

CALIFORNIA COASTAL COMMISSION

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(Continued from February
14, 2007)

STAFF REPORT: RETAINED AND APPELLATE JURISDICTIONS SUBSTANTIAL ISSUE AND *DE NOVO* & 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

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 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 Project Description 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

This proposed project was subject of a Commission hearing on February 14, 2007. At that time, the Commission opened and continued the hearing after raising concerns about the proposed project's two temporary monitoring wells not conforming to an LCP requirement that prohibits structures within a certain distance of coastal bluffs and the high tide line. Staff recommended that the applicant either modify the proposed project to conform to the LCP or request the County amend the LCP to allow the proposed project. The applicant has since modified the proposed project so that the two monitoring wells would no longer be within the County's LCP jurisdiction, but would instead be within the Commission's retained jurisdiction and therefore subject to Coastal Act provisions rather than LCP provisions.

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, 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.

Because this is a combined staff report for a substantial issue appeal, *de novo* hearing, and a permit within the Commission's retained jurisdiction, the Commission's decision for this proposed project requires three separate motions and resolutions – one regarding substantial issue, one for the *de novo* review of the County's CDP, and one for the Commission's permit. Staff recommends that the Commission:

- 1) determine that a **substantial issue exists** (i.e., a **No** vote on Motion 1.1) with respect to the grounds on which the appeal has been filed, because the appellants have raised a substantial issue with regard to the consistency of the project as approved by the local government with the policies and provisions of the certified LCP and with the coastal access and recreation policies of Chapter 3 of the Coastal Act;
- 2) after a *de novo* public hearing, which staff recommends be held immediately following the determination that substantial issue exists, **approve, with conditions**, the portion of the project proposed to be located in the Commission's appellate jurisdiction (i.e., a **Yes** vote on Motion 1.2) on the basis that the proposed project is consistent with the County's certified LCP and with the public access and recreation provisions of the Coastal Act; and,
- 3) after public hearing, which staff recommends be the same hearing as item (2) above, **approve, with conditions**, the portion of the project proposed to be located in the Commission's retained jurisdiction (i.e., a **Yes** vote on Motion 1.3).

1.0 RECOMMENDED MOTIONS AND RESOLUTIONS

1.1 MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE

Motion

I move that the Commission determine that Appeal No. A-3-SLO-06-053 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue:

Staff recommends a **NO** vote. Failure of this motion (i.e., a majority of No votes) will result in a *de novo* hearing on the application and adoption of the following resolution and findings, whereas passage of this motion (i.e., a majority of Yes votes) will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the appointed Commissioners present.

Resolution To Find Substantial Issue:

The Commission finds that Appeal No. A-3-SLO-06-053 presents a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency with the certified local coastal plan and/or the public access and recreation policies of the Coastal Act.

1.2 MOTION & RESOLUTION FOR COASTAL DEVELOPMENT PERMIT NO. A-3-SLO-06-053

Staff recommends the Commission approve Coastal Development Permit No. A-3-SLO-06-053 subject to the conditions in Sections 2.0 and 3.0 below.

Motion

I move that the Commission approve Coastal Development Permit No. A-3-SLO-06-053 subject to conditions set forth in the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote by the majority of the Commissioners present.

Resolution

The Commission hereby approves the coastal development permit for the proposed development and adopts the findings set forth below on the grounds that the development as conditioned will be in conformity to the policies of the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

1.3 MOTION & RESOLUTION FOR COASTAL DEVELOPMENT PERMIT E-07-001

Staff recommends that the Commission, after a public hearing, approve Coastal Development Permit No. E-07-001 subject to the conditions in Sections 2.0 and 3.0 below.

Motion:

I move that the Commission approve Coastal Development Permit No. E-07-001 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote by a majority of the appointed Commissioners present.

Resolution to Approve a Coastal Development Permit:

The Commission hereby approves the coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 CCSO shall monitor beach erosion at least once per week during the project duration to ensure the monitoring wells remain covered. The CCSO 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 CCSO finds that the wellheads are exposed, the CCSO 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 CCSO 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 CCSO 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.

4.0 FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

4.1 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 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-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. 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 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.

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.

4.2 COASTAL COMMISSION JURISDICTION

4.2.1 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.

4.2.2 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.

4.3 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 CCSO 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 CCSO on September 21, 2006 filed a 49-day waiver. On January 25, 2007, pursuant to a request by the CCSO, the County rescinded the portion of its approved CDP that authorized development activities east of Highway 1. On January 26, 2007, the CCSO 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 CCSO submitted a revised project description.

4.4 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 CCSO 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.

4.4.1 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.

4.4.2 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.

4.4.2.1 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.

4.4.2.2 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.

4.4.2.2 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.

4.4.2.3 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.

4.4.2.4 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.

4.4.2.5 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.

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

4.5.1 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.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, conforms to the public access and recreation provisions of the Coastal Act and the certified LCP.

4.5.2 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. 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.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, conforms to the sensitive habitat provisions of the Coastal Act and the certified LCP.

4.5.3 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.

As part of its project description, the CCSO submitted a report (Technical Memorandum No. 1 Mini-Sparker Test, Carollo Engineers, April 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 CCSO'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. 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 CCSO 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 CCSO'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**.

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 CCSO 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.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, conforms to the marine biological resource protection provisions of the Coastal Act and the certified LCP.

4.5.4 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.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, conforms to the spill prevention and response provisions of the Coastal Act.

4.5.5 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).
- 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, conforms to the Coastal Act section 30233(a).

4.5.6 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.

Conclusion: Based on the above, the Commission finds that the project, as conditioned, conforms to the visual resource provisions of the Coastal Act and the certified LCP.

5.0 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.

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.

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.

APPENDIX II:
COUNTY CDP AND DEVELOPMENT PLAN
CONDITIONS OF APPROVAL

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes a three phase Geotechnical and Hydrogeologic data collection project consisting of:
 - a. Phase I – Complete approximately seven exploratory soil borings, approximately 4 to 6 inches in diameter each, in locations parallel with and in close proximity to the beach surf zone from the San Simeon Creek beach area to the parking lot beach area located approximately 1,000 feet to the south. Phase I work would also include geophysical exploration with a cone-penetrometer test vehicle that will collect data by pushing a 1 to 2 inch diameter probe into the sand within the same general beach areas. A temporary equipment access ramp would be installed in the parking lot area and remain for all three phases.
 - b. Phase II – Install two 4-inch diameter monitoring wells on the San Simeon Creek beach area and the parking lot beach area as well as a geophysical survey along the surf zone and ocean floor at the San Simeon Beach area.
 - c. Phase III – Complete soil borings along the proposed pipeline alignments and other project elements that are not located within the beach area. Phase III will also include test pumping from the monitoring wells installed under Phase II.
 - d. An access ramp at the southern end of the existing parking area on the west side of Highway One. Aggregate rock base would be placed at the south end of the parking lot. Wood timbers or a pre-fabricated ramp would be placed on top by a crane. A winch may be used for lowering or lifting rubber wheeled trucks and equipment on the ramp. Temporary cabling and anchorage of the winch may be completed by constructing a drilled concrete pier anchor in the parking lot. The ramp would be used each evening to allow drilling and test equipment to be completely removed from the beach area. Upon removal of the temporary ramp, the base rock would either be removed or spread for use within the parking lot. All temporary anchorages for the winching system would be removed.
 - e. Removal of the temporary ramp and temporary anchorages for the winching system and the parking returned to its pre-construction state, shall occur within 15 days of completion of the test pumping from Phase III.
 - f. Re-installation of the ramp is authorized to allow removal of the ground water monitoring wells and such ramp shall be removed within 15 days of completing the removal of the ground water monitoring wells.

Conditions to be completed prior to project activities

2. **Prior to any project activities**, the CCSD shall provide evidence that an environmental monitor approved by the County has been retained for all measures requiring environmental mitigation to ensure compliance with County Conditions of Approval and Mitigated Negative Declaration measures. Costs of the monitor shall be paid for by the applicant.

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3. **Prior to any project activities**, the CCSD shall provide a copy of permits or verification that no permit is necessary from State Parks, Coastal Commission, U.S. Fish and Wildlife Services, Army Corps of Engineers, CalTrans, and the State Lands Commission.
4. **Prior to any project activities**, the CCSD shall provide an archaeological monitoring plan prepared by a qualified archaeologist for review and approval by the Department of Planning and Building. The monitoring plan shall be approved by State Parks and the State Historic Preservation Officer and include a measure that includes requirements that the drill hole will be relocated if significant archaeological resources are encountered during excavation of the control unit. All excavation shall be guided by this cultural resources monitoring plan. The monitoring plan shall provide that the following activities are excluded from designated sensitive areas:
 - a. Unnecessary excavations
 - b. Staging equipment on undisturbed portions of an archaeological site
 - c. Collection, removal, or unnecessary displacement of any artifacts, eco-facts, or cultural remains
 - d. Removal of native soil outside a sensitive area
5. **Prior to mobilization**, a pre-activity survey shall be conducted by a qualified biologist and a certified marine biologist. The survey shall include the entire project site and surrounding habitats. During the survey, the biologists shall survey for the presence/absence of marine mammals, western snowy plover, southwestern pond turtle, California red-legged frog, two-striped garter snake, foothill yellow-legged frog and special-status nesting bird species.
6. **Prior to data collection and temporary access ramp installation activities**, the project site shall be clearly delineated with stakes, flagging, rope or cord to minimize inadvertent degradation or loss of adjacent wildlife habitat during study activities. Delineation material shall be maintained by the qualified biologist for the duration of the construction activities.
7. **Prior to data collection and temporary access ramp installation activities**, a qualified biologist and certified marine biologist shall conduct an employee education program for all employees and contractors who would work on the project site. At a minimum, the program shall include the following components, as they relate to potentially-occurring special-status species:
 - a. Known habitat requirements;
 - b. A color photograph of the species;
 - c. A summary of the occurrence of potentially-occurring special-status species in the vicinity of the project site;
 - d. Special-status species protection under the Endangered Species Acts; and,
 - e. A review of avoidance and minimization measures to be implemented during the project.
8. **Prior to any project activities**, pre-project photo-documentation shall be completed for the proposed ramp area to determine if impacts to the bluff edge or face result from the temporary placement of the access ramp.
9. **Prior to any project activities**, a Hazardous Spill Contingency Plan (HSCP) shall be prepared for the project and shall be implemented to reduce the potential of hydrocarbon spills to a less than significant level. The HSCP shall include a provision that in the event

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that fuel or oil release occurs during the project activities, all work will cease and spill response and countermeasures will be implemented and project manager shall immediately notify the appropriate regulatory agencies (including, but not limited to: California Office of Emergency Services, California State Parks, California Department of Fish and Game - OSPR, California Coastal Commission and the Regional Water Quality Control Board, Central Coast Region) in the event of a reportable spill. The HSCP shall contain a contingency measures to be implemented by the contractor as approved by the regulatory agencies.

10. **Prior to mobilization, data collection and temporary access ramp installation activities**, a monitoring report prepared by the environmental monitor shall be submitted to the Department of Planning and Building verifying that the above conditions have been met.

Conditions to be completed during project activities

11. **During all project activities**, a monitoring report prepared by the environmental monitor shall be submitted weekly to the Department of Planning and Building verifying that all measures requiring environmental mitigation have been met and that all project activities are conducted in accordance with the procedures outlined in the project-specific Wildlife Contingency Plan (WCP).
12. **During mobilization, data collection, temporary access ramp installation, and demobilization**, a qualified biologist shall monitor the project site for the presence of biological resources which have the potential to be impacted during project activities (including marine mammals). Potential impacts to non-listed species during this time shall also be avoided and minimized to the extent feasible.
13. **During mobilization, data collection, temporary access ramp installation, and demobilization**, project activities on the beach shall be conducted outside of the nesting period for western snowy plover (March 1 – September 14) to reduce impacts to nesting western snowy plovers. However, due to the potential for wintering western snowy plovers in the project site, a qualified biologist shall monitor the activity of snowy plover to ensure that construction activities are limited to a distance which would not result in an indirect or direct impact to the species, as determined by a qualified biologist monitoring the project site.
14. **During data collection and temporary access ramp installation**, any contractor, employee, or agency personnel who inadvertently kills or injures a special-status species shall immediately report the incident to the designated project representative. The representative shall contact the CDFG or USFWS immediately. The CDFG contact for immediate assistance is State Dispatch at (916) 445-0045. State Dispatch will contact the local warden or biologist. The Sacramento Field Office of the USFWS and CDFG would be notified in writing within three working days of the accidental death or injury to a special-status species during project related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The USFWS contact is the Chief of the Division of Endangered Species, 2800 Cottage Way Suite W-2605, Sacramento, California 95825-1846 (916-414-6000). Submittals to CDFG should be addressed to 1416 9th Street, Sacramento, California 95814 (916-654-4262).

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15. **During data collection, temporary access ramp installation, and demobilization activities**, all trash that may attract wildlife shall be properly contained, removed from the work site and disposed of daily.
16. **During all project activities**, signs and caution flagging shall be placed around the project equipment stating the duration that the area will be restricted from recreational activities (e.g., fishing, site viewing, etc.), and recommending use of the remaining portion of the beach, parking area, or other adjacent areas for these activities until project completion. At minimum, all signs shall consist of 8.5- by 11-inch sheets placed in weatherproof plastic-sleeves containing the following information in bold print:
 - a. Title of project;
 - b. Brief description of proposed activities;
 - c. Expected duration of project;
 - d. Project manager contact information; and,
 - e. Information on alternative parking and recreation access locations.
17. **During all project activities**, Lateral beach access shall be maintained.
18. **During all project activities**, energy dissipation devices, such as a hay-bale diffusion basin, shall be utilized during the proposed aquifer pump test to reduce potential erosion or sedimentation during discharge of purged groundwater. Purged groundwater shall not be discharged to the lagoon area.
19. **During all project activities**, the discharge of purged groundwater shall be conducted in accordance with a NPDES/WDR permit to be obtained from the RWQCB for the proposed pump test. Water quality testing will be utilized to determine if the water quality objectives are being violated. If a violation is indicated, the discharge will be ceased until corrective actions are implemented to ensure compliance with the water quality standards.
20. **During all project activities**, no other discharges to surface waters of concrete, asphalt, sediment, soil, drilling mud, or water shall be allowed during the proposed study activities.
21. **During all project activities**, no equipment shall be allowed below the mean high tide line unless tidal waters have receded from the authorized work area, with the exception of the geophone cable area.

Conditions to be completed during geophysical survey

22. **During the cable laying process**, divers shall avoid hard-bottom habitat to the extent feasible.
23. **During mobilization of the support vessel**, the vessel shall not cross directly in front of migrating whales, or foraging marine wildlife (e.g., foraging dolphins, sea otters, seals).
24. Support vessels shall make every effort to maintain a distance of 1,000 feet from sighted marine wildlife.
25. **In the event that the support vessel is paralleling migrating whales**, support vessels shall operate at a constant speed that is not to exceed the speed that the whales are

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traveling at and extreme caution will be taken to ensure that female whales shall not be separated from their calves.

26. **During mobilization**, support vessels shall not be used to herd or drive whales or other marine wildlife from the project site.
27. **During mobilization and data collection activities**, if a marine animal engages in evasive or defensive action (i.e., whales), support vessels shall drop back until the animal calms or moves out of the area.
28. If a collision with marine wildlife occurs, the vessel operator in consultation with the marine wildlife monitor shall document the conditions under which the accident occurred, including the following:
 - a. Location of the vessel when the collision occurred (latitude and longitude);
 - b. Date and time;
 - c. Speed and heading of the vessel;
 - d. Observation conditions (e.g., wind speed and direction, swell height, visibility in miles or kilometers, and presence of rain or fog);
 - e. Species of marine wildlife contacted;
 - f. Whether an observer was standing watch for the presence of marine wildlife; and,
 - g. Names of vessel, operator (the company), and captain or officer in charge of the vessel at time of accident.

If safe to do so, the vessel shall stop after a collision. The vessel is not obliged to stand by and may proceed after confirming that it will not further damage the animal by doing so. The vessel shall then communicate by radio or telephone all details to the vessel's base of operations. From the vessel's base of operations, a telephone call shall be placed to the Stranding Coordinator, NMFS, Southwest Region, Long Beach.

Alternatively, the vessel captain may contact the NMFS Stranding Coordinator directly using the marine operator to place the call or directly from an onboard telephone, if available.

29. **During transit to and from the project site and while at the project site**, the survey vessel will avoid crossing surface kelp to the maximum extent feasible.
30. **During the implementation of the seismic reflection survey activities**, monitoring will be conducted by a marine mammal monitor and marine wildlife will be observed for behavioral activity. The marine mammal monitor shall have appropriate educational degrees, adequate experience, and necessary certificates to be perform such work. Any observed behavioral changes, such as dive, leaving the source, or attraction to the source will be documented. Behavior will be monitored by visual and acoustical means. Should any detrimental effects be suspected, testing will be halted immediately and CDFG, USFWS, and NOAA Fisheries will be contacted immediately.

Conditions to be completed during Phase III activities

31. **During Phase III activities**, a 1x1 meter archaeological control unit shall be excavated at each hollow-stem auger exploratory location, with the exception of those hollow-stem auger drill holes that are placed directly in a roadway. The drill holes are estimated to reach 15 to 70 feet. Archaeological excavations may extend to a depth of 3 to 8 feet.

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The excavation shall be guided by the cultural resources monitoring plan approved by the Department of Planning and Building, State Parks, and the SHPO.

32. **During drilling operations for all Phase III hollow stem auger holes**, monitoring shall be conducted by a qualified archaeologist familiar with the resource types potentially present in these locations. The qualified archaeologist shall conduct the monitoring activities based on a previously prepared cultural resources monitoring plan.

Conditions to be completed after project activities

33. Post-project photo-documentation shall be completed for the proposed ramp area to determine if impacts to the bluff edge or face result from the temporary placement of the access ramp. If damage to the bluff is identified and determined to be significant, the project proponent will consult with the California State Parks as landowner, the California Coastal Commission, and the County of San Luis Obispo regarding the need for restoration of the bluff area. Possible restoration activities could include repair of the bluff face to reduce further erosion or revegetation of the bluff area, if warranted.
34. Following project activities, all trash and debris would be removed from work areas
35. **At the conclusion of all project activities**, a monitoring report prepared by the environmental monitor shall be submitted to the Department of Planning and Building verifying that all measures requiring environmental mitigation have been met and that all project activities were conducted in accordance with the procedures outlined in the project-specific Wildlife Contingency Plan.

On-going conditions of approval (valid for the life of the project)

36. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
37. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.
38. All activities on the site shall be completed within two years of issuance of any applicable permits from State Parks, Coastal Commission, U.S. Fish and Wildlife Service, Army Corps, CalTrans and the State Lands Commission.

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APPENDIX III: APPEALS

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4500

VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Land Watch San Luis Obispo

Mailing Address: Post office ^{Box} 174

City: Cambria, Ca

Zip Code: 93428

Phone: 805 9271802

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County Board of Supervisors

2. Brief description of development being appealed:

three-phase geotechnical/hydrogeologic project
to assess feasibility of beach wells
for Cambria desalination facility

3. Development's location (street address, assessor's parcel no., cross street, etc.):

San Simeon Beach across highway One from
San Simeon State Parks Campground, San Simeon
California

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions
- ☐ Approval with special conditions:
- ☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-06-053

DATE FILED: 9-21-06

DISTRICT: Central Coast

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

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

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: August 15, 2006

7. Local government's file number (if any): DRC 2004-00142

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Cambria Community Services District
1316 Tamson Drive Suite 201
Cambria, Ca 93428

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

(1)

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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

Mahela Burton Director Land Use
Signature of Appellant(s) or Authorized Agent LWS
bbidp 2

Date: September 20, 2006

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

Section VI. Agent Authorization

I/We hereby
authorize

Mahela Burton
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Cynthia Hawkey
Signature of Appellant(s)

Date:

9-20-06

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

(Please see attached)
via email

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SEP 20 2006



CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

LandWatch
san luis obispo county

Post Office Box 174 ♦ Cambria, California 93428

September 19, 2006

Coastal Zone Appeal File # DRC2004-00142

LandWatch San Luis Obispo County submits this appeal of the San Luis Obispo County Board of Supervisor's approval of coastal development permit file # DRC2004-00142. The proposed development involves the siting of permanent infrastructure including underground pipelines for the intake of sea water and the discharge of toxic effluent from the proposed desal facility. The three phases of the project described in the permit include loosely designed temporary activities and semi-permanent structures on the beach near the mouth of San Simeon Creek and within coastal wetlands and riparian areas at San Simeon State Beach campground. LandWatch San Luis Obispo County respectfully appeals the approval of the coastal development permit for proposed projects on the following grounds.

The impacts on public access of drilling and exploration to site intake and discharge pipelines should not be segmented from analysis of the impacts of the proposed permanent intake and discharge infrastructure.

The County based its finding that the drilling, sonic exploration, and construction of monitoring wells needed to site permanent infrastructure including intake and discharge pipelines will not impact beach access because the structures and the activities will be temporary. But the purpose of the project is to determine sites for permanent structures in the beach, wetland, riparian, and lagoon areas of San Simeon State Beach Campground. The exploration project is simply the means of siting permanent infrastructure within these sensitive resource areas. A permit to site the pipelines and other infrastructure should not be issued until the impacts to public access and sensitive resource areas of the permanent infrastructure have been analyzed.

Evidence that the exploration structures and activities needed to site the desal infrastructure are temporary does not lead to the conclusion that coastal access will not be significantly disrupted by the presence of infrastructure itself. A finding that the activities related to the siting of permanent infrastructure will not disrupt public access and resources is meaningless on its own and must necessarily be based on analysis that the permanent infrastructure itself will not cause such disruption.

The proposed projects are in violation of Title 8 of the County Code Health and Safety.

Section 8.66 et seq. of Title 8 of the County Code implements the LCP policy to protect marine habitats by explicitly prohibiting the discharge of contaminants including, but not limited to, pollutants and contaminants such as heavy metals into the ocean waters of San Luis Obispo County, prohibits any new pipes or conduits that carry such discharges, and prohibits the placing of any pipes or conduits which are to carry contaminants into the ocean waters of the County. These sections apply to "any person" including "public entities".

According to the project description provided in the County staff report and the District's Negative Declaration project description, phase III of the proposed project involves the boring of 17 pipeline "alignments" between the offshore intake and discharge sites and the proposed desal facility site. Such boring in preparation for installation of pipelines that are proposed for the explicit purpose of discharging contaminants including heavy metals and concentrations of other pollutants and contaminants is prohibited by Title 8.

The appeal should be upheld and the permit denied because the project involves the siting of a pipeline that is in violation of this coastal ordinance.

The proposed projects call for disposal of waste in sensitive resource and habitat areas in violation of policies to protect sensitive resources.

The District's plan calls for, among other types of waste, the disposal of excess drill cuttings in bore holes in sensitive resource areas along the shoreline and near the lagoon at San Simeon State Beach. LandWatch San Luis Obispo County strongly objects to any and all dumping of any waste in the project area in sensitive, resource, and habitat areas by the District or any of their agents in relation to the proposed project. LandWatch San Luis Obispo County requests that the Coastal Commission require the District to provide detailed plans with specific systems for disposal of all waste that will occur as a result of the proposed project including but not limited to all products of the proposed drilling and boring activities. No such analysis has been provided. Without such provisions the project is in violation of policies to protect sensitive resources.

The desal-produced water is for new urban development inside Cambria and in the North Coast Planning Area but the permit was issued based on the misinformation that the water is for drought.

The County Board of Supervisors approved the permit for the project based in part on the misinformation that the desal facility was intended to provide water for drought for existing customers and not for new development. This false statement was made in the Boards' staff report and was reiterated during the permit hearing. The District has made it clear in staff reports that the proposed desal facility is to provide water for new growth

within Cambria and according to page 3-10 of the *Draft Cambria San Simeon Area Plan*, it is intended to provide a new source of water for development of urban population centers in the North Coast Planning Area, outside of the newly-separated Cambria and San Simeon Planning Area.

The *Draft Cambria San Simeon Area Plan* explicitly provides the planning foundation for using the desal facility to produce new water for new urban development both inside Cambria and within the currently undeveloped coastline of the North Coast Planning Area. However, the County Board of Supervisors approved the permit based on the misinformation that the purpose of the proposed desal facility is to "provide a reliable water supply during dry summer months and during drought periods." (See County staff report page 3.)

The phases of the facility development described within this permit involve development of infrastructure for a major public works facility the purpose of which is to provide water for unplanned urban development. This is not simply "growth inducing" – it will not merely tempt or encourage growth. The very purpose of the plant itself is to provide water for urban development including unplanned development within the North Coast Planning Area.

The proposed projects fail to conform to the North Coast Area Plan because the North Coast Area Plan is obsolete and a finding of conformance is impossible.

The site for the proposed projects is the North Coast Planning Area. Issuance of a coastal development permit for development must be based on findings that the proposed development conforms to the requirements of the North Coast Area Plan as well as to the requirements of the broader Local Coastal Program, General Plan and Coastal Zone Land Use Ordinances and other County Ordinances. One of the functions of the North Coast Area Plan is to provide current data on resource availability. The Coastal Act, the Government Code (§§65000 et. seq.), and the San Luis Obispo Local Coastal Program all require proposed development to be analyzed in terms of their impacts on available resources. Without these analyses, coastal public resources are threatened and destroyed by development that is allowed to proceed without proper resource analyses and resulting resource protections.

LandWatch San Luis Obispo County points out that the North Coast Area Plan is obsolete and no longer functions as a valid planning tool because, among other reasons, it contains no current baseline resource data on which findings of consistency with resource protection requirements can be made. For example, it is impossible to determine what impacts the proposed project will have on wildlife habitat, on coastal streams, wetlands, or marine habitat among other things because the North Coast Area Plan lacks current data on these resources in the area. Information about the availability, health, and locations of resources provides the empirical evidence needed to show that a proposed project does or does not conform to the resource protection requirements of the Local Coastal Program. The courts have held that without such evidence, a finding that a project conforms with the resource protection requirements is impossible. The reports on which the District based its Mitigated Negative Declaration are not enough for the

purposes of making the required findings of consistency with an adopted adequate North Coast Area Plan.

Until the North Coast Area Plan is properly updated by the County and certified by the Coastal Commission no legal finding of consistency can be made.

The proposed projects fail to conform to the LCP portions of the General Plan Conservation Element because the Conservation element is obsolete and a finding of conformance is impossible

The same is true as to the San Luis Obispo General Plan Conservation Element. The Conservation Element is obsolete and no longer functions as a valid planning tool. It is impossible to make a finding of consistency with the Conservation Element until that Element of the General Plan is updated to include, among other things, current resource base line data upon which findings of consistency may be made. Until the LCP sections of the Conservation Element are brought into conformance with the requirements of State General Plan law no legal finding of consistency can be made.

The proposed projects fail to conform to the Local Coastal Program Policies for Environmentally Sensitive Habitats.

As stated above, it is impossible to make a finding of consistency with an element of a general plan including a local coastal program where that element is outdated to the point that it does not provide a valid planning tool. Making any finding of consistency with the Policies for Environmentally Sensitive Habitats necessarily requires an understanding and knowledge of the current condition of the habitat – where it is and what plants and animals depend upon it, among other things. Since neither the North Coast Area Plan nor the County Conservation Element provide current baseline data on, among other things, Environmentally Sensitive Habitats in the North Coast Planning Area, it is impossible to make a finding that sensitive habitats or other resources will or will not be disrupted. No one can say whether the proposed projects will or will not significantly disrupt habitat without knowing exactly where and what the habitat is.

While some of the reports upon which the District bases its environmental analysis are relatively current these reports have not been adopted by the County and do not provide adopted current baseline data for the purpose of general plan consistency analyses.

No analysis is provided on the impacts of two kilojoules of sound from seismic reflection survey on marine organisms.

The project includes a seismic reflection survey and the use of “mini-sparkers” which generate two kilojoules of sound. Based on the purposes of the policies to, among other things, protect and enhance marine biological resources, the County must provide an analysis of the impacts of these surveys on marine organisms and, prior to approval of the permit for the project, generate findings supported by evidence that the seismic reflection processes will not harm marine organisms.

The information provided thus far by the District does not adequately address the impact of two kilojoules on marine plant and animal species. The District's analysis is limited to the impact of sound and, according to the American Heritage Dictionary a joule is a unit of electrical, thermal, or mechanical energy. The impacts of two kilojoules of force radiating through the water must be analyzed on terms other than the sound produced. To understand the impacts on marine species, data and analysis must be provided to show the thermal, electrical, and mechanical force that will be produced by two kilojoules of energy and the impacts those forces will have on marine species.

The 'blanket permit' from the State Land Commissions' Division of Environmental Planning and Management regarding the use of 'mini-sparkers' is over 22 years old. The permit is antiquated. The Coastal Commission, at a minimum, should request an opinion from the State Land Commission regarding new science of shock sound and energy waves and acute pulse related issues that may harm marine life.

In addition it is not clear whether the District is required to obtain a Marine Mammal Protection Act Incidental Harassment Authorization.

The County failed to make proper findings that the proposed project conforms to the San Luis Obispo County Local Coastal Program and the LCP standards and policies.

A decision to approve a coastal development permit must be supported by findings which in turn must be supported by evidence in the record. The land use decision making body must provide complete links between data, analysis and its final decision. Any finding that any project conforms to the Local Coastal Program portions of the County's General Plan must be supported by facts or evidence. To support its decision to approve the coastal development permit for this project, the County Board of Supervisors made the finding that, as conditioned, "the proposed project or use is consistent with the San Luis Obispo General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan Policies."

This finding is legally inadequate because it is merely a conclusion unsupported by facts or evidence. Instead, the County's finding is based on explicit evidence that the project does not conform to the LCP portions of the General Plan. For example, on page 4 of its June 22, 2006 staff report, the statement is made that the project fails to conform to the requirement that new development be located more than 100 feet from the upland edge of riparian habitats. This nonconformance is translated into a finding of conformance by the following:

The purpose of the project is data collection. ... The drill holes are located as far away from sensitive areas as possible without compromising the objectives of the geotechnical study. ... There are no permanent structures proposed with this project. While drill holes are located within the 100 foot riparian setback, the drill holes cannot be relocated without compromising the objectives of the study. Study activities are located as

far away from the wetland as feasible and development has been designed and sited to prevent significant impacts to Sensitive Resource Areas.

These statements provide rationale to violate the requirements of the LCP policy to protect Sensitive Resource Areas but do not provide the legally required data and analysis upon which its finding of consistency must be based. In like manner the County based its ultimate finding of consistency on the repetition of stock phrases that provide rationale for violating LCP standards and policies and failed to provide the required data and analysis to demonstrate conformance.

The permit approval fails to conform to Coastal Act and Local Coastal Plan requirements because the County did not provide data, analysis, public discussion, and findings supported by evidence that the proposed project conforms to any LCP standard or policy. LandWatch San Luis Obispo County recommends that the Coastal Commission uphold the appeal because consistency with LCP standards and policies has not been demonstrated, and that the Commission deny any permit until findings of consistency with LCP standards and policies may be made based on proper data and analyses that demonstrate consistency.

The County failed to provide data, analysis, and findings supported by evidence that the proposed project conforms to the LCP Coastal Plan Public Works Policies.

The siting of infrastructure is part of any major public works project. However, the County staff report contains no analysis of whether the temporary structures and activities for siting project infrastructure such as pipelines within the beach, wetland, and lagoon areas of San Simeon State Beach Campground conform to LCP Coastal Plan Public Works Policies and no such findings were made by the Board of Supervisors.

The permit approval fails to conform to Coastal Act and Local Coastal Plan requirements because the County did not provide data, analysis, and findings supported by evidence that the proposed project conforms to the LCP Coastal Plan Public Works Policies. LandWatch San Luis Obispo County recommends that the Commission uphold the appeal because consistency with LCP Public Works Policies has not been demonstrated.

The project violates Coastal Zone Land Use Ordinance Section 23.02.034 because it is not adequately described.

Coastal Zone Land Use Ordinance Section 23.02.034 requires an application for a development plan must provide a description of the site for the development including the location of all proposed structures.

According to the District's project description for Phase I, the proposed seven exploratory soil borings will be located "in close proximity to the beach surf zone from the San Simeon Creek beach area to the Parking Lot beach located approximately 1,000 feet to the south". Would the County or the Coastal Commission accept and approve an application for construction of a home within 100 feet of the sea that provided a site description of "in close proximity to the beach surf zone"?

LandWatch San Luis Obispo County points out that these are inadequate project descriptions to support project analyses and project approval. Section 23.02.034 stipulates that the District must establish the project location and the County and the Coastal Commission have no jurisdiction to approve a project without a description of the project location. This failure to establish project site locations exists in each of the three phases of the project. Approval of the proposed project without site locations would be a violation of Section 23.02.034 and of the Local Coastal Program. Even though the project is for the purpose of deciding the exact location of permanent infrastructure, the area within which the infrastructure may be constructed must be identified using survey markers.

The project description also states that Phase I "may also include geophysical exploration with a cone-penetrometer test vehicle that will collect data by pushing a 1 to 2 inch diameter probe into the sand within the same general areas." Here the District fails to provide an accurate description of the project itself (no description is given of this process) and by stating that the project "may" include this particular type of test has so far avoided any analysis of the conformance of the test with the LCP. No such analysis was provided to the County Board of Supervisors.

Likewise, there are no project locations provided for the proposed Phase III soil borings. Put together, the District's project description and the County's staff report inform decision makers that Phase III of the project includes 17 soil borings along the "proposed pipeline alignments" which extend from the shore to the proposed on-shore desalination facility. Without knowing where the 17 soil borings will be dug there is no way of finding that the borings are consistent with any requirements of the LCP or any ordinance requirements. There is no way to determine impacts on sensitive habitats such as wetlands or riparian areas.

Certainly, disposal of the materials extracted from the borings and drillings in every phase of the proposed project, mixed as they will be with metals and oil products, must be significant elements of the project description. Yet, the project description provided to the Board of Supervisors contains no such description as noted elsewhere.

In addition, Phase III describes that the soil borings will be completed by "either hollow-stem auger drilling equipment or mud-rotary drilling equipment." The type of drilling equipment used should be selected and described so that decision makers can understand the impacts of the project.

Without this information it is impossible for the County or the Coastal Commission to make an informed decision. We recommend that the Coastal Commission uphold the appeal deny the permit until all elements of the project are adequately described in the permit application by the District as required by Section 23.02.034.

If the siting of desal infrastructure is deemed to be an independent project from the development of the desal facility, separate permits should be issued for each phase of the proposed project in order to demonstrate conformance with LCP policies.

According to the District's project description, the site location of the proposed Phase II monitoring wells will not be known until the seven soil borings are completed within Phase I of the project. Conformance with Coastal Act and LCP policies for coastal access and protection of sensitive habitat areas will depend upon the location of these monitoring wells because each well head will be "covered by an 8-inch-diameter PVC or steel piping set into concrete footings with piping extending several feet above the ground surface". The well head covering would also be secured by a concrete apron approximately three feet wide by three feet long and approximately one foot thick. (Page 2-10, 11)

These concrete, steel, and PVC structures will remain above ground at the beach locations for "approximately one to two years after installation". This is in direct contradiction to the statement made in the County's staff report that "no structure will be in place from October 15 to April 15 within the Flood Hazard area." Structures such as these will, depending on their location, have a significant impact on public access to the beach and to the safety of those who visit the beach. At this time there is no way of knowing the location of these structures.

Since the siting of these semi-permanent beach structures will determine whether the Phase II will be consistent with coastal act and LCP policies for coastal access or protection of sensitive habitat and resources, and since the location can not be described until Phase I is completed, Phase II must be the subject of a separate permit application and approval.

In addition, if the location of Phase III soil borings depends on the, as-yet-unknown, Phase I borings and/or Phase II monitoring well locations, Phase III must also be the subject of a separate permit that can only be received, analyzed, and issued after the locations of the 17 soil borings have been determined.

LandWatch San Luis Obispo County asserts that if the siting of desal infrastructure is deemed to be an independent project from the development of the desal facility, separate permits should be issued for each phase of the proposed project

No analysis is provided to show whether the proposed projects conform to the coastal Policies for Energy and Industrial Development.

No analysis is provided to show whether the proposed projects conform to Coastal Plan Policies for Energy and Industrial Development. In order to demonstrate conformance with the County's General Plan and Local Coastal Program policies and requirements, analyses of conformance including findings supported by evidence must be provided.

West Coast Governors' Agreement on Ocean Health

The West Coast Governors' Agreement on Ocean Health, the California Ocean Resources Management Act, the Marine Life Protection Act, and the California Ocean Protection Act infers that regulatory agencies (including the California Coastal Commission) to implement ecosystem-based management using the best available scientific information. The proposed Cambria project squarely falls into the ecosystem-based arena.

Based on the above, LandWatch San Luis Obispo County respectfully requests that the Coastal Commission uphold the appeal and deny the permit until the application, permit analyses, findings, and LCP and General Plan elements conform with local and state statutory requirements.

Cynthia Hawley,
President
LandWatch San Luis Obispo County

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

(see III b.)

Name: Santa Lucia Chapter of the Sierra Club et al

Mailing Address: po Box 15755

City: San Luis Obispo

Zip Code: 93402

Phone: 805-543-8717

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County Board of Supervisors

2. Brief description of development being appealed:

three-phase geotechnical/hydrogeologic project to assess feasibility of beach wells for Cambria desalination facility.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

San Simeon Creek beach, across Highway 1 from San Simeon State Parks Campground.

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions
☐ Approval with special conditions:
☐ Denial

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-06-053

DATE FILED: 9-21-06

DISTRICT: Central Coast

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

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

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: Aug. 15, 2006

7. Local government's file number (if any): DRC2004-00142

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Cambria Community Services District
1316 Tamson Drive, Ste. 201
Cambria CA 93428

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

(1) Mahala Burton
6425 Cambria Pines Rd.
Cambria, CA 93428

(2) Greenspace - The Cambria Land Trust
PO Box 1505
Cambria, CA 93428

(3) Conner Everts
Southern California Watershed Alliance
2515 Wilshire Blvd.
Santa Monica CA 90403

(4)

co-appellants

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

All land use planning depends on a current, functional county land use plan. It has been nearly ten years since the Coastal Commission informed the County that the North Coast Area Plan, which has not had a comprehensive update of policies and standards since it was written in 1981, was non-functional as a planning tool until it is updated. With the approval of this permit, the County has approved the physical exploration for the siting of pipelines for a major public works project, the purpose of which is to provide the infrastructure and fabricated water source for growth, with no valid planning mechanism in place.

The proposed project is on State Park property and a public access area. Coastal public access policies require that public access to the beach be maximized and that new development shall not interfere with the public's right of access to the beach. Proponent's proposed mitigations focus on parking lots and alternative parking and pedestrian routes, but does not acknowledge that they are proposing to restrict access to public beaches - via parking that is safe, which will inevitably transfer to the shoulder of a public highway -- to those segments of society that are not either physically and/or economically at a disadvantage. Entering and exiting the parking area line of sight may be impeded by construction activity creating a hazard in an otherwise reasonably safe parking area. The project does not account for the congestion caused by people pulling into a work area expecting to find parking, finding none, then leaving again. The otherwise scenic viewshed would be cluttered with drilling equipment and water craft causing an attractive nuisance to the passerby creating yet another hazardous condition. The applicant ignores the fact that the project - drill rig, trucks on the beach, etc. - is, in and of itself, an impediment to coastal access by virtue of its occupying the project site. A similar project proposed for this location in 1985 was rejected by State Parks on the basis of its interference with public access.

Specific inconsistencies with public access policies:

COASTAL ACT SECTION 30211: DEVELOPMENT NOT TO INTERFERE WITH ACCESS: The access point for the project is a small-unimproved dirt parking lot approx 250 ft by 75 ft. There are no carefully marked parking spaces such as in a supermarket. Users include vehicles, campers, trucks and large motor homes. Parking is along one side of the lot only, its west side facing the ocean where benches are located for ocean viewing. There are an estimated 17 spaces for cars and fewer if there are campers and motor homes.

This parking lots access to the beach and ocean is exceptionally convenient for public use requiring a short walk down a bluff (no steps) and depending on the tide 10-15 ft to the ocean although throughout the winter the tide is often crashing on the toe of the bluff.

This parking lot is a popular viewing area for those using Hwy One. Perhaps during a winter weekday the lot may never fill, however there is a constant turnover with vehicles pulling in for the short-term to take in the vista and access the beach. Disabled persons can sit on a bench for an unobstructed ocean view. There are 5 benches for viewing and 3 picnic tables.

The huge staging area with its cranes, winches, construction material, drilling rigs, drilling equipment, worker vehicles, personnel vehicles and many other vehicles will overwhelm the parking lot for a grossly under-stated one month up to 2 years. Permit is valid two years from vesting.

The SLO County Planning Department Staff report suggests that alternate convenient parking for the public is the Washburn day use lot parking lot East and North of the staging area lot. This parking lot is below street grade, unmarked from the highway and gated and locked from sunset to 8:30 am. To access the beach and ocean you must walk ¼ mile using a bridge beneath the highway, navigate around a large Snowy Plover enclosed area and finally come into view of the ocean. There is no access for the disabled and no place to view the ocean for the disabled. This access point is wholly inadequate for the disabled and people with children; hardly a suitable alternative for the staging area lot.

Inconsistent with COASTAL ACT SECTION 30213: LOWER COST VISITOR AND RECREATIONAL FACILITIES: The drilling area near the lagoon will interfere with the ocean/beach experience of the campers at San Simeon Campground. Campers access the beach and ocean via a short scenic trail along San Simeon Creek and around the lagoon. The campground provides lower cost visitor and recreational facilities. Sonic drilling, drilling rigs, trucks, workers, drilling holes, noise and disruption of the tranquility of the beach will grossly interfere with the public's right to access and with the public's right to the use and enjoyment of the beach and ocean.

Violations of and inconsistency with Coastal Plan Policies protecting environmentally Sensitive Habitat (CPP ESH policies 1, 3, 7, 17, 20, 21, 28) are inherent in the project as designed, and the frequent tacit admission as such ("...the drill holes are located within the 100 foot riparian setback [but] cannot be relocated without compromising the objectives of the study" – Notice of Action/Project Description, pg 6) are a clear indication that the project needs to be redesigned and mitigated and cannot be permitted in this form. Threatened ESHA includes habitat for the threatened Pacific western snowy plover, obviously subject to harassment by work at the project site.

The project is inconsistent with Coastal Act Section 30253: Minimization of adverse impacts. The placement of the ramp over a narrow eroding bluff covered with coastal bluff scrub will cause irreparable damage and harm. The only repair to the bluff in the mitigation suggested by the CCSD provides for repair by the construction of protective devices that are in violation of the Coastal Act.

There has been no detailed scientific study or material provided as to the effects of proposed ultrasound drilling and seismic reflection survey on specific marine life. The geophysical survey permit proffered by Fugro West, issued by the State Lands Commission more than 25 years ago, was itself based on an MND not supported by an EIR or detailed study. The stale data on which this permit relies and a technical memorandum proffered by Padre Associates are insufficient to support the conclusion of no harm to marine life by the seismic reflection survey. The Padre Associates study appears to have focused solely on a simple estimated measurements of received decibel levels in water, with no reference to the potential impacts of cited noise levels on marine wildlife or the substantial body of scientific study in this field. The requirement for an EIR is especially pertinent as this project would be conducted within the Monterey Bay National Marine Sanctuary.

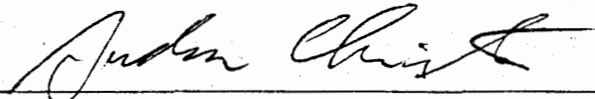
The project has clear growth-inducing impacts as part of a project to produce water in excess of the community's needs. We are on uncharted legal ground when a water district, whose job it is to serve water when it is available and stop issuing new hook ups when it is not available, starts to produce new water and decides how big the water production facility will be based on how many new houses it wants. How many houses get built is the jurisdiction of the land use planning agency, which is the County. Once a desal production facility is built, with capacity to expand that production, who gets to decide?

The study covered by the MND is in essence a feasibility study and thus an integral part of the desalination plant project, described by the Department of Planning as "seven sonic drillholes...for the intake structure and brine discharge areas" (New Project Referral, M. Neder, 2/1/05). But for the desal plant project, the drillhole project would not take place. A study of the impacts of the drillhole project without considering the impacts of the desalination project as a whole - construction, intake and outflow -- constitutes piecemealing.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date:

8/28/06

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date:

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: California Coastal Commission, Commissioners Sara Wan and Mary Shallenberger

Mailing Address: 45 Fremont St., Suite 2000

City: San Francisco, CA

Zip Code: 94105

Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Allow a three phase geotechnical and hydrogeologic data collection project to aid in the assessment of design alternatives for future seawater desalination facility for Cambria.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

San Simeon Creek Beach (across Highway 1 from San Simeon State Parks Campground), San Luis Obispo County

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION	
APPEAL NO.	A 3-540-06-053
DATE FILED	Central 9-24-06
DISTRICT	Central Coast

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CENTRAL COAST AREA

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

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

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: August 15, 2006

7. Local government's file number (if any): DRC2004-00142

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Cambria Community Services District
Tammy Rudock, General Manager
P.O. Box 65
Cambria, CA 93426

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

(1) Santa Lucia Chapter of the Sierra Club et al
P.O. Box 15755
San Luis Obispo, CA 93402

(2) LandWatch of San Luis Obispo County, Attention: Mahala Burton
P.O. Box 174
Cambria, CA 93428

(3) Greenspace - The Cambria Land Trust
P.O. Box 1505
Cambria, CA 93428

(4) Conner Everts
Southern California Watershed Alliance
2515 Wilshire Blvd.
Santa Monica, CA 90403

(5) Matt Janssen, Permit Chief, San Luis Obispo Planning &
Building Department
County Government Center, Room 310
San Luis Obispo, CA 93408

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attached.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

See Attached.

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

SECTION V. Certification

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

Signed: Mary K Schallenberger
Appellant or Agent

Date: 9/21/06

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

Signed: _____

Date: _____

Reasons for Appeal: San Luis Obispo County Coastal Development Permit DRC2004-00142 (Cambria Community Services District)

The County approved project is for a three phase geotechnical and hydrogeologic data collection project to aid in the assessment of a future seawater desalination facility. Phase 1 activities include completion of approximately seven exploratory soil borings, geophysical exploration with a cone-penetrometer test vehicle that will collect subsurface data by pushing a 1 to 2 inch diameter probe into the sand, and a temporary equipment access ramp located at the existing beach parking lot. Phase 2 activities include the installation of two 4-inch diameter monitoring wells on the beach and geophysical survey along the surf zone and ocean floor. Phase 3 activities include completing soil boring along proposed inland pipeline alignments and test pumping from monitoring wells. The proposed project is within the Recreation land use category and is located in the San Simeon State Park beach area across Highway One from the State Parks Campground and Beach parking lot, north of the Community of Cambria. The site is in the North Coast Planning Area.

The proposed project is inconsistent with the certified LCP for the following reasons:

North Coast Area Plan Planning Area Standards

Areawide Standard 6. Site Selection: *Primary site selection for new development shall be locations not visible from Highway 1.* The project is inconsistent with this standard because construction equipment, barricades, access ramps and anchoring devices will be located and staged in highly scenic areas visible from Highway One. Above ground monitoring well surface features will also be visible from Highway One. Alternatives may be available in locations not visible from Highway One.

SRA Combining Designation Standard 1. Site Planning: *Projects are to concentrate proposed uses in the least sensitive portions of properties.* The project is inconsistent with this standard because drill locations are within and adjacent to sensitive beach areas, wetlands, and stream and riparian habitats. Alternative drilling locations, staging and use of construction equipment, and monitoring wells may be located in less sensitive areas.

SRA Combining Designation Standard 2. Site Design: *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.* The project is inconsistent with this standard because heavy equipment staging areas, access ramps, and anchoring systems located on the blufftop may impact marine resources. Phase 2 groundwater monitoring wells will be located within and adjacent to sensitive habitat areas for at least one year. According to the proposed work plan, these wells will be constructed using PVC casing and well heads will be set in concrete footings that stick up above the ground 2 to 3 feet. The County approved project does not include adequate information to determine if the concrete footings can be constructed on the sandy beach without impacts to marine resources. Further, the County approval does not include information regarding the demolition and/or complete removal of such facilities. Filling the wells with slurry, or partial removal and backfilling may have adverse impacts to marine resources.

Recreation Standard 6. Setbacks – Coastal: *Structures are to be located a minimum of 50 feet from the Mean High Tide Line (MHTL) or the upper edge of defined bluffs, whichever is greater.* The project is inconsistent with this standard because structures will be within 50 feet of the MHTL and the upper edge of the bluff.

Recreation Standard 7. Limitation on Use. This standard lists all of the principally-permitted and non-principally permitted uses allowed within the Recreation (REC) land use category. Geotechnical and hydrogeologic data collection (including associated data collection equipment,

wells, cables, drill rigs, mini-sparkers, etc.) is not included in the list of and therefore may not be allowed within the REC land use category of San Simeon State Park.

Coastal Zone Land Use Ordinance Standards.

Sensitive Resource Areas/Wetlands/Streams and Riparian Habitats

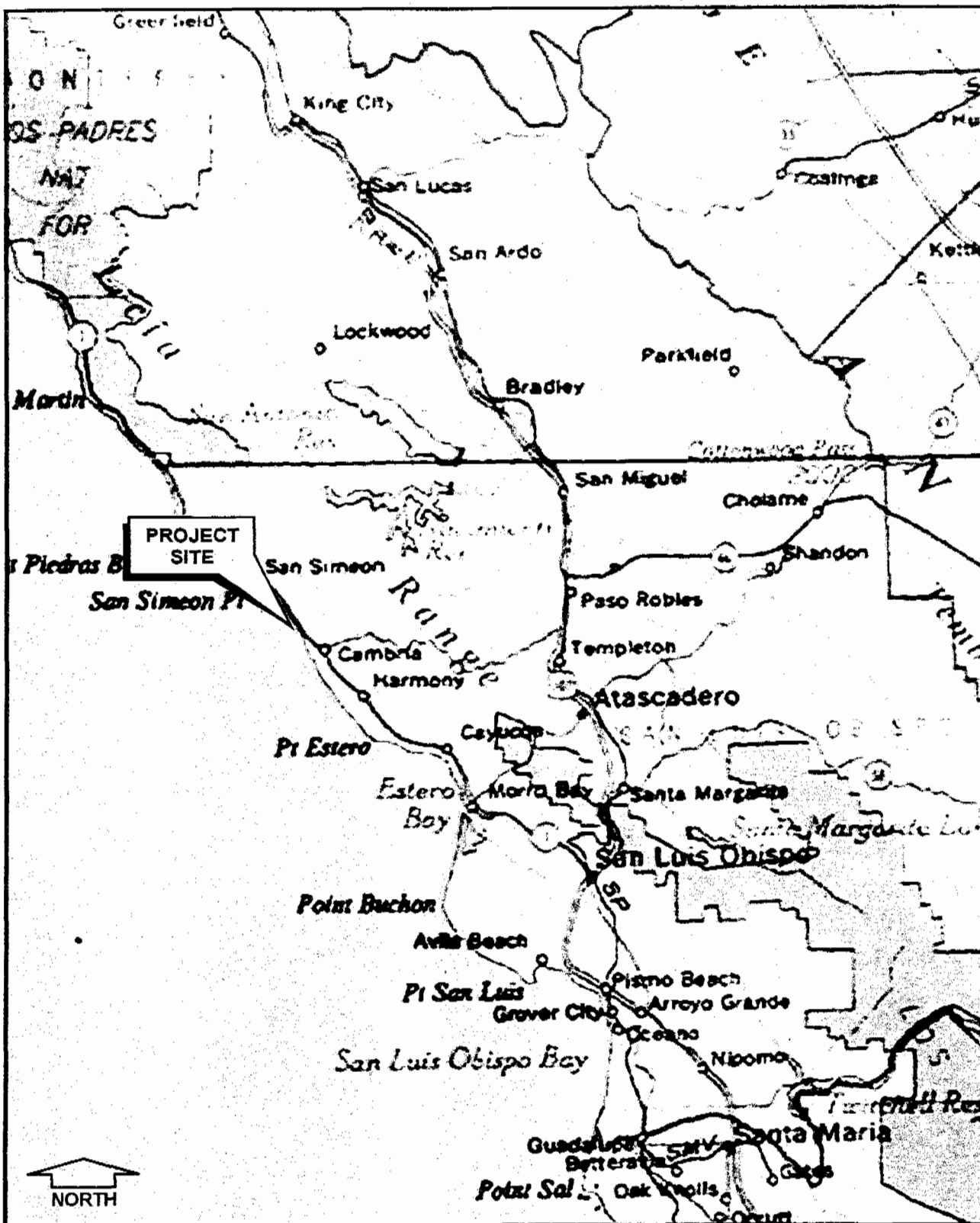
CZLUO Sections 23.07.172 and 23.07.174. *New development is to be located as far away from the wetland as feasible.* Alternative project locations may exist further away from the wetlands of San Simeon Creek. *New development is to be located more than 100 feet from the upland edge of wetland and riparian habitats.* The project is inconsistent with this standard because drilling activities and test wells are located within the required setbacks.

Coastal Plan Policies

Access Policy 1: Protection of existing access.

Recreation and Visitor-Serving Policy 1. Recreation Opportunities. The proposed project will impact access and recreation at blufftop access and picnic areas. Adequate mitigation measures have not been adequately addressed. Groundwater monitoring wells will be located on public recreation beach areas. Temporary impacts to access and recreation opportunities also have the potential to conflict with relevant Coastal Act access and recreation standards.

ESHA Policy 1: Protection of Environmentally Sensitive Habitat Areas (ESHA). The project is not a resource dependent use and has the potential to result in significant disturbance to ESHA areas.



Source: TOPO! c 2001 National Geographic Holdings (www.topo.com)

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

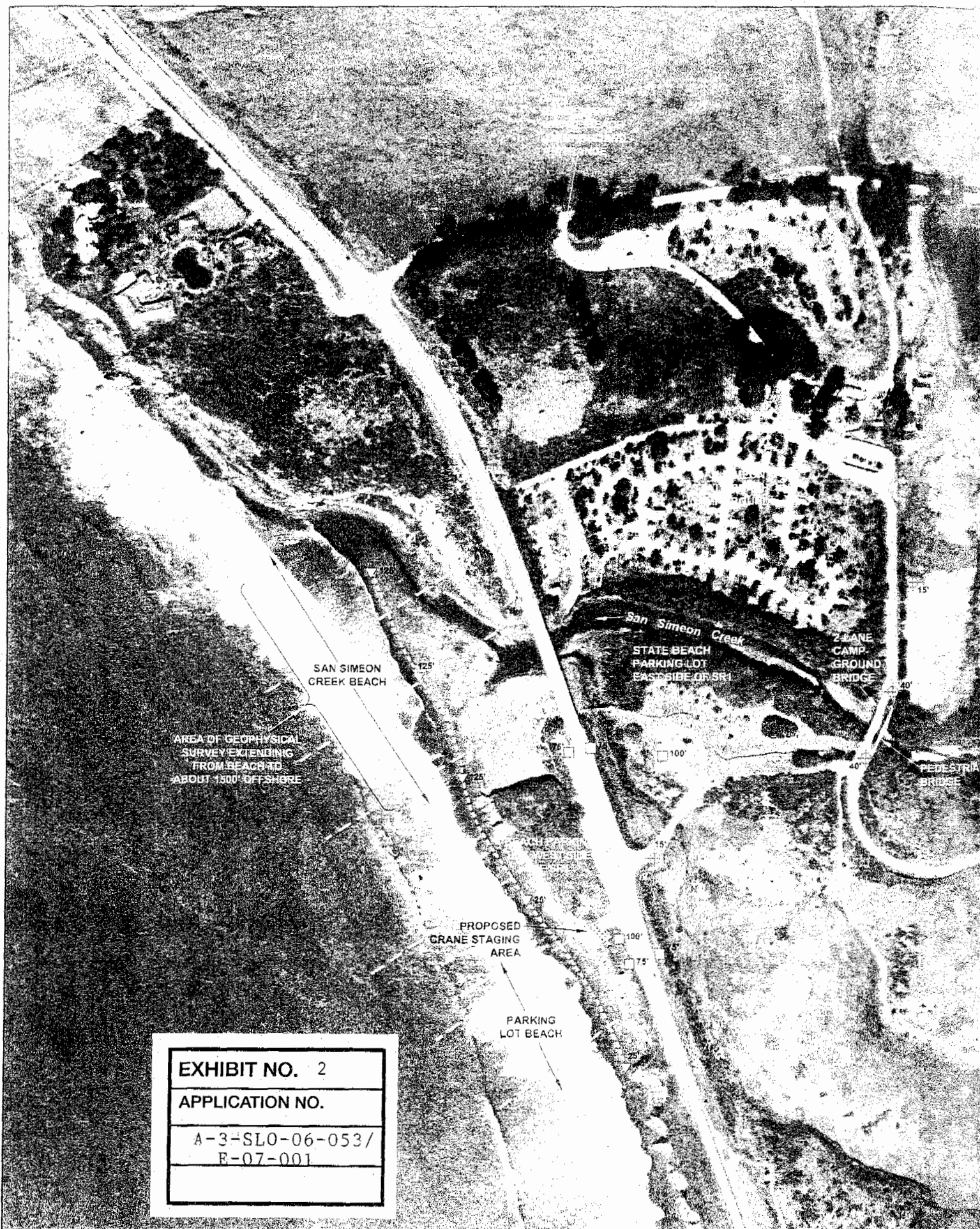


EXHIBIT NO. 2

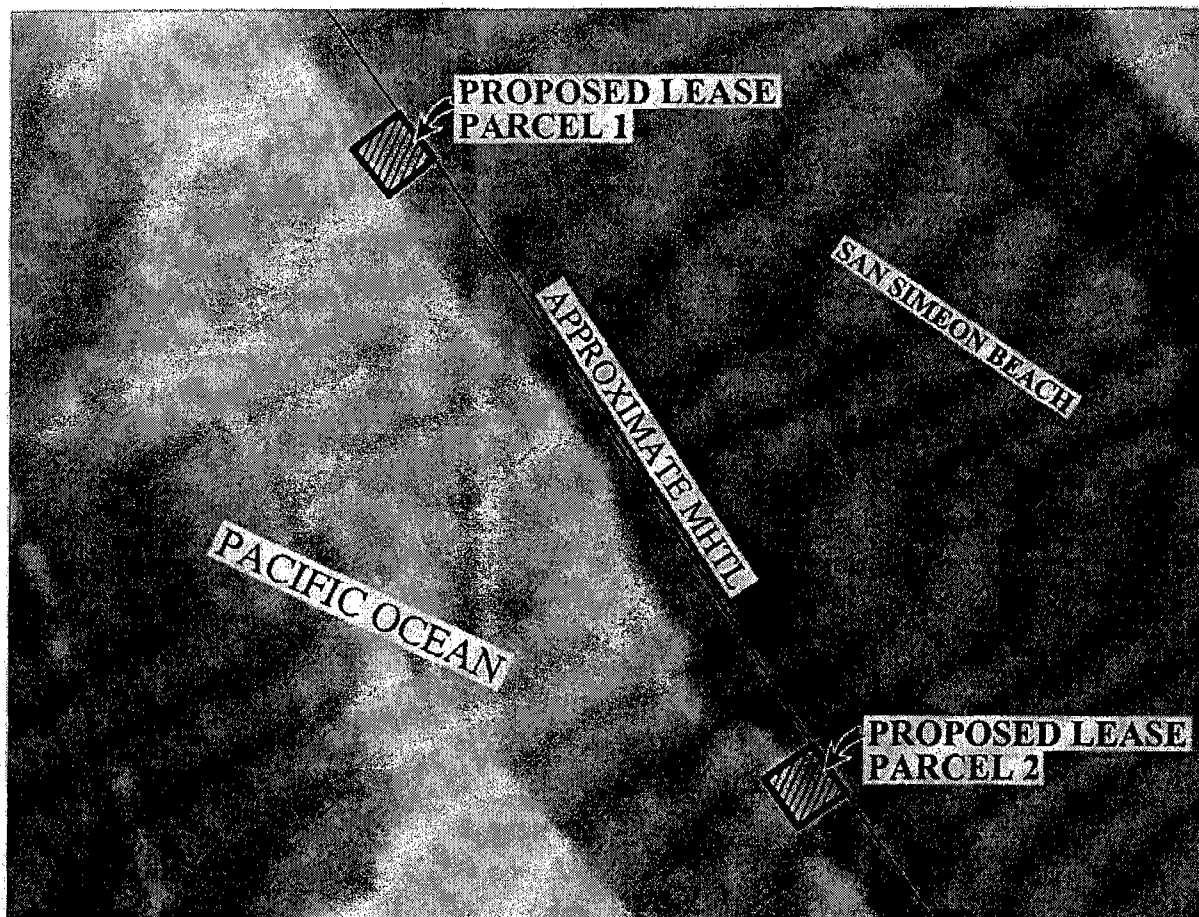
APPLICATION NO.

A-3-SLO-06-053/

E-07-001

NO SCALE

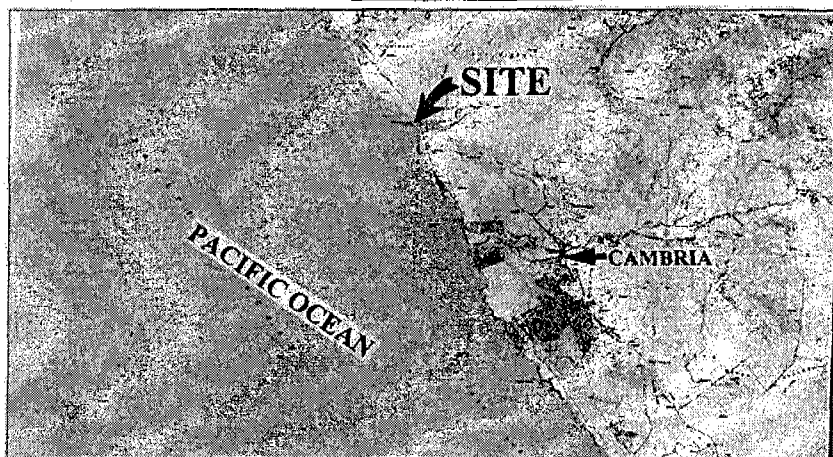
SITE



SAN SIMEON STATE BEACH
SAN LUIS OBISPO COUNTY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

EXHIBIT NO. 3

APPLICATION NO.

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



HUSTEAD 6/6/07