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W12a



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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number A-3-SLO-04-056

Applicants Country Enterprises, Attn: Rory Muniz

Appellants Commissioners Sara Wan and Mike Reilly

Local government San Luis Obispo County

Local decision Approved with conditions 7/12/04 (COAL 04-0243/SUB 2003-00217).

Project location Harmony Coast, west side of Highway One, North Coast Planning Area, San Luis Obispo County, (APN(s) 046-081-011, 046-081-014).

Project description Lot line adjustment between three parcels of 43.75 acres, 4.93 acres, and 1.45 acres each, resulting in two parcels of 43.60 acres and 6.53 acres; and provide two 15,000 square foot residential building envelopes.

File documents San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Permit COAL 04-0243/SUB 2003-00217; Local Administrative Record; Visual Analysis (Cannon Associates, January 2002 and October 2002); Visual Mitigation Plan (SB Planning, June 2005); Geologic Hazards Study (Cleath & Associates, February 2002); Cultural Resource Investigation (Parker and Associates, December 2001); Well Completion Report (Filliponi & Thompson Drilling (June 2004); Percolation Data Report (Mid-Coast Geotechnical, June 2002); Biological Resource Update to the Biological Assessment (Althouse and Meade, Inc., Revised June 2005); Wetland Delineation (Althouse and Meade, Inc., Revised June 2005).

Staff recommendation ...Substantial Issue; Denial

Summary: San Luis Obispo County approved a lot line adjustment (LLA) between three parcels of approximately 43.75, 4.93, and 1.45 acres, resulting in two parcels of 43.60 and 6.53 acres. Although the validity of the 1.45-acre parcel is in question, the proposed LLA merges it away. The LLA also substantially repositions the 4.93-acre parcel from its existing location as narrow irregular shaped strip of land adjacent to Highway One, to a rectangular 6.53-acre parcel centrally located on the visible hillside. The project also includes the designation of two 15,000 square foot residential building envelopes on the newly configured parcels. The project is located in an area known as the “Harmony Coast”, between the communities of Cayucos and Cambria, in the North Coast Planning Area of San Luis Obispo County. This stretch of mostly undeveloped rural agricultural land contains a variety of environmentally sensitive habitat areas and is a critical public viewshed for which the LCP dictates maximum protection.



California Coastal Commission
January 2006 Meeting in Los Angeles

Staff: J. Bishop Approved by:
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Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, because as approved by the County the proposed project is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) pertaining to agriculture, visual and scenic resources, and environmentally sensitive habitat areas (ESHA).

The LCP protects the long-term viability of coastal agriculture by requiring that agricultural land be maintained and kept available for agricultural production. For LLA's, the LCP requires that the agricultural productivity of any resulting parcel not be diminished. In this case, the site is zoned for Agriculture (AG) under the LCP and in conjunction with neighboring parcels has a history of being used for cattle grazing. The LLA will diminish the agricultural capability of the site by fragmenting agricultural lands, by removing excess acreage available for agriculture, and by undermining the purpose of agricultural zoning with non-agricultural residential uses. Alternative parcel configurations, including maintaining the existing configuration, would better maximize support of continued or renewed agriculture on the site. Thus, the project raises a substantial issue with LCP policies protecting agricultural lands.

The LCP requires that unique and attractive features of the landscape, including natural landforms and scenic vistas be preserved and protected. The project is located adjacent to Highway One in a highly scenic area known as the "Harmony Coast." The proposed parcel reconfiguration shifts residential building sites higher up the visible hillside, making future residential development more intrusive within the Highway One viewshed. The residences, access road improvements, cutting and filling of the hillside, extensive landscaping, and revegetation will alter the natural landform causing adverse visual impacts to the rural agrarian character along this stretch of relatively undeveloped coast. Alternative parcel configurations, including maintaining the existing configuration, would better preserve the unique visual and scenic values of the Harmony coast. Thus, the project raises a substantial issue with LCP policies protecting visual and scenic resources.

The LCP prohibits new development from significantly disrupting environmentally sensitive habitat areas (ESHA). ESHA on the site includes wetlands, streams and riparian areas, and native grasslands. The purpose of the LLA is to establish attractive residential parcels and future building sites. The paving of access roads, grading of the hillside, and increases in impervious surfacing on steep slopes will contribute to soil erosion and sedimentation on the property. If not properly designed, installation of wells and septic systems for residential use can have adverse impacts to water quality. In addition, residential development on the hillside will push animal grazing closer into sensitive wetland areas and can adversely impact wetland habitat values. Alternative parcel configurations, including the existing configuration, would reduce these adverse ESHA impacts. Thus, the project raises a substantial issue with LCP policies protecting ESHA.

Staff further recommends that the Commission **deny** the project due to fundamental inconsistencies with the certified LCP. One of the primary tests under the LCP is to determine if the LLA creates a "better or equal" situation with respect to conformance with LCP policies and ordinances (Section 21.02.030(c)). In each issue area analyzed (agriculture, visual and scenic, ESHA, and archaeology), the proposed LLA will have greater impacts to coastal resources than under the current parcel configuration. Given the fact that the proposed LLA "worsens" the overall situation in terms of conformance with the LCP, the



project must be denied. Finally, LLA’s are a discretionary land use decision, and denial of the LLA in this case would not result in the taking of private property.

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Click on the link at left to go to the exhibits.

I. Appeal of San Luis Obispo County Decision

A. Local Government Action

A CEQA Mitigated Negative Declaration (EDO2-524) was prepared for the project on May 23, 2003. On July 7, 2003, the San Luis Obispo County Subdivision Review Board approved the Mitigated Negative Declaration and a Coastal Development Permit (COAL 04-0243/SUB 2003-00217) to adjust the lot lines between three parcels of 43.75 acres, 4.93 acres, and 1.45 acres, resulting in two parcels of 43.60 acres and 6.53 acres; and provide for two 15,000 square foot residential building envelopes. See Exhibit C for the County’s Final Local Action Notice on the project, including findings and special conditions. Notice of the final County action on the Coastal Development Permit was received in the Coastal Commission’s Central Coast District Office on July 30, 2004. The Commission’s ten-working



day appeal period for this action began on August 2, 2004 and concluded at 5:00 P.M. on August 13, 2004. A valid appeal by Commissioners Wan and Reilly (see below) was received during the appeal period.

B. Appeal Procedures

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 sea and the first public road paralleling the sea, and is within 100 feet of a wetland. In addition, this project is appealable because a residential lot line adjustment and residential development is not the principal permitted use on the subject agriculturally (AG) zoned parcels.

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 LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 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 located between the nearest public road and the sea and thus, if approved, this additional finding must be made in a de novo review.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal

C. Summary of Appellants' Contentions

The Appellants (Commissioners Wan and Reilly) generally allege that the County's approval of the lot line adjustment is inconsistent with LCP policies and ordinances pertaining to agriculture, visual and scenic resources, and environmentally sensitive habitat areas (ESHA). Please see exhibit E for the Appellants' complete appeal documents.



II. Staff Recommendations

A. 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: *I move that the Commission determine that Appeal No. A-3-SLO-04-056 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF SUBSTANTIAL ISSUE: Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-SLO-04-056 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. Staff Recommendation on Coastal Development Permit

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

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-SLO- 04-056.*

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

RESOLUTION TO DENY THE PERMIT: The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the San Luis Obispo County Local Coastal Program. Approval of the permit 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 development on the environment.



III. Substantial Issue Findings and Declarations

As summarized below, the appeals by Commissioners Wan and Reilly raise a **substantial issue**, because as approved the County, the project is inconsistent with provisions of the San Luis Obispo County certified LCP with respect to: 1) agriculture; 2) visual and scenic resources; and 3) environmentally sensitive habitat areas. Staff recommends that the Commission find a substantial issue with respect to the grounds in which the appeal has been filed and take jurisdiction over the coastal development permit for this project.

Agriculture

Agriculture policies are cited in full in the *de novo* findings below. LCP Agriculture Policy 1 requires that lands suitable for agriculture be maintained in or available for agricultural production unless, among other reasons, continued or renewed agricultural use is not feasible, or the permitted conversion will not adversely affect surrounding agricultural uses. LCP Agriculture Policy 2 prohibits lot line adjustments in agricultural areas that would limit existing or potential agricultural capability. The proposed LLA is inconsistent with these policies because it fragments and removes suitable land currently available for agriculture. The newly configured 6.53-acre parcel is located in the center of the larger 43.6-acre parcel and will be fenced off from surrounding agricultural areas. The resulting parcel configuration will fragment agricultural lands and reduce overall agricultural capabilities on the site. Continued or renewed agriculture is feasible in this area and surrounding agricultural operations would be adversely affected due to the loss of potential grazing lands.

LCP Agriculture Policy 3 identifies requirements to protect agricultural lands when non-agricultural supplemental uses are approved to support agriculture. As opposed to such supplemental uses, single-family residences are specifically allowed by the LCP on agricultural lands, and are considered to be a part of, rather than supplementary to agricultural use. The objective of Policy 3 is to minimize the conversion of agricultural lands to non-agricultural uses. The proposed project is not intended to protect agricultural lands, but is intended for single-family residential development. This is neither agricultural nor a supplemental non-agricultural use. The intensification of residential development on agricultural land enabled by the LLA contradicts this policy objective. In any case, the County's approval of the LLA does not include all necessary protections for this type of development, such as affirmative agricultural easements, fencing requirements, prohibitions of future subdivisions, limiting future residential development on each parcel to one single primary residence, and prohibiting secondary guest houses and non-agricultural accessory structures.

Section 23.04.024(b) of the Coastal Zone Land Use Ordinance (CZLUO) establishes a minimum parcel size of 320 acres for land divisions (including LLA's) on parcels where there is an existing agricultural use of grazing. The lot line adjustment approved by the County established two lots for residential use, both of which are inconsistent with the 320-acre minimum parcel size requirement. The local approval finds that the lot line adjustment is "equal" to the existing situation because the parcel sizes are below minimum parcel size as set through the LCP and will remain so after the adjustment. While it is recognized that the number and size of existing lots preclude strict compliance with minimum parcel size requirements, there are alternative lot configurations that would better meet the intent of this ordinance, namely to ensure the long term viability of coastal agriculture. Such alternatives involve



increasing the area designated for agricultural use and reducing the area designated for residential use.

CZLUO Section 23.04.024(f) requires that approval of land divisions on non-prime agricultural soils include a finding that the division will maintain or enhance the agricultural viability of the site. The County approval did not include a comprehensive agriculture viability analysis, nor did the County approval contain an analysis of whether or not the site contained prime grazing lands. Although the County staff report states that there is adequate space for cattle to move across the site between residences, it is unclear how this alone maintains or enhances agricultural viability. In this case, there are alternative parcel configurations and residential siting options, such as the current parcel configuration, that would better maintain and enhance the agricultural viability of the site.

Agriculture Policy 7 requires that the highest priority for the use of new water extractions, which must be consistent with habitat protection, is to preserve available supplies for existing or expanded agricultural uses. CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. The Applicant has stated that water to serve future residential development will be obtained by converting an on-site agricultural well to residential use and wastewater treatment will be provided by on-site septic systems. The County's approval of this lot line adjustment does not contain the information necessary to determine if the on-site water supply is adequate to serve future residential development without adversely impacting agriculture or natural habitats, or if the designated building sites contain soils suitable for septic system use without impacting the water quality of Ellylsy Creek and associated wetland areas.

Finally, increased development pressures will adversely affect surrounding agricultural lands. While the lot line adjustment is not removing land from agricultural zoning, it will affect long-term agriculture by altering land patterns through an emphasis on residential use over other uses. The purpose of this project is not to maintain or improve agricultural capability, but rather to establish attractive residential building sites without any association to a bonafide agricultural use. In this case, the County approved project allows for the conversion of an excessive amount of the site's agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region.

Visual and Scenic

As cited in full in the *de novo* findings below, Visual and Scenic Policy 1 requires that unique and attractive features of the landscape, including natural landforms, scenic vistas, and sensitive habitats be preserved and protected. In addition, Section 23.04.021(c) of the CZLUO establishes overriding land division requirements prohibiting new land divisions where the only feasible building site would be on a slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road. While the County approved building envelopes have been designed to avoid silhouetting from Highway One, other visual impacts are raised by the project. The LLA moves proposed development envelopes further up the steep hillside making development more visible from Highway One. Shifting development to steeper slopes and higher elevations also increases the amount of cutting and filling necessary to support residential use. In addition, the further away the development is sited from



travelers on Highway One, the more extensive the berming and landscape screening must be to hide the development from public view.

The Appellants also raise the issue of impacted views from nearby Highway 46. The Applicant has provided ample evidence to show that the development is far enough away from Highway 46 (over 7 miles), and if visible at all the intervening topography will adequately block the proposed development from public view. Thus, this particular appeal contention does not raise a substantial issue.

Environmentally Sensitive Habitat Areas

As cited in the *de novo* findings below, San Luis Obispo County LCP Environmentally Sensitive Habitat Area (ESHA) Policies 1, 2, and 27, and Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.170 (d) prohibit new development proposed within or adjacent to locations of environmentally sensitive habitats from significantly disrupting the resource, and within an existing resource, allows only those uses dependent on such resources. In addition, ESHA Policies 28 and 33 require that native trees and plant cover, and vegetation which is rare or endangered, be protected against significant disruption of habitat values.

The property contains an extensive wetland complex, streams and riparian habitat, and native grasslands. Concerns have been raised that the project will locate future residences on the hillside and will push cattle grazing operations closer into sensitive wetland areas. Large animal foraging, trampling of vegetation, and animal waste associated with this type of agriculture use can cause adverse impacts to wetlands. Inconsistent with Policies 28 and 33, the County approved project moves future residential development into identified native grassland areas. Concerns are also raised over increased impervious surfacing on steep slopes, resulting in increased sedimentation and erosion of soils. The future residences under the proposed LLA are shifted to higher elevations up the hillside, thereby increasing the amount of cutting and filling required on steeper slopes. In addition, the installation of wells and septic systems in close proximity to wetlands for residential use can adversely impact water quality on the property.

Alternative parcel configurations would reduce or avoid these adverse ESHA impacts. For example, under the current parcel configuration, development envelopes are available that avoid grazing impacts to wetlands by providing more room for grazing outside of wetland areas, maintain LCP wetland setbacks and buffers, and avoid impacts to native grasslands.

Conclusion

As described above, the project raises multiple questions of consistency with the certified LCP. As approved by the County, the project thus raises a substantial issue with respect to the LCP's agriculture, visual, and environmental sensitive habitat policies. The Commission thus takes jurisdiction over the coastal development permit for the proposed LLA.

IV. De Novo Findings and Declarations



A. Project Location

The subject property is located in an area known as the “Harmony Coast”, between the communities of Cayucos and Cambria, in the North Coast Planning Area of San Luis Obispo County (see Exhibit A). The project site is approximately one mile south of the community of Harmony on the west side and directly adjacent to Highway One.

B. Site Characteristics

Proposed Development Site

The undeveloped property is approximately 50.13 acres in size and is zoned for Agriculture (AG) in the LCP. The property is part of a cattle grazing area historically referred to as the “North Ranch” and originally part of the larger Rancho San Geronimo. Scattered structures, barns, animal pens, and older ranch roads can be found in this general area. A historic ranch house named the “Blackburn” or “Tripp House” is situated just outside the project area to the south on an adjacent property. At present, the project site is characterized as open rangeland with a history of cattle operations.

The portion of the site where structural development is proposed is on the visible hillside west of Highway One. The terrain slopes downhill west to east towards Ellyslly Creek, which runs roughly parallel to the easterly property boundary and adjacent to Highway One. Three unnamed drainages flow down the hillside into Ellyslly Creek creating deep wetland gullies and areas of steeply sloped terrain. An existing dirt access road roughly bisects the property and is accessed directly from Highway One. The road enters the southeast corner of the property through a eucalyptus grove, then turns north and continues up the hillside and over the ridge. This private access road serves the subject property as well as adjacent agricultural parcels to the west. See Exhibit F for project area photos.

Property Characteristics

The subject property includes three contiguous parcels in common ownership totaling approximately 50.13 acres. Parcel 1 is the largest at approximately 43.75 acres and was created by deed in 1860 (C/DDS/247). This deed left a gap of property between it and the old County Road (now Highway One), and was conveyed by deed in 1877 creating Parcel 2 (J/DDS/406). Parcel 3 was created in 1974 when the State of California conveyed by Director’s Deed a small portion of property adjacent to Highway One. In this case, it appears that portions of the Applicant’s property were occupied in part by the Old County Road (now Highway One) in a previous alignment. The property is now directly adjacent to Highway One in its current configuration, and the creation of Parcel 3 looks to be a direct result of the Highway One realignment. As described in the deeds and shown on the submitted site plan, Parcel 3 is entirely a drainage easement running along Highway One on the eastern property boundary. In the early 1990’s the County recognized these three parcels through the Certificate of Compliance (COC) process. Parcels 1 and 2 were issued “straight” COC’s in 1991. Parcel 3 reflects the only “conditional” COC.

C. Project Description



The proposed project will adjust the lot lines between three parcels of approximately 43.75 acres, 4.93 acres, and 1.45 acres each, resulting in two parcels of 43.60 acres and 6.53 acres. In this process, the small 1.45 parcel is to be merged into the other parcels, resulting in a total of two parcels. The most significant project element is that the LLA substantially repositions the 4.93-acre parcel from its existing location, as narrow, irregular shaped strip of land adjacent to Highway One, to a single rectangular shaped 6.53-acre parcel centrally located on the hillside and abutting the western boundary of the larger combined 43.75-acre parcel. The project also includes the establishment of two 15,000 square foot residential building envelopes. The building envelopes are proposed on either side of the existing dirt access road and are located midway up the hillside. See Exhibit B for proposed parcel configuration, the location of new development envelopes, and access road alignment.

The County approved project establishes siting and design parameters that the future residences must follow. To avoid “silhouetting” against the sky when viewed from Highway One, the County conditioned the future residences to not exceed 18.5 feet in height above the existing ground surface, or the 246.5’ elevation, whichever is lower. At the time of future application for the residences, the Applicant must show the use of colors that are compatible to the surrounding environment. Darker, non-reflective, earth tone colors must be used for walls, chimneys, etc., and darker green grey, slate blue or brown colors must be used for the roof structures. The County approved project also requires mitigation for disturbed soils and the use of native grassland buffers between wetlands and disturbed areas.

D. Standard of Review

Title 21- Real Property Division Ordinance of the LCP

In addition to LCP policies and ordinances identified by the appeals and cited in this report, Title 21 Real Property Division Ordinance also applies to the proposed lot line adjustment. Under Section 21.08.020(a) of Title 21 Real Property Division Ordinance of the County LCP, subdivisions include lot line adjustments. This section specifically includes lot line adjustments as a type of development that requires a coastal development permit and is subject to the provisions of the certified LCP. Title 21 Section 21.08.020(a) states:

***Section 21.08.020(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.*

In addition, Section 21.02.030(c) of the Real Property Division Ordinance applies to the proposed lot line adjustment. This ordinance states that lot line adjustments must maintain a position which is better than, or equal to, the existing situation relative to the County’s zoning ordinances. Section 21.02.030(c) states:



(c) Criteria to be considered. A lot line adjustment shall not be approved or conditionally approved unless the new parcels resulting from the lot line adjustment will conform with the county's zoning and building ordinances. The criteria to be considered includes, but is not limited to, standards relating to parcel design and minimum lot area. These criteria may be considered satisfied if the resulting parcels maintain a position with respect to said criteria which is equal to or better than such position prior to approval or conditional approval of the lot line adjustment.

Thus, in order for a LLA to be approved the “better or equal” test must be met for each coastal resource issue area. As described in more detail in the De Novo findings below, the proposed LLA does not create a “better or equal” position. Rather, the proposed LLA results in greater resource impacts than under the current parcel configuration, thereby “worsening” the overall position with respect to the LCP’s agriculture, visual and scenic, ESHA, and archaeology policies and ordinances.

E. Coastal Development Permit Determination

By finding a substantial issue in terms of the project’s conformance with the LCP the Commission takes jurisdiction over the application for the proposed project. The standard of review for this application is the San Luis County certified LCP and the Public Access and Recreation policies of the Coastal Act.

Developable vs. Non-developable Parcels

To maximize the protection of coastal resources, the lot line adjustment should not result in an increase in the number of developable parcels over that number which existed prior to the proposed adjustment. In this case, there is uncertainty about whether existing Parcel 2 (4.93-acres) and Parcel 3 (1.45-acres) can be developed to begin with. This is not as much of a concern with Parcel 3 because it would be merged away under the current proposal. Parcel 2 on the other hand is slated for residential development and would be reconfigured under this proposal. As discussed previously, Parcel 2 is an irregular shaped sliver of land comprised almost entirely of wetlands. A small portion of this parcel is not wetlands but is extremely steep (40% slope) and without access. The County did not specifically analyze whether there is a reasonable expectation to be able to develop Parcel 2 as currently configured. If there is not, than clearly the LLA could not be supported under the LCP.

In any case, this question does not need to be resolved at this time because even if there are two developable parcels, the proposed LLA will have greater impacts to coastal resources than if the current configuration is maintained. The Applicant has shown a possible building site on the existing Parcel 2 adjacent to Highway One and outside of the identified wetland resource. This is the current baseline condition under which the proposed project is evaluated against. As discussed in the findings below, the reconfigured parcels results in adverse impacts to agricultural resources, diminishes the scenic and visual qualities of the area, and has adverse impacts to ESHA. Irrespective of whether or not Parcel 2 can be developed currently, the proposed LLA “worsens” the situation with respect to LCP consistency and should not be approved. Thus, the LLA is both inconsistent with various LCP policies and ordinances, and the LCP’s specific LLA criteria for approval.



1. Agriculture

A. Applicable LCP Policies and Ordinances

LCP agricultural land use policies specifically applicable to the subject site include:

LCP Agriculture Policy 1: Maintaining Agricultural Lands. ...Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses. ...

Permitted Uses on Non-Prime Agricultural Lands. Principal permitted and allowable uses on non-prime agricultural lands are designated on Coastal Table O – Allowable Use Chart in Framework For Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on non-prime soils, that the least amount on non-prime land possible is converted and that the use will not conflict with surrounding agricultural lands and uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Agriculture Policy 2: Divisions of Land. Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance.

...

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that any existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify the parcels used for agricultural and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Agriculture Policy 3: Non-Agricultural Uses. In agriculturally designated areas, all non-agricultural development which is proposed to supplement the agricultural use permitted in areas designated as agriculture shall be compatible with preserving a maximum amount of agricultural use. When continued agricultural use is not feasible without some supplement use, priority shall be given to commercial recreation and low intensity visitor-serving uses allowed in Policy 1.



Non-agricultural development shall meet the following requirements:

- a) No development is permitted on prime agricultural land...*
- b) Continued or renewed agricultural use is not feasible as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.*
- c) The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.*
- d) The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.*
- e) Clearly defined buffer areas are provided between agricultural and on-agricultural uses.*
- f) Adequate water resources are available to maintain habitat values and serve both the proposed development and existing and proposed agricultural operations.*
- g) Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.*
- h) The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agricultural and, if appropriate, open space use by the following methods:*

Agricultural Easement. *The applicant shall grant an easement to the county over all agricultural land shown on the site plan. This easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land covered by the easement to agriculture, non-residential use customarily accessory to agriculture, farm labor housing and a single-family home accessory to the agricultural use.*

Open Space Easement. *The applicant shall grant an open space easement to the county over all land shown on the site plans as land unsuitable for agriculture, not a part of the approved development or determined to be undevelopable. The open space easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land to non-structural, open space uses.*

LCP Agriculture Policy 4: Siting of Structures. *A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce impacts on adjacent agricultural uses. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.050a OF THE CZLUO.]*

Policy 6: Lot Consolidation. *In some portions of the coastal zone where historical land divisions created lots that are now sub-standard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel*



sizes as set forth in the Coastal Zone Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots that would not permit continued agricultural use if sold individually. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Agriculture Policy 7: Water Supplies. *Water extractions consistent with habitat protection requirements shall give highest priority to preserving available supplies for existing or expanded agricultural uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

CZLUO Section 23.04.024 (e) and (f):

e. Overriding requirements for division on prime-agricultural soils. *Land divisions on prime agricultural soils as defined by this title shall be subject to the following requirements:*

- (1) The division of prime agricultural soils shall be prohibited unless it is demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy will not be diminished.*
- (2) The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.*
- (3) Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability*

f. Overriding requirements for division on non-prime agricultural soils. *Land divisions on non-prime agricultural soils as defined by this title shall be subject to the following requirements:*

- (1) Mandatory findings. A proposed land division shall not be approved unless the approval body first finds that the division will maintain or enhance the agricultural viability of the site.*

CZLUO Section 23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category: Sighting of Structures. *A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.*

B. Consistency with Applicable LCP Policies

Agriculture Policy 2 and Ordinance 23.04.024 are the primary LCP standards that regulate land divisions including lot-line adjustments. Under Agriculture Policy 1 lot-line adjustments must not compromise the long-term viability of agricultural lands. This policy requires that agricultural lands be maintained in, or available for, agricultural production. While lot line adjustments do not necessarily remove lands from agricultural production, they can affect the long-term use of the land to the detriment of agriculture. For example, lot line adjustments can alter land use patterns, emphasizing residential



development over other uses, and can create parcels too small to be economically viable for long-term agricultural use. When lot line adjustments lead to an increase in residential or urban development, conflicts between urban and agricultural uses increase, and the pressure to convert remaining agricultural lands also increases.

Prime vs. Non-prime Soils

The LCP distinguishes between prime and non-prime agricultural lands. While both are protected, the development constraints and requirements differ dependant on whether land is “prime” or “non-prime”. Under the LCP, prime soils are defined as: 1) land rated as class I or II in the Soil Conservation Service classifications; 2) land rated 80-100 in the Storie Index rating; 3) land which supports livestock for food/fiber and has annual carrying capacity of at least one animal/unit per acre (defined by USDA)¹; or 4) land planted with fruit or nut bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which yields at least \$200/acre. Non-prime soils are other soils classified in the Agricultural land use category of the Land Use Element.

In this case, the property contains two separate soil types. The vast majority of the site is comprised of Class VI (non-prime) soils. A narrow band of Class II (prime) soils are present along the eastern border of the site paralleling Highway One. This Class II soil is associated with sensitive wetlands of Ellylsy Creek. Ellylsy Creek encompasses most of the existing 4.93-acre parcel and would not be considered land area adequate to support agricultural uses. In terms of prime grazing land, the annual carrying capacity of this property remains uncertain. Research conducted by Commission staff suggests that the combined 50.13-acre parcels alone would not likely qualify as prime grazing land under the LCP test. However, if viewed in conjunction with neighboring parcels, it is possible to have large enough acreage for the site to be considered prime grazing land. As such, the Commission finds that the usable area of the project site by itself contains non-prime agricultural soils.

Maintaining Agricultural Capability

The LCP is protective of agricultural lands. As described, the property is zoned for Agriculture (AG) and has a long history of cattle grazing. Although the site has not been grazed in a number of years, the land should be maintained and available for agricultural production. No evidence has been provided suggesting that the land is not viable grazing land. Under current conditions, building envelopes are available that could accommodate residential development in support of agriculture and not diminish long-term viability of the site. A potential building site on the existing 4.93-acre parcel was identified by the Applicant and is separated completely from grazing areas and agriculturally productive soils by Ellylsy Creek. Development at this location would not fragment usable areas of land on the larger site. Even if the existing 4.93-acre parcel was sold off individually and not used for agriculture, the largest and most productive agricultural land on the current 43.75-acre would be maintained for agriculture.

¹ The USDA website defines animal/unit: “An Animal Unit (AU) represents 1,000 pounds of live animal weight. It serves as a common unit for aggregating animals across farms and across animal types. Animals per animal unit were 1.14 for fattened cattle, 0.74 for dairy cows, 2.67 for breeding hogs, 9.09 for hogs for slaughter, 250 for layer chickens and pullets more than 3 months old, 455 for broiler chickens and pullets less than 3 months old, 50 for turkeys for breeding, and 67 for turkeys for slaughter. In the other beef and dairy category, the animals per animal unit were 4.0 for beef and dairy calves less than 500 pounds, 1.73 for beef and dairy calves more than 500 pounds, 1.14 for beef replacement heifers, 0.94 for dairy replacement heifers, and 1.0 for beef breeding herds.”



The proposed LLA is inconsistent with the LCP's agriculture protection policies, including the overriding land division requirements of CZLUO Section 23.04.024 (e, f), because it does not maintain agricultural capability, and does not maintain or enhance the agricultural viability of the site. The project would fragment the site by creating a 6.53-acre residential parcel and building envelope at the center of available grazing lands. While the Agriculture Department's review of this project indicates that the proposed parcels are equal to the existing parcels with respect to agricultural zoning standards, the findings are not supported with a comprehensive viability analysis and appear in some cases to conflict with many of the underlying LCP policies and ordinances. The San Luis Obispo County Agriculture Department's findings on parcel configuration and agricultural use on the site state:

The proposed 6.53 acre parcel creates a parcel which is more conducive to individual ownership and reduced agricultural capability. However, the eastern boundary is situated more than 100 feet from the wetland perimeter. If the wetland is fenced, grazing would still be possible on the larger parcel since livestock could be moved from north to south along the corridor separating the wetland from the two residential building sites.

This finding suggests that agricultural capability, particularly on the newly configured 6.53 acre parcel would be diminished as a result of the project. Even though it would still be possible to move livestock across the larger parcel, the finding is in conflict with the LCP requirement to maximize the existing or potential agricultural productivity of any resulting parcel.

In terms of protecting agriculturally productive soils, the Agriculture Department's findings state:

- (1) Future residential building sites proposed for the two reconfigured parcels could diminish the agricultural capability of the property and could substantially increase the potential for the loss of agriculturally productive soils.*
- (2) The size of the building envelopes is relatively large and, although much of the road already exists, additional project related grading could convert additional land. Coastal Zone policies value highly the protection of agricultural lands. Although the acreage which will be converted is relatively small considering the size of the ranch, the two future residential projects could create a significant impact to the available agricultural soils capable of supporting rangeland forage.*

These findings clearly recognize the LLA's adverse impacts to productive agricultural soils. The location and size of the newly created parcels, in conjunction with the desired 15,000 square foot building envelopes, will convert more agricultural land than is necessary to accommodate residential development. As shown on the site plans submitted by the Applicant, nearly eight (8) acres of grazing land would be fenced off for new residential uses and removed from agricultural use.

Nonconforming Parcel Size

One of the most important ways to maintain agricultural viability is to ensure adequate parcel sizes. Section 23.04.024(b) of the Coastal Zone Land Use Ordinance (CZLUO) establishes a minimum parcel size of 320 acres for land divisions (including LLA's) on parcels where there is an existing agricultural



use of grazing. The subject parcels, which total 50.13 acres, are considered “non-conforming” because they do not meet the current size standard for grazing land. In this case, the proposed LLA results in one agriculture parcel marginally smaller than currently exists (Parcel 1 is currently 43.75 acres and would become 43.6 acres). While it is recognized that the number and size of existing lots preclude strict compliance with minimum parcel size requirements, there are alternative lot configurations that would better meet the intent of this ordinance, namely to ensure the long term capability of coastal agriculture. Such alternatives involve increasing the area designated for agricultural use and reducing the area designated for residential use. Policy 6 of the LCP addresses substandard lots created by subdivisions and contemplates lot consolidation when small lots would not permit continued agricultural use if sold individually. In instances such as this where the existing parcels are substandard size and are currently in common ownership, it is more protective of coastal agriculture to merge all of the parcels to create the largest agricultural site available.

Non-agricultural Residential Development on Agricultural Lands

Under the LCP, residential development is a conditional, discretionary use on the agriculturally (AG) zoned parcel. Because the proposed project is a conditional, discretionary use, development such as this is subject to special criteria regarding the siting, design and character of structures. Because the development is proposed in an area that has historically been used for cattle grazing, continued or renewed agriculture as well as the protection of surrounding agricultural activities must be ensured.

Concerns regarding the incompatibility of residential development and agricultural land uses is reflected by the fact that the proposed project is a conditional, discretionary use at this site. Typical incompatibility issues raised at residential-agricultural land use interface include: noise, dust, and odors from agricultural operations and animals; road-access conflicts between agriculturally related machinery and/or animals and private automobiles; and limitations of pesticide application, residential garden pest/exotic plant species transfer to name a few. Such incompatibilities can threaten continued or renewed agricultural operations when standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as animal wastes, dust and noise from machine operations – cultivating spraying, harvesting, et al) are a threat to residential use and enjoyment of the property.

The more fundamental question raised by the project is whether intensified residential development can be considered appropriate to the agricultural use of the property, and if so, what parcel configuration and siting arrangement best supports continued or renewed agricultural use. In this case, the proposed project includes two 15,000 square foot building envelopes to support future residential use without a bonafide agricultural use. As discussed previously, residential non-agricultural development such as this will fragment the site and convert more agricultural land than necessary to accommodate residential use. A more appropriate configuration would be to site and design future residential uses in a manner that supports agriculture, minimizes conflicts, and reduces loss of viable agricultural land. If two residential building sites must be pursued, other configurations and building envelopes such as discussed previously and below, would be superior to the current proposal.

Cumulative Impacts



The proposed project by itself results in a number of coastal resource impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future in the Harmony coast area. One concern is that these mostly undeveloped agricultural parcels will be used in the future for more “estate” type homes. These large estate type homes, where visible, would redefine the character of the agrarian and rural open space landscape here. More often than not, residential use of the land limits continued or renewed agricultural opportunities. It is likely that the subject project would induce future non-agriculture related development in the surrounding area. Also visible from Highway One, a series of new lot line adjustments are proposed on historic grazing lands to support large residential “estate” developments (Pierson, COAL 01-001/S000161L) and (Martin/Hobbs, S020365L). Other large residential “estate” projects proposed on non-conforming agricultural sites are also transforming the agricultural landscape of the Harmony coast (Schneider, A-3-SLO-00-040). It is possible that the Commission’s approval of a LLA to support residential dwellings unrelated to any agricultural use of the area here could induce similar future development proposals.

In contrast to residential development that is incidental to and/or in support of agricultural production, such as farmer and farm labor housing, the development of non-farming related single-family homes on agricultural lands is contrary to the goal of keeping agricultural lands in agricultural production. Given increasingly high housing costs, agricultural use cannot compete with the use of land for residential development even on a large un-subdivided farm parcel or ranch. The recent trend to develop large expensive homes on such properties exacerbates this problem by increasing the speculative value of these large parcels in the scenic rural coast as sites for such homes. The development resulting from these pressures is widely recognized as contributing to the loss of agricultural production on agricultural land in conflict with the LCP requirement to maintain the maximum amount of agricultural land in agricultural production (See, for example, Polacek A-2-SMC-04-002 and Waddell A-2-SMC-04-009).

C. Agriculture Conclusion

The largely undeveloped Harmony coast is a critical coastal resource area. Maintaining the rural agrarian countryside between Cayucos and Cambria is of utmost County and Statewide importance. One of the ways the LCP protects this resource is through the agricultural land use compatibility policies described above. In this case, the proposed LLA conflicts with the most fundamental agricultural protection policies and ordinances of the LCP by fragmenting agricultural lands, removing productive agricultural soils, and emphasizing residential development over agricultural uses. New development of this nature will increase conversion of coastal agricultural lands to residential uses. The proposed project as approved by the County may induce a similar type of future growth in this area inconsistent with LCP requirements to protect rural agricultural land. Thus, the Commission finds that the project is inconsistent with the agriculture protection policies and ordinances of the LCP. The Commission further finds the LLA inconsistent with Title 21 Section 21.02.030(c) because it will have greater adverse impacts to coastal agriculture than the current parcel configuration and “worsens” the overall position with respect to LCP policy and ordinance conformance. For these reasons the project must be denied.

2. Visual and Scenic Resources



A. Applicable Policies

The County's LCP is protective of coastal zone visual and scenic resources, particularly views from public roads such as Highway One. The LCP states:

Visual and Scenic Resource Policy 1: 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.

Visual and Scenic Resource Policy 2: Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Where 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.

Visual and Scenic Resource Policy 4: New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views.

Visual and Scenic Resource Policy 5: Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

CZLUO Section 23.05.034(d) –Landform alterations within public view corridors. Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.

B. Consistency with Applicable LCP Policies

San Luis Obispo County LCP Visual and Scenic Resources Policies 1, 2, and 4 require new development to be sited to protect unique and attractive features of the landscape, views to and along the ocean and scenic areas, and minimize its visibility from public view corridors. Visual and Scenic Resources Policy 5 and CZLUO Section 23.05.034(d) require grading, major vegetation removal and landform alterations within public view corridors to be minimized. In this case, the entire property is within the Highway One viewshed. Because the surrounding Harmony coast area is substantially undeveloped rural open space, any development in this area poses the potential for adverse impacts in terms of protecting the areas valuable scenic qualities.

Visual and Scenic Policy 2 aims to protect public views through the use of slope created "pockets" to shield new development. Given the exposed nature of the site with rolling, low lying grasses,



opportunities to hide or screen development using existing vegetation or topography is limited. Commission Staff has visited the site, studied topographic maps, and reviewed aerial photos and can confirm that it is unlikely that alternative sites completely out of the viewshed exist. The only area on the project site that may provide some visual relief is in the southwest property corner where a grove of eucalyptus trees could be used as a visual screen. Although this site should not be completely ruled out as a future development site, other constraints such as steep slopes and potential habitat impacts must also be carefully considered.

Under LCP Policies 4 and 5, every reasonable effort must be made to assure that new development in this area is truly subordinate to, and blends with the rural landscape. Under the current parcel configuration, the building site identified on the 4.93-acre parcel is on flatter terrain, at a much lower elevation, and closer to the Highway One frontage. It is not uncommon for historical residential developments along this stretch of coast to be located near the Highway One frontage. No cutting or filling of the hillside would be necessary to support development at this site. Screening future development under the current parcel configuration would require less landform alteration and less visual intrusion into the viewshed. It is possible that a short row of shrubs or trees could effectively screen a structure at this location on the existing 4.93-acre parcel. In addition, the closer the development is to the road, the shorter the length of time the development would be visible as travelers pass. The higher up the hillside and the further away from the highway the development is located, the longer the development appears within the cone of vision. In addition, one of the more compelling visual features of the Harmony coast is the large vistas of rolling hillsides. Development within the middle of such as setting – in the “longview” – would be a much more significant impact than would a development in the immediate foreground, closer to the viewer.

Most significant with respect to visual and scenic impacts, the proposed LLA moves development envelopes further up the steep hillside, increasing the amount of cutting and filling necessary to support residential development and increasing the amount of time the structure is visible in the viewshed. To mitigate for the unavoidable impacts to the scenic qualities of the area, the Applicant has provided a visual mitigation plan that consists of building two 6' tall by 20' wide earthen berms across each of the proposed building envelopes. The berms would be planted with native vegetation. However, in the Commission's experience, large berms with landscape trees and vegetation used to screen the residences from public view would look unnatural. In addition, it does not appear that this approach minimizes landform alterations within the viewshed, as required by Policy 5. The engineered berm will not be effective in completely screening the new residences from public view. A line of site profile provided by the Applicant shows the berms screening only up to the first 10' of the houses. Because the residences are taller than 10' above finished floor elevation (18'.5"), portions of the residences above this elevation would be visible. Screening the residence completely would depend on maintaining planted vegetation. The berms themselves are quite large. If not appropriately designed and/or vegetated, the berms could appear as unnatural landform alterations. Additional land area would also be expected should the berms be tapered or smoothed along their edges to blend with the steep contours of the natural terrain. It has been the Commission's experience that vegetated berms can sometimes look unnatural and lack effectiveness particularly in open rural landscapes such as this. Finally, extensive grading and earthmoving for the homes and earthen berms, may also be visible and may alter the natural form of the hillside.



The further up the hillside the development sites are moved, the steeper the slopes, and the more landform alteration is required. The further away the development is sited within the cone of vision of travelers on Highway One, the larger the berming and more intense the landscape screening must be to hide the residences. For these reasons, the proposed LLA will result in greater impacts to visual and scenic resources than would occur under the existing parcel configuration.

The Commission recognizes the County's effort to minimize the development's impacts on the open landscape by: 1) avoiding silhouetting against the skyline; 2) requiring the use of earthtone colors on the exterior of future structures; 3) requiring revegetation of disturbed areas; and 4) requiring some landscape screening. Nonetheless, these measures are not adequate to ensure that the extremely sensitive rural viewshed of the Harmony coast will be preserved to the maximum extent feasible.

There is no question that Visual and Scenic Resource Policy 4 of the LCP sets a high standard for protection of the extreme sensitivity of the Harmony Coast. The controlling objective of Policy 4 is to design new structures as to be subordinate to and blend with the rural character of the landscape. There are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding large agricultural parcels with farm buildings and individual residences; and 2) compatibility with the overall open space environs of the larger Harmony coast area.

Consistency with the character of the built environment can be evaluated primarily on architectural style and overall mass/scale. Because the residences are not proposed under this application, it is difficult to judge consistency with this standard. Nevertheless, the two 15,000 square foot development envelopes suggest that the proposed residences would be larger in mass and scale than a typical farmhouse. Other residential projects approved by the Commission on the Harmony coast prescribed building envelopes between 5,000 and 7,000 square feet. In terms of compatibility with the larger rural agricultural Harmony coast, large residential development is distinctly counter to the character of this greater area. While a limited number of residences have been developed on the rolling hillsides, this particular stretch of the Harmony coast remains largely undeveloped. If and when a residential development is proposed for this project, the County should exercise maximum discretion in ensuring conformance with the LCP's visual and scenic standards.

C. Conclusion

The proposed project is located in a highly scenic area requiring the utmost protection under the LCP. The LLA does not meet the visual and scenic resource protection standards of the LCP because the resulting residences would not subordinate to, and do not blend with, the rural character of the area. The proposed LLA does not improve this condition, but rather, creates greater impacts to visual resources. Alternative building sites, including the site identified area under the existing parcel configuration, would have less impact to visual and scenic resources. Thus the Commission finds that the proposed project is inconsistent with the LCP visual and scenic resource protection policies and ordinances. The Commission further finds that because the proposed LLA "worsens" the situation with respect to LCP conformance with LCP policies and ordinances, the project is inconsistent with Title 21 Section 21.02.030(c) and must be denied.



3. Environmentally Sensitive Habitat Areas

A. Applicable Policies

LCP policies and ordinances define and protect ESHA's, allowing only a very limited amount of development within or near these areas. The LCP is clear about limiting new development in ESHA to resource dependent uses (Policy 1 and CZLUO Section 23.07.170d(2)) and precludes land divisions, including lot lien adjustments, within environmentally sensitive habitats and their required setbacks (Policy 4). Vegetation that is rare or endangered must be protected and new development must minimize habitat disruptions (Policies 28 and 33 and CZLUO Section 23.07.176).

The LCP (CZLUO Section 23.11.030) defines "Environmentally Sensitive Habitat" 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 developments. They include, wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.

The LCP also contains the following provisions relevant to the protection of environmentally sensitive habitats:

Environmentally Sensitive Habitats Policy 1: *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 PUSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Environmentally Sensitive Habitats Policy 2: *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitat and that proposed development or activities will be consistent with the biological continuance of the habitat....*

Environmentally Sensitive Habitats Policy 4: *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 PUSUANT TO SECTION 23.07.170 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Environmentally Sensitive Habitats Policy 5: *Coastal Wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored.*



Environmentally Sensitive Habitats Policy 18: Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.

Environmentally Sensitive Habitats Policy 27: Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Environmentally Sensitive Habitats Policy 28: Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed.

Environmentally Sensitive Habitats Policy 33: 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.

CZLUO Section 23.07.170 – Environmentally Sensitive Habitats: The provisions of this section apply to development proposed within or adjacent to (within 100feet 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.

(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 within 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).

CZLUO Section 23.07.172 – Wetlands. Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration



of degraded wetlands.

a. Location of development: *Development shall be located as far away from the wetland as feasible, provided that other habitat values on the site are not thereby more adversely affected.*

...

a. Wetland setbacks: *New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.*

(1) Permitted uses with wetland setback: *Within the required setback buffer, permitted uses are limited to . . . roads when it can be demonstrated that:*

(i) Alternative routes are infeasible or more environmentally damaging.

(ii) Adverse environmental effects are mitigated to the maximum extent feasible.

CZLUO Section 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 the habitat.*

If questions arise about the precise boundary location of any land use category or combining designation map boundary, the LCP contains procedures to resolve such questions (CZLUO Section 23.01.041c(3)).

CZLUO Section 23.01.041 – Rules of Interpretation: *Any questions about the interpretation or applicability of any provision of this title, are to be resolved as provided by this section.*

c. Map boundaries and symbols: *If questions arise about the location of any land use category or combining designation boundary, or the location of a proposed public facility, road alignment or other symbol or line on the official maps, the following procedures are to be used to resolve such questions in the event that planning area standards (Part II of the Land use Element), do not define precise boundary or symbol location:*

(3) *Where a boundary is indicated as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Department, based upon the character and exact location of the particular feature used as a boundary*



B. ESHA Identification

According to the project biological assessment² the subject site has a number of sensitive habitat areas including a wetland/riparian system associated with Ellylsy Creek, and native grasslands. Under the LCP, three areas of the site qualify as an Environmentally Sensitive Habitat Area (ESHA). The first ESHA is the primary stream and riparian corridor associated with Ellylsy Creek and several small tributaries draining storm flows from steep hillsides. The riparian habitat has only a few willow, cottonwoods, and alders. The shrub and tree components are returning after extensive cattle grazing denuded the creek over the past several decades. According to the Althouse and Meade report, there are no deep pools on the property that would provide over-summering habitat for California red-legged frogs and steelhead trout. Although red-legged frog have not been identified in Ellylsy Creek for this project, it is known habitat for the California red-legged frog. Southwestern pond turtle have also been identified in Ellylsy Creek. The creek may also provide habitat for the California tiger salamander and Tidewater goby, listed as endangered by the Federal Endangered Species Act.

The second ESHA is wetland. The site contains a large wetlands complex with wetland areas occurring in all of the drainages on the property. A wetland delineation was conducted for the property by Althouse and Meade, Inc. in December 2001, updated in January 2005, and revised in June 2005. Typical plant species include brown-headed rush, miniature tule, cattails, bulrush, and spikerush. There were no areas where hydrophytic vegetation was dominant and hydric soil conditions were not observed. All channels and swales were generally dominated by hydrophytic vegetation. Therefore, according to the delineation, all channel bottoms and one concave feature on a hillslope, were determined to be wetlands.

The third ESHA is valley needlegrass grassland dominated by purple needlegrass (*Nassella pulchra*), a native perennial bunchgrass declining in numbers throughout the state. This habitat type is listed by the California Department of Fish and Game as a sensitive natural community. According to the report, the historically grazed parcels have been ungrazed for the last six years, and are showing a noticeable shift from annual grass dominance to bunchgrass dominance. It may be that these areas were overgrazed in the past, as new information from other areas suggests that some managed grazing may improve the establishment of native bunchgrasses.

Three rare plant species are known to occur on the property: Cambria morning glory (*Calystegia subacaulis* ssp. *episcopalis*), Obispo Indian paintbrush (*Castilleja densiflora* ssp. *Obispoensis*), and Hoffman's sanicle (*Sanicula hoffmannii*). Cambria morning glory occurs in patches throughout the property. The botanical report estimates a population of more than 500 individuals, with many more likely to be in the vicinity. Obispo Indian paintbrush also occurs in the grasslands and is considered to be declining in numbers due to habitat loss. Obispo paintbrush occurs sporadically in grassland habitats across the property. Both Obispo paintbrush and Cambria morning glory are included in the CNPS inventory in List 1B (Plants Rare and Endangered in California and Elsewhere), but are not a candidates for either state or federal listing. Hoffman's sanicle is a CNPS List 4 species identified on the property in clay and serpentine derived clay soils in patches throughout the valley needlegrass grassland.

² Biological Resource Update to the Biological Assessment for APN's 046-081-011 & 14 by Althouse and Meade, Inc. Revised June 2005



Nine special status animals were identified on or near the project site. They include: Golden eagle, Northern harrier; Southwestern; Monarch butterfly; Bald eagle; Steelhead, California red-legged frog; Coast range newt; and two-striped garter snake.

A number of factors support the designation of these areas on the project site as ESHA. As described in the biological studies, most of the property contains a rich mosaic of habitat types (e.g., wetlands, streams and riparian, grasslands). The property is contiguous with other ESHA areas and supports rare and sensitive plant and animal species. The Commission Staff has reviewed the evidence, visited the properties with Staff biologist, and after carefully weighing all the above factors it has been determined that the wetland, stream and riparian areas, and native grasslands areas identified and mapped by the Applicant's biologist are ESHA (see Exhibit C).

C. Consistency with Applicable Policies

The location of the building envelopes on both the existing and the proposed parcel configurations appear to be consistent with the wetland and streams and riparian setback policies. Issues raised with respect to septic systems and water quality impacts appear the same under both conditions. All building sites are over 100 feet from wetlands and riparian areas and potential impacts from construction activities do not appear to favor one configuration over the other.

However, the proposed parcel configuration has the potential to increase grazing impacts on wetland and riparian areas associated with Ellyslly Creek. The LLA shifts the residential building sites onto the hillside and will push grazing animals further into wetland areas. The proposed LLA does allow a narrow corridor between the residences and the wetlands, but forcing grazing animals within and through the area will result in an overconcentration and negative impact to the resource (e.g., trampling, overgrazing, increased animal waste). As described in the biological reports, extensive cattle grazing denuded the creek of vegetation over the past several decades. Thus, the existing configuration appears superior in terms of protecting wetland and riparian habitat from the impacts of grazing.

The existing configuration also appears superior in terms of protecting native grasslands. On the 4.93-acre parcel, the Applicant has identified a building envelope that does not contain native grasslands. This site could be developed without impacting native plant cover or rare and endangered vegetation. Section 23.07.172(a) of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. While County approval attempts to move the development sites a far away from the wetlands as possible, the result is a greater impacts to native grasslands. In this case, the LLA places a residential building site within identified native grasslands. According to the biological report, this homesite contains approximately 6,000 square feet of purple needlegrass (*Nassella pulchra*) (see Exhibit C). Mitigation for the loss of this needlegrass grassland is recommended at a two to one ratio by the project's biologist.

Future access improvements are another concern. While these improvements are not proposed at this time they would be addressed during future applications for the residences. Impacts are associated with alterations or removal of riparian vegetation of Ellyslly Creek and some its small wetland drainages through the construction of new culvert crossings and paving and widening the access road. Under the LCP, roads may be allowed within the required setback if it is demonstrated that alternative routes are



infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible. Much of the existing access road is not setback 100 feet from the identified wetlands and stream and riparian habitat areas. The encroachment of the roadway within the 100 foot setback area is approvable on the larger 43.75-acre parcel because alternative routes that would observe the 100 foot buffer appear to be more environmentally damaging. This is not the case, however, with access to the existing development site on 4.93-acre site. Direct access from Highway One appears to be a superior access route in terms of minimizing impacts to ESHA.

C. Conclusion

The proposed project site contains a variety of sensitive habitat types that require protection under the LCP. While all of the building sites are able to maintain the requisite 100-foot ESHA setback, the proposed LLA moves one of the building envelopes into areas of native purple needlegrass grasslands. In addition, moving the homesites further up the hillside and into grazing areas, will shift grazing pressures into sensitive wetland areas. Access also appears to be less environmentally damaging under the current configuration. For these reasons, the proposed LLA will result in greater impacts to ESHA than under the existing parcel configuration. Some of these impacts could possibly be dealt with in the future through project conditions such as removing building areas from grassland habitat areas. The Commission finds that the proposed project is inconsistent with the LCP ESHA protection policies and ordinances. The Commission further finds that because the proposed LLA “worsens” the situation with respect to conformance with LCP ESHA policies and ordinances, the project is inconsistent with Title 21 Section 21.02.030(c).

4. Archaeology

a. Applicable Policies

To protect and preserve archaeological resources, the following resource protection policies and ordinances apply to the project:

Policy 1: Protection of Archaeological Resources. *The county shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

CZLUO Section 23.07.104(d) applies to identified archaeologically sensitive areas and states in relevant part:

d. Required finding. *A land use or construction permit may be approved for a project within an archaeologically sensitive area on where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant*



archeological resources.

b. Consistency with Applicable Policies

LCP Policy 1 provides for the protection of both known and potential archaeological resources. To avoid development on important archeological sites, all available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal. Where these measures are not feasible, and development will adversely affect identified resources, adequate mitigation is required. In addition, CZLUO Section 23.07.104 outlines procedures and requirements for development within identified archaeologically sensitive areas. Before issuance of a land use or construction permit, an archaeologist knowledgeable in Chumash Indian culture must conduct a mandatory preliminary site survey. If the site survey determines that proposed development may have significant effects on existing, known or suspected resources, a resource protection mitigation plan must be prepared. The plan may recommend the need for additional study, subsurface testing, monitoring during construction, project redesign, or other actions to mitigate the impacts on the resource.

According to the cultural resource investigation, the project site was once occupied by the Obispeno Chumash.³ Two previously recorded archaeological sites and various isolated prehistoric materials were revealed during site surveys. One site was recorded as an isolated bedrock-milling feature but is not significant, as it is an isolated piece of material that would not be impacted by the project. A second site is characterized as “a large scatter of stone tools and stone tool manufacturing materials.” This site meets the criteria established by the State for listing as a “significant” cultural resource.

Potential impacts posed by residential development in close proximity to the archaeological site include: grading activities, residential construction activities and equipment staging, and development of access road, and other ongoing residential uses around the new homesite. According the archaeological report, avoiding the site completely is the preferred action to be taken in this case. If the site is impossible to avoid, the report recommends mitigation measures, such as capping the site with sterile fill so that construction activities will not directly disturb soils containing cultural materials.

The current parcel configuration allows ample opportunity to completely avoid the site. Large land areas are currently available on the 43.75-acre parcel to site and design development to ensure protection of the significant archaeological resources. Residential development sites could be adequately setback from the resource and access roads could be realigned to avoid continued disturbance. Development on the existing 4.93-acre parcel would be completely isolated from the sensitive archaeological area and far enough away to avoid impacts. In contrast, the proposed LLA establishes a 6.53-acre parcel that fully encompasses the portion of the identified archaeological site located on the property. As shown on the site plan (Exhibit B), approximately 15-20% of the new parcel would be occupied by one of the identified archaeological sites. The residential building envelope is located approximately 20 feet from the western edge of the archaeological site.

³ *Cultural Resource Investigation of the Crabtree Parcel*, Parker and Associates, December 5, 2001.



c. Archaeology Conclusion

The project site contains significant archaeological resources that require protection under the LCP. In this case, the LLA configures new parcels over known archaeologically sensitive areas and establishes new development envelopes in close proximity to known resources. The Commission finds that the project is inconsistent with Policy 1 and CZLUO Section 23.07.104 (d) because adequate measures have not been taken to ensure protection of the significant archaeological resources. The Commission also finds that the proposed LLA will have greater impacts to archaeological resources than under the current parcel configuration. Thus, the project is inconsistent with the “equal or better” criteria established by Title 21 Section 21.02.030(c).

V. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.** [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.** ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

***Public Resources Code (CEQA) Section 21080.5(d)(2)(A).** Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.** (a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would



substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed and is necessary because there are feasible alternatives and mitigation measures available which would substantially lessen any significant adverse effect the project may have on the environment. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

