

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
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W7a



Appeal Filed:	8/13/04
49th day:	Waived
Substantial Issue:	1/16/06
Staff:	J.Bishop
Staff report:	2/22/07
Hearing date:	3/14/07
Item #:	W7a

## APPEAL STAFF REPORT DE NOVO HEARING

**Appeal number** ..... A-3-SLO-04-056

**Applicant**..... Richard Henderson

**Appellants** ..... Commissioners Sara Wan and Mike Reilly

**Local government** ..... San Luis Obispo County

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

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

**Project description**..... Lot line adjustment between three parcels of 41.48 acres, 6.9 acres, and 1.75 acres each, resulting in two parcels of 43.6 acres and 6.53 acres; and provide two 10,000 square foot residential building envelopes.

**File documents**..... San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Permit COAL 04-0243/SUB 2003-00217; Local Administrative Record; Visual Analysis (Cannon Associates, January 2002 and October 2002); Visual Mitigation Plan (SB Planning, June 2005); Conceptual Renderings (SB Planning, August 2006); Geologic Hazards Study (Cleath & Associates, February 2002); Cultural Resource Investigation (Parker and Associates, December 2001 and September 2006); Well Completion Report (Filliponi & Thompson Drilling, June 2004); 4-hour Pump Test (Filliponi & Thompson Drilling, November 2005); Percolation Data Report (Mid-Coast Geotechnical, June 2002); Agricultural Viability Report (Swisher and Hall, June 2006); Wetland Delineation (Althouse and Meade, Inc., Revised June 2005); Biological Resource Update to the Biological Assessment (Althouse and Meade, Inc., revised June 2005 and edited for new owner July and August 2006).

### Staff recommendation ...Denial

**Summary:** The Applicant's proposed lot line adjustment and establishment of residential building sites on a 50.13 acre property zoned for agriculture raises concerns regarding protection of environmentally sensitive habitat area (ESHA), visual and scenic resources, archaeology, and agriculture along the largely undeveloped stretch of rural countryside between Cayucos and Cambria. The subject property is highly constrained due to the presence of wetlands, streams and riparian habitat, and sensitive plant communities; is entirely within the Highway One public viewshed; contains known archaeological sites; and has a history of agricultural use that is protected by the LCP. Staff is recommending that the Commission **deny** the project due to fundamental inconsistencies with the certified LCP.



California Coastal Commission  
March 2007 Meeting in Monterey

Staff: J. Bishop Approved by:

## Project Background

On January 6, 2006, the Commission found that a substantial issue exists with respect to this project's conformance with the certified San Luis Obispo County Local Coastal Program (LCP) and took jurisdiction over the coastal development permit. At the same meeting, the Commission continued the de novo hearing to allow the Applicant an opportunity to provide additional information regarding the substantial issues raised by the project. Additional information developed by the Applicant includes: (1) an analysis of the agricultural viability of the site; (2) an updated visual simulation; (3) a biological resource update; (4) a letter from the project's consulting archaeologist; (5) a letter from the project's consulting hydrogeologist; and (6) water well pump test logs.

In the time since the substantial issue hearing, the property has changed ownership and the new Applicant (Henderson) has also changed the project in several ways. First, the Applicant has reduced the size of the development envelopes from 15,000 square feet to 10,000 square feet. Second, the Applicant has re-oriented the development envelope on proposed Parcel 2 in an effort to lessen impacts to native grasslands. Third, the Applicant has reduced the height of the future residences from 18.5 feet to 12 feet. Lastly, the Applicant has committed to a reciprocal grazing agreement with the neighboring property owner to potentially increase cattle carrying capacity on the property. The terms of such an agreement have yet to be discussed.

Staff recognizes the positive changes made to the project and has analyzed the new information provided by the Applicant. However, these changes do not resolve the project's fundamental inconsistencies with the certified LCP. As summarized below, Staff continues to recommend denial of the project.

## Recommendation

The proposed project is a lot line adjustment (LLA) and merger between three parcels of approximately 41.48 acres, 6.9 acres, and 1.75 acres, resulting in two parcels of 43.60 acres and 6.53 acres. Although the validity of the 1.75-acre parcel is in question, the proposed LLA merges it away. The LLA also substantially repositions the 6.9-acre parcel from its existing location as a narrow irregular shaped strip of land adjacent to Highway One, to a rectangular 6.53-acre parcel centrally located on the more visually sensitive hillside. The project also includes the designation of two 10,000 square foot residential building envelopes on the newly configured parcels. The project is located in an area known as the "Harmony Coast", between the communities of Cayucos and Cambria, in the North Coast Planning Area of San Luis Obispo County. This stretch of mostly undeveloped rural agricultural land contains a variety of environmentally sensitive habitat areas and is a critical public viewshed for which the LCP dictates maximum protection.

The LCP prohibits new development from significantly disrupting environmentally sensitive habitat areas (ESHA). ESHA on the site includes wetlands, streams and riparian areas, and native grasslands. The purpose of the LLA is to establish attractive residential parcels and future building sites. In addition to direct impacts to ESHA, such as the loss of native grasslands, the project will have ongoing indirect impacts. The paving of access roads, grading of the hillside, and increases in impervious surfacing on steep slopes will contribute to soil erosion and sedimentation on the property. The installation of wells and septic systems for residential use can also have adverse impacts to water quality. Residential uses within and adjacent to ESHA will result in ongoing habitat disturbances from



noise, light, and other typical residential activities. In addition, residential development located in the center of the open hillside will force grazing animals closer into sensitive stream and wetland areas that can adversely impact habitat values. Alternative parcel configurations, including the existing configuration, would reduce these adverse ESHA impacts. Thus, the project is inconsistent with LCP policies protecting ESHA.

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

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

The LCP provides for the protection of both known and potential archaeological resources. To avoid impacts to archeological sites all available measures must be explored. The proposed LLA establishes a 6.53-acre parcel that fully encompasses the identified archaeological site located on the property and establishes a residential building envelope roughly 20 feet away from the archaeological site. As a result the proposed LLA increases the potential for adverse impacts to archaeological resources. Maintaining the existing configuration is superior in terms of avoiding archaeological resources. Thus, the project is inconsistent with the LCP policies protecting archaeological resources.

For all of these reasons, Staff recommends that the Commission **deny** the project due to fundamental inconsistencies with the certified LCP. One of the primary tests under the LCP is to determine if the LLA creates a “better or equal” situation with respect to conformance with LCP policies and ordinances (Section 21.02.030(c)). In each issue area analyzed (ESHA, visual and scenic resources, agriculture, and archaeology), the proposed LLA will have greater impacts to coastal resources than under the current parcel configuration. Given the fact that the proposed LLA “worsens” the overall situation in terms of conformance with the LCP, the project must be denied. Finally, LLA’s are a discretionary land use decision, and denial of the LLA in this case would not result in the taking of private property.



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

## I. Staff Recommendation on Coastal Development Permit

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

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

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

**RESOLUTION TO DENY THE PERMIT:** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the San Luis Obispo County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



## II. De Novo Findings and Declarations

### A. Project Location

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

### B. Site Characteristics

#### Proposed Development Site

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

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

#### Property Characteristics

The subject property includes three contiguous parcels in common ownership totaling approximately 50.13 acres. Parcel 1 is the largest at approximately 41.48 acres and was created by deed in 1860 (C/DDS/247). This deed left a gap of property between it and the old County Road (now Highway One), which was conveyed by deed in 1877 creating Parcel 2 of approximately 6.9 acres (J/DDS/406). Parcel 3 is approximately 1.75 acres and was created in 1974 when the State of California conveyed by Director’s Deed a small portion of property adjacent to Highway One. In this case, it appears that portions of the Applicant’s property were occupied in part by the Old County Road (now Highway One) in a previous alignment. The property is now directly adjacent to Highway One in its current configuration, and the creation of Parcel 3 looks to be a direct result of the Highway One realignment. As described in the deeds and shown on the submitted site plan, Parcel 3 is entirely a drainage easement running along Highway One on the eastern property boundary. In the early 1990’s the County recognized these three parcels through the Certificate of Compliance (COC) process. Parcels 1 and 2 were issued “straight” COC’s in 1991. Parcel 3 was issued a “conditional” COC, including conditions restricting some types of development.



### C. Project Description

The proposed project will adjust the lot lines between three parcels of approximately 41.48 acres, 6.9 acres, and 1.75 acres each, resulting in two parcels of 43.60 acres and 6.53 acres. In this process, the small 1.75 parcel is to be merged into the other parcels, resulting in a total of two parcels. The most significant project element is that the LLA substantially repositions the 6.9-acre parcel from its existing location, as narrow, irregular shaped strip of land adjacent to Highway One, to a single rectangular shaped 6.53-acre parcel centrally located on the hillside and abutting the western boundary of the larger resulting 43.6-acre parcel. The project also includes the establishment of two 10,000 square foot residential building envelopes (reduced from the previously proposed 15,000 square foot envelopes). The building envelopes are proposed on either side of the existing dirt access road and are located midway up the hillside. See Exhibit B for proposed parcel configuration, the location of new development envelopes, and access road alignment.

The County approved project established siting and design parameters that the future residences must follow. To avoid “silhouetting” against the sky when viewed from Highway One, the County conditioned the future residences to not exceed 18.5 feet in height above the existing ground surface, or the 246.5’ elevation, whichever is lower. As described in the project summary, the new Applicant (Henderson) has proposed a reduction in the height of the future residences from 18.5 feet to 12 feet from natural grade. At the time of future application for the residences, the Applicant must show the use of colors that are compatible to the surrounding environment. Darker, non-reflective, earth tone colors must be used for walls, chimneys, etc., and darker green grey, slate blue or brown colors must be used for the roof structures. The County approved project also required mitigation for disturbed soils and the use of native grassland buffers between wetlands and disturbed areas.

### D. Standard of Review

Title 21- Real Property Division Ordinance of the LCP

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

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

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



21.02.030(c) states:

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

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

## E. Coastal Development Permit Determination

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

### Developable vs. Non-developable Parcels

To maximize the protection of coastal resources, the lot line adjustment should not result in an increase in the number of developable parcels over that number which existed prior to the proposed adjustment if the increase would result in resource impacts inconsistent with the LCP. In this case, there is uncertainty about whether existing Parcel 2 (6.9-acres) and Parcel 3 (1.75-acres) can be developed to begin with. This is not as much of a concern with Parcel 3 because it would be merged away under the current proposal. Parcel 2 on the other hand is slated for residential development and would be reconfigured under this proposal. Currently, Parcel 2 is an irregular shaped sliver of land comprised almost entirely of wetlands. A small portion of this parcel is not wetlands but is extremely steep (40% slope) and without access. The County did not specifically analyze whether there is a reasonable expectation to be able to develop Parcel 2 as currently configured. If there is not, than clearly the LLA could not be supported under the LCP, as further elaborated in findings below, because of the significant increase in coastal resource impacts due to proposed reconfiguration.

In any case, this question does not need to be resolved at this time because even if there are two developable parcels, the proposed LLA will have greater impacts to coastal resources than if the current configuration is maintained. The Applicant has shown a possible building site on the existing Parcel 2 adjacent to Highway One and outside of the identified wetland resource. This is the current baseline condition under which the proposed project is evaluated against. As discussed in the findings below, the reconfigured parcels results in adverse impacts to agricultural resources, diminishes the scenic and visual qualities of the area, increases the potential for impacts to archaeology, and has adverse impacts to ESHA. Irrespective of whether or not Parcel 2 can be developed currently, the proposed LLA



“worsens” the situation with respect to LCP consistency and should not be approved. Thus, the LLA is both inconsistent with various LCP policies and ordinances, and the LCP’s specific LLA criteria for approval.

## 1. Environmentally Sensitive Habitat Area (ESHA)

### A. Applicable Policies

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

The LCP (CZLUO Section 23.11.030) defines “Environmentally Sensitive Habitat” as:

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

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

***Environmentally Sensitive Habitats Policy 1:*** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

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

***Environmentally Sensitive Habitats Policy 4:*** *No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTION 23.07.170 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*





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

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

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

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

***Environmentally Sensitive Habitats Policy 33:*** Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.

***CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:*** The provisions of this section apply to development proposed within or adjacent to (within 100feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.

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

***(d) Development standards for environmentally sensitive habitats:***

- (1)*** New development within or adjacent to the habitat shall not significantly disrupt the resource.
- (2)*** New development within the habitat shall be limited to those uses that are dependent upon the resource.
- (3)*** Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4)*** Development shall be consistent within the biological continuance of the habitat.
- (5)*** Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

***CZLUO Section 23.07.172 – Wetlands.*** Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or



construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.

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

...

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

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

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

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

**CZLUO Section 23.07.176 – Terrestrial Habitat Protection:** The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

**(a) – Protection of vegetation:** Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of the habitat.

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

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

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

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



## B. ESHA Identification

According to the project biological assessment<sup>1</sup> the subject site has a number of identified environmentally sensitive habitat areas including: wetlands, stream and riparian habitats, and native grasslands. Under the LCP, these areas of the site qualify as an Environmentally Sensitive Habitat Area (ESHA).

The first ESHA is the primary stream and riparian corridor associated with the vegetated areas of Ellyslly Creek. The riparian habitat has only a few willow, cottonwoods, and alders. Cattails and tules occur in patches in Ellyslly Creek and its tributaries. The shrub and tree components are returning after extensive cattle grazing denuded the creek over the past several decades. According to the Althouse and Meade report, there are no deep pools on the property that would provide over-summering habitat for California red-legged frogs and steelhead trout. Although red-legged frogs have not been identified in Ellyslly Creek for this project, according to the project biologist it is known habitat for the California red-legged frog. Southwestern pond turtle have also been identified by the project biologist in Ellyslly Creek and on the project site. The creek may also provide habitat for the California tiger salamander and Tidewater goby, listed as endangered by the Federal Endangered Species Act.

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

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

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

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<sup>1</sup> Biological Resource Update to the Biological Assessment for APN's 046-081-011 & 14 by Althouse and Meade, Inc. Revised June 2005, April 2006, and edited for the new property owner July 2006.



CNPS List 4 species identified on the property in clay and serpentine derived clay soils in patches throughout the valley needlegrass grassland.

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

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

### C. Consistency with Applicable Policies

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

However, the proposed parcel configuration has the potential to increase grazing impacts on wetland and riparian areas associated with Ellyslly Creek. The LLA shifts the residential building sites onto the center of the hillside and will push grazing animals further into wetland and creek areas because grazing animals such as cows are likely to be moved away from residential uses to avoid incompatibilities. The proposed LLA does allow a narrow corridor between the residences and the wetlands, but forcing grazing animals within and through the area will result in an overconcentration of animals and negative impact to the resource (e.g., trampling, overgrazing, increased animal waste). As described in the biological reports, extensive cattle grazing denuded the creek of vegetation over the past several decades. Thus, the existing configuration appears superior in terms of protecting wetland and riparian habitat from the impacts of grazing. Although the Applicant has made the case that the lot line adjustment will lead to a better outcome for habitat resources (due to the placement of restrictive fencing to keep grazing animals out of wetland and riparian habitat areas), it should be noted that implementing these protective measures can (and should) occur without approval of this LLA and under the current parcel configuration.

The existing configuration also appears superior in terms of protecting native grasslands. On the 6.9-acre parcel, the Applicant has identified a building envelope that does not contain native grasslands. This site could be developed without impacting native plant cover or rare and endangered vegetation. Section 23.07.172(a) of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. While the County approval attempted to move the development sites as far away from the wetlands as possible, the result is a greater impact to native grasslands. In this case, the LLA places a residential building site within identified native grasslands. Before the building envelope was relocated this homesite impacted



approximately 8,865 square feet of purple needlegrass (*Nassella pulchra*) (see Exhibit C). The current alignment would impact 7,992 square feet of needlegrass. Mitigation for the loss of this needlegrass grassland is recommended at a two-to-one ratio by the project's biologist. While the revised project reduces the needlegrass impacts by approximately 873 square feet, the existing parcel configuration remains superior because it can provide for a development envelope that completely avoids impacts to native grassland ESHA.

Future access improvements are another concern. While these improvements are not proposed at this time they would be addressed during future applications for the residences. Impacts are associated with alterations or removal of riparian vegetation of Ellysy Creek and some its small wetland drainages through the construction of new culvert crossings and paving and widening the access road. Under the LCP, roads may be allowed within the required setback if it is demonstrated that alternative routes are infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible. Much of the existing access road is not setback 100 feet from the identified wetlands and stream and riparian habitat areas. The encroachment of the roadway within the 100 foot setback area may be approvable on the larger 41.48-acre parcel because alternative routes that would observe the 100 foot buffer appear to be more environmentally damaging. This is not the case, however, with access to the existing development site on 6.9-acre site. Direct access from Highway One appears to be a superior access route in terms of avoiding impacts to ESHA.

### C. Conclusion

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

## 2. Visual and Scenic Resources

### A. Applicable Policies

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

*Visual and Scenic Resource Policy 1: Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible.*



***Visual and Scenic Resource Policy 2:*** Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Where possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusion.

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

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

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

## B. Consistency with Applicable LCP Policies

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

Visual and Scenic Policy 2 aims to protect public views through the use of slope created “pockets” to shield new development. Given the exposed nature of the site with rolling, low lying grasses, opportunities to hide or screen development using existing vegetation or topography is limited. Commission Staff has visited the site, studied topographic maps, and reviewed aerial photos and can confirm that it is unlikely that alternative sites completely out of the viewshed exist. The only area on the project site that may provide some visual relief is in the southwest property corner where a grove of eucalyptus trees could be used as a visual screen. Although this site should not be completely ruled out as a future development site, other constraints such as steep slopes and potential habitat impacts must also be carefully considered.

Under LCP Policies 4 and 5, every reasonable effort must be made to assure that new development in



this area is truly subordinate to, and blends with the rural landscape. Under the current parcel configuration, the building site identified on the 6.9-acre parcel is on flatter terrain, at a much lower elevation, and closer to the Highway One frontage. It is not uncommon for historical residential developments along this stretch of coast to be located near the Highway One frontage. No cutting or filling of the hillside would be necessary to support development at this site. Screening future development under the current parcel configuration would require less landform alteration and less visual intrusion into the viewshed. It is possible that a short row of shrubs or trees could effectively screen a structure at this location on the existing 6.9-acre parcel. In addition, the closer the development is to the road, the shorter the length of time the development would be visible as travelers pass. The higher up the hillside and the further away from the highway the development is located, the longer the development appears within the cone of vision. One of the more compelling visual features of the Harmony coast is the large vistas of rolling hillsides. Development within the middle of such as setting – in the “longview” – would be a much more significant impact than would a development in the immediate foreground, closer to the viewer.

Most significant with respect to visual and scenic impacts, the proposed LLA moves development envelopes further up the steep hillside, increasing the amount of cutting and filling necessary to support residential development and increasing the amount of time the structure is visible in the viewshed. To mitigate for the unavoidable impacts to the scenic qualities of the area, the Applicant has provided a visual mitigation plan that consists of building two 6' tall by 20' wide earthen berms across each of the proposed building envelopes. The berms would be planted with native vegetation. However, in the Commission's experience, large berms with landscape trees and vegetation used to screen the residences from public view would look unnatural. In addition, it does not appear that this approach minimizes landform alterations within the viewshed, as required by Policy 5. The engineered berm will not be effective in completely screening the new residences from public view. A line of site profile provided by the Applicant shows the berms screening only up to the first 10' of the houses. Because the residences are taller than 10' above finished floor elevation (now proposed to be 12' in height), portions of the residences above this elevation would be visible. Screening the residence completely would depend on maintaining planted vegetation. The berms themselves are quite large. If not appropriately designed and/or vegetated, the berms could appear as unnatural landform alterations. Additional land area would also be expected should the berms be tapered or smoothed along their edges to blend with the steep contours of the natural terrain. It has been the Commission's experience that vegetated berms can sometimes look unnatural and lack effectiveness particularly in open rural landscapes such as this. Finally, extensive grading and earthmoving for the homes and earthen berms, may also be visible and may alter the natural form of the hillside.

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

The Commission recognizes the County's effort to minimize the development's impacts on the open landscape by: 1) avoiding silhouetting against the skyline; 2) requiring the use of earthtone colors on the



exterior of future structures; 3) requiring revegetation of disturbed areas; and 4) requiring some landscape screening. Nonetheless, these measures are not adequate to ensure that the extremely sensitive rural viewshed of the Harmony coast will be preserved to the maximum extent feasible.

The Applicant has provided an updated visual simulation showing what the project would look like in the current parcel configuration compared to the proposed configuration. However, this simulation is only marginally effective in conveying how a completed project would appear to travelers along Highway One. Moreover, the simulation only includes a single view angle and does not include any other reference points within the public viewshed as a comparison. Nor does the updated simulation provide an accurate depiction of the berm and vegetative screening to be used. The simulation shows a berm only half the size as previously proposed (the new simulation shows a 3 foot high berm versus the previously proposed 6 foot high berm). In the simulation used to depict what a structure would look like in the current condition adjacent to the highway, no additional vegetative screening is used in the photo creating the appearance of a much greater visual impact.

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

Consistency with the character of the built environment can be evaluated primarily on architectural style and overall mass/scale. Because the residences are not proposed under this application, it is difficult to judge consistency with this standard. Nevertheless, the two 10,000 square foot development envelopes suggest that the proposed residences would be larger in mass and scale than a typical farmhouse. Other residential projects approved by the Commission on the Harmony coast prescribed building envelopes between 5,000 and 7,000 square feet. In terms of compatibility with the larger rural agricultural Harmony coast, large residential development is distinctly counter to the character of this greater area. While a limited number of residences have been developed on the rolling hillsides, this particular stretch of the Harmony coast remains largely undeveloped. If and when a residential development is proposed for this project, the County should exercise maximum discretion in ensuring conformance with the LCP's visual and scenic standards.

### C. Conclusion

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





Section 21.02.030(c) and must be denied.

### 3. Agriculture

#### A. Applicable LCP Policies and Ordinances

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

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

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

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

...

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

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

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



*Policy 1.*

*Non-agricultural development shall meet the following requirements:*

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

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

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

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

***Policy 6: Lot Consolidation.*** *In some portions of the coastal zone where historical land divisions created lots that are now sub-standard, the Land Use Element shall identify areas*



*where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots that would not permit continued agricultural use if sold individually. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

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

**CZLUO Section 23.04.024 (e) and (f):**

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

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

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

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

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

## B. Consistency with Applicable LCP Policies

Agriculture Policy 2 and Ordinance 23.04.024 are the primary LCP standards that regulate land divisions including lot-line adjustments. Under Agriculture Policy 1 lot-line adjustments must not compromise the long-term viability of agricultural lands. This policy requires that agricultural lands be maintained in, or available for, agricultural production. While lot line adjustments do not necessarily



remove lands from agricultural production, they can affect the long-term use of the land to the detriment of agriculture. For example, lot line adjustments can alter land use patterns, emphasizing residential development over other uses, and can create parcels too small to be economically viable for long-term agricultural use. When lot line adjustments lead to an increase in residential or urban development, conflicts between urban and agricultural uses increase, and the pressure to convert remaining agricultural lands also increases.

#### Prime vs. Non-prime Soils

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

In this case, the property contains three separate soil series: Lodo, Diablo, and Cropley. Lodo and Diablo soils are classified as non-prime (Class IV and VI respectively). Cropley soil is classified as prime if irrigated (Class II irrigated, and III non-irrigated). The vast majority of the site is comprised of Class VI (non-prime) soils. A narrow band of Class II (prime) soils are present along the eastern portion of the site paralleling Highway One. This Class II soil is associated with sensitive wetlands of Ellyslly Creek. It is also important to note that these soils are only considered prime if irrigated. Ellyslly Creek encompasses most of the existing 6.90-acre parcel and would not be considered land area appropriate to support agricultural uses. In terms of prime grazing land, the annual carrying capacity of this property was determined to be approximately 5 to 6 animal units per year. Research conducted by Commission staff suggests that the combined 50.13-acre parcels *alone* would not likely qualify as prime grazing land under the LCP test. However, if viewed in conjunction with neighboring parcels, or as part of a grazing leasing operation, it is possible to have large enough acreage for the site to be considered prime grazing land. As such, the usable area of the project site by itself contains non-prime agricultural soils.

#### Nonconforming Parcel Size

One of the most important ways to maintain agricultural viability is to ensure adequate parcel sizes. Section 23.04.024(b) of the Coastal Zone Land Use Ordinance (CZLUO) establishes a minimum parcel size of 320 acres for land divisions (including LLA’s) on parcels where there is an existing agricultural use of grazing. The subject parcels, which total 50.13 acres, are considered “non-conforming” because

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<sup>2</sup> The USDA website defines animal/unit: “An Animal Unit (AU) represents 1,000 pounds of live animal weight. It serves as a common unit for aggregating animals across farms and across animal types. Animals per animal unit were 1.14 for fattened cattle, 0.74 for dairy cows, 2.67 for breeding hogs, 9.09 for hogs for slaughter, 250 for layer chickens and pullets more than 3 months old, 455 for broiler chickens and pullets less than 3 months old, 50 for turkeys for breeding, and 67 for turkeys for slaughter. In the other beef and dairy category, the animals per animal unit were 4.0 for beef and dairy calves less than 500 pounds, 1.73 for beef and dairy calves more than 500 pounds, 1.14 for beef replacement heifers, 0.94 for dairy replacement heifers, and 1.0 for beef breeding herds.”



they do not meet the current size standard for grazing land. In this case, the proposed LLA results in one agriculture parcel marginally smaller than currently exists (Parcel 1 is currently 41.48 acres and would become 43.6 acres in size under the proposal). Parcel 2 would be marginally smaller (Parcel 2 is currently 6.9 acres and would become 6.53 acres). While it is recognized that the number and size of existing lots preclude strict compliance with minimum parcel size requirements, there are alternative lot configurations that would better meet the intent of this ordinance, namely to ensure the long term capability of coastal agriculture. Such alternatives involve increasing the area designated for agricultural use and reducing the area designated for residential use. As described by the Agriculture Department, the proposed 6.53-acre parcel is more conducive to residential use than ongoing agriculture and represents a significant loss of available grazing land area. Policy 6 of the LCP addresses substandard lots created by subdivisions and contemplates lot consolidation when small lots would not permit continued agricultural use if sold individually. In instances such as this where the existing parcels are substandard size and are currently in common ownership, it is more protective of coastal agriculture to merge all of the parcels to create the largest agricultural site available. In this case, no alternative parcel configurations have been evaluated by the Applicant.

#### Maintaining Agricultural Capability

The LCP is protective of agricultural lands. As described, the property is zoned for Agriculture (AG) and has a long history of cattle grazing. Although the site has not been grazed in a number of years, the land should be maintained and available for agricultural production. No evidence has been provided suggesting that the land is not viable grazing land. Although it is not clear that residential development is necessary on the site to support on-going agricultural operations, under current conditions, building envelopes are available that could accommodate residential development in support of agriculture and not diminish long-term viability of the site. A potential building site on the existing 6.90-acre parcel was identified by the Applicant and is separated completely from grazing areas and agriculturally productive soils by Ellyslly Creek. Development at this location would not fragment usable areas of land on the larger site. Even if the existing 6.9-acre parcel was sold off individually and not used for agriculture, the largest available agricultural space on the current 41.48-acre could be maintained and available for agriculture.

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

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



*the wetland from the two residential building sites.*

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

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

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

These findings clearly recognize the LLA's adverse impacts to productive agricultural soils. The location and size of the newly created parcels, in conjunction with the desired 10,000 square foot building envelopes, will convert more agricultural land than is necessary to accommodate residential development on the property. As shown on the site plans submitted by the Applicant, nearly eight (8) acres of grazing land would be fenced off for new residential uses and removed from agricultural use.

Following the substantial issue hearing the Applicant commissioned an Agricultural Viability Study<sup>3</sup> of the property which finds that: (1) the property is not a commercially viable agricultural unit; (2) the LLA increases the carrying capacity of the resultant 43.6-acre parcel, thereby enhancing the long-term agricultural viability of the property; (3) existing parcels 2 and 3 are inferior to parcel 1 because of the need for increased habitat protection; (4) the LLA would allow for greater environmental protection; and (5) the LLA would not force animals into the riparian and wetland areas resulting in superior grazing conditions.

While the study is informative, a few observations are necessary. First, the study concludes that the property is not commercially viable because the carrying capacity of the property is less than 20 animal units per year. This conclusion is based solely on an analysis of the individual non-conforming parcel sizes and fails to recognize the historic grazing patterns and opportunities for cooperative agreements with neighboring properties. If viewed in conjunction with neighboring parcels currently being grazed, it may be possible to have large enough acreages for the site to be part of a commercially viable agricultural unit.

Second, the conclusions of this analysis rely on a calculation of annual forage productivity based strictly on soil maps and a comparative yield method. This approach appears to skew the results and does not

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<sup>3</sup> *Agricultural Viability of APN's 046-081-011 and 014*, Mark Swisher, B.S. and Michael Hall, M.S., Animal Science Department California Polytechnic State University, June 2006.



accurately depict actual conditions on the ground. For example, areas on the property directly adjacent to Highway One that contain Cropley soils (the identified building envelope under current conditions) is shown to be most productive and produces a higher yield of herbaceous forage. To conclude that the building envelope designated under the existing parcel configuration is located on the most productive soil of the property would be taking a narrow view of agricultural viability, ignoring the fact that this area contains woody riparian and scrub vegetation, is not considered “prime” under the LCP due to lack of irrigation, is geographically disconnected from the rest of the property by the active creek channel, and should not be grazed for environmental reasons also discussed in the study.

Third, the study highlights the fact that a reciprocal grazing easement under the proposed LLA would increase the grazing potential on the entire property. Similarly, the study finds that the LLA would allow for greater environmental protection because livestock could be excluded the wetland and riparian areas with fencing. However, it must be observed that this easement program and the environmental protections described in the study are available under the current parcel configuration and do not rely on approval of the LLA to be implemented.

#### Non-agricultural Residential Development on Agricultural Lands

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

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

The more fundamental question raised by the project is whether intensified residential development can be considered appropriate to the agricultural use of the property, and if so, what parcel configuration and siting arrangement best supports continued or renewed agricultural use. In this case, the proposed project includes two 10,000 square foot building envelopes to support future residential use without a bonafide agricultural use. As discussed previously, residential non-agricultural development such as this will fragment the site and convert more agricultural land than necessary to accommodate residential use. A more appropriate configuration would be to site and design future residential uses in a manner that supports agriculture, minimizes conflicts, and reduces loss of viable agricultural land. If two residential building sites must be pursued, other configurations and building envelopes such as discussed previously and below, would be superior to the current proposal. In addition, any residential



use on the property that must be contemplated should be supplemented with appropriate agricultural management measures and easements to assure that the agricultural capacity of the land is maintained.

#### Cumulative Impacts

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

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

#### C. Agriculture Conclusion

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





## 4. Archaeology

### a. Applicable Policies

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

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

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

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

### b. Consistency with Applicable Policies

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

According to the cultural resource investigation, the project site was once occupied by the Obispeno Chumash.<sup>4</sup> Two previously recorded archaeological sites and various isolated prehistoric materials were revealed during site surveys. One site was recorded as an isolated bedrock-milling feature but is not significant, as it is an isolated piece of material that would not be impacted by the project. A second site is characterized as “a large scatter of stone tools and stone tool manufacturing materials.” This site meets the criteria established by the State for listing as a “significant” cultural resource.

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<sup>4</sup> Cultural Resource Investigation of the Crabtree Parcel, Parker and Associates, December 5, 2001.



The proposed LLA establishes a residential building envelope 20 feet away from the archaeological site. Potential impacts posed by residential development in close proximity to the archaeological site include: grading activities, residential construction activities and equipment staging, development of access roads and driveways, and other ongoing residential uses around the new homesite. According to the cultural resource investigation, avoiding the site completely is the preferred action to be taken in this case. If the site is impossible to avoid, the report recommends mitigation measures, such as capping the site with sterile fill so that construction activities will not directly disturb soils containing cultural materials. A recent letter written by John Parker, the project's consulting archaeologist, states that the lot line adjustment will not impact significant cultural resources (see Exhibit G). However, the letter goes on to describe the possibility of disturbing cultural features outside of the recorded resource boundary and recommends the need for archaeological monitors during ground disturbing activities. Presumably, the recent assertion made by Parker relies on the implementation of mitigation measures described in this letter and his earlier report.

The more appropriate question in terms of this LLA is not how to mitigate for potential impacts, but rather, does the proposed parcel configuration increase the potential for adverse impacts? As required by the LCP, all available measures must be explored to avoid impacts. This includes an evaluation of alternative parcel configurations. The current parcel configuration is superior in terms of archaeological resource protection. The current parcel configuration allows ample opportunity to completely avoid the site. Large land areas are currently available on the existing 43.75-acre parcel to site and design development to ensure protection of the significant archaeological resources. Residential development sites could be adequately setback from the resource and access roads could be realigned to avoid continued disturbance. Development on the existing 4.93-acre parcel would be completely isolated from the sensitive archaeological area and far enough away to easily avoid impacts. In contrast, the proposed LLA establishes a 6.53-acre parcel that fully encompasses the portion of the identified archaeological site located on the property. As shown on the site plan (Exhibit B), approximately 15-20% of the new parcel would be occupied by one of the identified archaeological sites. As proposed, the residential building envelope is located only 20 feet from the western edge of the archaeological site.

### c. Archaeology Conclusion

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

## V. California Environmental Quality Act (CEQA)

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

*CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant*



*Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

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

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

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

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

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

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

