

CALIFORNIA COASTAL COMMISSION

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 staff report addendum
 posted on Wednesday, December 12.

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Staff:	T. Luster-SF
Staff Report:	August 16, 2007
Hearing Date:	September 6, 2007 (Continued from February 14, 2007)
Denied:	6-6
Revised Findings:	November 28, 2007
Hearing Date:	December 13, 2007

REVISED FINDINGS: CONSOLIDATED STAFF REPORT
RETAINED AND APPELLATE JURISDICTIONS
SUBSTANTIAL ISSUE, *DE NOVO*, AND REGULAR PERMIT ITEMS

LOCAL GOVERNMENT:	County of San Luis Obispo
DECISION:	Approval with Conditions
APPEAL NO.:	A-3-SLO-06-053
APPLICATION FILE NO.:	E-07-001
APPLICANT:	Cambria Community Services District
PROJECT DESCRIPTION:	Temporary placement of monitoring wells and cables, use of vehicles and vessels, and other related development activities needed to conduct geotechnical and hydrogeologic tests for determining feasibility of a site for desalination wells.
PROJECT LOCATION:	San Simeon State Beach, north of Cambria, San Luis Obispo County
APPELLANTS:	Land Watch – San Luis County; Sierra Club – Santa Lucia Chapter; Commissioners Mary Shallenberger and Sara Wan
COMMISSIONERS ON PREVAILING SIDE:	Blank, Clark, Hueso, Reilly, Shallenberger, and Vargas

APPENDIX I:	Applicable Coastal Act / Local Coastal Program Provisions
APPENDIX II:	County CDP and Development Plan Conditions of Approval
APPENDIX III:	Appeals
EXHIBIT 1:	Location map
EXHIBIT 2:	Site plan
EXHIBIT 3:	Location of State Lands Commission leases

SUBSTANTIVE FILE DOCUMENTS:

- Certified County of San Luis Obispo Local Coastal Program
- County of San Luis Obispo File No. DRC2004-00142
- Coastal Commission Appeal File No. A-3-SLO-06-053
- Appeal Applications from Land Watch – San Luis Obispo County, Sierra Club – Santa Lucia Chapter, and Commissioners Shallenberger and Wan
- Final Initial Study/Mitigation Negative Declaration Geotechnical/Hydrogeologic Investigation Activities For the Pending Desalination Project, Padre Associates, October 2005
- Technical Memorandum No. 1 Mini-Sparker Test, Carollo Engineers, ~~April~~ August 2006
- Draft Environmental Assessment for Geotechnical and Hydrogeological Data Collection Activities for the Pending Cambria Desalination Project at Cambria, San Luis Obispo County, California, prepared by U.S Army Corps of Engineers, February 2007
- Environmental Awareness Training Program for Cambria Community Services District Desalination Project Geotechnical and Hydrogeologic Investigation Activities, San Luis Obispo County, California, Padre Associates, February 2007
- Hazardous Spill Contingency Plan for Cambria Community Services District's Geotechnical/Hydrogeologic Investigation Activities for the Pending Desalination Project, Cambria, San Luis Obispo County, California, Padre Associates, February 2007
- Wildlife Contingency Plan (Appendix C-1), Cambria Community Services District, Revised February 12, 2007
- State Lands Commission, leases and staff report, June 28, 2007
- CCSD ~~Revised-Updated~~ Project ~~Description~~ Application and Attachments, July 31, 2007
- William Randolph Hearst Memorial State Beach Re-classification and Revised Statement of Purpose, California State Parks, August 2007 (Note: applies to San Simeon State Beach)

STAFF NOTE ON REVISED FINDINGS

The proposed project described herein consists of a series of geotechnical tests and associated activities along San Simeon Beach meant to determine whether the beach substrate would be suitable for subsurface intake and outfall structures. The proposal, by the Cambria Community Services District (CCSD), would have required both a coastal development permit from the Commission for portions of the project within the Commission's retained jurisdiction and from the County of San Luis Obispo for portions of the project within the County's Local Coastal Program jurisdiction. The County's permit, issued August 15, 2006, was appealed to the Commission.

This staff report provides for the Commission recommended Revised Findings reflecting the Commission's three decisions on September 6, 2007 – the Commission first found that substantial issue existed with respect to an appeal of the local coastal development permit; it then denied that permit in a *de novo* hearing; and it finally denied a coastal development permit for portions of the project within the Commission's retained jurisdiction.

The Commission's public hearing and vote on December 13, 2007 is to determine whether the attached Revised Findings accurately reflect the Commission's September 6, 2007 decisions. The hearing and vote is to address only whether these Revised Findings support those decisions; it is not to address the merits of the proposed project or whether those decisions should be changed.

The December 13th hearing requires one motion and resolution on whether to adopt these Revised Findings. Commissioners eligible to vote are those on the prevailing side of the September 6th decisions – Commissioners Blank, Clark, Hueso, Reilly, Shallenberger, and Vargas.

The proposed changes in support of the Commission's Revised Findings are shown herein as modifications to the original staff report in ~~strikeout~~ and underline text. Changes in italicized ~~strikeout~~ and underline are those incorporated into the staff report through the September 5, 2007 Addendum.

1.0 RECOMMENDED MOTION AND RESOLUTION

Motion

Staff recommends the Commission adopt the following findings in support of its actions on September 6, 2007 to find substantial issue with an appeal of Coastal Development Permit A-3-SLO-06-053, to deny that permit pursuant to a *de novo* hearing, and to deny Coastal Development Permit application E-07-001.

I move that the Commission adopt the Revised Findings in support of the Commission's actions on September 6, 2007 concerning San Luis Obispo County Coastal Development Permit A-3-SLO-06-053 and the Commission's Coastal Development Permit application E-07-001.

Resolution

The Commission hereby adopts the Findings set forth below regarding San Luis Obispo County Coastal Development Permit A-3-SLO-06-053 and Coastal Development Permit E-07-001.

2.0 SUMMARY

This project, proposed by the Cambria Community Services District (CCSD), consists primarily of conducting geotechnical and hydrogeologic tests to determine whether subsurface conditions at San Simeon State Beach are suitable for desalination intake and discharge wells.

Development associated with the tests includes drilling boreholes and monitoring wells, installing well casings and wellheads, laying cables and using mini-sparkers to conduct a seismic reflection survey, conducting pump tests, and other related activities along the beach and in nearshore waters. The CCSD is considering constructing a desalination facility *nearby-at a site several hundred yards inland*, and results of the tests would be used to determine whether the site's geologic and hydrologic characteristics are suitable for locating subsurface intake and discharge structures that would be used by such a facility.

The project would occur within the County's certified LCP jurisdiction and within the Commission's retained jurisdiction. This staff report therefore provides recommended findings and conditions for a substantial issue appeal, *de novo* hearing, and a permit within the Commission's retained jurisdiction. Since County approval of a Coastal Development Permit (CDP) in 2006, appeal of that permit in 2007, and the Commission's initial hearing on the proposal in February 2007, the CCSD has made several substantial changes to the proposal. The project as originally approved and conditioned by the County included exploratory drilling and soil borings along possible pipeline alignments in or near sensitive riparian habitat areas along San Simeon Creek east of Highway 1. However, based on the CCSD's request, the County rescinded its CDP approval of project elements east of the highway and those elements are no longer a part of the proposed project. The CCSD's other substantial changes to the proposal since it was approved by the County include moving two proposed monitoring wells lower on the beach within the Commission's retained jurisdiction instead of within the County's LCP jurisdiction, capping the two wellheads with PVC or steel pipe rather than concrete pads, and using a crane rather than constructing a ramp to lower and raise project-related vehicles to and from the beach. The recommended appeal and permit findings herein reflect the current, revised version of the proposed project.

As noted above, the project purpose is to gather information about whether the site could support subsurface intake and discharge structures for a potential desalination facility. The findings herein, however, evaluate only whether the proposed temporary test activities conform to applicable Coastal Act and LCP provisions – they do not evaluate whether structures associated with a permanent full-scale facility at this location would conform to the Coastal Act or the LCP. In fact, the LCP does not allow at this location the types of structures that would be needed for such a facility, and the CCSD recognizes that the County and Commission would have to amend the LCP before a permanent facility could be built. Approval of a full-scale facility may also require revision of the Declaration of Purpose for San Simeon State Beach, which establishes primary uses of the beach as scenic, natural, cultural, and recreational. ~~Nevertheless, because the immediate proposed project—the geotechnical and hydrogeological tests as modified and subject to the recommended Standard Conditions and Special Conditions herein—can be determined to conform to applicable provisions of the LCP and the Coastal Act, staff is recommending the Commission approve the proposal.~~

2.0 — STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment:** This permit is not valid until a copy of the permit is signed by the Permittee or authorized agent, acknowledging receipt of the permit and the acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration:** Construction activities for the proposed project must be initiated within two years of issuance of this permit. This permit will expire two years from the date on which the Commission approved the proposed project if development has not begun. Construction of the development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made at least six months prior to the expiration date.
- 3. Interpretation:** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission (hereinafter, "Executive Director") or the Commission.
- 4. Assignment:** The permit may be assigned to any qualified person, provided the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

3.0 SPECIAL CONDITIONS

1. Administrative: ~~Prior to permit issuance, the CCSD shall provide to the Executive Director the following:~~

- ~~a) An approved Right of Entry approval from the Department of Parks and Recreation.~~
- ~~b) A letter from the Corps of Engineers to the U.S. Fish and Wildlife Service stating the Corps' determination as to whether or not the proposed project will adversely affect western snowy plovers (i.e., a federal Endangered Species Act Section 7 consultation letter).~~

2. Timing and General Limitations:

- ~~a) Motorized or mechanized project-related activities shall not occur on the beach or in coastal waters between March 1 and September 14 of any year.~~
- ~~b) All project related tests and surveys shall be done during weekdays and during daylight hours only (between sunrise and sunset), with the exception of the monitoring well pump tests, which may be conducted for up to 48 consecutive hours.~~
- ~~c) All vehicles used during the tests and surveys except the small boat used for the seismic reflection survey shall at all times remain above the wetted sand area of the beach. Only those vehicles necessary to conduct a particular test or survey shall be on the beach for those activities. The CCSD shall remove all vehicles and mechanized or motorized equipment from the beach by the end of each workday.~~
- ~~d) The environmental monitors described in **Special Condition 4** shall accompany project personnel during all project activities at the staging area, on the beach, or in coastal waters.~~
- ~~e) During all project-related activities, the CCSD shall contain all trash, garbage, and excess materials on the project site and shall remove it by the end of each workday.~~

3. Public Access:

- ~~a) Project-related equipment and vehicles shall be used in a manner that does not prevent continuous lateral access along the beach.~~
- ~~b) The project staging area shall not use more than the southernmost 100' of the parking area. On weekends (i.e., between sunset on Friday and sunrise on Monday), all vehicles and equipment shall be removed from the staging area and the area shall be made available for public use. During these weekend periods, vehicles and equipment shall not be stored at other public parking areas. The parking area shall be used for staging or storing equipment for no more than fifty days total during the two-year duration of the project.~~
- ~~c) While equipment or vehicles are at the staging area, the CCSD shall post the area with weatherproof signs describing the project activities, their expected duration, project manager contact information, and information about nearby alternative parking and recreation locations.~~

4. Environmental Monitoring and Training: Before and during project related activities, the CCSD shall implement the measures contained in its Environmental Awareness Training Program (February 2007), as modified herein:

- a) Before the start of project-related test and survey activities, the CCSD shall provide to the Executive Director confirmation from the County that the CCSD has retained a qualified marine mammal monitor and has retained an environmental monitor approved by the County and approved and permitted by the United States Fish and Wildlife Service for western snowy plover recovery. The CCSD shall also provide confirmation to the Executive Director that these monitors will be present during project activities to ensure compliance with conditions of this permit.
- b) Before the start of project-related test and survey activities, the monitors shall conduct for all personnel that will be on the project site an environmental education training program. The monitors shall identify during the program all known or potentially occurring listed sensitive species at or near the project site, including photographs and a description of their habitat requirements, and shall describe measures that will be implemented to avoid and minimize adverse effects to these species. The monitors shall obtain from each of the on-site project personnel a signed statement that they have participated in the environmental training and understand the required mitigation measures. The monitors shall make those signed statements available upon the Executive Director's request at any time during the two-year duration of the project.

5. Biological Survey and Reports:

- a) Before the start of the project-related test and survey activities, the approved environmental monitor shall conduct a biological survey of all onshore areas that will be subject to those activities (e.g., the staging area, the beach and beach access routes, monitoring well locations, etc.). The survey shall include photographic documentation of areas to be used during project activities, including the staging area and the bluffs adjacent to the staging area. The survey will identify the presence or absence of all sensitive species known or likely to be in the area, including the western snowy plover and other listed species. If any listed sensitive species are identified within these areas, the monitor shall provide to the Executive Director a list of those species and any additional mitigation measures that will be implemented to avoid impacts to the identified species. Project-related activities shall not begin until the Executive Director has approved these additional mitigation measures.
- b) Within 14 days of completing the project's exploratory soil borings and the seismic reflection survey, the environmental monitors shall submit a report to the Executive Director describing how these activities were implemented, any adverse effects noted to listed sensitive species, and the project personnel responses to those adverse effects. [Note: this report may be combined with the marine mammal monitoring report required pursuant to **Special Condition 9** below.]

6. Monitoring Well Location and Configuration:

- a) The two monitoring wells shall be located within the areas designated on the State Lands Commission leases at least 100 feet from San Simeon Creek and Estuary and at least 100 feet from any western snowy plover nesting area identified by State Parks or identified during the pre-construction biological survey.
- b) Each well shall be constructed so that the wellhead is at least three feet below the Mean High Tide line (approximately 1.5 feet NGVD (National Geodetic Vertical Datum)).

When they are installed, the wellheads shall be covered with at least three feet of native beach sand. The CCSD shall monitor beach erosion at least once per week during the project duration to ensure the monitoring wells remain covered. The CCSD shall also post at the staging area a notice approved by the Executive Director that describes the project-related activities and includes a telephone number the public may call if the wellheads become exposed. If the CCSD finds that the wellheads are exposed, the CCSD shall within 24 hours rebury or cut the wellheads to maintain at least three feet of cover. Except during well installation, abandonment/removal, and the pump tests, any burying or uncovering the wells shall be done using hand tools only.

7. Monitoring Well Pump Tests:

- a) Prior to conducting the pump tests at the two monitoring wells, the CCSD shall provide for the Executive Director's review and approval the well monitoring logs, results of the geotechnical surveys, and an analysis based on these results that describes any anticipated effects of the pump tests on San Simeon Creek and Estuary. The analysis shall describe all measures that will be implemented to ensure the pump tests have no adverse effect on surface water flows in the San Simeon Creek and Estuary. The pump tests shall not occur until after the Executive Director approves the analysis.
- b) To ensure turbid water is not directly discharged to open coastal waters, the water and sediment discharged during the pump tests shall be pumped into a geotextile bag or a hay bale diffusion basin placed on dry open sand. The point of discharge shall be at least 100 feet from San Simeon Creek and Estuary.

8. Monitoring Well Abandonment: The two monitoring wells shall be abandoned and removed and their sites restored within 25 months of issuance of this Coastal Development Permit. Well abandonment and removal shall include removal of the well casings, wellheads, any monitoring equipment, and all other structural components of the wells. Well removal shall occur only between September 15 and March 1.

9. Seismic Reflection Survey:

- a) Before and during the seismic survey, the CCSD shall implement the marine mammal protection measures of the Wildlife Contingency Plan (February 12, 2007) and the Final Initial Study/Mitigation Negative Declaration Geotechnical/Hydrogeologic Investigation Activities For the Pending Desalination Project (October 2005), as modified herein.
- b) The mini-sparkers used during the seismic reflection survey shall be placed in the monitoring wells so that the acoustic bursts they generate travel through at least 30 feet of sand before they enter the water column. The monitoring wells shall be capped during use of the mini-sparkers.
- c) The cables used for the seismic reflection test shall not be placed on hard-bottom habitat.
- d) Upon completion of the seismic reflection survey, the environmental monitors shall submit a report to the Executive Director describing the survey activities, any adverse effects noted to marine mammals, and the project personnel responses to those adverse effects. [Note: this report may be combined with the report required pursuant to **Special Condition 6** above.]

10. Spill Plan: During all project-related activities, the CCSD shall implement spill prevention and response measures described in the Hazardous Spill Contingency Plan (February 2007), as modified herein. ~~In addition, vehicles shall not be fueled on the beach.~~

11. Liability for Costs and Attorneys Fees: ~~The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees — including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay — that the Coastal Commission incurs in connection with the defense of any action brought against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.~~

3.0 FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

3.1 PROJECT PURPOSE AND DESCRIPTION

The Cambria Community Services District (CCSD) proposes to conduct several types of geotechnical and hydrogeologic tests at San Simeon State Beach (see Exhibit 1) over a two-year period to determine whether the beach would be suitable for subsurface desalination intake and outfall wells. Development associated with the tests includes installing well casings and wellheads, placing cables, conducting pump tests, using vehicles along the beach, and other similar activities. The tests would occur located along San Simeon State Beach near the mouth of San Simeon Creek and Estuary (see Exhibit 2). The area includes significant sensitive habitat values in and near the creek and estuary, along the beach, and in nearshore coastal waters, including a western snowy plover nesting area managed by the Department of State Parks and Recreation. The area also provides substantial recreational and scenic values, as it is located near a popular state campground and is adjacent to Highway 1.

In 1997-98, the CCSD conducted geophysical tests that identified alluvial deposits about 60 to 110 feet below the surface of the beach. This current proposed project is meant to confirm those existing survey data and provide more detailed additional data to determine whether intake and discharge wells could feasibly be located along San Simeon Beach. If determined feasible, the CCSD might then propose to use the site for wells for a desalination facility yet to be proposed.

Note: These findings address only those activities proposed as part of the tests and temporary structures described herein. Any future development associated with a potential *desalination facility* subterranean intake and outfall structures at this location will require modification of the LCP and additional review and approval by the Commission.

Project activities would occur both within the County's LCP jurisdiction and the Commission's retained jurisdiction. The entire project is within the Commission's appeal jurisdiction.

Project-related development activities within the County's LCP jurisdiction would include:

- Using an unimproved public parking area on the shoulder of Highway 1 as a staging area: The parking area is adjacent to the beach and is used by the public for access to the shoreline. There is no vehicular access between the beach and parking area, as they are separated by a five- to ten-foot high bluff. The CCSD would use the southernmost 100 feet of the parking area to stage equipment and would site a crane in this area to lower and raise vehicles to and from the beach. The crane would be a 120-ton truck-mounted hydraulic crane approximately 50 feet long and 27 feet wide. Other vehicles to be used include a track-mounted rotary-core ultrasonic drilling rig, a truck-mounted cone penetrometer drilling rig, a backhoe, a bulldozer, one or two all-terrain vehicles, one or more utility trucks, and a trailer-mounted generator. The parking area has room for about 20 vehicles, and the CCSD would use about half of those spaces for staging for up to about 30 to 40 days during the tests that would be conducted over the two-year duration of the project.

The rest of the main project-related development activities would occur on tidelands within the Commission's retained jurisdiction and would include:

- Drilling up to seven exploratory boreholes on the beach: Using a ~~truck~~ track-mounted sonic drill rig, the CCSD would drill about seven test boreholes near and parallel to the surf zone along about 1,000 feet of the beach. Each test hole would be about four to six inches in diameter and would range from about 25 to 125 feet deep. Along with the test drilling, the CCSD would conduct cone penetrometer testing along the same beach area. This test involves pushing a steel cone into the sand at high pressure to collect data that would be used to identify characteristics of the substrate, such as soil types, permeability, presence of contaminants, etc.
- Installing two groundwater monitoring wells along the beach: The CCSD would install two monitoring wells to a depth of about 120 feet using a track-mounted sonic drill rig. Each well would include casings of from four to six inches in diameter and an eight-inch diameter cap of PVC or metal. The monitoring wells would be located at two sites just below the mean high tide line (see Exhibit 3). The two wells would be in place for up to two years.
- Conducting an offshore seismic reflection survey: The CCSD would conduct the survey by placing two 1500-foot cables in nearshore waters and placing mini-sparkers in the two onshore monitoring wells. The cables would be placed using divers and a small boat. The mini-sparkers would generate an acoustic signal that would be picked up by the cables. *If the mini-sparkers fail, the CCSD would instead conduct the survey by striking a hammer onto an approximately one-foot square steel plate placed on the sand.* The survey is intended to provide additional information about substrate conditions.
- Conducting a beach and nearshore topographic survey and performing sediment texture sampling: The proposed project includes two topographic surveys – one in late summer/early fall, and one in late winter/early spring. The CCSD would conduct the surveys using a crew of about two surveyors and three divers. Sediment texture sampling would involve collecting approximately one-gallon grab samples of sand and sediment from the beach and seafloor during the topographic survey.
- Pump testing of the monitoring wells: The CCSD would lower a submersible pump into the wells and would use a portable generator to power the pump, which is expected to produce about 35 gallons per minute from the wells. The tests are expected to occur ~~about a year~~ *within the first two months* after the monitoring wells are installed. Each pump test would run from about 24 to 48 hours to determine the level of yield and drawdown in the wells. Water discharged during the test would be piped through a flexible hose into a geotextile bag placed on the beach that would retain any silt or sediment in the discharge and would prevent beach erosion.
- Removing and abandoning equipment: *No later than 25 months after issuance of a coastal development permit, the CCSD would remove all well casings, wellheads, and monitoring equipment. Activities and equipment used for removal would be similar to those used to install the wells.*

The activities on and near the beach and coastal waters are expected to occur on about 30 to 40 days over a two-year period.

Note: The project, as currently proposed and as evaluated herein, has been revised since it was approved and conditioned by the County through its issuance of a Coastal Development Permit. The currently proposed project no longer includes some of the components that were challenged in appeals to the Commission.

Those changes include the following:

- The original proposal included several exploratory wells and soil borings that would have been located along San Simeon Creek in or near sensitive riparian habitat areas inland of the beach and Highway 1. At the request of the CCSD, the County rescinded its CDP approval of project activities east of Highway 1.
- The original proposal included construction of a ramp from the parking area along Highway 1 to the beach. The CCSD is now proposing to use a crane instead of a ramp to provide beach access for the project vehicles.
- The original proposal included concrete pads at the two monitoring well wellheads. The CCSD deleted those concrete pads from its currently proposed project and now proposes that the wellheads be short lengths of PVC or metal pipes only.
- The original proposal included installing monitoring wells higher on the beach between the mean high tide line and the foot of the coastal bluffs. The CCSD is now proposing to install the two wells just seaward of the mean high tide line.

The findings herein are based on the current version of the proposed project; that is, without the exploratory wells and soil borings inland of the beach, without the ramp, without the concrete wellhead pads, and with the two monitoring wells located lower on the beach.

3.2 COASTAL COMMISSION JURISDICTION

3.2.1 Permit and Appeal Jurisdiction

Portions of the project are located within the Coastal Zone in the County of San Luis Obispo and are subject to the County's certified Local Coastal Program (LCP). Pursuant to Coastal Act Section 30603, the project is also within the appeal jurisdiction of the Commission because it is within 300 feet of the inland extent of the beach, within 100 feet of an estuary and a stream, within a sensitive coastal resource area, and between the sea and the first public road. Additionally, part of the project is within the Commission's retained jurisdiction – the project involves development activity in coastal waters and on tidelands – so it requires a permit directly from the Commission.

The standard of review for the Substantial Issue determination and *de novo* review on appeal is consistency with the certified LCP, and because the project is located between the first public road and the sea, the standard of review includes the Coastal Act's public access and recreation provisions. The standard of review for the portion of the proposed project within the Commission's retained jurisdiction is Chapter 3 of the Coastal Act.

3.2.2 Appeal Procedures

After LCP certification, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within the appealable areas defined by Coastal Act Section 30603(a). Pursuant to Coastal Act Section 30603(b), the grounds for appeal are limited to the assertion that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access and recreation provisions of the Coastal Act.

Substantial Issue Appeal: Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission may proceed directly to a *de novo* hearing on the merits of the project or may hear the *de novo* portion of the appeal at a subsequent hearing. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. At the "substantial issue" stage of the appeal process, the only persons qualified to testify before the Commission are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. If substantial issue is found, the Commission will proceed to a full *de novo* public hearing on the merits of the project.

De Novo Hearing: If the Commission conducts a *de novo* hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program. In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development conforms to the public access and public recreation policies of Chapter 3. At the time of the *de novo* hearing, any person may testify.

3.3 PERMIT AND APPEAL HISTORY

On August 15, 2006, the County of San Luis Obispo conditionally approved CDP and Development Plan #DRC2004-00142 for the project. The CCSD had previously conducted environmental review of the project and issued a Mitigated Negative Declaration for the proposed project in October 2005. On September 7, 2006, the Coastal Commission received the County's Notice of Final Action and associated records to start the 10-working-day appeal period, which ended September 21, 2006. Appeals were filed August 31 and September 21, 2006, and the CCSD on September 21, 2006 filed a 49-day waiver. On January 25, 2007, pursuant to a request by the CCSD, the County rescinded the portion of its approved CDP that

authorized development activities east of Highway 1. On January 26, 2007, the CCSD revised its project to replace the proposed ramp with a crane and to replace the proposed concrete wellheads with PVC or galvanized steel wellheads. On February 14, 2007, the Commission opened and continued a hearing on the appeal and CDP. On June 28, the State Lands Commission issued leases for the monitoring wells at two locations along San Simeon Beach (see Exhibit 3). On July 31, the CCSD submitted ~~a revised project description~~ an updated project application. On September 6, 2007, the Commission, at public hearing, found that the appeal raised substantial issue, determined that the proposed project did not conform to applicable LCP and Coastal Act provisions and denied the appealed local coastal development permit and the application to the Commission.

3.4 APPEAL – SUBSTANTIAL ISSUE ANALYSIS

Appellants contend that the project as approved and conditioned by the County is inconsistent with several policies of the certified LCP and the Coastal Act. As noted above, the CCSD has made several substantial changes to the project since the County issued its CDP and as a result, several of the appeal contentions no longer apply to the project as currently proposed.

Those appeal issues raising Substantial Issue are summarized below in Section 4.4.1 and are discussed in more detail in Section 4.4.5. Those appeal issues not raising Substantial Issue are discussed in Section 4.4.2 below.

3.4.1 Appeal Issues Raising Substantial Issue

Based on the County's record, information provided by the appellants, and the findings herein, the Commission finds that *substantial issues* exist with respect to conformity of the proposed project, as approved and conditioned by the County, with applicable LCP provisions related to sensitive habitat areas, marine biological resources, and visual resources, and to Coastal Act and LCP provisions related to public access and recreation, as summarized below and as further described in Section 4.5 of these findings:

- Public access: Appellants contend that the proposed project, as approved and conditioned by the County, will interfere with public recreation and access to the shoreline and therefore does not conform to applicable provisions of the County's LCP and the Coastal Act. The project would reduce available public parking at a site adjacent to the shoreline and would affect public access and recreation along a stretch of beach.
- Sensitive habitat areas: Appellants contend that the proposed project would adversely affect several sensitive habitat areas in a manner not allowed under the LCP. The project, as approved and conditioned by the County, has the potential to adversely affect a coastal stream and wetland, as well as habitat used by the western snowy plover for overwintering, breeding, and nesting.
- Marine biological resources: Appellants contend the project's seismic reflection survey would result in harm to sensitive marine species due to the acoustic signals generated by the survey equipment, and due to discharges that may result from project tests.

- Visual resources: Appellants contend that the proposed project does not conform to LCP requirements related to development visible from Highway 1. Although modified, the project would still be visible from the highway and from other scenic areas.

3.4.2 Appeal Issues Not Raising Substantial Issue

Appellants contend the following issues raise substantial issue; however, the Commission's review of the County's record and the proposed project as modified, shows that the appellants' contentions do not support such a finding. Appeal contentions not raising substantial issue include those related to placement of structures, out-of-date LCP policies, inadequate project description, growth inducement, public works, energy and public works, segmentation, and flood hazards.

3.4.2.1 Appeal Issue – Placement of Structures

- LCP North Coast Plan Recreation Standards #6 and #7 – see text in Appendix I

The LCP's North Coast Plan Recreation Standard #6 requires that new structures be located at least 50 feet from the high tide line or the upper edge of defined bluffs, whichever is greater. That standard allows structures to be located up to 25 feet of the bluff if they do not interfere with coastal access and when supported by a geology report prepared pursuant to requirements of the Coastal Zone Land Use Ordinance. The North Coast Plan Recreation Standard #7 identifies various permitted principal and non-principal uses allowed at San Simeon Beach. Appellants contend that the project as approved and conditioned by the County does not conform to these above LCP provisions because it would include structures within 50 feet of the high tide line or coastal bluffs and would involve uses that are not among the principal or non-principal permitted uses allowed through Recreation Standard #7.

The project as originally approved and conditioned by the County included three structures – a ramp that would have crossed a coastal bluff and two monitoring wells with concrete wellheads that would have likely been placed within 50 feet of the high tide line. However, the CCSD has since modified the proposed project by replacing the ramp with a crane, which is not considered a structure, and by moving the monitoring wells seaward out of the County's LCP jurisdiction and into the Commission's retained jurisdiction. Therefore, the currently proposed project includes no structures within the LCP jurisdiction. The proposed monitoring wells are instead subject to Coastal Act Section 30233(a). Section 4.5.5 of these findings discusses the wells' conformity to this Coastal Act provision.

Therefore, based on the County's record, the revised project description, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.4.2.2 Appeal Issue – Inadequate Project Description

- LCP Section 23.02.034 – see text in Appendix I.

LCP Section 23.02.034 requires that an application for this type of permit identify the location of all existing and proposed structures. Appellants contend that the project as approved and conditioned by the County does not conform to this LCP provision because the CCSD's CDP application provides only approximate locations for some of the proposed structures.

During the County's review, the CCSD stated it could not determine the location of the two monitoring wells until it completed the initial geotechnical testing. Similarly, the CCSD could not precisely describe the location of the seven initial boreholes and cone penetrometer tests, since they would take place on a highly dynamic beach environment and their exact locations would not be known until testing started. However, the CCSD has since modified the project so that the only two structures are the proposed monitoring wells, which are now proposed to be located in the Commission's retained jurisdiction rather than in the County's LCP jurisdiction. They would now be sited within two 25-foot square areas shown on the State Lands Commission lease documents (see Exhibit 3).

Therefore, based on the CCSD's project description, the County's record, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.4.2.3 Appeal Issue – LCP Policies are out of date

Appellants contend that the County's approval of the project was based in part on out-of-date or obsolete planning documents, including the LCP's North Coast Plan, the LCP's Environmentally Sensitive Habitat policies, and the General Plan's Conservation Element. While some of the cited LCP policies are now several decades old (e.g., the Commission certified the North Coast Plan and Environmentally Sensitive Habitat policies in 1988), they continue to serve as the current policies of the certified LCP and they are applicable to this proposed project. Based on the CCSD's project description, the County's record, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.4.2.4 Appeal Issue – Growth Inducement / Public Works / Energy and Industrial Policies

- LCP Public Works Policy 2 states:

New or expanded public works facilities shall be designed to accommodate but not exceed the needs generated by projected development within the designated urban reserve lines. Other special contractual agreements to serve public facilities and public recreation areas beyond the urban reserve line may be found appropriate.

Appellants contend that the project as approved and conditioned by the County does not conform to the LCP's policies related to growth inducement, public works, or energy and industry. Appellants further contend that the County approved the proposed project's CDP based in part

on erroneous information about the project purpose. The appellants state that the County's findings describe the proposed project's purpose as providing drought relief, but that the true purpose of the project is to provide water for new growth within and outside of Cambria.

However, the current proposed project, as modified by the CCSD, would not result in growth inducement and does not trigger the LCP's public works or energy and industrial policies. The activities associated with the current proposed project are to determine whether subsurface conditions along San Simeon Beach are conducive to desalination intake and outfall wells. These activities do not necessarily lead to construction or operation of a desalination facility. If results of the proposed geotechnical and hydrogeologic tests suggest this site is suitable, any further proposals to site permanent structures, pipelines, and related facilities would require extensive additional environmental review and permitting, including additional CEQA review and CDPs from both the County and the Commission. Based on the CCSD's project description, the County's record, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.4.2.5 Appeal Issue – Segmentation

Appellants contend that the project's review and approval by the County did not address the implications of a full-scale desalination facility that could result from the proposed geotechnical and hydrogeologic tests. Appellants contend that the County erred in approving the geotechnical tests without reviewing the full potential desalination facility being considered for a nearby location.

As noted previously, the current project involves only geotechnical and hydrogeologic tests meant to determine whether the beach area is suitable for desalination intake and outfalls. Based on a request by the CCSD, the County rescinded its approval of portions of the proposed project that could have led to specific alignments or locations for permanent structures associated with a full-scale facility. Even if test results show that the area is suitable, there is no certainty that this site would be selected or approved for permanent desalination-related structures or that a desalination facility would be built at or near this site. Further, the environmental review for any full-scale facility would need the information derived from these tests to help identify potential adverse effects, alternatives, and necessary mitigation measures. Based on the CCSD's project description, the County's record, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.4.2.6 Appeal Issue – Flood Hazard

- LCP Section 23.07.062(a) states:

With the approval of the Director of Public Works, the of Planning and Building Director may authorize construction or placement of a temporary structure or use within a Flood Hazard area pursuant to the required land use permit without meeting these standards, provided that the structure or use will not be in place from October 15 to April 15.

Areas along San Simeon Creek are designated by the County as flood hazard areas. The LCP provision cited above prohibits construction or placement of temporary structures within such areas between October 15 and April 15. Appellants contend that the proposed project does not conform to this provision because it would result in monitoring wells and soil boring locations within a flood hazard area within that time period.

The project as currently proposed no longer includes structures in or adjacent to San Simeon Creek. The only structural elements of the project subject to inundation would be the two below-grade monitoring wellheads located on the beach within the Commission's retained jurisdiction. Even during high tides, floods, or other high water events, the two eight-inch diameter wellheads would have no measurable effect on high water elevation. Based on the CCSD's revised project description, the County's record, and the above, the Commission finds this issue raises **no substantial issue** with respect to conformity to the certified LCP.

3.5 CONFORMITY TO THE CERTIFIED LCP AND APPLICABLE PROVISIONS OF THE COASTAL ACT

3.5.1 Public Access and Recreation

Pursuant to Coastal Act Section 30604(c), because the project is located between the first public road and the sea, it is subject to public access provisions of both the LCP and the Coastal Act, which include those listed below and in Appendix I of these findings.

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

LCP Access Policy 2 states:

Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is

defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline

Coastal Act and LCP policies related to public access and recreation require generally that new development not interfere with public access to the shoreline and that it provide maximum feasible access, subject to several exemptions. Appellants contend that the project, as approved and conditioned by the County, would interfere with access and recreation on the coast and therefore does not conform to public access provisions of the LCP and Coastal Act Sections 30211 and 30213. The project as currently approved and conditioned does not include all feasible mitigation measures available to minimize its effects on access.

The proposed project would include development between the first public road and the sea and is therefore subject to the LCP and Coastal Act policies cited above. The development would occur in San Simeon State Beach, acquired by the State in 1932 with its primary purposes being to preserve and protect the scenic, natural, cultural, and recreational resources of the shoreline.

The proposed project would include staging equipment and placing a crane at the south end of an unimproved parking area along Highway 1 and adjacent to San Simeon State Beach. The parking area is about 250 by 75 feet and provides about twenty parking spaces along with access to the beach via several unimproved pathways. Use of the parking area for staging would take up about half of the available spaces for up to about thirty to forty days during the two-year project duration and during those days would impede access along at least one of the pathways to the beach. Although there are other parking areas and accessways nearby, the project as currently approved and conditioned by the County would interfere with public access to the shoreline during those days. The proposed project's use of drill rigs and support vehicles on the beach would also reduce public access and recreation along the beach, as would the monitoring wellheads that would be located in the beach's surf zone.

~~Several measures are available and necessary to reduce the proposed project's effects on public access and recreation. To ensure the activities address concerns of the land manager, **Special Condition 1** would require the CCSD to submit prior to CDP issuance a Right of Entry approval from the California Department of State Parks and Recreation. **Special Condition 2** would require the CCSD to conduct activities on weekdays only so as to avoid higher visitor use times on weekends. **Special Condition 2** would also prohibit project-related motorized and mechanized activities at the staging area and on the beach during the western snowy plover nesting season, which runs from March 1 to September 14 each year and which also coincides with the times of highest visitor use. **Special Condition 2** would further require that vehicles be on the beach only when needed for project-related activities and that they be removed from the beach at the end of each workday. Additionally, **Special Condition 3** would require that project-related activities not prevent lateral access along the beach.~~

~~To reduce the effects associated with the CCSD's use of a beachside parking area as a staging area, **Special Condition 3** would require the CCSD to limit the size of its staging area to that shown on its project plans, which is approximately the southernmost 100 feet of the parking area. Additionally, the CCSD has stated it could remove vehicles and equipment from the staging area on weekends during the approximately thirty days that the parking area would be used for~~

staging to make most of the parking area available during these higher use periods. ~~Special Condition 4~~ would therefore require that all project related vehicles and equipment be moved away from this and any other nearby public parking area during weekends. ~~Special Condition 4~~ would also require the CCSD to post information at the staging area identifying alternative parking and access areas. To prevent the monitoring wells from interfering with public use of the beach, ~~Special Condition 6~~ would require the CCSD to monitor the wells at least once per week and respond to calls from the public if the wellheads are exposed and to rebury them or lower the wellhead elevation.

The project would cause substantial disruption of public access to a particularly notable stretch of shoreline. San Simeon State Beach provides a combination of sensitive habitat areas and low-intensity public access, and the beach is used primarily for passive recreation, such as walking, birdwatching, and similar activities. As noted above, the beach area has been recognized for its combination of scenic, natural, cultural, and recreational qualities. The project would disrupt those qualities due to activities, noise, and exclusion caused by vehicle access on the beach, well drilling on the beach, possible maintenance activities needed to ensure wellheads remain buried so they do not pose a hazard to the public or to wildlife, and eventual removal of well casings. The project would require substantial additional mitigation to avoid or minimize those adverse impacts. The project would also reduce the availability of access to this area of shoreline by taking up about half of the available parking spaces at the beach's main access point, which is an informal blufftop parking area immediately adjacent to, and visible from, the beach area. The project would cause the same types of noise, activities, and exclusion at this staging area, which would cause further disruption of those qualities noted above.

Allowing these types of mechanized and vehicular activities would not conform to Coastal Act section 30214(a), for example, which allows the Commission to limit types of access based in part on an area's topographic and geologic characteristics, the capacity of the site to sustain a particular type of use, and the fragility of natural resources. Currently, access to the beach is by foot traffic only, and the proposed project – including vehicular use, mechanized well drilling, and other activities – would represent a significant intensification of the type of access to the site and would go beyond its capacity to support its noted qualities. Similarly, Coastal Act Section 30221 requires that oceanfront land suitable for recreational use be protected for that use unless that type of use is already adequately provided in the area. As noted above, this particular stretch of beach has been recognized for its combination of qualities that exist at a relatively small number of easily accessible beaches in the area. The proposed project would detract from the type of recreational use now offered at this location.

Additionally, the proposed project could result in significant cumulative impacts similar to those above if its successful completion led to further development in the form of additional construction and development associated with placing the subsurface intake and outfall contemplated for this site. These cumulative impacts at this site could potentially be avoided through use of an alternative and less environmentally damaging location for any future proposed structures at this site or a potential water supply facility at another inland site.

Conclusion: Based on the above, the Commission finds that the project, ~~as conditioned,~~ does not conform to the public access and recreation provisions of the Coastal Act and the certified LCP.

3.5.2 Environmentally Sensitive Habitat Areas (ESHA):

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Applicable LCP provisions (with text provided in Appendix I of this report) include:

- LCP Sections 23.07.170, 172, & 174.
- Environmentally Sensitive Habitat Policies 1, 2, 3, 7, 17, 20, 21, & 28
- Environmentally Sensitive Habitat – Wetlands Policies 7 & 8
- LCP North Coast Plan Sensitive Resource Area Combining Designation Standards #1&2
- County Health and Safety Code Section 8.66

Applicable Coastal Act provisions require generally that the environmentally sensitive habitat areas be protected from significant disruption and that development adjacent to such areas be compatible with and be sited and designed to prevent significant degradation of those areas. LCP provisions related to sensitive resource areas require in general that certain uses be prohibited or minimized in those areas and that approved development include feasible mitigation measures to avoid or minimize potential impacts to sensitive habitat. Appellants contend that the project, as approved and conditioned by the County, does not conform to a number of County LCP policies meant to protect sensitive habitat areas. Although the current proposed project has been revised to eliminate several project components that would have affected sensitive habitat, it still has the potential to cause impacts as described below and does not yet include all feasible mitigation measures to avoid or reduce those impacts.

The San Simeon Beach and Estuary area includes important habitat areas for a number of listed sensitive species, including marine mammals, shorebirds, and others. *The County LCP designates the estuary and creek as environmentally sensitive habitats.* Special status species known to exist at or near the project site include the steelhead (*Oncorhynchus mykiss irideus*), tidewater goby (*Eucyclogobius newberryi*), California red-legged frog (*Rana aurora draytonii*), Southwestern pond turtle (*Clemmys marmorata pallida*), and California black rail (*Laterallus jamaicensis*). At least one listed species, the Western snowy plover (*Charadrius alexandrinus nivosus*), uses part of the upper beach area for overwintering and as breeding and nesting habitat. Portions of the beach are closed during their nesting season from March 1 to September 14 each year. A sandbar often blocks the creek mouth during parts of the year and creates a lagoon with highly variable water and habitat conditions that attract a number of species. The area between the beach and Highway 1 includes coastal bluff scrub habitat.

Aspects of the proposed project that could affect environmentally sensitive resource areas include placement and removal of vehicles from the beach, vehicle access along the beach, drilling test wells on the beach, performing a seismic reflection survey on the beach and in nearshore waters, and performing a pump test at one or both of the proposed monitoring wells. Proposed activities on the beach include use of large drill rigs, mini-sparkers, and other equipment that has the potential to disturb sensitive species and habitat. ~~Although project components have been sited to avoid many potential ESHA impacts, additional mitigation measures are needed to ensure the project conforms to applicable Coastal Act and LCP provisions and results in minimal impacts to these species and habitat areas.~~

~~**Special Condition 1** would ensure that the CCSD obtain any necessary authorization from the U.S. Fish and Wildlife Service for potential impacts to plovers. **Special Condition 2** would prohibit mechanized or motorized project related activities on the beach during plover nesting season from March 1 to September 14 and would allow vehicles on the beach only when necessary for project related activities and only during daylight hours. **Special Condition 2** would also require that the CCSD remove all project related trash, debris, and excess materials by the end of each workday.~~

~~To further avoid and minimize impacts to ESHA, the CCSD developed an Environmental Awareness Training Program (February 2007) for this project. It includes descriptions of the listed species that may be at or near the project site, describes mitigation measures that would be implemented to protect those species, and describes environmental training that would be provided to project personnel. **Special Condition 4** would require the CCSD to implement those measures as part of permit compliance. **Special Condition 4** would also require the CCSD to provide environmental monitors and environmental training for all on-site project personnel. **Special Condition 5** would require pre-project biological surveys and post-project reporting to assist in determining whether impacts are avoided and minimized. **Special Condition 10** would also implement a spill prevention and response plan meant to avoid or reduce the potential for spills to enter ESHA or coastal waters and would prohibit vehicles from being fueled when they are on the beach.~~

~~Several Special Conditions specifically address the potential impacts that could result from the monitoring wells, pump tests, and seismic reflection survey. About a year after the monitoring wells are installed, the CCSD would conduct pump tests to determine the potential water yield from the underlying substrates. The tests would run from about 24 to 48 hours. To ensure the wells do not cause adverse effects to the sensitive habitat associated with San Simeon Creek and Estuary, **Special Condition 6** would require that they be located at least 100 feet from those areas. **Special Condition 7** would require the CCSD to provide to the Executive Director prior to the pump test an analysis based on the results of the initial geotechnical surveys, the seismic reflection survey, and monitoring results from the two wells showing that the pump tests will not affect the creek or estuary. **Special Condition 7** would also prohibit turbid water from the pump tests from being pumped into the creek or estuary. With these Special Conditions, potential adverse effects to sensitive habitat would be avoided and minimized.~~

Although portions of the proposed project have been relocated to avoid or reduce potential impacts to ESHA, the project overall would still degrade those areas and would not be compatible with the habitat values of those areas. For example, both the project's staging area and the location of its proposed wells would result in noise and activities easily heard and seen within the nearby ESHA and other sensitive resource areas along the beach and coastal bluffs. The LCP's North Coast Plan Sensitive Resource Area Combining Designation Standard 2 specifically requires that development on coastal blufftops be designed and situated to minimize adverse impacts to marine resources. The beach and proposed project site is used during all times of the year by various species, including listed endangered and threatened species and protected marine mammals – for example, the Western snowy plover not only uses the beach during its nesting season but has been observed at the beach during other times of the year. The beach is used by marine mammals as a haulout area, and the nearby estuary provides a wide range of environmental conditions over the course of the year used by many species.

Additionally, successful completion of the proposed project would likely lead to further nonconformity to the Coastal Act's ESHA requirements as well as nonconformity to related LCP requirements. For example, the LCP's Environmentally Sensitive Habitat – Marine Habitat Policy 39 requires that shoreline structures, such as those contemplated for future location at the beach, be designed or sited to avoid and minimize impacts on marine habitats. As noted above, the activities and development needed for both this current proposed project and an anticipated future project would cause impacts to these sensitive habitat areas that do not meet these Coastal Act and LCP requirements.

Conclusion: Based on the above, the Commission finds that the project, ~~as conditioned,~~ does not conforms to the sensitive habitat provisions of the Coastal Act and the certified LCP.

3.5.3 Marine Biological Resources

Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation,

maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

- LCP Environmentally Sensitive Habitat – Marine Habitat Policy 38
- County Health and Safety Code Section 8.66
[See text in Appendix I]

Applicable Coastal Act provisions require generally that permitted development maintain and protect marine biological resources. Related LCP provisions serving as guidance require generally that permitted development be sited and designed to mitigate incompatible uses and avoid and minimize impacts to marine resources, and that discharges not adversely affect marine biological resources. Appellants contend that the proposed project, as approved and conditioned by the County, does not adequately protect the area's marine biological resources.

The coastal waters offshore of San Simeon State Beach provide a rich diversity of habitat for numerous marine species. The nearshore area includes hard bottom habitat and kelp forests, and is used by a number of listed sensitive species, including marine mammal species such as sea otters, grey whales, and others, for foraging, migration, and other uses.

One project component that has the potential to adversely affect marine biological resources is the seismic reflection survey. The survey would be conducted to determine substrate characteristics. It would require placing two 1500-foot cables in offshore waters for one to two days using a small boat and divers and placing mini-sparkers within the two monitoring wells on the beach. The mini-sparkers would be fired from within the wells to generate a signal to be picked up by the offshore cables to allow identification of substrate characteristics. *If the sparkers are inoperable, the CCSD would as an alternative generate a signal by placing a small steel plate on the sand and striking it with a hammer.*

As part of its project description, the CCSD submitted a report (Technical Memorandum No. 1 Mini-Sparker Test, Carollo Engineers, April-August 2006) that provides information about the test's acoustic characteristics, including the expected levels of sound attenuation that would occur as the produced sound wave moves through the beach substrate and into the water column. The CCSD's use of the mini-sparkers is also subject to a permit issued by the State Lands Commission. The "General Permit to Conduct Geophysical Surveys" (PRC 8392) is used to authorize the use of relatively low-level and low-impact survey and testing equipment in state waters. The permit allows the use of equipment such as these mini-sparkers that use up to 2 kilojoules of energy. Although the mini-sparkers produce an initial 209-decibel acoustic burst, that level is expected to attenuate to no more than 56 decibels by the time the sound wave moves through thirty feet of sand to reach the water column. That level is substantially less than the approximately 75 decibels generated by ocean surf and is well below the approximately 150 decibel level of concern identified by the Commission when it considers limiting or mitigating acoustic output from higher energy devices. *The potential use of hammer strikes on a steel plate would similarly be below the 150-decibel threshold.* ~~To ensure the acoustic burst is at a level that is not expected to cause damage to marine life, **Special Condition 9** would require that the CCSD place the mini-sparkers in the monitoring wells at a depth that ensures their acoustic bursts would travel through at least thirty feet of sand before they enter the water column.~~

~~Special Condition 9~~ would further reduce potential adverse impacts by requiring that the cables used during the survey not be placed on hard bottom habitat. Additionally, measures in the CCSD's Wildlife Contingency Plan (February 12, 2007) and the Final Initial Study/Mitigation Negative Declaration Geotechnical/Hydrogeologic Investigation Activities For the Pending Desalination Project (Padre Associates, October 2005) required pursuant to **Special Condition 9** would help further ensure that sensitive marine life is not adversely affected during the tests. Measures in those plans to avoid and minimize impacts to marine mammals include conducting pre-project training to project personnel, continual observation by a qualified marine mammal monitor onboard the vessel during the seismic survey, reporting requirements should any "take" of marine mammals occur, and other similar requirements. Further, several of the Special Conditions established to protect sensitive habitat as described in the previous section will result in benefits to marine resources, including the spill prevention plan required by **Special Condition 10**. As noted previously in these Findings, the beach area and nearshore waters are used year-round by a variety of marine mammals and other species that would likely be adversely affected by the seismic survey and the accompanying activities.

Marine biological resources could also be affected by construction and activities associated with the two monitoring wells sited below the mean high tide line. The CCSD proposes to use a rotary sonic drill rig to install the wells. This type of drill uses high-frequency vibration to reduce friction between the drill rods and the substrate to allow faster drilling. The high-frequency vibrations are expected to attenuate quickly in the surrounding sand and are not expected to cause adverse effects to marine mammals that may be nearby. Additionally, this type of drill rig does not use drill muds, so its use will avoid potential adverse water quality effects due to release of those muds into the water column or on the beach. ~~Provisions of Special Conditions 2, 3 and 10 that impose limits on the use of mechanized and motorized equipment and require spill prevention and response measures will result in further avoidance and minimization of potential impacts.~~

The wellheads would be located in an active surf zone and have the potential to become exposed and injure marine life or become fouled with marine debris if they are sited at the wrong elevation. There are only limited beach profile data for this beach to help identify at what elevation the wellheads would remain covered, and in fact, CCSD is proposing to conduct a study as part of this current project to further identify characteristics of the beach profile. To address this concern and to identify appropriate elevations that would prevent exposure of the wellheads, the CCSD submitted with its revised project description a report (Technical Note on Equilibrium Beach Profile Change at Proposed Monitoring Well Sites on San Simeon State Beach, San Luis Obispo County, Scott Jenkins, PhD, July 31, 2007) that modeled anticipated summer and winter beach profiles. The report applied summer and winter wave height data from elsewhere in the region to local bathymetry and determined that the sand levels at the proposed wellhead sites were not likely to drop by more than approximately three feet due to short-term erosion and seasonal changes to the beach profile. Commission staff's review of the report concluded that although the report's findings were based in part on non-local data, those findings provided a reasonable basis upon which to establish the anticipated range of beach conditions during the temporary placement of the wells. ~~In addition, staff concluded that the report's recommendation—that the wellheads be set at a level no higher than approximately three feet below the measured Mean High Tide Line—would result in the wellheads remaining covered~~

throughout the anticipated conditions. However, additional measures are required to address the potential that non-modeled characteristics of the local environment result in the wellheads becoming exposed. Both the State Lands lease and **Special Condition 6** would require the two wellheads to be covered at all times. **Special Condition 6** would also require the CCSD to regularly monitor whether the wellheads become exposed and to respond promptly to any notification from the public that the wellheads are exposed. If they become exposed, the CCSD could then either re-cover the wellheads or cut them to a lower elevation. As an additional measure, the requirement of **Special Condition 8** that all well components, including wellheads, casings, and monitoring equipment, be removed within two years would ensure that long-term adverse effects to marine biological resources are avoided. Finally, to avoid impacts during the pump tests, **Special Condition 7** would require that the Executive Director approve results of CCSD's initial geotechnical studies before these tests begin and that discharges from those tests be directed through filtering devices before they enter coastal waters. However, if the wellheads were to become exposed, they would adversely affect marine mammals or other species using that area of beach and nearshore waters. Further, wellhead expose could occur at any time of the year, including sensitive nesting, pupping, molting, or other periods. Activities needed to rebury or modify the wellheads during these times could then further disturb these uses of the beach and nearshore area.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, does not conforms to the marine biological resource protection provisions of the Coastal Act and the certified LCP.

3.5.4 Spill Prevention and Response

Coastal Act Section 30232 states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The Coastal Act requires generally that spills be prevented and that effective containment and cleanup be provided for spills that do occur. The project includes the potential for oil and fuel spills into sensitive areas due to its use of motor vehicles on and near the beach and the use of a boat in nearshore waters.

The CCSD will avoid some potential spill-related impacts by using a sonic drill rig that does not require the use of drill muds instead of a standard drill rig that does use drill muds. The CCSD also submitted a Hazardous Spill Contingency Plan (February 2007) that identifies a number of measures the CCSD will implement to avoid spills and to respond to any spills that may occur. Those measures include regularly inspecting equipment for leaks, maintaining an on-site spill response team, having spill response equipment (e.g., absorbent booms, sorbent pads, shovels, containers, etc.) on hand to respond to spills, implementing identified spill response procedures, including notifying appropriate agencies, and others. **Special Condition 10** would incorporate measures in this Plan as required components for permit compliance. **Special Condition 10**

~~would also require that vehicles be fueled away from the beach area.~~ However, because the proposed project-related activities would occur immediately on or adjacent to ESHA, coastal waters, and highly sensitive nearshore habitat including rocky intertidal areas, it is not possible to adequately contain and cleanup a spill should it occur.

Conclusion: Based on the above, the Commission finds that the project, ~~as conditioned,~~ does not conforms to the spill prevention and response provisions of the Coastal Act.

3.5.5 Placing Fill

Coastal Act Section 30233(a) states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- a) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- b) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- c) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- d) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- e) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- f) Restoration purposes.*
- g) Nature study, aquaculture, or similar resource-dependent activities.*

The project would involve placing fill within coastal waters in the form of two sets of temporary well casings, wellheads, and monitoring devices, and laying two 1500-foot long offshore cables for up to two days as part of a seismic survey. Coastal Act section 30233(a) allows the Commission to authorize fill in coastal waters if the proposed fill activity meets three tests. The first test requires the proposed activity to fit within one of seven categories of uses described in Coastal Act section 30233(a)(1)-(7). The second test requires that there be no feasible less environmentally damaging alternatives to the fill. The third test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects.

- 1) Allowable Use Test: ~~Coastal Act section 30233(a)(4) allows fill in open coastal waters for incidental public service purposes. The proposed fill activities would be conducted by a public agency and represents a relatively minor set of activities necessary to determine whether a larger public facility might be able to use the site. Therefore, in this instance, the Commission finds that the proposed temporary fill is an allowable incidental~~

public service use and therefore in conformance with Coastal Act section 30233(a)(4). This proposed project does not meet the first test of section 30233(a). The project cannot be considered an incidental public use, since that category is limited to minor or subordinate activities associated with an ongoing use, and this project would represent a new and major activity necessary for a proposed major development. Since the project does not meet this first test, it is not necessary for the Commission to evaluate the proposal for conformity to the other two tests.

- 2) No Feasible, Less Environmentally Damaging Alternatives: The second test of section 30233(a) requires an assessment of whether there are feasible less environmentally damaging alternatives to the proposed fill. The project purpose is to determine whether this particular site is feasible for desalination intake and outfall wells, so it is infeasible to use an alternative site for the proposed test activities. Several of the proposed geotechnical tests and studies do not require placement of fill (e.g., beach profiling, cone penetrometer tests, etc.), but those tests must be supplemented with temporary placement of monitoring wells and seismic test cables to adequately characterize the site. Further, the information derived from the proposed test activities will be used during subsequent CEQA review that will evaluate whether other sites may be feasible and less environmentally damaging for a proposed full scale project. Therefore, the Commission finds that there are no feasible, less environmentally damaging alternatives to the proposed fill and that it meets the second test of Coastal Act section 30233(a).
- 3) Feasible Mitigation Measures: The third test under section 30233(a) requires that the project include feasible mitigation measures to minimize adverse environmental effects. Those measures are described in other sections of this report and are imposed through **Special Conditions 1-10**. They include requirements to keep the well structures buried, limiting work and monitoring to less sensitive times and seasons (e.g., outside of western snowy plover nesting season, outside of higher visitor use times on weekends, etc.), ensuring the temporary cable avoids hard bottom habitat, and implementing a spill prevention plan. By imposing the **Special Conditions** described in this report as part of the coastal development permit, the Commission finds the proposed project meets the third test of Coastal Act section 30233(a).

For the reasons above, the Commission finds that this coastal dependent project, as conditioned, is an allowable use for fill, has no feasible less environmentally damaging alternatives, and includes feasible mitigation measures, and is therefore consistent with section 30233(a) of the Coastal Act.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, does not conforms to the Coastal Act section 30233(a).

3.5.6 Visual Resources

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The LCP's Visual and Scenic Resources Policy 1 states:

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.

The LCP's Visual and Scenic Resources Policy 2 states:

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

The LCP's Visual and Scenic Resources Policy 10 states:

Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g., beach erosion control structures). Limit development on dunes to only those uses which are identified as resource dependent in the LCP. Require permitted development to minimize visibility and alterations to the natural landform and minimize removal of dune stabilizing vegetation.

The LCP's Visual and Scenic Resources Policy 11 states:

New development on bluff faces shall be limited to public access stairways and shoreline protection structures. Permitted development shall be sited and designed to be compatible with the natural features of the landform as much as feasible. New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches.

The LCP's North Coast Plan Planning Area Areawide Standard #6 states:

Primary site selection for new development shall be locations not visible from Highway 1, as follows:

- a. Sites shall be selected where hills and slopes would shield development unless no alternative location exists or the new development provides visitor-serving facilities.*
- b. New development shall be located so that no portion of a structure extends above the highest horizon line of ridgelines as seen from Highway 1.*
- c. Where single ownership is on both sides of Highway 1, building sites shall be located on the east side of Highway 1 except for identified visitor-serving development.*
- d. Development proposals for sites with varied terrain are to include design provisions for concentrating developments on moderate slopes, retaining steeper slopes visible from public roads undeveloped.*

The LCP's visual policies generally provide that scenic vistas be protected, that new development not be visible from major public view corridors, that new development on open sandy beaches be limited to that needed for public health and safety, and that new development on bluff faces be limited to public access stairways and shoreline protection structures. The LCP further requires development on bluff tops be designed and sited to minimize visual intrusion on nearby beaches. The LCP's North Coast Plan Areawide Standard #6 provision requires that locations for certain new development not be visible from Highway 1, unless no alternative location exists. Additionally, Coastal Act Section 30251 requires that development be sited to protect views to and along the ocean, that it be visually compatible with the surrounding area. Appellants contend that the project as approved and conditioned by the County would not conform to the applicable LCP policies.

Because the purpose of the project is to determine whether this particular location is suitable for desalination components, the project is covered by the Areawide Standard #6 exemption that allows new development to be visible from Highway 1 if there are no alternative locations. Also, as originally approved and conditioned by the County, the project would have included a ramp placed along a coastal bluff and beach and two monitoring wells with concrete caps on the beach. However, the CCSD has since changed the proposed project by replacing the proposed ramp with a crane and by replacing the proposed concrete wellhead caps with much smaller caps of PVC or steel pipe that will be installed below grade.

Even with these changes, the proposed project would result in adverse visual effects, due to its use of a beachside parking area for staging equipment and a 120-ton crane that would be located at the top of a coastal bluff adjacent to and visible from the beach and other nearby coastal view areas. The project's use of vehicles along the beach would also adversely affect the area's visual resources. ~~Therefore, several Special Conditions are necessary to minimize the proposed project's adverse visual impacts and to allow it to conform to the above Coastal Act and LCP provisions. The time limits imposed in **Special Condition 2** would reduce the amount of time the project affected visual resources and would ensure most of the project activities occurred outside the peak visitor season. **Special Condition 2** would also reduce visual impacts by requiring most of the project-related work be done during daylight hours to avoid the need for night lighting. Additionally, **Special Condition 3** would require the CCSD to move the project-~~

~~related vehicles away from the beach and bluff during higher visitor use periods on weekends. To ensure the wellheads remain buried and do not create an adverse visual impact, **Special Condition 6** would require the CCSD to inspect them at least once per week and respond to public notification about the wellheads, and to rebury them if they become exposed. Additionally, **Special Condition 8** would require that all structural components of the wells be removed within 25 months of CDP issuance. These adverse visual effects, located along a highly scenic coastal area valued in part for its views and vistas along the shoreline, would not conform to Coastal Act and LCP provisions that require such views to be protected.~~

Conclusion: Based on the above, the Commission finds that the project, ~~as conditioned,~~ does not conforms to the visual resource provisions of the Coastal Act and the certified LCP.

54.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

On October 28, 2005, the Cambria Community Services District certified a Mitigated Negative Declaration for the proposed project. In addition, Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of the CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The previous Findings have established that there are such alternatives and mitigation measures that are feasible but have not been incorporated into the project. Therefore, this proposed project does conform to the above-cited CEQA standard and thus must be denied.¹

~~As discussed above, the proposed project has been conditioned to be found consistent with the policies of the Coastal Act. Mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of CEQA.~~

¹ Pursuant to P.R.C. 21080(b)(5), a denial of a proposed project is statutorily exempt from the CEQA.

APPENDIX I: COASTAL ACT AND LOCAL COASTAL PROGRAM PROVISIONS

Public Access:

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) states, in relevant part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway...

Coastal Act Section 30213 states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*

- (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

LCP Section 23.04.420 states, in relevant part:

Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. This section to satisfy the intent of the California Coastal Act also establishes coastal access standards...

b. Protection of existing coastal access. Development shall not interfere with public rights of access to the sea where such rights were acquired through use or legislative authorization. Public access rights may include but are not limited to the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

Placing Structures:

LCP North Coast Plan Recreation Standard #6 states:

New structures are to be located a minimum of 50 feet from the high tide line or the upper edge of defined bluffs, whichever is greater. Where a geology report prepared in accordance with the CZLUO recommends a lesser setback, new structures may be placed to not less than 25 feet of the defined shoreline bluff; provided that the reduced setback shall not interfere with the obtaining or maintenance of coastal access of a minimum width of ten feet (10') as required in the Local Coastal Program.

LCP North Coast Plan Recreation Standard #7 states:

Principal permitted uses are limited to: Eating and drinking places (not including drive-in restaurants, fast food and refreshment stands); food and beverage retail sales (limited to tourist-oriented uses such as gift shops and art galleries); hotels and motels; and bed and breakfast facilities. Non-principal permitted uses are limited to: service stations; recreational vehicle parks (east of Highway 1); caretaker residences where appropriate; public assembly and entertainment (when accessory to a hotel or motel); coastal accessways; water wells and impoundment; and cultural, education, and recreational uses (excluding libraries, membership organizations, schools, social service organizations, and equestrian exhibition facilities) normally allowed by Coastal Table O pertinent to a visitor-serving priority area.

Environmentally Sensitive Habitat Areas:

The LCP's Environmentally Sensitive Habitat Policy 1 states:

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

The LCP's Environmentally Sensitive Habitat Policy 2 states:

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

The LCP's Environmentally Sensitive Habitat Policy 3 states:

The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible. Detailed wetlands restoration criteria are discussed in Policy 11. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Wetlands Policy 7 states:

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. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Wetlands Policy 8 states:

Principally permitted uses in wetlands are as follows: hunting, fishing and wildlife management; education and research projects. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-172 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Wetlands Policy 17 states:

In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted. The minimum buffer strip may be adjusted by the county if the minimum setback standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Coastal Streams Policy 20 states:

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Coastal Stream Policy 21 states:

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Riparian Habitat Policy 28 states:

In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

The LCP's Environmentally Sensitive Habitat – Marine Habitat Policy 38 states:

Uses shall be restricted to recreation, education and commercial fishing. Adjacent development shall be sited and designed to mitigate impacts that would be incompatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

LCP Environmentally Sensitive Habitat – Marine Habitat Policy 39 states:

Shoreline structures, including piers, groins, breakwaters, seawalls and pipelines, shall be designed or sited to avoid and minimize impacts on marine habitats. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.178¹ OF THE CZLUO.]

¹ Coastal Zone Land Use Ordinance Section 23.07.178 states: The provisions of this section are intended to preserve and protect habitats for marine fish, mammals and birds. Development within or adjacent to marine habitats is subject to the provisions of this section.

LCP North Coast Plan Sensitive Resource Area Combining Designation Standard 1 states:

Projects requiring Development Plan approval are to concentrate proposed uses in the least sensitive portions of properties. Native vegetation is to be retained as much as possible.

LCP North Coast Plan Sensitive Resource Area Combining Designation Standard 2 states:

Development and recreational uses, especially on the blufftop, shall be designed and situated to minimize adverse impacts on marine resources. Access shall be permitted when compatible with protection of marine resources.

LCP Section 23.07.170 states:

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

- a. *Application content. A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
 - (1) *Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.*
 - (2) *Recommends conditions of approval for the restoration of damaged habitats, where feasible.*
 - (3) *Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.*
 - (4) *Identifies the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. These identified constraints will be used by the County to evaluate, and require implementation of project design alternatives that result in impacts to ESHA being avoided and unavoidable impacts minimized. This shall also include**

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- a. Protection of kelp beds, offshore rocks, reefs and intertidal areas. Development shall be sited and designed to mitigate impacts that may have adverse effects upon the habitat, or that would be incompatible with the continuance of such habitat areas.
 - b. Siting of shoreline structures. Shoreline structures, including piers, groins, breakwaters, seawalls and pipelines shall be designed or sited to avoid and to minimize impacts on marine habitats.
 - c. Coastal access. Coastal access shall be monitored and regulated to minimize impacts on marine resources. If negative impacts are demonstrated, then the appropriate agency shall take steps to mitigate these impacts, including limitations of the use of the coastal access.

assessment of impacts that may result from the application of fire safety requirements.

- (5) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.*
- (6) Critically evaluate “after-the-fact” permit applications where unpermitted development has illegally encroached into setback areas before off-site mitigation is considered. Evaluate all options of restoring and enhancing the pre-existing on-site habitat values. Off-site mitigation should be an additional requirement where necessary to offset the temporary impacts of the violation and address the potential for restoration efforts to fail.*
- b. Required findings: Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:*
 - (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.*
 - (2) The proposed use will not significantly disrupt the habitat.*
- c. Land divisions: No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.*
- d. Alternatives analysis required. Construction of new, improved, or expanded roads, bridges and other crossings will only be allowed within required setbacks after an alternatives analysis has been completed. The alternatives analysis shall examine at least two other feasible locations with the goal of locating the least environmentally damaging alternative. The bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmental effects, only when the alternatives analysis concludes that a feasible and less-environmentally damaging alternative does not exist. If however, the alternatives analysis concludes that a feasible and less-environmentally damaging alternative does exist, that alternative shall be used and any existing bridge or road within the setback shall be removed and the total area of disturbance restored to natural topography and vegetation.*
- e. Development standards for environmentally sensitive habitats:*
 - (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.*
 - (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.*
 - (3) Where feasible, damaged habitats shall be restored as a condition of development approval.*
 - (4) Development shall be consistent with the biological continuance of the habitat.*
 - (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards.)*

LCP Section 23.07.172 states:

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.*
- b. Principle Permitted Uses in wetlands: Hunting, fishing, wildlife management, education and research projects.*
- c. Department of Fish and Game review. The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design.*
- d. 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 within wetland setbacks: Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and 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.**
 - (2) Wetland setback adjustment: The minimum wetland setback may be adjusted through Minor Use Permit approval (but in no case shall be less than 25 feet), provided that the following findings can be made:
 - (i) The site would be physically unusable for the principal permitted use unless the setback is reduced.*
 - (ii) The reduction is the minimum that would enable a principal permitted use to be established on the site after all practical design modifications have been considered.*
 - (iii) That the adjustment would not allow the proposed development to locate closer to the wetland than allowed by using the stringline setback method pursuant to Section 23.04.118a of this title.**
 - (3) Requirements for wetland setback adjustment: Setbacks established that are less than 100 feet consistent with this section shall include mitigation measures to ensure wetland protection. Where applicable, they shall include landscaping,*

screening with native vegetation and drainage controls. The adjustment shall not be approved until the approval body considers the following:

(i) Site soil types and their susceptibility to erosion.

(ii) A review of the topographic features of the site to determine if the project design and site location has taken full advantage of natural terrain features to minimize impacts on the wetland.

(iii) The biologists report required by Section 23.07.170 shall evaluate the setback reduction request and identify the types and amount of vegetation on the site and its value as wildlife habitat in maintaining the functional capacity of the wetland.

(iv) Type and intensity of proposed development.

(v) Lot size and configuration and location of existing development.

e. Site development standards:

(1) Diking, dredging or filling of wetlands: Diking, dredging or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 11 of the Local Coastal Plan and shall not be conducted without the property owner first securing approval of all permits required by this title.

(2) Vehicle traffic: Vehicle traffic from public roads shall be prevented from entering wetlands by vehicular barriers, except where a coastal accessway is constructed and designated parking and travel lanes are provided consistent with this title. The type of barrier and its proposed location shall be identified in the materials accompanying an application for a land use permit and must be approved by the Planning Director before permit issuance to insure that it will not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland.

(3) Open space easement required: A land use or construction permit for a structure larger than 1000 square feet in floor area shall not be approved on a parcel of one acre or larger that contains a wetland, unless the property owner first grants the county or an approved land trust an open space easement or fee title dedication of all portions of the site not proposed for development, as well as the entire wetland.

LCP Section 23.07.174 states:

Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.

a. Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.

b. Limitation on streambed alteration: Channelization, dams or other substantial alteration of stream channels are limited to:

(1) Necessary water supply projects, provided that quantity and quality of water from streams shall be maintained at levels necessary to sustain functional capacity of streams, wetlands, estuaries and lakes. (A "necessary" water project is a project

that is essential to protecting and/or maintaining public drinking water supplies, or to accommodate a principally permitted use as shown on Coastal Table "O" where there are no feasible alternatives.

- (2) Flood control projects, including maintenance of existing flood control channels, where such protection is necessary for public safety or to protect existing commercial or residential structures, when no feasible alternative to streambed alteration is available;*
 - (3) Construction of improvements to fish and wildlife habitat;*
 - (4) Streambed alterations shall not be conducted unless all applicable provisions of this title are met and if applicable, permit approval from the California Department of Fish and Game, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and California State Water Resources Control Board. In addition, every streambed alteration conducted pursuant to this title shall employ the best mitigation measures where feasible, including but not limited to:
 - a. Avoiding the construction of hard bottoms;*
 - b. Using box culverts with natural beds rather than closed culverts to provide for better wildlife movement; and*
 - c. Pursuing directional drilling for pipes, cables, and conduits to avoid surface streambed disturbance.**
- c. Stream diversion structures: Structures that divert all or a portion of streamflow for any purpose, except for agricultural stock ponds with a capacity less than 10 acre-feet, shall be designed and located to not impede the movement of native fish or to reduce streamflow to a level that would significantly affect the production of fish and other stream organisms.*
 - d. Riparian setbacks: New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet. In the rural areas (outside the URL) this setback shall be a minimum of 100 feet. A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted nest management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats.
 - (1) Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d(1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses. All permitted development in or adjacent to streams, wetlands, and other aquatic habitats shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures to be provided include, but are not limited to:
 - (i) Flood control and other necessary instream work should be implemented in a manner than minimizes disturbance of natural drainage courses and vegetation.***

- (ii) *Drainage control methods should be incorporated into projects in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction.*
- (2) *Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:*
 - (i) *Alternative locations and routes are infeasible or more environmentally damaging; and*
 - (ii) *Adverse environmental effects are mitigated to the maximum extent feasible; and*
 - (iii) *The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and*
 - (iv) *The adjustment is the minimum that would allow for the establishment of a principal permitted use.*
- e. *Alteration of riparian vegetation: Cutting or alteration of natural riparian vegetation that functions as a portion of, or protects, a riparian habitat shall not be permitted except:*
 - (1) *For streambed alterations allowed by subsections a and b above;*
 - (2) *Where an issue of public safety exists;*
 - (3) *Where expanding vegetation is encroaching on established agricultural uses;*
 - (4) *Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the Planning Director determines no feasible alternative exists;*
 - (5) *To increase agricultural acreage provided that such vegetation clearance will:*
 - (i) *Not impair the functional capacity of the habitat;*
 - (ii) *Not cause significant streambank erosion;*
 - (iii) *Not have a detrimental effect on water quality or quantity;*
 - (iv) *Be in accordance with applicable permits required by the Department of Fish and Game.*
 - (6) *To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174d(2) can be made.*

LCP Section 23.02.034 states:

The purpose of a Development Plan is to: enable public review of significant land use proposals; and to insure the proper integration into the community of land uses which, because of their type or intensity, may only be appropriate on particular sites, or may only be appropriate if they are designed or laid out in a particular manner. The Development Plan process includes a public hearing before the Review Authority. Action on a Development Plan is discretionary and may include: approval based on the standards of this title; approval with conditions; or disapproval, based on conflict with the provisions of this code, or information in the staff report or public hearing testimony. When Development Plan approval is required by this title, preparation and processing of the application shall be as follows:

- a. *Development Plan content. The content of a Development Plan application is to be the same as required for Minor Use Permits by Section 23.02.033.*
- b. *Development Plan processing. Development Plan applications are to be submitted to the Planning Department, and shall be processed as follows:*
 - (1) *Environmental determination. When a Development Plan application has been accepted for processing as set forth in Section 23.02.022 (Determination of Completeness), it shall be subject to an environmental determination as required by the California Environmental Quality Act (CEQA). No action shall be taken to approve or conditionally approve the application until the environmental determination results in:*
 - (i) *A statement by the Environmental Coordinator that the project is exempt from the provisions of CEQA; or*
 - (ii) *Approval of a negative declaration by the decision-making body pursuant to CEQA; or*
 - (iii) *Certification of a final environmental impact report (EIR) by the decision-making body pursuant to CEQA.*
 - (2) *Staff report. Following completion of an Environmental Determination, the Planning Department shall prepare a staff report that:*
 - (i) *Describes the characteristics of the proposed land use or development project, as well as the project site and its surroundings; and*
 - (ii) *References applicable county land use policies; and*
 - (iii) *Determines whether the proposed use or project satisfies at minimum the provisions of this title; and*
 - (iv) *Recommends whether, and on what basis, the proposal should be approved, conditionally approved or disapproved.*
 - (3) *Public hearing. The Planning Director shall schedule the Development Plan for public hearing before the Review Authority as set forth in Section 23.01.060.*
- c. *Development Plan approval or disapproval. The authority to take final action on a Development Plan as set forth in this subsection is assigned to the Subdivision Review Board or Planning Commission. Where a Development Plan application is required in conjunction with a land division application, the advisory agency designated to take action on the land division by Title 21 of this code shall consider both the Development Plan application and the land division application on the same agenda. Final action on the Development Plan shall occur prior to final action on the land division application. In all other cases requiring Development Plan approval only, the Planning Commission is assigned to take final action. Decisions of the Review Authority may be appealed to the Board of Supervisors (Section 23.01.042), and certain projects may also be appealed to the Coastal Commission pursuant to Section 23.01.043.*
 - (1) *Conditions of approval. After the conclusion of a public hearing, the Review Authority may approve, conditionally approve, or disapprove the Development Plan. In conditionally approving a Development Plan, the Review Authority shall designate such conditions to satisfy any requirements of CEQA, and to:*
 - (i) *Secure compliance with the objectives and requirements of this title, the Land Use Element and the Local Coastal Plan; and*

- (ii) *Designate time limits or phasing schedules other than those specified in Section 23.02.040 (Permit Time Limits) for the completion of projects, when deemed appropriate.*
 - (iii) *Identify the specific land uses from Coastal Table O, Part I of the Land Use Element, which may be established on the site pursuant to the Development Plan approval.*
- (2) *Additional conditions. In addition to the conditions of subsection 23.02.034c(1), the Review Authority may adopt other conditions, including but not limited to:*
 - (i) *Requiring that security be provided to guarantee performance and/or compliance with conditions of approval, as set forth in Section 23.02.060 (Guarantees of Performance);*
 - (ii) *Requiring installation of specific on-site or off-site improvements;*
 - (iii) *Modifying, superseding or replacing conditions of approval imposed on the subject site or land use by a previous Development Plan, Minor Use Permit or any land use permit issued pursuant to the zoning ordinance (Ordinance No. 603).*
 - (iv) *Authorizing land uses on the site in addition to those requested in the Development Plan application where such additional uses would normally be required by this title to have Plot Plan or Minor Use Permit approval.*
 - (v) *Any other conditions judged by the Planning Commission to be necessary to achieve compatibility between the proposed use and its site, its immediate surroundings, and the community.*
- (3) *Effect of conditions. Whenever a Development Plan approval is granted or amended subject to conditions, use or enjoyment of the Development Plan approval in violation, or without observance of any such condition shall constitute a violation of the Coastal Zone Land Use Ordinance. In the event of such a violation, the approval may be revoked or modified as provided in Section 23.10.160 (Permit Revocation). The duration of conditions is established in Section 23.02.052 (Lapse of Land Use Permit).*
- (4) *Required findings. The Review Authority shall not approve or conditionally approve a Development Plan unless it first finds that:*
 - (i) *The proposed project or use is consistent with the Local Coastal Program and the Land Use Element of the general plan; and*
 - (ii) *The proposed project or use satisfies all applicable provisions of this title; and*
 - (iii) *The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and*
 - (iv) *The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and*
 - (v) *The proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.*

- (vi) *The proposed use or land division (if located between the first public road and the sea or the shoreline of any body of water), is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act.*
 - (vii) *Any additional findings required by planning area standards (Part II of the Land Use Element), combining designation (Chapter 23.07), or special use (Chapter 23.08).*
- d. *Effective date of land use permit: Except where otherwise provided by Section 23.01.043 for projects that may be appealed to the Coastal Commission, the approval of a Development Plan shall become final and effective for the purposes of construction permit issuance, business license clearance, or establishment of a non-structural use, on the 15th day following the act of Review Authority approval; unless an appeal is filed as set forth in Section 23.01.042 (Appeal). A land use permit for appealable development shall not become effective until the requirements of Section 23.02.039 are met.*

The County's Health and Safety Code Section 8.66 states, in relevant part:

Section 8.66.010: The board of supervisors finds that there are insufficient federal and state statutes to adequately protect, preserve, and enhance the unique and beautiful coastline of San Luis Obispo County and the significant resources in the ocean waters within the boundaries of the county such as commercial fishing, recreational fishing, human contact sports, swimming, scuba diving, surfing, tourism, marine habitat, rare and endangered species, domestic water supplies, sea otter refuge, marine research, aquaculture estuarine habitat, shellfish growing, recreational boating, and areas of special biological significance, all of which require protection from contamination. The board of supervisors further finds that because of the ecological relationship between the ocean waters within the boundaries of the county and the lands and people within the rest of the county, there must be local regulations for the:

- (1) Protection of public health by preventing contamination of domestic water supplies and water use for human contact recreation as well as contamination of fish and shellfish consumed by the public;*
- (2) Protection of economic stability and for economic development rights;*
- (3) Protection of significant resources, public health and economic stability resulting from contaminants being brought into the area by currents and tidal movements.*

Section 8.66.020: For the purpose of this chapter, the following words and phrases shall have the meanings respectfully ascribed to them by this section:

- (1) "Ocean waters of the county" means any ocean waters within the boundaries of or abutting the county.*
- (2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water, including but not limited to toxic and hazardous chemicals, selenium, pesticides, nutrients, sediments, heavy metals, and trace elements from agricultural drainage water, sewage, and any other waste water in sufficient quantities that will be detrimental to the present and future beneficial users.*

(3) "Contamination" means any impairment of the quality of the waters of the county by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease.

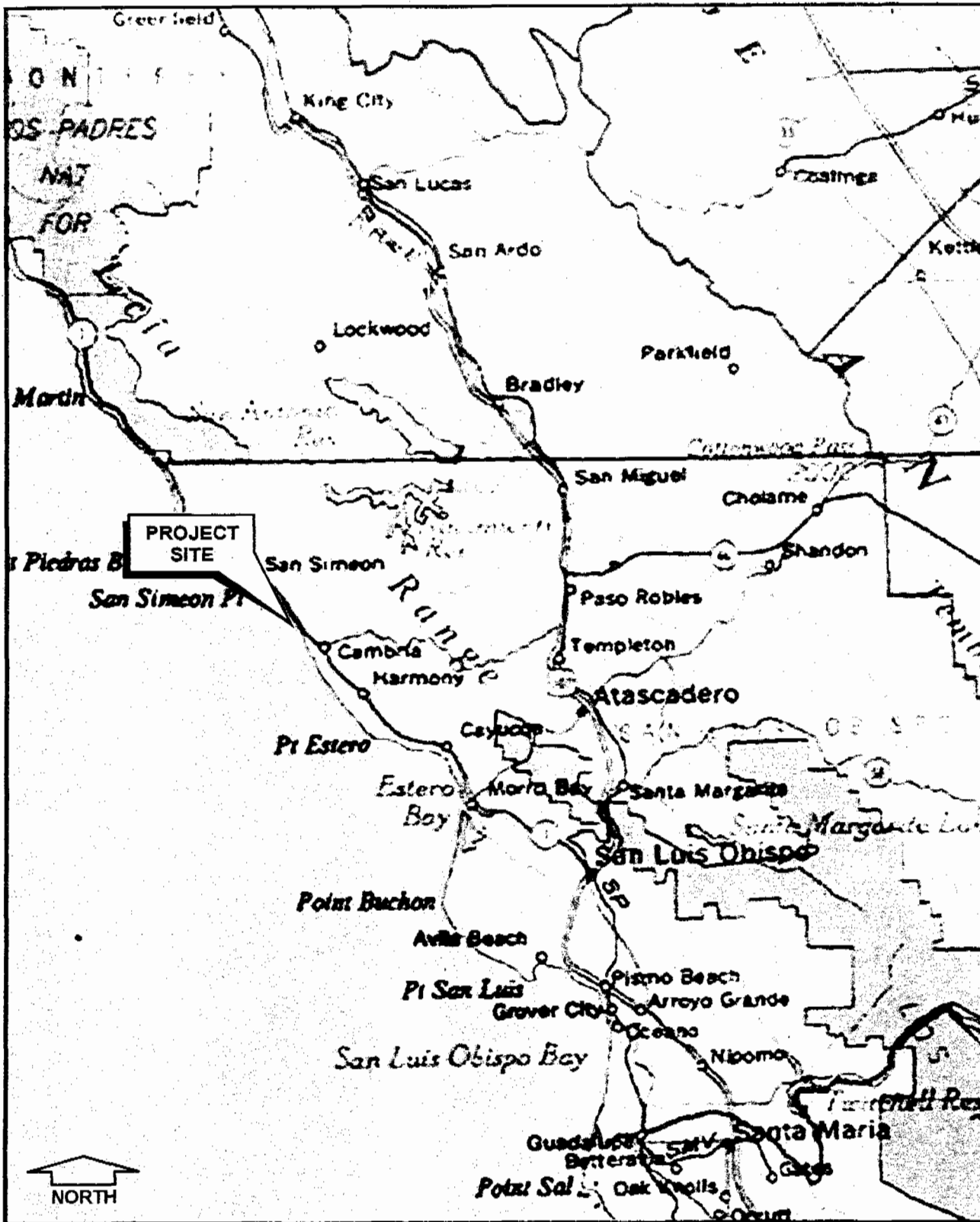
(4) "Pollution" means any alteration of the quality of the waters of the county to a degree which unreasonably affects such waters for beneficial uses, or facilities which serve such beneficial uses. Pollution may include contamination.

(5) "Person" includes an individual, firm, association, partnership, corporation, and public entity.

Section 8.66.030: It shall be unlawful for any new pipes or conduits to carry discharges into the ocean waters of the county which contain any contaminant or cause any contamination or pollution that would be detrimental to the present and future beneficial waters.

Section 8.66.040: It shall be unlawful to discharge any contaminants into the ocean waters of the county which contain any contaminant or cause any contamination or pollution that would be detrimental to the present and future beneficial users.

Section 8.66.050: It shall be unlawful to place or cause to be placed any pipes or conduits which are to carry contaminants into the ocean waters of the county that would be detrimental to the present and future beneficial users.



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padre
 associates, inc.
 ENGINEERS, GEOLOGISTS &
 ENVIRONMENTAL SCIENTISTS

Geotechnical Exploration and Hydrogeological Study
 for the Proposed Cambria Desalination Project

EXHIBIT NO. 1
APPLICATION NO.
A-3-SLO-06-053
E-07-001

SITE VICINITY MAP

FIGURE 2-1

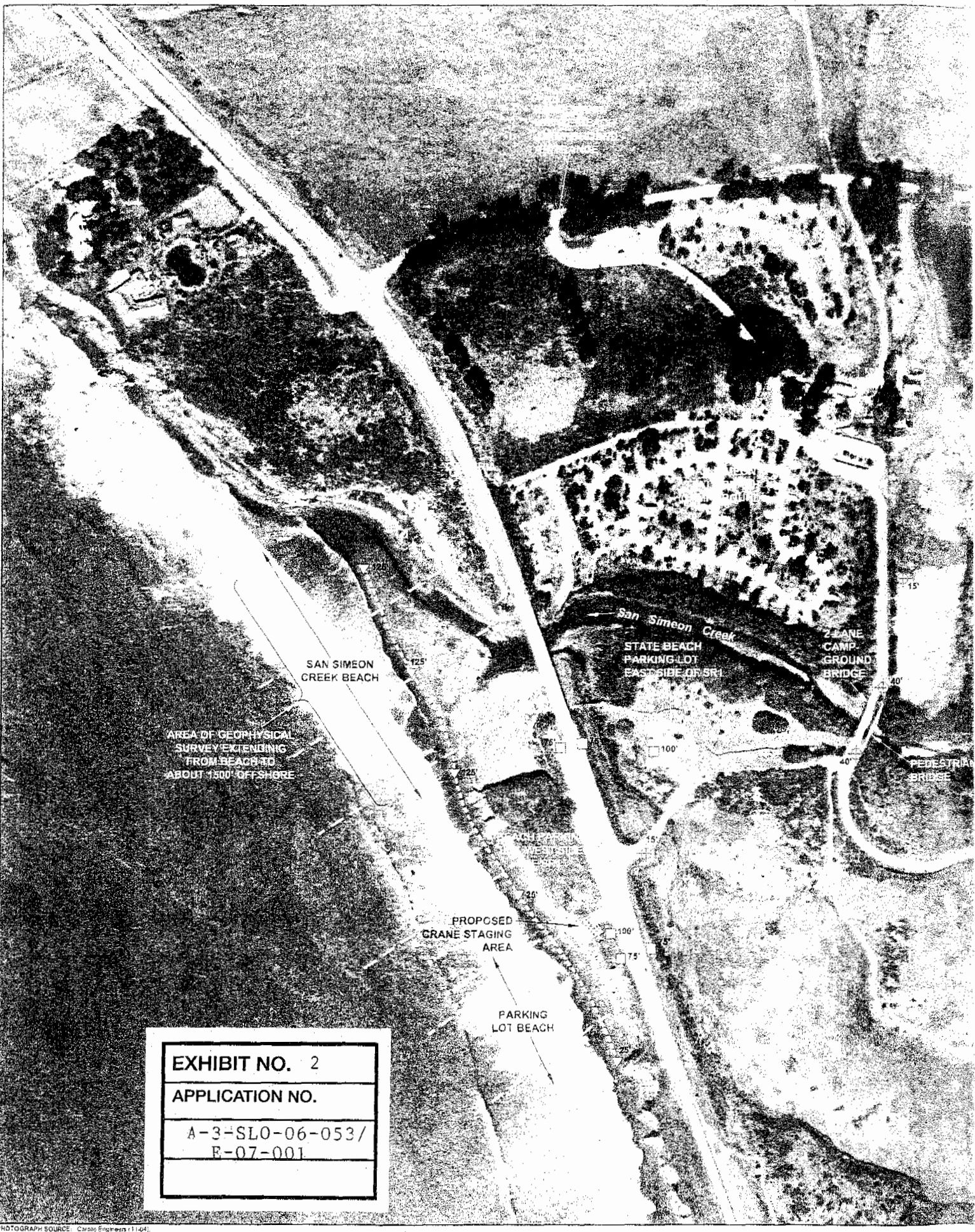


EXHIBIT NO. 2

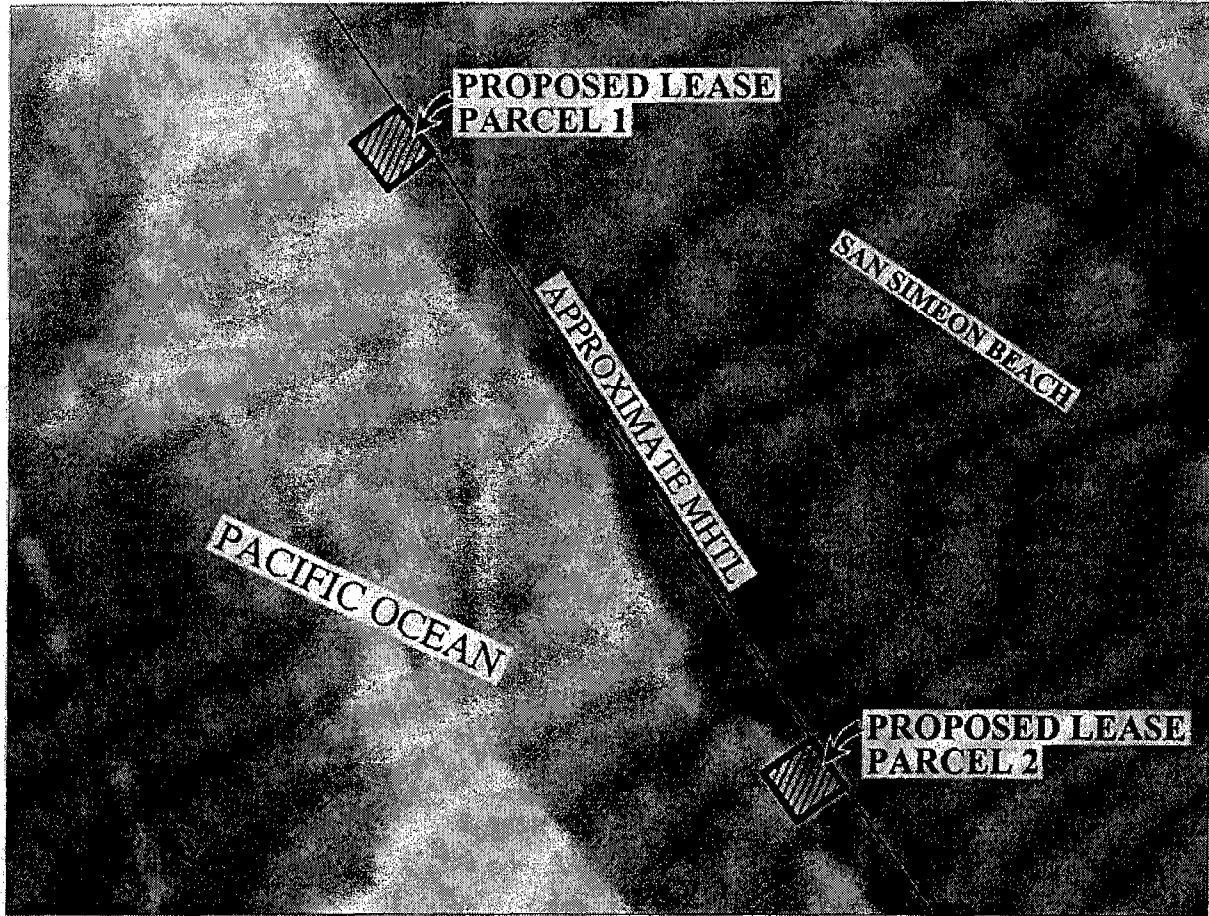
APPLICATION NO.

A-3-SLO-06-053/

B-07-001

NO SCALE

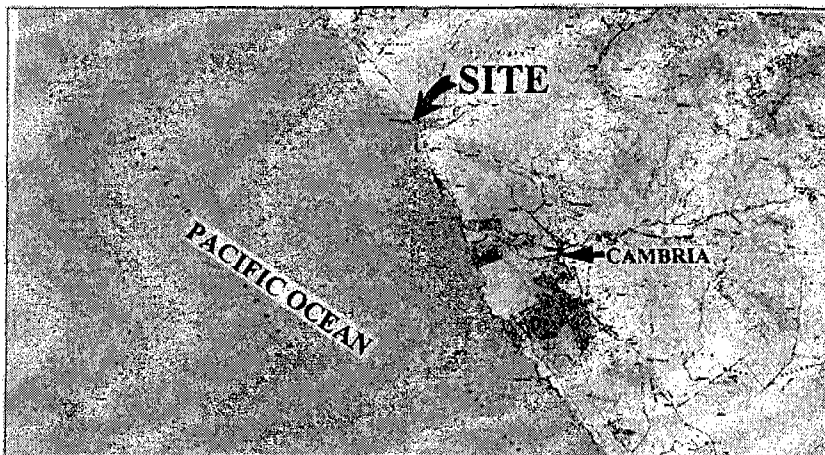
SITE



SAN SIMEON STATE BEACH
SAN LUIS OBISPO COUNTY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT NO. 3

APPLICATION NO.

A-3-SLO-06-053/
E-07-001



HUSTEAD 6/6/07

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.