schedule for compliance prior to County issuance of building permits differs from that of the Commission for compliance prior to Commission issuance of a coastal development permit.

APPLICANTS STATEMENT
EXHIBIT 5

Rationale for Commission Compliance Trigger. Although the Commission votes to approve coastal development permits, permits are actually issued by Commission staff at a later date, following completion of various notification processes. If the Commission imposes conditions of approval for which compliance is required prior to commencement of development, compliance with those conditions must also be demonstrated to Commission staff before a coastal development permit is issued. Commission condition compliance, if it is to occur prior to commencement of development, must occur prior to coastal development permit issuance because the Commission issues no other permits.

Rationale for County Compliance Trigger. Unlike the Commission, according to County officials, San Luis Obispo County deems its coastal development permits to be issued at the point of approval (or immediately following the close of the appeal period, as applicable). If the County, in approving a permit, imposes conditions for which compliance is required prior to commencement of development, compliance must be demonstrated at the building permit stage, which is the earliest step following County discretionary approval where compliance can be required to be demonstrated, as reflected in the County adaptation of the Monaco and Hudzinski conditions in the Barker–Delp approval.

Condition Compliance Cannot Precede Imposition of Conditions. In order to demonstrate permit condition compliance prior to coastal development permit approval under the County procedures, an applicant would be required to comply with the special conditions before the permit and conditions are even approved, which cannot be accomplished pursuant to County procedure.

Requirement for "Pipeline" Projects to Meet an Impossible Standard Would Thwart the Commission's Policy Statement in its Monaco Decision. In setting the Monaco special conditions as the standard for review of other "pipeline" projects, the Commission made it clear that its intent was to avoid new appeals, and deal expeditiously with those that were already filed. If "pipeline" projects in which the required conditions have already been incorporated were to be subject to a "substantial issue" finding because of the need to adapt the point of compliance review from the Commission process to the County's, the Commission's adopted policy would be thwarted and all "pipeline" projects would necessarily have to be brought before the Commission for *de novo* review.

Resource Protection is not Affected by Compliance at the Building Permit Stage. The result of the Commission-imposed condition compliance prior to issuance of the Commission's coastal development permit and the County's adaptation of condition compliance prior to issuance of the building permit is identical: no development, and hence, no potential resource impacts, shall occur until compliance with the the imposed conditions to avoid or mitigate those impacts, as prescribed by the Commission in its Monaco–Hudzinski approvals, has been demonstrated. Thus, the County process is consistent with the Commission's in protecting resources from project impacts.

Compliance Review and Permit Issuance Conducted by Staff of Both Agencies. Just as County staff will complete the review and issue the building permit for the Barker–Delp project, in the Commission process it is Commission staff -- not the Commissioners --who complete the review and issue the coastal development permit. Thus, the County process is in conformance with the Commission's in the level of review afforded prior to permit issuance.

Conclusion. The County approval of the Barker–Delp "pipeline" project raises "No Substantial Issue" because, in addition to complying with all other applicable certified LCP and Coastal Act policies, it incorporates the requirements imposed by the Commission for all "pipeline" projects in its approval of the Monaco project. The County's minor immaterial adaptation of the compliance schedule to conform to County procedures does not affect the efficacy of the conditions.

REQUEST FOR DETERMINATION OF FRIVOLOUS APPEAL

Public Resources Code Section 30620(d) provides that the the Executive Director may determine within five working days that an appeal is patently frivolous, and thereby require the appellant to deposit a fee of $300.00 with the Commission within five working days for the appeal to go forward. Because of intervening holidays, the fifth working day for such a determination in the Barker -Delp appeal would appear to be Wednesday, February 19.

Appellants' Knowledge of Commission Policy and Barker-Delp Approval Consistency. Based on appellants' frequent participation before the County and the Coastal Commission, it is clear that they have reason to know and understand both the Commission's policy with respect to "pipeline" projects, and the full extent to which the County went to comply with that policy in approving this project on appeal by these appellants before the County Board of Supervisors.

Appellants' Raised No New Issues at the County. Although appellants were represented in the Monaco proceeding before the Commission, they nonetheless continued to raise the identical objections that the Commission had rejected in the Monaco proceeding in December 2002 again the following month before the Board of Supervisors in the Barker-Delp review , and those objections are raised once more in the pending appeal.

Appellants' Latest Objection to Compliance Schedule Not Raised at the County. Appellants' additional assertion that the County approval raises "Substantial Issue" because the County requirement for demonstration of compliance prior to the issuance of construction permits is inconsistent with the Commission requirement for compliance prior to issuance of the coastal development permit was never raised by appellants in their stock presentation to the Board of Supervisors.

Objection is Specious Because Appellants Know (1) the County May Not Avail Itself of the Commission Compliance Schedule, (2) There is No Effect on Natural Resources as a Result of County Compliance Schedule Adaptation, and (3) Under Both Procedures, Staff, and Not the Decision maker(s) Make the Compliance Determination and Issue the Respective Permit(s). (1) Not only is it impossible for the County to complete permit compliance review prior to coastal development permit issuance, as explained above, but (2) the outcome of the County compliance review at the building permit stage is identical to that achieved by the Commission requirement prior to issuance of the coastal development stage. (3) Moreover, in the Commission process, Commission staff completes the review and issues the coastal development permit just as County staff completes the review and issues the building permit.

Conclusion. Appellants should be required to deposit the appeal fee provided in Public Resources Code Section 30620(d) because their appeal, based solely on specious procedural grounds without substantive effect, is, applicants believe, knowingly without merit and maliciously designed to further (and unnecessarily) delay their development, and , therefore, is patently frivolous.

Sincerely,

Stephanie D. Dall

cc: Ms. Sharon Delp
Mr. Glen Barker
Mr. Norbert Dall