

CALIFORNIA COASTAL COMMISSION

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

**Th11****CENTRAL COAST DISTRICT (SANTA CRUZ)
DEPUTY DIRECTOR'S REPORT***For the****January Meeting of the California Coastal Commission*****MEMORANDUM**

January 9, 2008

TO: Commissioners and Interested Parties
FROM: Charles Lester, Senior Deputy Director, Central Coast District
SUBJECT: ***Deputy Director's Report***

There were no waivers, emergency permits, immaterial amendments or extensions issued by the Central Coast District Office for the January 10, 2008 Coastal Commission hearing.

This report contains additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast Area.

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th14a, A-3-SLO-00-040	Schneider	ExParte Correspondence	1 7

Th 14a

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FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

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CENTRAL COAST AREA

Date and time of communication: 12-27-07 10AM

Location of communication: COUNTY GOV. CENTER S.L.O
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: MORGAN RAFFERTY / GORDON HENSLEY

Identity of person(s) receiving communication: K. ACHADJIAN

Name or description of project: TH 14A SCHNEIDER A-3-SLO-00-40

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

see attached

12-27-07
Date


Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Meeting with Commissioner Achadjian
December 27, 2007

Attendees:

Gordon Hensley
Morgan Rafferty

Thursday, January 10, 2008

Central Coast District

14. NEW APPEALS. See AGENDA CATEGORIES.

a. Appeal Number A-3-SLO-00-40 (Schneider, San Luis Obispo County) Application of Dennis Schneider to construct 10,000 sq. ft. single-family home, 2,500 sq. ft. barn, and 1.25 miles of access road improvements) on 40.6 acre agricultural parcel west of Highway 1 on marine terrace approximately one-half mile south of China Harbor and one mile north of Villa Creek Road along the Harmony Coast in San Luis Obispo County. (JB-SC)

Support staff recommendation to find substantial issue and approve with conditions

Issues:

Proposed project conflicts with LCP policies regarding protection of agricultural lands.

Proposed development poses significant adverse impacts to the rural nature of the Harmony Coast. It also involves cutting and filling of the hillside, extensive revegetation which would cause adverse visual impacts in the Highway One viewshed.

The construction of the bridge over Ellysley Creek has the potential to disturb or remove sensitive plant or animal species. Also, there are unmapped unmapped wetland, rocky intertidal, and coastal prairie habitat areas that have been identified on the property. These raise concerns about consistency with the LCP's ESHA protection policies.

The proposed project has not received approval from County Environmental Health for the necessary well for the project so staff has asked that the applicant receive evidence from Environmental Health that there is adequate water and sewer service available onsite.

To address these issues and to ensure that the proposed project is consistent with the LCP, Staff has recommended that the project be approved with conditions.

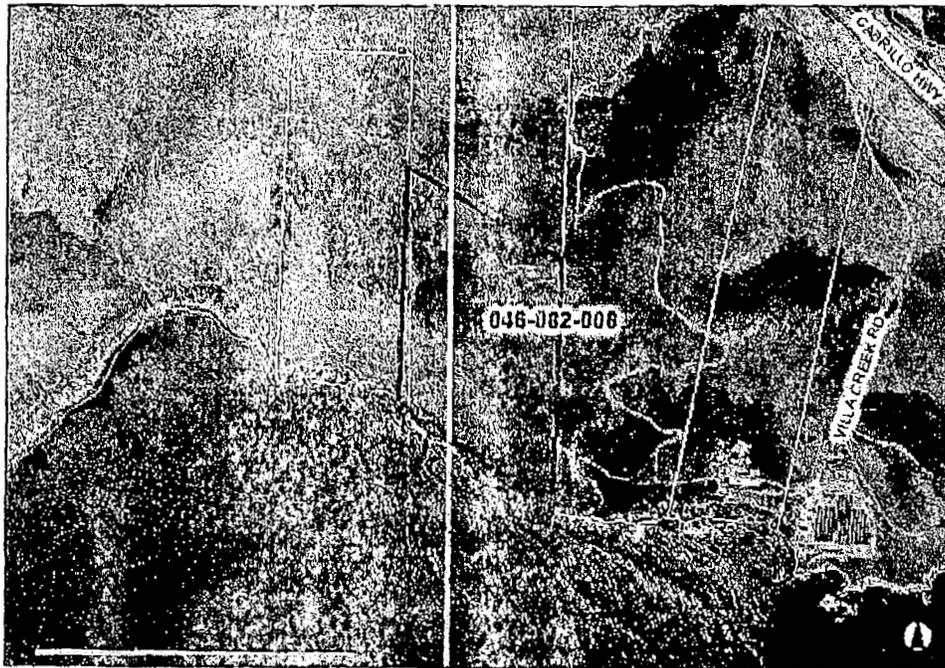


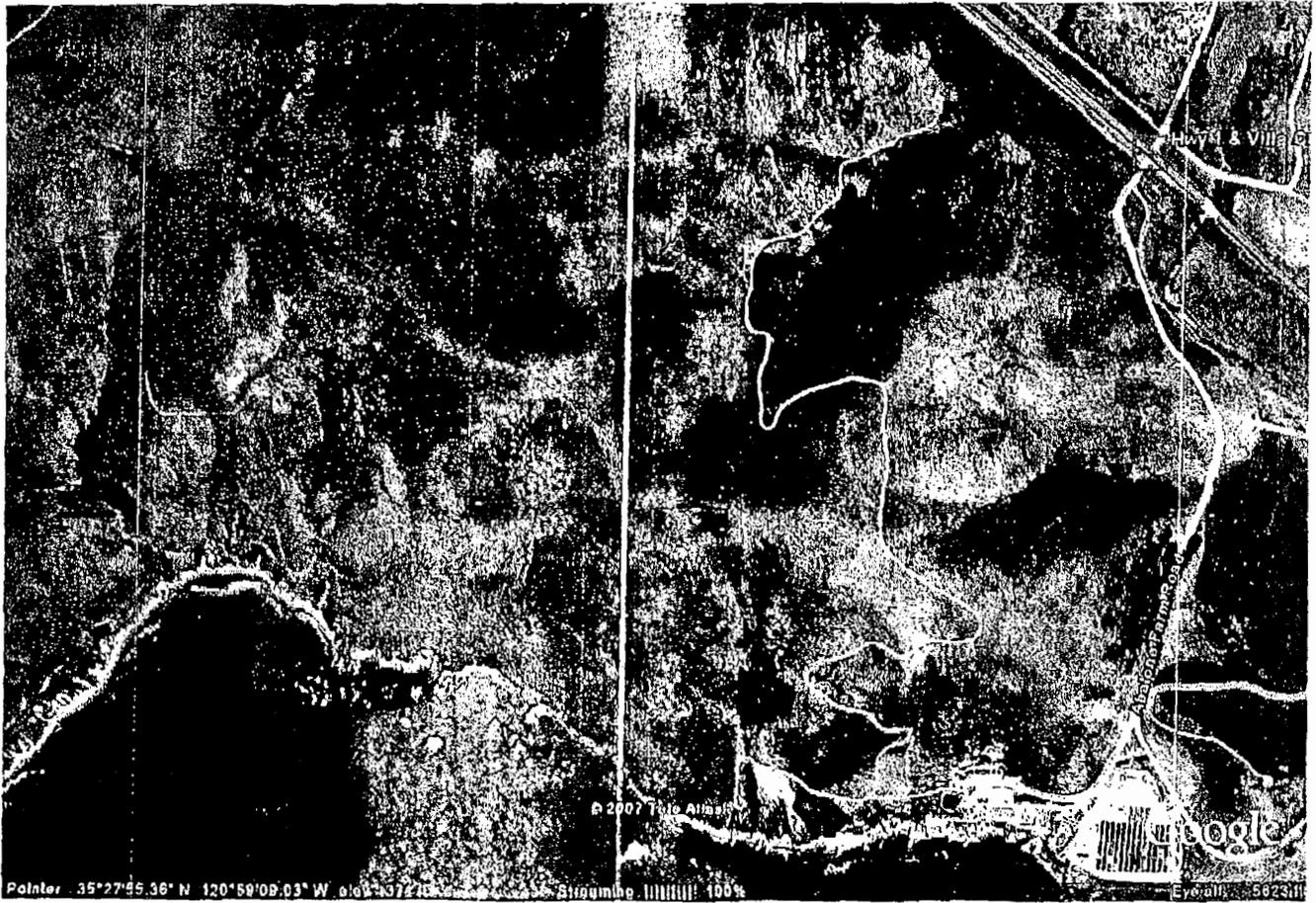
Schnider Project

Parcel Information

APN:	046-082-008
Mailing Address:	715 SANTA MARIA STE A, LOS OSOS, CA 93402
Land Use Category:	AG
Supervisory District:	2
Planning Area:	Estero
School District:	Coast Unified School District
Combining Designations:	Sensitive Resource Area
Coastal Designations:	

[Link to Tidemark Permit Tracking System](#)





Th14a

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Overnight Delivery via FedEx

January 3, 2008

Mr. Patrick Kruer, Chairman, and
Members of the California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

**Re: Substantial Issue Determination and Appeal of Coastal Development Permit
(Minor Use Permit) for Single Family Residence, Barn and Driveway
Dr. Dennis Schneider, Applicant
(Appeal No. A-3-SLO-00-040)**

Dear Chairman Kruer and Members of the Coastal Commission:

We represent Dr. Dennis Schneider ("Applicant") with regard to an appeal to the California Coastal Commission ("Coastal Commission") of approval by the San Luis Obispo County Planning Commission ("Planning Commission") of a coastal development permit (minor use permit) (no. D980010P/D980279V) for construction of a single family residence, detached barn, and driveway (collectively "Project") on his 40.6 acre parcel of real property located north of This appeal has been pending since April 7, 2000, following approval of the above referenced coastal development permit (minor use permit) on February 24, 2000.

Overview:

On February 24, 2000, the San Luis Obispo County Planning Commission approved a coastal development permit (minor use permit) for construction of a single-family residence, detached barn, and driveway on a 40.6 acre parcel north of Cayucos.

On April 15, 2004, the Coastal Commission found substantial issue and took jurisdiction over the coastal development permit (minor use permit) and on *de novo* approved a project for the parcel that reduced the square footage and height of the proposed home, reduced the footprint of development of uses ancillary to the home, eliminated the barn, and relocated the structure to different location on the site.

The Applicant subsequently filed suit challenging the Coastal Commission's action in this matter. Although the Coastal Commission prevailed at the Superior Court, the Appellate

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Court ruled that the Coastal Commission did not have authority to protect views from the ocean to the shoreline and ordered that the preemptory writ should issue and remanded the item back to the Coastal Commission for rehearing. In a finding of fact, the court also stated that there were significant geologic hazards attendant with the proposed relocation of the building envelope to the staff proposed area.

As a result of that court order, the project is once again before the Coastal Commission for action on substantial issue and a *de novo* hearing.

As its sole substantive response to the court's decision, the current staff recommendation removes the height limitation. Unfortunately, the report does not attempt to reconcile the four remaining points of contention between Applicant and staff that remain.

These four remaining points of disagreement are the size of the footprint of the home and attendant development, the deletion of the barn, the provision of an access road across the neighboring properties, and the location of the home site.

A. Residential Development Envelope.

The County approved an approximately 10,000 square foot home with attached garage with no restriction on the size of further development attendant to the residential use. The special conditions in the current staff report propose that the entire residential development envelope be restricted to less than 5,000 square feet, a restriction which is patently unreasonable given the needs of Applicant and his family, the size of the parcel, and the scale of development on adjacent parcels.

Applicant requested that staff consider applying the same standards that the Coastal Commission applied to the adjacent Morro Bay Limited (Appeal Numbers A-3-SLO-99-014 and A-3-SLO-99-032) development ("Ormsby") that is immediately northwest of their property. These Coastal Commission approved conditions allowed a total footprint of residential related structures of 7,000 square feet with a limitation that no single structure could exceed a footprint of 5,000 square feet *and* allowed an additional 7,000 square feet of impervious surfaces and outdoor activity areas. However, staff rejected Applicant's request.

B. Agricultural Accessory Building.

The County approved a 2,500 square foot barn which, as part of the review by Coastal Commission staff, Applicant agreed to reduce in size to 2,000 square feet.

Applicant also requested that staff consider applying the same standards that were incorporated into the Ormsby conditions which allow "agricultural support facilities."

However, this request was to no avail since staff continues to recommend that the barn not be allowed as a part of the Project.

C. Access.

Staff has continues to request that Applicant obtain access across two adjacent parcels located to the southeast of his parcel. Applicant has made a number of requests to these adjacent property owners for permission to gain vehicular access across their properties, and each time his request was rejected. The only feasible vehicular access is across the existing driveway and jeep trail from Highway 1.

Unfortunately, staff has continued to link the siting of the home to the location of vehicular access to the property despite the *de minimus* environmental impacts of accessing the proposed home site across the existing driveway and jeep trail given the scope of the improvements to the existing driveway is minimal and improvements to the jeep trail have been designed to meet the minimum access requirements of CDF.

D. Location of Home Site.

Staff proposes the relocation of the home site to the northwestern portion of the property on the basis that the longer driveway required to access the County approved home site, without access across the adjacent properties to the south, would reduce the agricultural viability of the property.

Unfortunately, the staff proposed home site is in a geologically unstable area. Two different geologists have confirmed that the County approved home site is the only geologically stable location. A fact that even staff appears to acknowledge when it states that the home site "shall be sited as close to the property line on the northwest portion of the marine terrace as feasible." The only stable portion of the marine terrace is the County approved home site.

Applicant believes that if the differences between his positions and those espoused by staff were viewed under the precedent set in Ormsby that all parties could reach a mutually agreeable solution. Unfortunately, staff has not been receptive to Applicant's entreaties.

Discussion:

Dr. Schneider is in agreement with all of the recommended Standard Conditions of Approval set forth in section 4.A. of the Appeal Staff Report Substantial Issue Determination & De Novo Hearing, dated December 26, 2007 ("Staff Report") for this Project and all of the recommended Special Conditions of Approval set forth in section 4.B. of the Staff Report, with the exception of that portion of Special Condition 1 related to construction of a barn,

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and Special Conditions 2(a) and (b) which relate to the size, height and location of the residence, and, by inference, extension of the driveway across the marine terrace portion of the Property to the site of the residence approved by the Planning Commission, and the construction of a barn.

Accordingly, the purposes and scope of this letter are limited to a) correction of certain material errors of fact and erroneous assumptions set forth in the Staff Report regarding the impacts of the Project associated with construction of the residence, barn and driveway in the locations approved by the Planning Commission that bear on alleged inconsistencies of the Project with the Coastal Act (Pub. Res. Code § 31000, et seq.) and certified Local Coastal Program for San Luis Obispo County ("LCP"); b) a discussion of certain geologic and drainage hazards and excessive grading requirements associated with the residence site recommended in the Staff Report that are not addressed in the Staff Report; c) a demonstration that there is no legal or other basis for the recommendation in the Staff Report to relocate and reduce the size of the residence as approved by the Planning Commission (including curtailment of extension of the driveway to the Planning Commission approved residence site); d) evidence that the Project as approved by the Planning Commission will have no impact on agricultural operations on the Property; and e) evidence that there is no legal or other basis for removal of the barn from the entitlements approved by the Planning Commission.

A. Material Factual Errors and Erroneous Assumptions In the Staff Report.

Following is a discussion of the material factual errors and erroneous assumptions contained in the Staff Report that either bear on the alleged inconsistencies of the Project as approved by the Planning Commission with the Coastal Act and LCP or have been cited to support potentially hazardous, unlawful and unnecessary revisions to the Project:

1. Improvements to the driveway will require a new bridge crossing over Ellysley Creek. The Property and several adjoining parcels are served by an existing substantial and permanent reinforced concrete bridge that crosses Ellysley Creek. Contrary to the statements in the Staff Report, ***construction of a new bridge over Ellysley Creek will not be necessary.*** The Project will have no impact whatsoever on Ellysley Creek.

2. The residence will not be visible from Sea West Ranch. The topographical features of the Property and neighboring properties to the northwest ***make viewing of the residence and barn at the sites approved by the Planning Commission from the Sea West Ranch impossible from all elevations.*** A prominent hill, coupled with the height of the bluff above the Planning Commission approved sites of the residence and barn, block views of the residence and barn sites as demonstrated by the photograph attached hereto as Exhibit "A", taken from the

boundary of the Sea West Ranch and the parcel immediately to the southeast. The photograph was taken from the closest possible vantage point of the Property from the Sea West Ranch. All other views of the Property from the Sea West Ranch are obscured. Clearly, the residence and barn at the sizes, heights and locations approved by the Planning Commission will not be visible from the Sea West Ranch.

3. The proposed residential development poses significant adverse impacts to the rural open space character of the Harmony Coast. Contrary to the impression conveyed in the Staff Report that the Harmony Coast in the vicinity of the Project is rural in character and undeveloped, *the residence site approved by the Planning Commission is in close proximity to the intensely developed Abalone Farm*, separated from the Property by only one intervening parcel with 990 feet of ocean frontage and with two existing buildings near the ocean bluff. The photograph of the Harmony Coast attached hereto as Exhibit "A-1" clearly illustrates the intense level of existing development in the vicinity of the Property. In fact, the site for the residence at the southeastern edge of the Property *places it in closest proximity to existing development in the area, thus clustering the proposed home with the existing development on the marine terrace.* A tabulation of the acreage comprising the marine terrace portion of all parcels between Estero Park and China Harbor conducted for Dr. Schneider by the civil engineering firm of Cannon & Associates reveals that approximately 30 percent (30%) of the marine terrace is presently developed. Clearly, the residence as approved by the Planning Commission will not change the character of that portion of the Harmony Coast in which it is located.

4. The driveway to the residential site will disturb an approximately 179,000 square foot area. The assumption that construction of the driveway to serve the barn and residence at the sites approved by the Planning Commission creates new or additional "disturbance" of the Property of 179,000 square feet ignores a number of pertinent facts. That number is a gross miscalculation of the square area the driveway will encompass. Assuming the driveway is 1.25 miles in length as approved by the Planning Commission, the driveway is 6,600 feet long. To consume 179,000 square feet, the driveway would have to average approximately 27 feet in width. To consume 147,000 square feet, the driveway would have to average approximately 22 feet in width. Such widths are far in excess of the driveway width requirements imposed by the County of San Luis Obispo/California Division of Forestry which, as the Staff Report confirms, are "18 feet wide ... CDF will allow the road to be narrowed to 10-12 feet in sensitive habitat areas providing there is a clear view entering and exiting the roadway...." with occasional turnouts. In fact, for most of its route there will be clear views entering and exiting the driveway, permitting it to be as narrow as 10-12 feet wide for much of its length. Thus, the impact of the driveway has been overstated by 100 per cent or more.

Facts ignored by the Staff Report, include, a) the existing driveway is paved from Highway 1 across the entire length of the "Tahvildari" property illustrated on Exhibit 2 (1 of 9) of the Staff Report; b) the calculation of disturbed area set forth in the Staff Report (whether 179,000 or some significantly less number of square feet) is a gross calculation that ignores Special Condition 7, which provides, in pertinent part, "The access road (driveway) shall, to the greatest degree feasible, follow the existing jeep trail ..." and Special Condition 6(f) which requires, in pertinent part, "...revegetation of all abandoned access routes." As discussed below, the application of these conditions to the marine terrace portion of the driveway is significant; c) the existing driveway is substantially more than a jeep trail as it must accommodate large trucks necessary to transport cattle onto and off of the Property from the cattle pens and chute located at the top of the ridge on an adjoining parcel that shares the existing driveway with the Property; and c) the site of the existing driveway from the top of the ridge to the marine terrace (located on the parcel immediately northwest of the Property) meanders in and out of a steep drainage swale, causing severe erosion during the wet season.

Realignment of the driveway from the steep drainage area that extends from the ridgetop to the marine terrace on the parcel immediately northwest of the Property, and abandonment and revegetation of the existing driveway alignment in that location, ***will cure the serious, existing erosion problem.*** The extension of the driveway laterally across the marine terrace to the residence site approved by the Planning Commission will permit abandonment and revegetation of the existing road located near the ocean bluff. The remainder of the driveway, with some minor deviations, will follow the alignment of the existing driveway, including the present access from Highway 1 and the existing bridge that crosses Ellysley Creek. Accordingly, the net area that will be disturbed by the driveway as approved by the Planning Commission is substantially less than the amount of area alleged in the Staff Report. In fact, the net impact is negligible.

B. Geologic and Drainage Hazards and Excessive Grading Associated With the Site Recommended In the Staff Report.

The topographic map of the Property (Exhibit 8 of the Staff Report) illustrates the location of the residence as approved by the Planning Commission at the southeastern end of the marine terrace and the site of the residence recommended in the Staff Report (represented by the cross-hatched rectangle) at the northwest corner of the marine terrace. As can be determined from the contour lines of the topographic map, ***the site of the residence recommended in the Staff Report is in a very steep area of the marine terrace at the mouth of a narrow arroyo.*** As illustrated in the photograph of the location of the residence proposed in the Staff Report attached hereto as Exhibit "B", ***the site is subject to inundation with mud and very large boulders that slough off during heavy rains from an unstable area of the marine terrace bluff above.***

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The letter of April 5, 2004 from Timothy S. Cleath, Certified Engineering Geologist, Cleath & Associates, attached hereto as Exhibit "C" attests to the inappropriate nature of the residence site recommended in the Staff Report. Mr. Cleath's letter provides, in pertinent part, "The site is adjacent to a canyon that has produced debris flows in the past. *These debris flows appear to have crossed the proposed site (recommended in the Staff Report) in the past...*" [Emphasis added.]

Mr. Cleath's conclusions are confirmed in a letter from John D. Kammer, Senior Engineering Geologist, GeoSolutions, dated April 7, 2004 attached hereto as Exhibit "D". Mr. Kammer in his letter recommends construction of a tall rock fence (cables and I-beams) *and a series of walls upslope of the residence to protect the structure from the canyon debris flows.* Importantly, construction of a large fill pad with keyway excavated into bedrock and a 2:1 slope if the residence is constructed at the site recommended in the Staff Report.

Policy 1 (Policies For Hazards), Chapter 11 (Hazards) of the Coastal Plan Policies of the LCP provides, in pertinent part "All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) *shall be located and designed to minimize risks to human life and property.*" [Emphasis added.] Indeed, Staff has failed to *heed the opinions of two independent geologists*, not once but twice, to properly evaluate the safety and geologic risks of their proposed site selections. Instead, after being forewarned by these geologists of the risks staff has again substituted their own non professional judgment in a matter of the utmost personal safety for Dr. Schneider and his family now and for years to come. In sharp contrast to the residence site recommended in the most recent Staff Report, the site approved by the Planning Commission is located within a geologically stable area of the marine terrace, with no hydrological constraints.

The importance of these geologic risks was not lost on the appellate court. The existence of these geological hazards was included as a statement of fact in the written decision of the Appellate Court attached hereto as Exhibit "E" when it found that "*The geological hazards are significant and include 40 degree slopes and large boulders. Appellant will have to building a rock fence with cables and I-beams, and a series of upslope walls to protect the residence from falling boulders.*" [Emphasis Added.] The relocated building envelope proposed in the Staff Report does nothing to address these concerns.

In sharp contrast to the residence site recommended in the Staff Report, *the site approved by the Planning Commission is located within a geologically stable area of the marine terrace with no hydrological constraints. The residence has been designed to conform to the natural gentle slope that predominates* the residence site approved by the Planning Commission. Further, this site is located within a natural topographic depression that enables the residence to be constructed at an elevation of approximately 55 to 75 feet

above sea level, *or approximately 35 feet lower than the site recommended in the Staff Report.* The lower elevation at the site approved by the Planning Commission takes advantage of the natural landforms that will shield the residence from all onshore public viewing areas.

Policy 2 (Site Selection For New Development) of Chapter 10 (Visual and Scenic Resources) of the LCP provides "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 usual intrusion.*" [Emphasis added.] Clearly, the residence site approved by the Planning Commission is consistent with the LCP Coastal Plan Policies, while the site recommended in the Staff Report is not.

C. There Is No Basis For the Recommendation To Relocate and Reduce the Size Of the Residence.

As discussed above, the public viewshed and hazards policies of the LCP require selection of the residence site approved by the Planning Commission over the site recommended in the Staff Report. Further, as discussed in the Staff Report, the viewshed impacts associated with siting the residence on the ridgetop portion of the Property coupled with the biological constraints associated with that location, as discussed in the Staff Report, *make the site approved by the Planning Commission the only site available within the confines of the Property that is consistent with the requirements of the LCP.* Virtually all of the arguments preferred in the Staff Report for moving the location of the residence to the northwest corner of the marine terrace, including alleged viewshed impacts and compatibility with surrounding area, are based on false premises, as demonstrated above. Further, the argument that relocating the residence to the northwest corner of the marine terrace will produce the tangential benefit of reducing the length of the driveway by approximately 1,100 feet is similarly flawed. Not only will the impact of the driveway across the marine terrace be mitigated by abandonment and revegetation of the existing driveway, as discussed above, it will be necessary to extend the driveway to the well location on the Property in any event, which is approximately 500 feet from the residence site recommended in the Staff Report toward the residence site approved by the Planning Commission.

All of the arguments in the Staff Report in favor of reducing the size of the footprint of the residence are highly subjective. For example, the Staff Report points to incompatibility of the residence approved by the Planning Commission with the "larger rural agricultural Harmony Coast," and the "unsightly" nature of the Abalone Farm. By inference, the residence approved by the Planning Commission would extend "unsightly" development to the remainder of the Harmony Coast. *The Staff Report maintains that new development, including the residence, must be subordinate to and blend with the "rural" landscape of*

the Harmony Coast. The Staff Report cites no objective standards for this requirement and cites no objective evidence for the premise that the residence is out of character with the remainder of the Harmony Coast. Such subjective arguments provide no legal foundation whatsoever for a condition of approval requiring reduction of the size of the residence.

To further cloud the waters, previous Coastal Commission actions on approval of residential developments on agricultural lands on the Harmony Coast contain less restrictive language. A primary example is the conditions of approval for Morro Bay Limited (Appeal Numbers A-3-SLO-99-014 and A-3-SLO-99-032) (“Ormsby”) attached hereto as Exhibit “F” which states the “sum total footprint of all residences and residentially-related structures (including guest houses, gazeboes, garages, etc.) within the building envelopes shall not exceed 7,000 sq. ft. and in no case shall the footprint of anyone structure exceed 5,000 sq. ft.” and that “total coverage of other non-structural impervious surfaces and outdoor activity areas within the residential building envelope, including all parking areas and other areas outside of the building footprints on which development is proposed, shall be limited to a maximum coverage of 7,000 square feet.” This is much less restrictive than the 5,000 square feet building envelope staff has proposed for Dr. Schneider’s project.

In addition to the foregoing, the Staff Report recommendation to reduce the size of the residence *is inconsistent with the Coastal Commission’s own recommendation to the County of San Luis Obispo regarding the maximum size of building envelopes.* In the Periodic Review of the Implementation of San Luis Obispo’s Local Coastal Program, Section 58 (Development and Building Size Limitations) (p. 181), dated June 29 and July 2, 2001, the Coastal Commission recommended as follows:

“To ensure protection of agricultural lands, Recommendations 5-4 and 5-5 recommend defining maximum building and landscaping envelopes for residences on agriculturally zoned lands. After discussions with the County staff and agricultural community, the Commission concurs that other alternatives, such as establishing performance standards for residential development on agricultural parcels, are more appropriate than a defined maximum building envelope. ... *The Commission therefore deletes references to house and building envelope sizes in Recommendations 5-4 and 5-5, and establishes performance standards* for residential use on agriculturally designated lands under Recommendation 5-8.”

As discussed below, *the entire Project as approved by the Planning Commission, including the residence, barn and driveway, will have no impact on the agricultural viability of the Property,* making the Project consistent with Recommendation 5-8. Accordingly, the residence as approved by the Planning Commission is consistent with the Coastal Commission’s own recommendations.

Finally, the high bluff that rises from the marine terrace to the ridgetop of the **Property will provide a backdrop for the residence approved by the Planning Commission insuring that it will not silhouette against the sky from any vantage point.** Condition of Approval 18 imposed by the Planning Commission will insure that the residence blends with this backdrop.

D. The Project As Approved By the Planning Commission Will Have No Impact On Agricultural Operations On the Property.

The Staff Report concludes that the Project as approved by the Planning Commission will have a negative impact on agricultural operations on the Property and will beget development of additional residences on the Harmony Coast area, thus "redefine(ing) the character of the agrarian and rural open space landscape here."

Contrary to the above finding, the Staff Report acknowledges that **the soils on the Property are not prime and that the Property is not suitable for irrigated crop production.** The Staff Report concurs with the finding of the San Luis Obispo County Agricultural Commissioner that **the Property is suitable only for cattle grazing,** and then only in conjunction with surrounding properties, since alone it is substandard in size to support cattle grazing operations.

The Coastal Plan Policies of the LCP at page 7-3 note that in the Cambria-Cayucos area, **the annual livestock carrying capacity of dryland range (such as the Property) is one animal unit per seven acres.** In a study commissioned for the Joshua Brown property near Cambria entitled "An Economic Evaluation of the Agricultural Potential of the Joshua Brown Property" by Kenneth C. Scott, PHD., Agricultural Economist, dated June 6, 1996, a copy of which is attached hereto as Exhibit "G", Dr. Scott concludes that ten or twelve acres of rangeland are required to sustain one head of cattle, depending on the configuration of the property. Assuming the most liberal of the criteria cited above, **the Property will sustain a maximum of 5 head of cattle** (40.6 acres ÷ 7 acres/head). Further assuming that the impact of the project is as drastic as the Staff Report maintains (179,000 square feet of the Property "disturbed" by the driveway, 12,000 square feet of footprint for the residence and barn, and 20,000 square feet of impervious surface), the total square footage of the Property devoted to development would be 211,000 square feet, which constitutes less than 5 acres of area. Since the Property will sustain only 5 head of cattle at 7 acres per head, only 35 acres of the Property are necessary to sustain cattle grazing. Subtraction of the area of the Property devoted to development from the 40.6 acres that constitute the Property leaves more than the 35 acres required for cattle grazing. Thus, using assumptions least favorable to development, **the Project as approved by the Planning Commission will have no adverse impact on continued agricultural use of the Property.**

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However in order to mitigate these concerns, Applicant is in agreement with These Special Conditions 9 and 10, an Agricultural Hold Harmless and Indemnity Agreement and recordation of an Agricultural and Resource Conservation Area encumbrance against the Property, which will that the Property will continue to function as an integral part of the cattle grazing operations presently conducted in conjunction with neighboring properties.

E. There Is No Basis For Removal Of the Barn From the Entitlements Approved By the Planning Commission.

The Staff Report sets forth in the Staff Report Addendum a revised Special Condition 2(b) which provides, in pertinent part, "This permit does not authorize construction of the 2,500 square foot accessory barn ... any future improvements, including an agricultural accessory structure, such as a barn, in the future as part of a bonafide agricultural operation, shall require an amendment to this permit. *The Staff Report provides no reason for removal of the barn from the entitlements approved by the Planning Commission.* Without a proper legal basis for removal of the barn, the proposed condition is arbitrary and capricious. Further, the requirement in revised Special Condition 2(b) that any barn to be permitted in the future must be a part of a "bonafide" agricultural operation has no basis in law. Such a requirement cannot be found in 14 CCR sec. 13250(b)(6) cited in the revised Special Condition 2(b), the LCP or in any other statute or regulation that governs the use of the Property.

The barn will have no impacts on the viewshed from any public viewing area. Even so, elimination of the barn flies in the face of the stated goal in the Staff Report to preserve the rural agricultural character of the Harmony Coast.

Thank you for your consideration. My client and I will be in attendance at the hearing on this matter to offer oral testimony and respond to questions.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/ec
Exhibits

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cc: Patrick Kruer
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La Jolla, CA 92037

Dr. William A. Burke
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Los Angeles, CA 90025

Larry E. Clark
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

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Bonnie Neely
Board of Supervisors
825 Fifth Street, Room 111
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Steve Blank
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Khatco Achadjian, Supervisor
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San Diego, CA 92101

Dave Potter, Supervisor
County of Monterey, District 5
1200 Aguajito Road, Suite 001
Monterey, CA 93940

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Mike Reilly, Supervisor
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Santa Rosa, CA 95403-2887

Mary K. Shallenberger
3309 East Curtis Drive
Sacramento, CA 95818

Sara Wan
22350 Carbon Mesa Rd.
Malibu, CA 90265

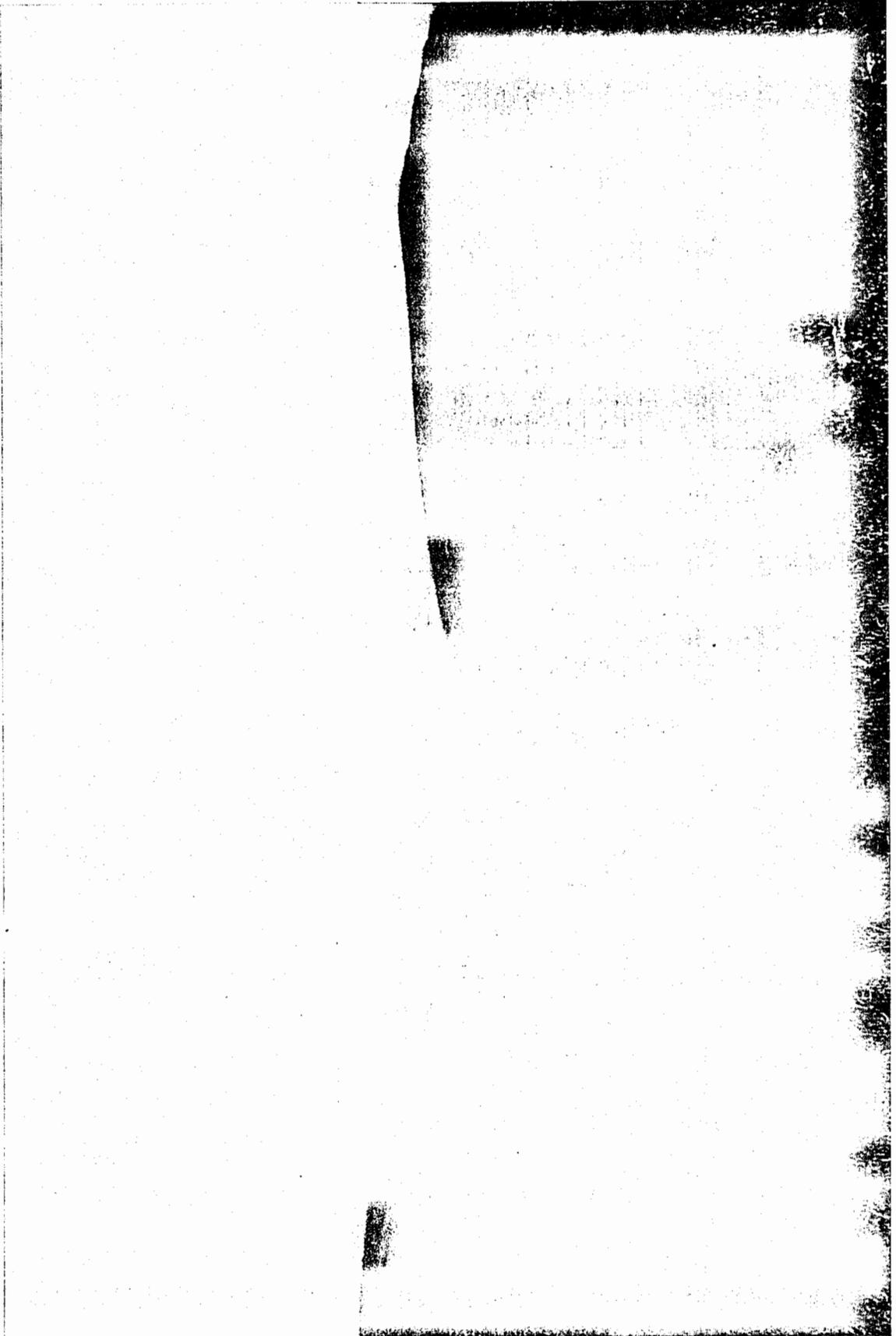
Dan Secord, M.D.
3335 Cliff Drive
Santa Barbara, CA 93109

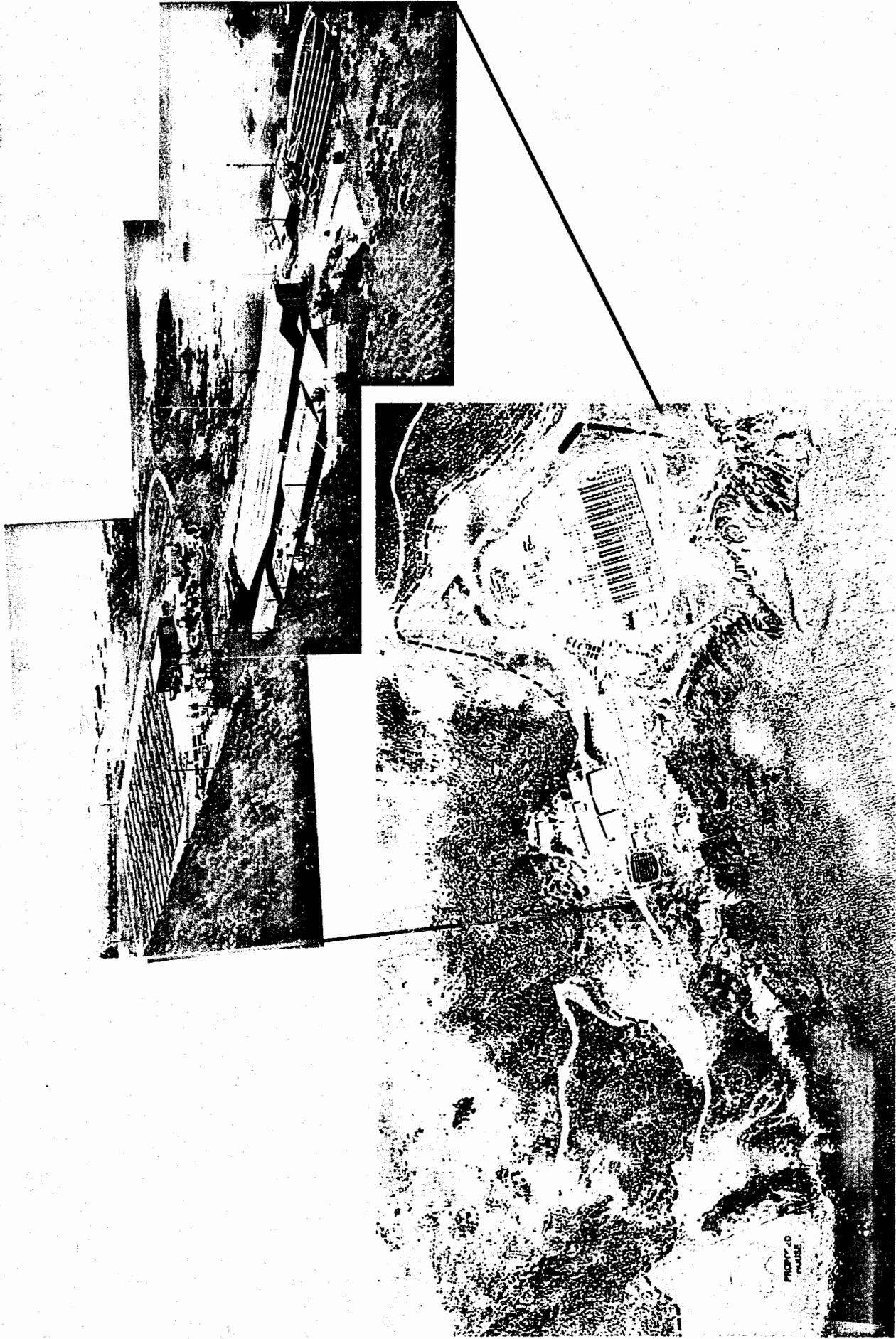
Steve Kinsey
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903

Mr. Jonathan Bishop
Staff Analyst
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Dr. Dennis Schneider
San Luis Obispo, CA 93401

SCHNEIDER PROPERTY CANNOT BE SEEN
FROM SEA WEST RANCH

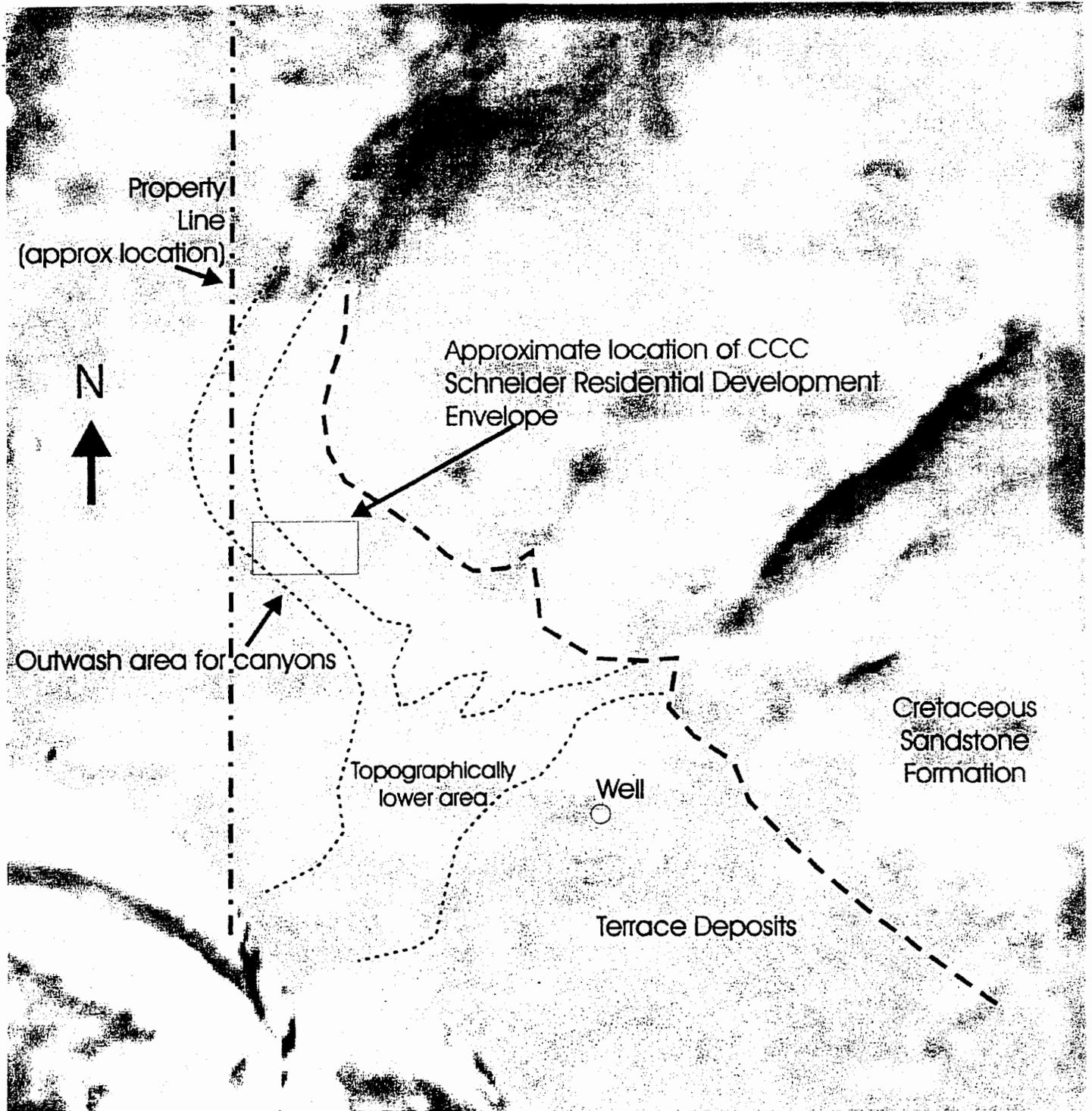




Total Terrace Area (---)*:	34.1 acres	31.7% of total
Existing Developed:	10.8 acres	0.9% of total
Additional Development:	0.3 acres	

*figures shown are approximations only





August 1999 Aerial Photograph

Scale 1" = 125' (approx.)

Geologic Conditions
 Residential Development Envelope
 Proposed by Coastal Commission Staff
 Schneider Property
 Near China Harbor and Abalone Farm
 San Luis Obispo County, California



GeoSolutions, Inc.

220 High Street, San Luis Obispo, CA 93401
(805) 543-8539, 543-2171 fax
info@GeoSolutions.net

April 7, 2004
Project SL01422-2

Mr. Dennis Schneider
581 Baywood Way
Los Osos, California 93402

SUBJECT: Preliminary Engineering Geology Evaluation
Proposed California Coastal Commission Site
Schneider Residence
China Cove, APN 046-082-008
Cayucos Area, San Luis Obispo County, California

Dear Mr. Schneider:

INTRODUCTION

Representatives of GeoSolutions, Inc. conducted a preliminary engineering geology evaluation of a proposed California Coastal Commission Schneider-residence site associated with the Schneider property located at China Harbor in the Cayucos area of the County of San Luis Obispo, California. Figure 1 depicts both the location of the Schneider residence as proposed by the California Coastal Commission (Coastal Commission) and the San Luis Obispo County approved Schneider residence location. The purpose of the evaluation is to discuss preliminary engineering geologic conditions associated with the proposed Coastal Commission Schneider-residence location. This evaluation was conducted utilizing Uniform Building Code guidelines and common engineering geologic practices. This evaluation included a review of available geologic publications (references) and maps pertinent to the Site. Field reconnaissance was conducted April 6, 2004. No subsurface investigation was conducted for this preliminary evaluation.

GEOLOGIC CONDITIONS

In the vicinity of the proposed Coastal Commission Schneider-residence site, two types of geologic units are present. Unnamed sandstone of Cretaceous age (138 to 63 mybp) is present on the steep mountain front and adjacent upslope hills and valleys. This sandstone is dense to very dense, light to dark brown, and bedded. Thickness is up to 6,000 feet (Hall and Prior, 1975). Natural bedrock slopes of this material are in excess of 0.5:1 (horizontal:vertical).

Overlying the Unnamed sandstone in this area are Terrace Deposits consisting of cobbles, pebbles, sand, silt, and clay. The exact age is unknown but is estimated to be Pleistocene to Holocene (2 mybp to present).

April 7, 2004

Project SL01422-2

4. The fill pad that would be created would be subject to toe erosion from the gully that is immediately west of the Site. Mitigation would require the use of walls to preclude erosion from debris flow and/or large rain events to stabilize the fill material. Erosion potential is very minor to non-existent at the San Luis Obispo County approved site. A ravine is present west of the San Luis Obispo approved site but the June 19, 1998 Geologic Hazards and Bluff Retreat Rate Study (Cleath) states "This stream course is entrenched everywhere except where the road crosses the ravine and should not result in overflow toward the proposed residence."

CONCLUSION

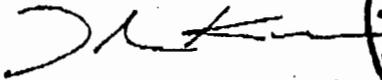
It is GeoSolutions, Inc. opinion that the Coastal Commission proposed residence location is located in a high-geologic hazard area that requires large amounts of mitigation to justify.

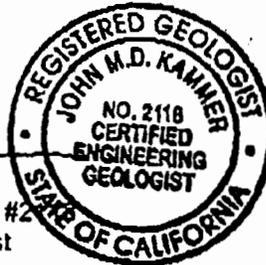
Except as directed by this report, site development should be performed in accordance with the Uniform Building Code and the laws and ordinances of the County of San Luis Obispo.

Should you have any questions regarding content of this report or other concerns, please do not hesitate to contact us at 805-543-8539.

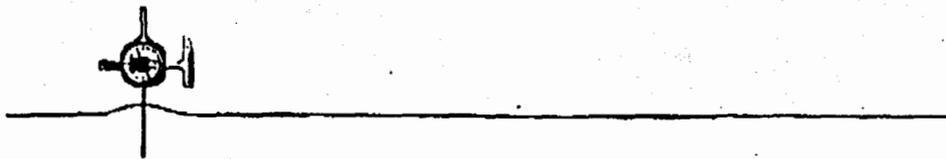
Sincerely,

GEOSOLUTIONS, INC.


John M. D. Kammer, C.E.G. #2
Senior Engineering Geologist



\\Server\geosolutions\Geology\Geology & Hydrology\Gen. Geology-Eng. Geol\Engineering geo rpts\Roadway evaluations\SL01422-2 China Harbor, Schneider\SL1422-2 Schneider coastal commission house placement let.doc



CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DENNIS C. SCHNEIDER,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL
COMMISSION,

Defendant and Respondent.

2d Civil No. B186149
(Super. Ct. No. CV040488)
(San Luis Obispo County)

Here we conclude that the Legislature has not recognized an ocean boater's "right to a view" of the coastline as a factor in regulating development. The Legislature has given the California Coastal Commission (Coastal Commission) enumerated powers to regulate such development. But, the Legislature has not empowered the Coastal Commission to "add" the factor of a boater's "right to a view" of the coastline as a factor to deny or restrict development in the coastline zone.

Dennis C. Schneider appeals from an order denying his petition for administrative mandamus to vacate a Coastal Commission decision imposing special conditions on a Coastal Development Permit to build a residence. (Pub. Resources Code, § 30801.)¹ We reverse and direct the superior court to issue a peremptory writ

¹ All statutory references are to the Coastal Act contained in the Public Resources Code unless otherwise stated.

commanding the Coastal Commission to set aside its decision and rehear the matter. (Code Civ. Proc., § 1094.5, subd. (f).) On rehearing, Coastal Commission may not consider whether the proposed development impacts views of the coast from offshore, ocean-based vantage points. (See E.g. *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1174.)

Facts and Procedural History

Appellant owns a 40 acre ocean-front parcel north of Cayucos on the Harmony Coast. The property is in an Ocean Shoreline Sensitive Resource Area, zoned agricultural, and is used for cattle grazing. It has a step-like topography with a steeply sloped ridge that extends down to a flat marine terrace. The marine terrace is about 200 feet wide and abuts the ocean bluff. There is no beach below the bluff. A commercial abalone farm is on a nearby parcel.

On February 24, 2000, the San Luis Obispo County Planning Commission (County) granted appellant a permit to construct a 10,000 square foot residence, a barn, and a 1.25 mile access road/driveway from Highway 1 to a building site on the southeast end of the marine terrace. The Coastal Development Permit (CDP) included 27 conditions which addressed concerns about steep slopes, erosion, drainage, scenic and visual resources, agricultural use, and potential environmental impacts.

On April, 3, 2000, two Coastal Commission members appealed County's issuance of the permit on the ground that the proposed development was inconsistent with the policies and ordinances of the San Luis Obispo County Local Coastal Plan (LCP). (§ 30603, subds. (a)(4) & (b)(1).)

Coastal Commission conducted a de novo hearing and found that the proposed development would be visible from the ocean. On April 15, 2004, it conditionally approved the CDP but imposed 15 special conditions requiring, among other things, that the project be resited at a higher elevation on the northwest corner of the marine terrace and that "[a]ll development (i.e., the residence, all impermeable pathways, turnarounds, courtyards, garages, swimming pools, retaining walls, etc.) shall be confined within an area of no greater than 5,000 square feet." Coastal Commission

required that all structures be single story, that the barn not be constructed, and that the access road/driveway be relocated to reduce its length, visibility, and impact on agricultural land.

Appellant filed a petition for administrative mandamus alleging that Coastal Commission had no authority to impose development conditions to protect views of the coastline from offshore, ocean-based vantage points. Coastal Commission argued that the enjoyment of uncluttered views from the ocean was a public resource protected by the LCP.

The trial court agreed with the Coastal Commission saying "that the beauty of a sunrise from a vantage point offshore is afforded the same protection as a sunset seen from land. [¶] The Court fully appreciates the difficulties [appellant] has had with the approval process and the conditions attached to the approval of his beautifully designed residential project. It may be compared to 'being nibbled to death by ducks' While this Court might not agree with any or all of the modifications or conditions, it fully understands the reasons given by the Coastal Commission and finds that substantial evidence exists in the record for each of them."

As we shall explain, Coastal Commission views and those of the trial court, cannot be sustained. The Coastal Commission has subordinated a landowner's real property rights to the occasional boater's "right to a view" of the coastline.² If and when the California Legislature expressly codifies a boater's "right to a view" of the coastline, the courts can and will lawfully give it credence. But the Coastal Commission is not empowered to legislate a boater's "right to a view" of the coastline.

² We do not invent the phrase "occasional boater," to support our ruling. A coastal landowner is on his or her property every day. Boaters, if any, pass by the property infrequently. This observation is particularly apt on the Harmony Coast.

Standard of Review

In an action for administrative mandamus, the court's inquiry extends to whether the agency acted in excess of jurisdiction or abused its discretion by not proceeding in the manner required by law. (Code Civ. Proc., § 1094.5, subd. (b); *La Costa Beach Homeowners' Assn. v. California Coastal Com.* (2002) 101 Cal.App.4th 804, 814.) Where jurisdiction involves the interpretation of a statute, regulation, or ordinance, the issue of whether the agency proceeded in excess of its jurisdiction is a question of law. (CEB, Cal. Administrative Mandamus (April 2005) § 6.29, p. 171; see e.g., *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 239-240; *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 349 [agency's interpretation of sales tax statutes and regulations subject to independent review].) "A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued. [Citations.]" (*Yamaha Corp. of America, v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4.)

San Luis Obispo County LCP

The California Coastal Act of 1976 (Coastal Act; Pub. Resources Code, § 30000 et seq) requires that local governments within the coastal zone prepare a Local Coastal Program (LCP) and implement ordinances to promote the Coastal Act's objectives of protecting the coastline and its resources and maximizing public access. (§§ 30001.5, 30512, 30513; *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1011.) "Local governments are responsible for creating their LCP's. [Citations.] The Coastal Commission was established to review these LCP's and certify the LCP's meet the requirements of the Act." (*Conway v. City of Imperial Beach, supra*, 52 Cal.App.4th at p. 86.) After a LCP is certified by the Coastal Commission, development review authority is "delegated to the local government that is implementing the local

coastal program" (§ 30519, subd. (a); *Kaczorowski v. Mendocino County Board of Supervisors* (2001) 88 Cal.App.4th 564, 569.)

Where the local government grants a CDP, the action may be appealed to the Coastal Commission by the applicant, any aggrieved person, or two members of the Coastal Commission. (§ 30625, subd. (a).) On appeal, the Coastal Commission reviews the matter de novo and may take additional evidence. (§ 30621, subd. (a); *City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795, 804.) Its jurisdiction, however, is limited. (*Ibid.*) "The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act's access policies. (§ 30603, subd. (b)(1).)" (*Kaczorowski v. Mendocino County Board of Supervisors, supra*, 88 Cal.App.4th at p. 569.)

Section 30251

The issue is whether the Coastal Commission may, in effect, add language to section 30251 by construing it. The Attorney General argues that it may do so. Section 30251 of the Coastal Act provides that: "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. . . ." (Emphasis added.) The statute does not expressly state a vantage point.

The Coastal Commission and the Attorney General's construction of the section adds the words "and from" between the italicized words "*along*," and "*the*." The statute would thus read, ". . . protect views to and along, and from, the ocean . . ." This expansive reading of the statute stretches the fabric too thin. The courts are loathe to construe a statute which has the effect of "adding" language to a statute. (E.g. *People v. Buena Vista Mines, Inc.* (1996) 48 Cal.App.4th 1030, 1034.) Courts may add language to a statute in extreme cases where they are convinced the Legislature inadvertently failed to

utilize the words which would give purpose to its pronouncements. (*Id.* at p. 1034.) In our view, this is not such a case. At this late date, it is unreasonable to assume that the Legislature meant to include ocean based views to the shore when it enacted section 30251 thirty years ago. Moreover, we believe that it is unreasonable to assume that the Legislature has ever sought to protect the occasional boater's views of the coastline at the expense of a coastal landowner.

Historically, the protection of public views "to and along the ocean and scenic coastal areas" has been construed to mean land-based scenic views from public parks, trails, roads and vista points. (See e.g., *La Costa Beach Homeowners' Assn. v. California Coastal Com.*, *supra*, 101 Cal.App.4th at p. 808 [construing section 30251 to require view corridor of beach and ocean from Pacific Coast Highway]; *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1011 [view corridor from coastal canyon]; *Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 551-552 [open-space easement to mitigate adverse visual impact of access road, inn, and residence].)

County's LCP has 11 Policies for Visual and Scenic Resources, none of which refer to the protection of offshore, ocean-based vantage points. Coastal Commission asserts that it can impose an offshore visual resource protection policy because section 30251 and the LCP do not differentiate between offshore and onshore view corridors. Other than its ipse dixit statement, the Coastal Commission cites no authority to support this theory.

The administrative record is also sparse. At the Coastal Commission hearing on the permit application, Executive Director Peter Douglas testified that the State of Maine had recently amended its coastal management program to incorporate an offshore visual protection policy. Douglas stated that a similar offshore visual protection policy was imposed on a nine-unit project north of appellant's property and that Coastal Commission's efforts to protect public views from the ocean was supported by the U.S. Sailing Association. At the de novo hearing on the CDP application, Coastal Commission Director Douglas testified that many of the "conditions that the staff is

recommending here today . . . *aren't part of, precisely, the county's LCP. . . .*" (Emphasis added.) Director Douglas stated that "the Commission, clearly, has original permit jurisdiction in state waters, out the three miles. You have a responsibility under the Coastal Act to protect views to and along the ocean, and to the ocean means both from the land . . . to the coast, and from the sea to the coast."³

In construing section 30251 and the LCP, we look to California law not the State of Maine or the U.S. Sailing Association. "The Coastal Act sets minimum standards and policies with which local governments within the coastal zone must comply; it does not mandate the action to be taken by a local government in implementing local land use controls." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 572.)

The Policies for Visual and Scenic Resources section of the LCP (chapter 10) refers to section 30251 of the Coastal Act which, as indicated, provides: "Permitted development shall be sited and designed *to protect views to and along the ocean and scenic coastal area*" (Emphasis added.) The LCP "INTRODUCTION" section recites: "The California Coastal Commission has adopted the following statement regarding Section 30251: [¶] 'The primary concern under this section of the Act is the protection of ocean and coastal views from public areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, *coastal streams and waters used for recreational purposes*, and other public preserves rather than coastal views from private residences where no public vistas are involved.'" (Italics added.)

We construe the phrase "coastal streams and waters used for recreational purposes" to mean rivers, streams, creeks, sloughs, lakes, reservoirs, lagoons, and land-

³ We are unable to agree with this leap in logic. "To and along the ocean" does not encompass "from the sea to the coast."

based bodies of water.⁴ (See Civ. Code, § 3534 ["Particular expressions qualify those which are general"]; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159-1160.) Section 30251 of the Coastal Act makes no reference to public view corridors that originate offshore, from the ocean to the land.

Coastal Commission reviewed the proposed development based on the Policies for Visual and Scenic Resources set forth in the LCP. (§ 30604, subd. (b).) Visual and scenic resource policy 4 provides: "New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened using native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views."

Visual and scenic resource policy 2 provides: "Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Whenever 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."

Coastal Commission found: "In addition to the scenic views from Highway One and other inland areas, [Visual and Scenic Resource] Policy 2 protects views from nearshore waters. In other words, the views of fishers, boaters, kayakers, surfers, et

⁴ Chapter 10 of the LCP refers to a 1980 Visual and Scenic Resources Study provides a detailed description of the scenic qualities of county coastal areas. It states: "Offshore viewing (unlike the previous view corridors) is *primarily concerned with the visual quality of the ocean seen from the shore* rather than the ability to see or enhance a view along a public highway or park. . . . Specific offshore viewing concerns include the location and appearance of offshore drilling and loading platforms, LNG terminal sites, the protection of offshore rocks and reefs, as well as long-range views across bays, coves, and inlets." (Emphasis added.)

cetera who may be present at different times in the water should also be considered. Because of the sheer cliff edge and the relative flat marine terrace, the proposed development (i.e., residence, lounge, barn, access road improvements, water tanks, etc.) would be highly visible, particularly from nearshore waters. . . . [¶] Although not visible [by] travelers along Highway One, the residential site on the marine terrace would be visible from offshore locations "

Neither section 30251 nor the LCP support an unwritten policy to protect scenic views of the coast from offshore, ocean-based vantage points. The LCP protects land-based "major public view corridors," not offshore views by the occasional boater, kayaker or surfer. Such an ocean-based view corridor would change minute by minute depending on where the boater, kayaker or fisher happens to be. The Coastal Commission found that the view corridor originated from "nearshore waters" but considered vantage points half a mile and a mile offshore. Executive Director Douglas opined that the view corridor could originate from a vantage point as far out as three miles offshore.

When Coastal Commission certified the LCP in 1988, it lacked authority "to create or originate any land use rules and regulations" or draft any part of the coastal plan. (*Yost v. Thomas, supra*, 36 Cal.3d at p. 572, citing *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 488.) In reviewing the proposed development to determine whether it was consistent with the certified LCP, Coastal Commission was not empowered to adopt a new offshore visual resource policy for San Luis Obispo County. (§ 30604, subd. (b); Cal. Code Regs., tit. 14, § 13119.) "Administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void. [Citations.]" (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 391; see e.g., *City and County of San Francisco v. Board of Permit Appeals* (1989) 207 Cal.App.3d 1099, 1110 [administrative

appeals board had no power to disregard or amend ordinances defining its authority].)

Remedy

Appellant argues that the proper remedy is to reinstate the original CDP issued by County. We disagree. The LCP requires that the scenic landscape of the Harmony Coast be preserved (Visual and Scenic Resource Policy 1) and that the development be designed to be subordinate to and blend with the natural character of the area (Visual and Scenic Resource Policy 4). The record indicates that the 10,000 square foot residence with its large windows and pyramid shaped skylights would be significantly larger than neighboring farm homes. Certain parts of the development (i.e., the house, the access road, or the barn) will be visible from Estero Park, Sea West Ranch, and other land-based public view corridors. In order to mitigate adverse impacts, Coastal Commission found that the proposed residence should be smaller and built higher up the ocean bluff at the west end of the marine terrace.

Appellant complains that relocating the residence to the northwest side of the marine terrace will make it more visible and expose it to rock falls, erosion, and a canyon outwash.⁵ The geological hazards are significant and include 40 degree slopes and large boulders. Appellant will have to build a rock fence with cables and I-beams, and a series of upslope walls to protect the residence from falling boulders.

Many of the special conditions imposed by the Coastal Commission were premised on the erroneous theory that section 30251 and the LCP protected public views from the ocean to the land. It influenced how the Coastal Commission balanced other LCP policies and Local Coastal Zone Land Ordinance restrictions. The complexity of these issues is reflected in Coastal Commission's revised findings which span 36 pages and includes 83 pages of exhibits, maps, and photos.

⁵ Evidence was received that the recommended building site was 50 to 70 feet higher up the marine terrace and would be more visible from public viewing areas down the coast and along Estero Bay.

In the words of Coastal Commission Executive Director Douglas, the property "is, obviously, a very sensitive site, given its location, and remoteness, and undeveloped character." We agree. The Harmony Coast is an Ocean Shoreline Sensitive Resource Area with undeveloped coastal bluffs, marine terraces, and steep ridgelines. Reasonable minds may differ on what conditions should be imposed for the development. But, such conditions may not be predicated on an offshore visual and scenic resource protection policy.

Coastal Commission requests that that we defer to its interpretation of the Coastal Act in determining the scope of the LCP. Its role, however, is interpretative not quasi-legislative. (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th at pp. 7-8.) "Because an interpretation is an agency's *legal opinion*, however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. [Citation.]" (*Id.*, at p. 11.)

Conclusion

The judgment is reversed. The superior court is ordered to issue a peremptory writ commanding the Coastal Commission to vacate its decision and rehear the matter consistent with this opinion. Appellant is awarded costs on appeal.

CERTIFIED FOR PUBLICATION

We concur:

YEGAN, J.

GILBERT, P.J.

PERREN, J.

Roger T. Picquet, Judge

Superior Court County of San Luis Obispo

James S. Burling and Lawrence G. Salzman, for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Tom Green, Chief Assistant Attorney General, J. Matthew Rodriguez, Senior Assistant Attorney General, John Saurenman, Supervising Deputy Attorney General, Rosana Miramontes, Deputy Attorney General, for Plaintiff and Respondent.

CALIFORNIA COASTAL COMMISSION

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

W 17a & b

A-3-SLO-99-014 Filed: 02/24/99
 A-3-SLO-99-032 Filed: 04/27/99
 A-3-SLO-99-014 49th Day: 04/14/99
 A-3-SLO-99-032 49th Day: 06/15/99
 Staff: SM-SC
 Staff Report: 09/22/99
 Hearing Date: 11/03/99
 Commission Action: A-3-SLO-99-014 Opened and Continued on 04/14/99; Substantial Issue Determination for both appeals postponed by applicant from 06/08/99 hearing; hearing on both appeals continued by Commission on 8/11/99

**COMBINED STAFF REPORT: TWO APPEALS
 SUBSTANTIAL ISSUE DETERMINATIONS
 AND DE NOVO REVIEW**

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: On September 15, 1995¹, the San Luis Obispo County Subdivision Review Board conditionally approved COAL 94-130 for the lot line adjustment. On January 26, 1999, the San Luis Obispo County Board of Supervisors approved Development Plan/Coastal development Permit D970195D for grading and roadway construction to serve the adjusted lots.

APPEALS: **A-3-SLO-99-014 and A-3-SLO-99-032**

APPLICANT: **Morro Bay Limited**
 AGENT: Dan Lloyd, Engineering Development Associates

APPELLANTS: David McBride, Commissioners Wan and Nava (A-3-SLO-99-014); Commissioners Wan and Potter (A-3-SLO-99-032)

LOCATION: West of Highway One, approximately 3 miles south of Harmony and 6 miles north of Cayucos, in the Agriculture land use category of the San Luis Obispo County North Coast Planning Area (APNs 046-082-013 through 046-082-022)

¹ The Commission did not receive a Notice of Final Local Action for this decision until April 23, 1999.

DESCRIPTIONS: San Luis Obispo County, A-3-SLO-99-032 approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres. A-3-SLO-99-014 involves the grading and construction of approximately 19,860 linear feet (4.76 miles) of access roads to serve the adjusted lots, and relocation of two of the building sites designated by the lot line adjustment. As recently revised by the applicant, the lot line adjustment will result in 8 residential parcels ranging in size from 20 acres to 39.06 acres, and one agricultural lot of 542.08 acres. The revised project also includes offers to dedicate a lateral and vertical coastal access easement, a deed restriction that limits use and development of 684.55 acres of the site to agricultural and resource conservation purposes, and a reduction in the roadway project of 5,350 feet.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Final Local Action Notices 3-SLO-99-011 and 3-SLO-99-046; July 20, 1999 letter from Sheppard, Mullin, Richter & Hampton (Exhibit 3) describing project revisions, and accompanying maps, documents, and data submitted by Engineering Development Associates

EXECUTIVE SUMMARY

Staff recommends that the Commission **conditionally approve** Coastal Development Permits for the revised lot line adjustment and roadway projects.

The appealed projects consist of a lot line adjustment (A-3-SLO-99-032) and roadway construction project (A-3-SLO-99-014) intended to facilitate future residential development on nine lots currently in single ownership, on a 746-acre agricultural site west of Highway One (*Middle Ranch*). The project site, which has historically been used for cattle grazing, is approximately 3 miles south of Harmony, and about 6 miles north of the town of Cayucos, in a rural agricultural area of San Luis Obispo's North Coast (Exhibits 1 and 2).

San Luis Obispo County approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres (shown by Exhibit 7). The residential lots would be generally located along the coastal ridge on the western portion of the property, while the agricultural parcels would comprise the area of the site east of the residential parcels. Approximately 4.8 miles of grading and construction of roadway was approved to serve the residential building sites.

The County-approved projects were appealed by the Commission because the approved residential lot configuration and associated road construction raised compliance questions concerning the preservation of rural agricultural lands, scenic public views, and sensitive wetlands. Further evaluation has also established that the existing agricultural lots, as currently configured, do not meet the LCP's minimum size of 320 acres for grazing, and are also arranged in a pattern that would limit the long-term agricultural viability of the site should these individual lots be sold and pursued for residential or other allowable non-agricultural development.

In response to the appeals and Commission concerns, the applicant has reduced the size of the 8 residential parcels (Parcels 1 – 8) so that they range between 20 acres and 39.06 acres, and has consolidated the two agricultural lots into a single agricultural lot (Parcel 9) of 542.08 acres (please see Exhibit 4). In addition, as currently proposed, use of the 8 residential parcels will be limited to building envelopes totaling 10.69 acres of the site and range in size from 0.23 to 1.92 acres each. Road construction has been reduced by approximately 1 mile and relocated to protect sensitive wetlands.

Another significant revision to the lot line adjustment and roadway projects that has occurred since the County's approval is the incorporation of offers to dedicate both a lateral shoreline access easement across all 9 lots, and a vertical access easement from Highway One to the mean high tide, along the northern boundary of the project site.

Commission staff has also worked with the applicant to develop restrictions on future site development, including specific siting and design criteria to protect visual resources (Condition 3i). These restrictions include:

- Agricultural setback areas surrounding the residential building envelopes that total 50.72 acres of the site and range in size from 2.95 acres to 13.75 acres each. The purpose of these setback areas is to provide a buffer between future residential development and agricultural use of the site. No structural development, other than that which is directly related to agriculture or resource conservation, is allowed within this setback area.
- The remainder of the residential lots (144 acres), as well as all areas of Parcel 9 outside of the building envelope (540.65 acres) will be deed-restricted for agricultural and resource conservation purposes. Within these areas, only those uses and development directly related to the cultivation of agricultural products for sale, and/or the protection and enhancement of natural and archaeological resources, is allowed. Structural development within the agricultural and resource conservation area is limited to agricultural accessory structures, and fencing to separate incompatible agricultural uses or to protect resource areas (e.g., wetlands). One

exception to this rule is the allowance of a corral in a specific area of Parcel 9 that will be available for the joint use of the owners of the 9 lots.

- All future development will need to comply with siting and design criteria to protect views from public viewing areas, including state waters. Specifically, development must be designed to blend in with and be subordinate to the natural landscape, including limiting height and vertical features above ridgelines; using earthtones and non-reflective materials; and limiting exterior lighting (see Condition 3i for more detail)

Finally, as required by the LCP, future site development will be subject to future Coastal Development Permit review and approval. In addition, the recommended conditions of approval require the applicant to submit a Storm Water Pollution Prevention Program for Executive Director review and approval, to ensure that water quality and wetland habitats are effectively protected during roadway construction. The conditions also require evidence that the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Regional Water Quality Control Board, and Department of Fish and Game have reviewed and approved the roadway project, or that no such approvals are required. This is necessary to ensure that the roads will not result in any wetland fill, and that any impacts to water quality or sensitive species associated with the replacement of the existing bridge over Ellysly Creek are appropriately addressed. Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

Overall, while the proposed lot line adjustment would not resolve the fundamental problem of non-conforming lots within an agricultural zone, it would reconfigure the lots in a manner that consolidates non-agricultural (residential) uses outside of the most agriculturally productive area of the site (684.5 acres or 92% are limited to agricultural use). Staff has considered alternative parcel configurations to that which was proposed by the applicant, and determined that in light of the site's environmental constraints (e.g., soils, views, topography, wetlands) there are no feasible alternatives that would better protect the agricultural, scenic, archaeological, and natural resources of the site, while allowing for residential development on the nine lots.

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I. SUMMARY OF APPELLANTS' CONTENTIONS

Please see Exhibit 1 for the full texts of the appeals.

The appeal of the lot line adjustment by Commissioners Wan and Potter contends that the project conflicts with LCP standards protecting agricultural and visual resources, as well as those requiring evidence that there are adequate on-site water and wastewater treatment capacities available to serve future residential development proposed to be accommodated by the lot line adjustment. More specifically, the Commissioners' appeal asserts that the project does not comply with LCP Policies 1 and 2 for Agriculture, or with Sections 23.04.024b, 23.04.024e(f), 23.04.021c, 23.04.050, and 23.04.430b of the Coastal Zone Land Use Ordinance (CZLUO). The appeal also questions project conformance with CZLUO Section 23.04.420, requiring vertical and lateral coastal access, as neither were provided by the original project or required by the County's approval.

The appeal of the roadway project by Commissioners Wan and Nava contends that the proposed roadway development will result in greater site disturbance than necessary to accommodate the proposed use of the site, and that portions of the proposed roadways will

be located within 100 feet of an existing wetland, inconsistent with sections 23.05.030e.1 and 23.07.172a of the CZLUO.

David McBride's appeal of the roadway project contends that "the project does not conform with Local Coastal Area Planning Standards" because "the designated ridgetop building sites are visible to the public and require development on some of the steepest and most fragile areas of the property". Mr. McBride's appeal also states that "development plans have been offered in a piecemeal fashion, avoiding the next obvious issues of constructing multiple driveways and other infrastructure on steep and erosive slopes".

II. LOCAL GOVERNMENT ACTION

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by the previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld. The conditions of this approval are attached as Exhibit 2.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to the Commission's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. As requested by Commission staff, the County provided such notice, received by Commission staff on April 23, 1999.

The County's review of the lot line adjustment and the roadway project (which also included a minor revision to one of the building envelopes previously identified in the lot line adjustment) included analyses of the projects impacts on views from Highway One, marine mammals, wetlands, and archaeological resources. Through this review, the building envelopes were oriented to not be visible from Highway One², and conditions were placed on the project that prohibit any human use areas from being established where they may be seen from known marine mammal haul-out areas along the shoreline. In addition, an archaeologically sensitive area of the site, adjacent to the main access road was identified and required to be protected by retaining an archaeologist to observe all earth disturbing activities in this area. Other notable aspects of the local approval include:

² Because the building envelopes on parcels 5 and 6 might have been partly visible from Highway One, the County's approval required landscaping at the entrance to the property that will prevent future development of these lots from being visible.

- requirements that: no development shall occur within 800 feet of the edge of a bluff (local condition 3c);
- limitations for development within the envelopes of Parcels 1 and 2 that prohibit rooflines from extending more than 10 feet above the grade of the saddle and require that roof forms be shaped similarly to the natural topography (local condition 3o);
- all units shall be limited to a height of 22 feet above natural grade, and provide articulated roof forms which follow the general shapes of the hills and avoid flat planes which project against the sky in long straight lines or acute angles. Areas adjacent to structures must be landscaped to cover exposed ground surfaces, cut faces and retaining walls (local condition 3r);
- no ancillary structures may be constructed in areas that are visible from Highway 1 or the coastline (local condition 3t);
- the applicant must disclose to all prospective buyers that nearby ranchlands may generate dust, noise, odors, and agricultural chemicals. The applicant must also disclose the importance of controlling domestic pets to prevent conflicts with agricultural activities. All deeds shall be recorded with the County's Right to Farm Ordinance (local conditions 3z and 4).

The entirety of the local conditions of approval, for both the lot line adjustment and the roadway project, are attached to this report as Exhibit 14. As recommended by staff, Special Condition 1 identifies that these local conditions of approval continue to apply to the projects, except where they conflict with the project revisions proposed by the applicant and the conditions of the Coastal Commission's approval.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. Both the roadway project and lot line adjustment are appealable because they are between the first public road and the sea, and are partly located within a Sensitive Resource Area designated by the LCP.

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

IV. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

The appeals raised a substantial issue, because as approved by the County, the projects are inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) protecting agricultural and scenic resources. The lot configuration approved by the County allows for the conversion of an excessive amount of the site's agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region. In addition, the lot configuration and proposed building sites will allow for future residential development that may be visible from Highway 46, the coastline, and the ocean, causing adverse impacts to the scenic open space qualities of the area. Finally, a substantial issue was also raised by the lack of provisions for public access to and along the coast, as required by both the LCP and the Coastal Act. These issues are explained in more detail in the De Novo findings of this staff report.

V. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, approve the Morro Bay Limited permits with conditions.

MOTION. Staff recommends a "YES" vote of the following motion:

I move that the Commission **APPROVE** Coastal Development Permits A-3-SLO-99-014 and A-3-SLO-032 subject to the conditions below.

RESOLUTION.

The Commission hereby **grants** a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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 prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. 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.

VII. SPECIAL CONDITIONS

1. Scope of Permits. These permits authorize, subject to the standard conditions above and the Special Conditions below, the lot line adjustment and roadway construction illustrated by the Revised Lot Configuration Plan prepared by Engineering Development Associates dated July 12, 1999 (attached as Exhibit 4). Grading, drainage, and roadway details approved by Permit A-3-SLO-99-014 are illustrated by the roadway plans prepared by Garing Taylor and Associates dated November and December 1997, subject to the revised configuration and roadway reductions identified by Exhibit 4. Except where in conflict with the revised project approved by these permits, and these conditions of approval, all conditions of San Luis Obispo County's approval of these projects (attached as Exhibit 14) continue to apply. All other conditions required pursuant to planning authority other than the Coastal Act continue to apply.

2. Amended Certificates of Compliance. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall submit, for Executive Director review and approval, amended Certificates of Compliance which reflect the revised lot line adjustment approved by Permit A-3-SLO-99-032.

3. Deed Restrictions. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall finalize, execute, and record, in a form and content acceptable to the Executive Director, a Deed Restriction for each of the newly configured parcels which limits future use and development of each parcel according to the specific provisions listed below. The Deed Restrictions shall include legal descriptions of the parcel being restricted, as well as legal descriptions for the portions of the parcel that are designated as Agricultural and Resource Conservation Areas, Agricultural Setback Areas, and Building Envelopes (shown by Exhibit 4). These Deed Restrictions shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This Deed Restrictions shall not be invalidated or changed without a Commission amendment to this coastal development permit.

The Deed Restrictions shall provide for the following:

- a. A prohibition against future subdivisions.
- b. Recordation of a right to farm statement that states "This parcel is adjacent to property that is used, or planned to be used, for agricultural purposes. Residents may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including animal grazing, plowing, spraying, pruning and harvesting, which

occasionally generate dust, smoke, noise, and odor. San Luis Obispo County and the State of California has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.”

- c. A prohibition against locating any new structures on prime soils.
- d. The following definition of agricultural production activities:

Agricultural production activities are those directly related to the cultivation of agricultural products for sale. Agricultural products are limited to food and fiber in their raw unprocessed state, and ornamental plant material.

- e. Acknowledgement that all future development activities on the site, including, but not limited to residential construction and installation of fencing will be subject to future coastal development permit review by San Luis Obispo County and/or the Coastal Commission. As part of this review, it shall be confirmed that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses.
- f. Measures to ensure that agricultural and development activities will be conducted in a manner that protects the archaeological resources of the site. These measures shall include, but not be limited to, ensuring that a qualified archaeologist shall be on-site to monitor any agricultural activity or development that involves subsurface disruptions. At least 15 days prior to undertaking any such activity or development, the applicant shall notify the cultural resource representative of the Chumash Tribe, and provide the Chumash representative with the opportunity to observe the activity or development. If either the archaeologist or Chumash representative identifies that the activity or development is uncovering archaeological or paleontological resources, all activities that may impact such resources shall cease until appropriate mitigation measures are reviewed and approved by the State Historic Preservation Office and the Executive Director of the Coastal Commission.
- g. Recognition that nothing in the Deed Restriction shall limit the public's right to vertical and lateral access across the site that may be established through easements, prescriptive rights, or other legal means.
- h. Specific criteria for the installation of fencing, and the type of fencing allowed. Fencing shall be allowed only to: mark the exterior boundary of Parcel 9 with Highway One and the properties to the north and south of the project; mark the exterior boundary of lots 1 and 2 with the property to the south of the project; separate non-compatible agricultural uses; protect sensitive natural resources (i.e., wetlands or other habitats for rare plants or animals); or, to separate lateral and vertical coastal access easements from agricultural or resource protection activities. Any fencing installed in order to separate non-compatible agricultural activities shall be removed immediately upon the termination of one of the non-compatible activities.

All allowable fencing shall be located at least 100 feet from the edge of any wetland, except where the roadway approved by A-3-SLO-99-014 encroaches within 100 feet of the wetland; in that area, the fence shall be located as close to the road as possible, but in no case any more than 5 feet from the roadway shoulder. All fence posts shall be constructed of 4-inch diameter wood posts, colored a natural earth tone color approved by the Executive Director, and limited to a maximum height of 5 feet.

- i. Parameters for visual resource protection that must be met by any structural development on the site. Future development proposals shall be accompanied by a complete as-built visual analysis demonstrating compliance with these provisions. As viewed from any public viewing area, including Highways 1 and 46, and state coastal waters (between mean high tide and three miles out), all new development shall be sited and designed to *blend in with and be subordinate to the natural landscape*, including but not limited to meeting the following requirements:
 - i.) any vertical structural features that extend above ridgelines as seen from any public viewing area must be minimized to the greatest extent feasible and shall not result in an overall design that fails to blend in with or be subordinate to the natural landscape;
 - ii.) for buildings which will profile against any sky or ocean area as seen from any of the public viewing areas identified above, the roof pitch shall not exceed 25% or the average natural gradient of the ground surface adjacent to the structure, whichever is greater (e.g., if the adjacent slope is 30%, the roof pitch would be limited to 30%);
 - iii.) hip roofs may be used to soften the mass of residences and gable roofs are permissible so long as they are responsive to the landform or do not result in a visual inconsistency with the natural surroundings;
 - iv.) no portion of any residential structures shall exceed 22 feet above natural grade;
 - v.) the sum total footprint of all residences and residentially-related structures (including guest houses, gazebos, garages, etc.) within the building envelopes shall not exceed 7,000 sq. ft. and in no case shall the footprint of any one structure exceed 5,000 sq. ft.;
 - vi.) total coverage of other non-structural impervious surfaces and outdoor activity areas within the residential building envelope, including all parking areas and other areas outside of the building footprints on which development is proposed, shall be limited to a maximum coverage of 7,000 square feet;
 - vi.) the use of reflective roofing and exterior siding materials is prohibited;

- vii.) buildings and other development (including fencing and paving) must use only earth tone and non-reflective exterior materials;
 - viii.) exterior lighting shall be low level and limited to that necessary for safe passage within the designated building envelopes; all lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface are visible from public viewing areas; floodlighting or spotlighting of ground or water surfaces visible from the public viewing areas shall be prohibited;
 - ix.) building design must incorporate extended eaves, at least 3 feet deep, in order to minimize the potential for window glare;
 - x.) native landscaping shall be used to soften the transition between natural landform and new residences;
 - xi.) new development shall be consistent with all previous County siting and design conditions
- j. Restrictions for future development within the Agricultural Use and Resource Conservation Area that limits such development to:
- i) agricultural production activities as defined by 3.d, above;
 - ii) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014;
 - iii) restoration, protection, and enhancement of native habitat and/or sensitive resources (e.g. wetlands);
 - iv) agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site, and a corral available for the joint use of the owners of parcels 1 -9 in the area shown by Exhibit 4. All agricultural support facilities must be consistent with visual resource protection criteria;
 - v) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve residential development in the building envelopes designated by Exhibit 4, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - vi) public access improvements.; and,
 - vii) fencing consistent with the Deed Restriction criteria.

- k. Restrictions for future development within Agricultural Setback Areas that limits such development to:
- i) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014, and the extension of these roadways to serve any residential development within designated building envelopes that may be approved in the future;
 - ii) development of agricultural support facilities directly related to agricultural production activities (i.e., the cultivation of food, fiber, and ornamental plants) within the Agriculture and Resource Conservation Area. All agricultural support facilities must be consistent with visual resource protection criteria;
 - iii) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to any residential development within designated building envelopes that may be approved in the future, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - iv) restoration, protection, and enhancement of native habitat and/or sensitive resources; and
 - v) public access improvements; and
 - vi) fencing consistent with the Deed Restriction criteria.
- l. Restriction for future development within Building Envelopes the that limits such development to one single family residence and one guest unit or other allowable accessory structure, outdoor activity areas, and the minimum infrastructure necessary to serve a single family residential use (i.e., one septic system/leachfield, one electrical main, one telephone main, and one cable television main) designed consistent with the visual resource protection criteria.

4. Lateral Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for lateral public access and passive recreational use along the shoreline proposed as part of the project. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 50 foot wide easement along the entire width of the property, which will be generally located in the area between the mean high tide line and a line 200 feet inland of the daily high water line, which is understood to be ambulatory from day to day. The easement area shall be located or, over time, relocated further upslope than 200 feet from the mean high tide line where necessary to address topographical and safety constraints, to avoid erosion and to allow safe passage in perpetuity. The recorded document shall include

legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

5. Vertical Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for vertical public access and passive recreational use to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 10 foot wide easement between the Highway One right-of-way and the mean high tide line, along a specific route to be determined in consultation with the Executive Director. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

6. Storm Water Pollution Prevention Plan. PRIOR TO COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review and approval, a detailed Storm Water Pollution Prevention Plan that identifies specific construction practices and controls that will be implemented in order to minimize erosion during and after roadway construction. Such measures shall include, but may not be limited to:

- a. timing construction to avoid or minimize grading during the rainy season (November 1 – April 30)
- b. staging construction to minimize the area of bare soil exposed at one time
- c. installing temporary boundary fencing to define grading limits
- d. seeding and/or mulching of exposed soils
- e. maintaining construction access roads free of dirt and sediments
- f. implementing dust control measures
- g. use of filter fabric fences, straw bale barriers, sand bag barriers, and/or sediment traps to intercept and detain sediment contained in storm water runoff
- h. providing temporary waterway crossings for construction equipment where applicable;
- i. covering excavated materials and construction debris stockpiles on a daily basis;
- j. appropriately disposing of, at a licensed landfill, any excess construction or fill material.
- k. Any permanent site plantings, structural controls, etc., necessary for the prevention, treatment and proper conveyance of storm water runoff through the life of the project.

7. Final Roadway Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit, for Executive Director review and approval, final engineered plans for the approved roadways and associated drainage facilities that revise the alignment of the driveways to lots four through eight in a manner that follows existing topographical contours and minimizes the alterations of natural landforms (i.e., cuts and fills) to the greatest degree feasible.

8. Other Agency Approvals. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit written evidence that the necessary approvals for roadway construction have been obtained from the following regulatory agencies, or that no such approvals are required:

- a. U.S. Army Corps of Engineers
- b. U.S. Fish and Wildlife Service
- c. Regional Water Quality Control Board
- d. California Department of Fish and Game

Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

9. Removal of Existing Fence Posts. PRIOR TO THE COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review

and approval, evidence that the fence posts previously installed around the wetland area of the site have either been removed in their entirety, or that a Coastal Development Permit has been obtained which allows for their retention and/or relocation in compliance with the Deed Restriction required by Special Condition 3 above.

VIII. DE NOVO FINDINGS AND DECLARATIONS

A. Background

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by a previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to both the Commission's and County's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. Similarly, the Commission had not been noticed of the two Conditional Certificates of Compliance for two of the lots affected by the adjustment, granted by the County prior to its approval of the lot line adjustment. As requested by Commission staff, the County provided the required Final Local Action Notices for the lot line adjustment and the Conditional Certificates of Compliance; Commission staff received these notices on April 23, 1999.

As evidenced by the local record for the lot line adjustment, the County review focused on siting future development in a manner that would avoid geologic hazards and prevent adverse impacts to scenic, natural, and archaeological resources. A detailed assessment of the visibility of future development from Highway One, as well as from shoreline areas that are used by marine mammals as haul-out areas, was conducted at the local level, and building envelopes and guidelines for future residential development were accordingly specified. In addition, the County Department of Agricultural reviewed the project's impact on the agricultural viability of the site and concluded that the project would have an insignificant impact.

However, fundamental issues regarding the size and orientation of the residential lots in relationship to the LCP's directive to maintain the maximum amount of land in agricultural production, as well as other unresolved issues such as the visibility of the building envelopes from Highway 46, wetland setbacks, and the need to provide for public led to the

Commission's appeal of both the roadway project and the lot line adjustment (the roadway project also had another appellant). The Conditional Certificates of Compliance previously granted for two of the existing lots were not appealed, based upon staff's review and conclusion that they were legal lots appropriately approved consistent with LCP requirements. The other 8 non-conditional certificates of compliance were also reviewed by staff and determined to be valid.

Commission staff scheduled the appeals of the roadway project and lot line adjustment for Substantial Issue hearing at the Commission's June 1999 meeting, but this hearing was postponed at the applicant's request. The appeals were then presented to the Commission at the August 1999 meeting, where the hearing was continued until October 1999 in order to resolve various issues related to the protection of visual and agricultural resources, as well those issues related to the provision of public access. Due to unforeseen circumstances of the applicant's representative, it was not possible to adequately respond to the issues raised at the August Commission meeting in time for an October hearing. This staff report and recommendation represents the culmination of the additional research and negotiations between staff and the applicant's representative that have occurred since the August hearing, in an attempt to address the Coastal resource issues identified by the Commission.

B. Project Descriptions

The two projects involve a lot line adjustment and roadway construction intended to serve future residential development on a 746-acre agricultural site. As originally approved by San Luis Obispo County, A-3-SLO-99-032 involved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres and total 270 acres, and two agricultural lots of 243.8 and 226.4 acres. The grading/roadway project (A-3-SLO-99-014) involved the grading and construction of approximately 19,860 linear feet (3.76 miles) of access roads to serve the adjusted lots, which generally equates to 18 acres of site disturbance, and relocation of two designated building sites identified as part of the lot line adjustment.

In response to the issues identified in the appeals of this project, the applicant has recently revised the project (please see Exhibits 3, 4, and 5). As revised, the lot line adjustment will result in 8 residential parcels (Parcels 1 – 8) that range in size from 20 acres to 39.06 acres and total 204 acres, and one 542.08-acre agricultural lot (Parcel 9). Future residential development is limited to specific building envelopes on each parcel that range from 0.23 acres to 1.92 acres in size, and total 10.69 acres. The 8 residential lots also include agricultural setback areas that range in size from 4.87 acres to 15.18 acres, and total 50.72 acres. The remainder of the 8 residential lots (approximately 144 acres) have been designated as Agricultural Use and Resource Conservation areas, where agricultural and resource conservation activities can be pursued by either the residential lot owner(s) and/or the owner/operator of the large agricultural parcel. In combination with Parcel 9, this results in 684.55 acres (92%) of the site as being available for agricultural and resource

conservation purposes. Other revisions to the project include a reduction in new roadway construction by approximately 5,350 feet, and the incorporation of an offers to dedicate both a lateral coastal access easement along the shoreline across all 9 lots into the project; and a vertical access from Highway One to the sea along the northern property line.

Existing lot configurations are shown by Exhibit 6. The originally proposed lot line adjustment approved by San Luis Obispo County is shown by Exhibit 7. The currently proposed lot line adjustment is illustrated by Exhibit 4. Table 1, on the following page of this report, compares the existing and proposed sizes of each lot.

Table 1: Comparison of original and currently proposed lot line adjustments.

Parcel #	Existing Acreage	Previously Proposed Acreage ³	Currently Proposed Acreage
Parcel #1	318.42	37.4	20.0
Parcel #2	8.76	29.7	20.65
Parcel #3	67.72	27.1	23.44
Parcel #4	168.02	22.8	32.87
Parcel #5	61.02	20.9	25.91
Parcel #6	59.80	29.7	21.21
Parcel #7	19.59	47.6	20.70
Parcel #8	7.76	54.9	39.06
Parcel #9	1.39	243.8	542.08
Parcel #10	2.80	226.4	0

Table 2: Quantities of land dedicated for agricultural and residential uses.

Parcel #	Total Acreage	Acreage within Agricultural Use and Resource Conservation	Acreage within Agricultural Setback	Building Envelope Acreage

³ The figures in the "Previously Proposed Acreage" Column (as well as the Existing Acreage Column) represent the parcel acreages identified by the San Luis Obispo County Notice of Final Local Action for the original lot line adjustment approved by the County. These figures are different from the acreages for the original lot line adjustment submitted by the applicant's representative, but do not have a substantive effect on the Commission's consideration of the appeals or permits.

		Area		
1	20.00	4.82	13.75	1.43
2	20.65	13.35	7.07	0.23
3	23.44	16.14	6.28	0.98
4	32.87	28.94	2.45	1.48
5	25.91	17.14	7.93	0.84
6	21.29	15.09	4.61	1.59
7	20.70	14.23	5.68	0.79
8	39.06	34.19	4.87	1.92
9	542.08	540.65	0	1.43
Totals	746.00	684.55	50.72	10.69

C. Project Location

The projects are located west of Highway One, on an agricultural site of 746 acres, approximately $\frac{3}{4}$ of a mile north of Villa Creek Road and 3 miles south of Harmony, in the North Coast Planning Area of San Luis Obispo County (please see Exhibit 3). This site, also known as "Middle Ranch", has previously been used for cattle grazing, and is adjacent to "North Ranch" and "South Ranch", which are currently used for grazing.

Site topography is bowl like, with hills and the coastal ridge surrounding the valley in the center of the property where the stock pond is located. Spectacular views of the coastline and inland areas are available from the top of these hills, as shown in the photographs attached as Exhibit 13. In recognition of the natural and scenic values of this section of coastline, the LCP designates the western portion of the site as a Sensitive Resource Area (please see Exhibit 2).

A large stock pond, which is also considered a wetland, exists on the site, as does an old farmhouse and an unpaved agricultural road. As observed by Commission staff on a recent site visit, other wetland areas, in addition to the stock pond, exist on the site. The applicant's representative has attempted to map these areas in updated Environmental Constraints Map, attached to this report as Exhibit 5. Ellysy Creek runs through the site at its eastern boundary with Highway One.

In addition to wetland and riparian habitats, the site provides important habitat values for marine mammals, which use the shoreline as haul-out areas. The site is also known to

provide foraging habitat for raptors including the Bald eagle (listed as Endangered by the State Endangered Species Act and threatened by the Federal Endangered Species Act) and the Golden eagle (considered a California Species of Special Concern by the Department of Fish and Game).

The site is also known to contain archaeological resources, which were partly evaluated during the local review of the lot line adjustment. During this review an archaeologically sensitive area was identified adjacent to the proposed access road. Additional archaeologically sensitive areas may exist on the site, but have not been fully evaluated or mapped.

D. Agricultural Resources

1. Applicable Policies:

LCP Policy 1 for Agriculture states in part:

Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.

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

LCP Policy 2 for Agriculture provides:

Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based on the following requirements:

- a. The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential

agricultural production of at least three crops common to the agricultural economy would not be diminished.

- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.

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

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

LCP Policy 3 for Agriculture identifies requirements for non-agricultural uses on agricultural lands intended to supplement the agricultural use. Among these requirements, an agricultural and/or open space easement must be granted to the County for all lands that are not a part of the supplemental non-agricultural development.

LCP Policy 4 for Agriculture requires:

A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce negative impacts on adjacent agricultural uses.

LCP Policy 6 for Agriculture states:

In some portions of the coastal zone where historical land divisions created lots that are now substandard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone

Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots, that would not permit continued agricultural use if sold individually.

LCP Policy 7 for Agriculture states:

Water extractions consistent with habitat protection requirements shall give highest priority to preserving available supplies for existing or expanded agricultural uses.

CZLUO Section 23.04.024b states:

- b. **Size based upon existing use.** Where a legal lot of record is developed with agricultural uses at the time of application for land division, the minimum size for a new parcel shall be based on the type of existing agricultural use, with the required minimum being the largest area determined by the following tests. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum size for its respective use:

(1) Crop production: ...

...Grazing

320 acres

CZLUO Section 23.04.024f provides:

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

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

(2) Application content. The land division application shall identify the proposed uses for each parcel.

Section 23.04.050 of the CZLUO states, in relevant part:

23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category:

- a. **Sighting of structures.** A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.

2. Analysis:

LCP Policy 1 for Agriculture requires that lands suitable for agriculture be maintained in, or available for, agricultural production unless, among other reasons, the permitted conversion will not adversely affect surrounding agricultural uses. Similarly, CZLUO Section CZLUO Section 23.04.024f requires that land divisions maintain or enhance the agricultural viability of the site, while Section 23.04.050(a) requires that single family dwellings and accessory buildings reduce negative impacts on agricultural uses. LCP Policy 4 for Agriculture requires residential development on agricultural land to incorporate whatever mitigation measures are necessary to reduce negative impacts on adjacent agricultural uses. Thus, a primary focus of the LCP's agricultural protection policies is to prevent conversions or land divisions of agricultural lands that would negatively impact agricultural production.

The original lot line adjustment approved by the County is inconsistent with this objective because it converts more agricultural land than necessary to accommodate residential development. As approved by the County, residential lots ranged in size from 21 to 55 acres each, which is clearly more than what is required to accommodate residential development⁴. This would have resulted in up to 270 acres of agricultural land being converted to residential use, thereby reducing the agricultural productivity of the site and jeopardizing the viability of agricultural operations. In addition, this approval could have set a precedent for the adjustment of other similarly situated non-conforming agricultural lots that would have a cumulative adverse impact on the viability of agriculture in the region.

The first step in addressing this problem was for Commission staff to undertake a thorough analysis of alternative lot configurations that would better protect agricultural use of the site and surrounding area. Fundamental coastal resource constraints that were applied to this analysis included the need to avoid the creation of building envelopes that would be visible from Highway One or other public areas, or located on steep slopes, prime agricultural land, or sensitive habitats. The LCP's minimum lot size of 20 acres in rural agricultural areas was also considered.

Alternative configurations that were analyzed included: locating the residential lots closer to Highway One, along the existing agricultural road; and, locating the residential lots on the

⁴ The minimum lot size for a parcel within an agricultural designation can be no less than 20 acres, but may be larger depending upon the type of agricultural use, as established by Section 23.04.024 of the CZLUO.

western slope of the first hill west of Highway One and north of the access road. Staff conducted numerous site visits, and met with the applicant's representatives on many occasions, to discuss these alternatives. Through this evaluation process, it was determined that these alternatives would not be more protective of agriculture because the eastern portion of the site is more agriculturally productive. This is due to the following factors which make the central and eastern portion of the property more suitable for grazing: the topography is generally less steep than the western portions of the site; it is more protected from the predominant westerly winds; and, the central portion of the site contains the best agricultural soils (please see Exhibits 8 and 9). In addition, the following factors make the central and eastern portion of the site less suitable for residential development from a coastal resource protection standpoint: eucalyptus trees used by foraging raptors are located in this area; a known archaeological site is located in this area; and, certain portions of this area would be visible from Highway One.

Another alternative that was considered was the option of requiring that the lots be consolidated into a single agricultural lot pursuant to Policy 6 cited above. This policy, however, is only applicable to areas where the Land Use Element identifies that parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes. The Land Use Element has not identified the project site as such an area. Without consolidating the existing lots, it is impossible for all of the adjusted lots to meet the minimum lot size of 320 acres for grazing uses, as established by CZLUO Section 23.04.024b and called for by LCP Policy 2 for Agriculture.

Given the lack of superior alternatives for the location of the residential lots, the next step was to attempt to reduce the extent of agricultural conversion that would result from the proposed adjustment to the greatest degree feasible. As reflected in the revised proposal submitted by the applicant, the size of each residential parcel has been reduced and clustered in the southwestern portion of the parcel to the degree that the 20-acre lot minimum and natural topography will allow. Moreover, the applicant has restricted the extent of residential use allowed on the adjusted parcels to building envelopes that total 10.69 acres, established agricultural setbacks for these building envelopes totaling 50.72 acres, and has restricted the use of the remainder of the site (684.55 acres) to agricultural and resource conservation purposes.

The applicant has also reduced the conversion of agricultural land associated with roadway construction by eliminating a significant stretch of road, and reconfiguring the approach to lots 4-9, for an overall reduction of approximately 5,350 linear feet of roadway. With a typical roadway width of 20 feet, this reduction will avoid the conversion of almost 2.5 acres of agricultural land.

While the revised projects represent significant improvements over the original proposals in terms of minimizing impacts to agriculture, additional measures are needed to ensure that the agricultural productivity of the site and surrounding land will be effectively protected.

These measures, which range from defining what constitutes an agricultural activity to specifying the particular circumstances in which fencing is allowed, are critically important elements that will impact the ability of the proposed Agricultural Use and Resource Conservation Area's ability to preserve the agricultural productivity and viability of the site. Other such measures include the need to record a Right to Farm statement, which recognizes that residential development shall not interfere with the ability of adjacent agricultural operations to continue, and a prohibition against future subdivisions to prevent any reduction in the area of the site reserved for agricultural use. Finally, the need to specifically identify the particular uses that are allowed within the proposed Building Envelopes, Agricultural Setback Areas, and the Agricultural Use and Conservation Area are essential ingredients to preventing the lot line adjustment and future residential development from adversely affecting the agricultural productivity of the site. To ensure that such measures are incorporated into the project, and will be carried out in perpetuity, Special Condition 3 requires that Deed Restrictions be recorded for each of the newly created parcels that embody these provisions.

In terms of prime agricultural soils, LCP Agricultural Policies 2b and 4, as well as CZLUO Section 23.04.050 call for non-agricultural development and agricultural accessory structures to be located outside of areas containing prime agricultural soils. The limited areas of prime agricultural soils on the site (shown by Exhibit 8) will be retained within the proposed Agricultural Use and Resource Conservation area. In addition, the Deed Restrictions required by Special Condition 3 requires all structures, as well as any water or wastewater treatment infrastructure, to avoid areas of prime soils.

Another section of the LCP that is relevant, but not directly applicable, to the proposed lot line adjustment is Policy 3 for Agriculture, which identifies requirements for non-agricultural uses on agricultural lands that are intended to supplement the agricultural use. As opposed to such supplemental uses, single-family residences are specifically allowed by the LCP on agricultural lands, and are considered to be a part of, rather than supplementary to, agricultural use. However, this project presents a problem not specifically contemplated by the LCP, namely, how to address the impact of residential development on non-conforming lots within an agricultural area on existing agricultural uses.

Policy 3, while not directly germane, provides some guidance on how non-agricultural uses should be sited, designed, and restricted to protect agricultural resources to meet the broad agricultural protection policies of the LCP and, by extension, the Coastal Act. For example, part e of this Policy calls for clearly defined buffer areas between agricultural and non-agricultural uses. Another important aspect of this Policy is the requirement that an agricultural and/or open space easement be granted to the County for all lands that are not a part of the supplemental non-agricultural development. In the case of the proposed lot line adjustment, the provisions of Policy 3 are generally satisfied by the recommended conditions of approval. In particular, Special Condition 3 requires recordation of Deed Restrictions (as opposed to easements) that will maintain all areas of the site outside of the

residential building envelopes for agricultural and resource conservation purposes, and will establish buffer areas between agricultural and non-agricultural areas.

A final concern regarding the projects' impacts on agricultural resources has to do with the availability of water to serve non-agricultural development, and whether additional extractions of groundwater to serve such development will limit water supplies necessary to support agricultural production. As required by LCP Policy 7 for Agriculture, the highest priority for the use of new water extractions, which must be consistent with habitat protection, is to preserve available supplies for existing or expanded agricultural uses. To ensure compliance with this requirement, Special Condition 3e requires confirmation that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses, during the future coastal development permit reviews required for residential development.

3. Conclusion:

The lot line adjustment and roadway projects, as revised by the applicant and conditioned by the Commission, are consistent with LCP standards protecting agricultural lands because the conversion of prime agricultural soils have been avoided, and the conversion of non-prime agricultural land has been minimized to the degree that the agricultural viability of the site and surrounding area will be maintained. The revised lot configuration, when compared to the potential for residential development to occur in an unconsolidated fashion on each of the non-conforming lots as currently configured, is a betterment towards preserving the agricultural viability of the site, especially in light of the provisions of the Deed Restrictions required by Special Condition 3.

E. Sensitive Habitats

1. Applicable Policies:

LCP Policy 1 for Environmentally Sensitive Habitats 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.

LCP Policy 2 for Environmentally Sensitive Habitats provides:

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.

LCP Policy 5 for Environmentally Sensitive Habitats 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.

LCP Policy 18 for Environmentally Sensitive Habitat provides:

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.

Policy 19 for Environmentally Sensitive Habitats requires:

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.

Policy 36 for Environmentally Sensitive Habitat Areas, entitled "Protection of Kelp Beds, Offshore Rocks, Rocky Points, Reefs and Intertidal Areas", 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.

CZLUO Section 23.07.164e requires the following specific findings, applicable to the project, to be made when approving development in Sensitive Resource Areas:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.

- (2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.

...

CZLUO Section 23.07.166c identifies the following minimum site design and development standard for projects that may impact wetlands or other aquatic habitats as follows:

- c. Construction and landscaping activities shall be conducted to not degrade lakes, ponds, wetlands, or perennial watercourses within an SRA through filling, sedimentation, erosion, increased turbidity, or other contamination.

CZLUO Section 23.07.170b requires the following specific findings to be made when approving new development within or adjacent to Environmentally Sensitive Habitats:

- (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.

CZLUO Section 23.07.172 provides, in relevant part:

23.07.172 – Wetlands.

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

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

...

- a. **Wetland setbacks:** New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval

body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.

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

- (i) Alternative routes are infeasible or more environmentally damaging.
- (ii) Adverse environmental effects are mitigated to the maximum extent feasible.

2. Analysis:

Four characteristics of the project site qualify certain areas of the site as a Sensitive Resource Area and/or and Environmentally Sensitive Habitat. The first relates to the portion of the site fronts on the Pacific Ocean, and the fact that this rocky intertidal area is used by marine mammals as haul-out areas. In fact, the LCP specifically maps the shoreline area of the site as a Sensitive Resource Area (please see Exhibit 2).

The second site characteristic that qualifies as an Environmentally Sensitive Habitat is the presence of scattered wetlands. These include the three wetlands identified in the updated Environmental Constraints map prepared by the applicant and attached as Exhibit 5. However, based on the site visits that have been conducted by Commission staff, during which significantly wet areas were observed elsewhere on the site, it can not be concluded that the submitted map depicts *all* wetlands that may exist on the site.

The third important habitat value provided by the site is the fact that it is used by raptors for foraging. According to the 1995 County staff report for the lot line adjustment, Dr. V.L. Holland and Jennifer Langford jointly prepared biological assessments of the site, and identified that Golden and Bald eagles use the site as a foraging area. The Bald eagle is listed as endangered under the California Endangered Species Act, and listed as threatened under the Federal Endangered Species Act. The Department of Fish and game considers the Golden eagle to be a California Species of Special Concern.

The fourth sensitive habitat contained on the site is Ellysy Creek, which parallels Highway One at the entrance to the site. In addition to supporting riparian vegetation, the creek may also provide habitat for the Tidewater goby, listed as endangered by the Federal Endangered Species Act.

To protect these resources, the projects, as well as the local approvals, incorporate specific measures intended to prevent negative impacts and allow for continued biological productivity. With respect to marine mammals, the project was designed in coordination with the National Marine Fisheries Service. As a result of this coordination, Condition 3h

of the local approval of the lot line adjustment requires future residential development to demonstrate that no activity area of the development will be visible from marine mammal haul-out points (non-activity portions of the structures such as a roof or chimney may be visible from such areas). In addition, Condition 3I of the local approval requires that CC&R's inform all property owners of the presence of marine mammals that are sensitive to human intrusion and/or disturbance. This must include an explanation of the sensitivity of the animal, examples of possible disturbance, and a disclosure that disturbance of the animals may be considered harassment and is illegal under the Marine Protection Act. These CC&R's must be developed in consultation with the National Marine Fisheries Service, and subsequently reviewed and approved by the San Luis Obispo County Department of Planning and Building.

With respect to foraging habitat for Bald and Golden eagles, the 1995 County staff reports states that the consulting biologists recommended that large areas of the site be preserved in open space, that wetlands be revegetated and enhanced, and that residential development be clustered in the rear portion of the site. These measures, which were incorporated in to the local conditions of approval, have been improved upon by the currently recommended conditions of approval; open space has been maximized, residential development is more tightly clustered and restricted, and wetland resources are protected from future development (please see wetland discussion below). In addition, the County's approval of the roadway project prohibits construction in the area near the Eucalyptus trees that are used by eagles during the eagle's breeding and fledging period (April through July).

Regarding Ellyslly Creek, the project will not result in any in-stream alterations or removal of riparian vegetation, and involves only minor modifications to the existing creek crossing (i.e., the addition of railings). Thus, no negative impacts to the habitat values of the creek are expected. This will be confirmed by Special Condition 8, which requires that the applicant provide evidence that the Department of Fish and Game and the U.S. Fish and Wildlife Service have reviewed and approved the roadway project, or that no such approvals are required.

Finally, with respect to wetlands, all of the proposed building envelopes, and most of the new roadway will be setback at least 100 feet from the identified wetlands. However, in one location along the southern side of the largest wetland area, the proposed road encroaches within approximately 30 feet of the wetland. Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development shall be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use. Roads may be allowed within the required setback if it is demonstrated that alternative routes are infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible.

The limited encroachment of the roadway within the 100 foot setback area is approvable under the LCP because the applicant has demonstrated that the required exception findings of section 23.07.172(d)(I) can be made. First, alternative routes further south or to the north of the stock pond that would observe the 100 foot buffer would be more environmentally damaging because they would involve either significantly more grading and disturbance or construction and grading on steep slopes. This would create more significant impacts to the wetland due to slope instabilities and sedimentation problems related to roadway design. Second, the primary adverse environmental effects of the proposed road construction within the buffer are mitigated to the maximum extent feasible through Special Condition 6, which requires the implementation of a storm water pollution prevention plan. This includes standards to control runoff and erosion both during and after construction.

As previously noted, staff observations of the site indicate that there may additional wetland areas on the site that have not been delineated by project plans, or the submitted Environmental Constraints Map, to date. This concern is addressed by Special Condition 8, which requires the applicant to submit written evidence that the necessary approvals for roadway construction have been obtained from the U.S. Army Corps of Engineers (among other regulatory agencies). Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

3. Conclusion:

As conditioned, the currently proposed lot line adjustment and roadway project will not have an adverse impact on the sensitive habitat values provided by the site, and will protect the biological productivity of these areas, consistent with LCP Policies and Ordinances cited above.

F. Visual Resources

1. Applicable Policies:

Policy 1 for Visual and Scenic resources requires:

Unique and attractive features of the landscape, including but not limited to natural landforms, scenic vistas and sensitive habitats are to be preserved and protected, and in visually degraded areas restored where feasible.

Policy 2 for Visual and Scenic Resources provides:

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.

Policy 4 for Visual and Scenic Resources addresses new development in rural areas, and states:

New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited.

Policy 5 for Visual and Scenic Resources requires:

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

CZLUO Section 23.04.021c provides:

New land divisions where the only feasible building site would be on slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road shall be prohibited as required by Visual and Scenic Resources Policy 4 of the Local Coastal Plan.

2. Analysis:

The proposed development poses adverse impacts to visual and scenic resources primarily through its designation of residential building sites along an undeveloped rural coastal ridgeline. The locations of the building envelopes were defined at the local level in large part to completely eliminate, or allow only extremely limited, visibility from Highway One. The natural topography of the project site now prevents most of the building envelopes from being visible from Highway One. To address the limited instance when one or two of the envelopes may be seen from Highway One, through the narrow ravine in which the access road is located, the County's approval requires landscaping that will block such views.

Although the proposed building envelopes may not be visible from Highway One, they are visible, at least in part, from other public view corridors, including the shoreline, the ocean, and Highway 46 (at a distance). The local review of the lot line adjustment and roadway projects did not address the impacts to the public view corridors available from these areas.

The applicant has submitted additional information analyzing the potential visual impact of the project from Highway 46. This analysis concludes that any visibility of the structures from Highway 46 will be insignificant, given the brief viewing window available to westbound drivers at the very top of Highway 46, as well as the angle of direct sunlight necessary to reflect back into the drivers view.

Nonetheless, this does not necessarily account for visual impacts that may be perceived by the public at public viewpoints along Highway 46 (there is a significant pullout at the top of 46 that affords spectacular views of the Harmony coast south to Morro Bay). Nor does it address the impacts to scenic views available from the shoreline and ocean (discussed in more detail below). Thus, in order to assure that visual impacts are avoided and minimized, Special Condition 3i contains specific requirements for visual resource protection that must be met by future development. The overall objective of this condition is to ensure that new development will be sited and designed to blend in with, and be subordinate to, the natural landscape, as called for by LCP Policy 4.

In order to minimize visual impacts from the Highway 46 viewshed, Special Condition 3i prohibits future construction from using reflective roofing and exterior siding materials, and requires that such construction use only earth-tone materials and incorporate extended eaves to minimize glare from windows. In addition, Special Condition 3i requires that water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve future residential development be located underground to the greatest degree feasible. Special Condition 3i also limits the maximum height and site coverage of future development, and restricts exterior lighting, in order to prevent extremely large and/or brightly lighted development that would be more visible from public viewsheds.

With regard to the building envelopes' visibility from the shoreline and ocean, it is clear that as approved by the County, portions of future development will be visible. In fact, Condition 3h of the County approval specifically allows portions of future development to be visible from shoreline areas, so long as human activity areas are not visible from marine mammal haul out areas along the shoreline. Under this scenario, future development would be highly visible from offshore areas.

The Special Conditions attached to this permit intended to minimize visual impacts from the Highway 46 viewshed (described above) will also help minimize impacts to views available from the shoreline and ocean by limiting the size and glare of new development. They are not adequate, however, to address the requirements of Policy 2, which calls for the

protection of views to and along the ocean, and requires new development should utilize slope created "pockets" to shield development and minimize visual intrusion.

In order to achieve compliance with this Policy, Special Condition 3i requires that any vertical structural features that would extend above the ridgeline as seen from any public viewing area (including up to three miles seaward of the mean high tide line) must be minimized to the greatest extent feasible. Such vertical features are prohibited if they would result in an overall design that fails to blend in with or be subordinate to the natural landscape. Special Condition 3i also minimizes the visual impact of any non-vertical feature that would extend above a ridgeline as seen from a public viewing area by limiting roof pitch to 25% or the natural gradient of the ground surface adjacent to the structure (whichever is greater). This will prevent unnatural structural forms from silhouetting against the sky or ocean. Similarly, hip roofs are encouraged by this condition as a means of softening the mass of future development. Finally, Special Condition 3i requires native landscaping to soften the transition between natural landform and new residences.

With respect to the roadway project, Special Condition 7 requires revised roadway plans that revise the alignment of the proposed driveways so that they follow existing topographical contours and minimize the alteration of natural landforms (i.e., cuts and fills). This will minimize the visibility of the roadways from the Highway 46 viewshed, consistent with LCP Policy 5.

3. Conclusion:

As approved by San Luis Obispo County, future development within the proposed building envelopes would have an adverse impact on the visual and scenic resources enjoyed by the public from Highway 46, the shoreline, and the ocean. In order to avoid and minimize these impacts, Special Conditions have been attached to this permit. Only with these conditions can the project be found to be consistent with LCP Policies for visual and scenic resources cited above.

G. Infrastructure

1. Applicable Policies:

CZLUO Section 23.04.430b

23.04.430 – Availability of Water Supply and Sewage Disposal Services.

- b.** Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal

systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

2. Analysis:

CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Water to serve future residential development will be obtained from on-site well(s), and wastewater treatment will be provided by on-site septic systems. The applicant has submitted information from the County Environmental Health Department and water consultants (Exhibit 10) that supports a finding of adequate water and wastewater treatment to support future residential development.

First, well and pump tests show that there is adequate water supply, and that water quality would be adequate, although treatment may be necessary based on further analysis. Second, an analysis of onsite wastewater disposal requirements supports a finding that adequate areas for disposal will be available for future residential development, again, with the understanding that further technical analysis of appropriate system locations will be necessary when any future residential development is proposed. This, in combination with the understanding that future residential development proposals will be subject to coastal development permit review and approval, during which further detailed analyses to document the necessary water treatment and septic siting options must be conducted, the Commission finds that the proposed lot line adjustment is consistent with the LCP.

H. Archaeological Resources

1. Applicable Policies:

Policy 1 for Archaeological Resources states:

The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required.

Policy 6 for Archaeological Resources provides:

Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resource and submit alternative mitigation measures.

2. Analysis:

As stated in the County's 1995 review of the lot line adjustment, Dr. Charles Dills conducted a detailed surface survey of the site to ensure that the adjusted lots, their building sites, and roadway access would avoid degradation of any archaeological sites. The County found the project to be consistent with the above LCP requirements because the archaeological resources that exist on the coastal bluff would not be impacted, and the project was conditioned to require on site monitoring by a qualified archaeologist during the construction of access roads and future residential development.

The 1998 County staff report addressing the proposed roadway project notes that a potentially significant archaeological site was discovered in the area of the existing farmhouse during the initial study of the lot line adjustment. The County approved the roadway project with an additional condition regarding Archaeological Resources (Condition 7) that requires the portion of the roadway within 400 feet of the archaeologically sensitive area designated by the Environmental Constraints Map (Exhibit 5) to be staked and inspected by an archaeologist. The applicant must implement all mitigations proposed by the archaeologist and the County's Environmental Coordinator, which, according to this condition, may include minor route adjustments, placement of fill, and/or monitoring.

The mitigation measures required by the County do not, however, specify that the review of archaeological impacts, and the required on-site monitoring, must be conducted by an archaeologist knowledgeable in the Chumash culture, as required by Policy 6. Nor does the local approval address potential impacts to archaeological resources that may occur through non-permit related activities, as required by Policy 6. As a result, a Special Condition has been attached to this report that supplements the County requirements by requiring that the applicant provide opportunities for a qualified Chumash representative to participate in the archaeological reviews and observations, including observations of any future agricultural activities that involve subsurface disruptions. In the event that either the archaeologist and/or Chumash representative identify that activities being conducted on the site may be impacting archaeological resources, the activity must cease until the appropriate mitigations are developed in coordination with the Executive Director and the State Historic Preservation Officer.

c. Conclusion:

Only with the additional archaeological conditions described above can the project be found to be consistent with the archaeological resource protection requirements of the LCP.

I. Public Access and Recreation

1. Applicable Policies:

LCP Policy 12 for Agriculture addresses Access in Agricultural Areas, and states:

Consistent with other LCP access policies which provide for access dedications, the county shall require at the time a Coastal Development permit is processed, the establishment of vertical and/or lateral access to the beach for which no established vertical or lateral access exists. The County shall close undeveloped trails which are hazardous or conflict with existing agricultural operations and when an alternative safe, existing or potential access is available for the same beach. Access trails shall be located on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, trails shall be located at the edge of the field and/or along parcel lines that would not significantly disrupt the agricultural operations.

Improvements and management of accessways shall be provided in agricultural areas adequate to avoid adverse impacts on, and protect the productivity of, adjacent agricultural soils. Improvement and management practices shall include, but not be limited to, the following:

Limit the seasons of the year when public access is permitted by using seasonal barriers and signs; and
Develop access trails with fences or other buffers to protect agricultural lands.

Consistent with the access section of the CZLUO access requirements may be waived if it can be conclusively demonstrated that the adverse impacts on agricultural operations are substantial and cannot be feasibly mitigated.

CZLUO Section 23.04.420 states, in relevant part:

23.04.420 – Coastal Access Required.

c. When new access is required. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
- (2) The site already satisfies the provisions of subsection d of this section; or
- (3) Agriculture would be adversely affected; ...

d. Type of access required:

(1) **Vertical Access:**

(ii) **In rural areas:** In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, and accessway shall be provided for each mile of frontage

(2) **Lateral access dedication:** All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff.

Coastal Act Section 30210 requires:

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 30212 states in part::

- (a) 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.

2. Analysis

With the revised project, the applicant has provided an offer to dedicate a 200 foot wide lateral coastal access dedication the length of the property landward of the mean high tide land (Exhibit 5). This is a significant public access offer, and will provide an important future link in the California Coastal Trail. In order to incorporate the applicant's offer into the project, Condition 4 requires the recordation of this offer that reflects this aspect of the project.

The applicant has also provided a conditional offer to dedicate a vertical public access along the northern boundary of the property, extending from Highway One to the mean high tide. This is also a significant public access offer, and will provide a greatly needed vertical link to the Harmony coast (currently there is no vertical public access to the shoreline between Cambria and Cayucos (approximately 11 miles). Condition 5 incorporates the applicant's offer into the project. As conditioned, the project is consistent with the public access policies of the LCP and the Coastal Act.

I. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

San Luis Obispo County certified a Negative Declaration for the Lot Line Adjustment on September 11, 1995, and a Negative Declaration roadway project and January 26, 1999. Both of these Negative Declarations include mitigation measures that have been incorporated into the terms of the County's approvals, and are intended to prevent the project from having a significant impact on the environment. These mitigation measures continue to apply to the project, except where they may conflict with the project revisions and conditions of approval adopted by the Commission (please refer to Special Condition 1).

As detailed in the findings of this staff report, and the findings previously adopted by the Commission with respect to the Substantial Issue Determination, the Commission has identified environmental impacts of the project that were not effectively addressed by the

certified Negative Declarations. In order to address these issue, the applicant has revised the projects, and the Commission has adopted Special Conditions of approval, which will prevent the Lot Line Adjustment and roadway projects from having a significant adverse impact on the environment within the meaning of CEQA.

**An Economic Evaluation of the Agricultural
Potential of the Joshua Brown Property**

at

Cambria , California

Prepared by:

Kenneth C. Scott, PhD.
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June 6, 1996

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A current resume is attached at the end of this report.

An Economic Evaluation of the Agricultural Potential of Joshua Brown Property

Summary Statement

The purpose of this report is to explore agricultural operational plans to use the Joshua Brown property as an agricultural resource and evaluate the economic returns that can be generated through agricultural use of the Joshua Brown property.

The property has been personally inspected. Interviews with local ranchers have been conducted and the production relationships and economics of ranching in the area have been discussed with the Cooperative Extension Service personnel in San Luis Obispo. In addition, several private studies and public studies performed on ranching in San Luis Obispo County have been reviewed. **After this examination, it is concluded that the property, as currently constituted, is too isolated, lacks sufficient productive resources and improvements, and is of insufficient size to accommodate any operational plan for agricultural production. In addition, agricultural practices undertaken would be incompatible with the recreational and commercial uses surrounding the property. These incompatible uses induce higher costs of production and require special facilities (fences) which contribute in substantial ways to the economic infeasibilities established.**

An Economic Evaluation of the Agricultural Potential of Joshua Brown Property

Introduction and Location

The Joshua Brown Property is located about 1.5 miles north of Cambria along Highway 1. The legal description of the property is recorded as APN 13-38-000 and APN 13-38-030, Parcels 2 and 3 of COAL 94-078. Parcel 1 was also included in the property and just recently sold to another party.

Highway 1 with the adjacent recreational lands immediately to the west of Highway 1 serves as the west boundary to the original property. Highway 1 provides the only access. San Simeon Beach State Park borders the property on the north and lands owned by Liemert border to the east and south. The adjacent lands across Highway 1 are zoned recreational as is the State Park Property. The Liemert property currently has a rural zoning, the same as the subject property. Should the current rural zoning status of the subject property be changed to agricultural without zoning changes in any surrounding properties, it would create a small, isolated island designated as agricultural lands.

When purchased by Mr. Brown about two years ago, the property consisted of 277 acres. With the sale of parcel # 1 which consisted of about 80 acres lying north of Leffingwell Creek to another party the remaining lands were reduced to about 197 acres. It is the agricultural viability of this 197 acres to the south of Leffingwell Creek that is the subject of this evaluation. Parcel # 3 is currently listed for sale. If it should sell, then the Joshua Brown Property would need to be evaluated as two separate parcels instead of one. For this analysis, Parcels 2 and 3 will be treated as a single entity.

Historical Practices on the Property

The property has historically been used for cattle grazing. In the past, the property has supported a herd of 17 mother cows. The range supplied feed for six to eight months, depending upon rainfall amounts and timing and the spring temperatures. During the remaining four to six months supplemental feeding was required. Generally speaking, about one ton of hay is required per head per year for the supplemental feeding. The value of the calves sold varied from year to year depending upon feeding conditions and market prices received. Long ago, some oat hay was raised along the lower reaches of the property on the better soils along Highway 1. In recent years, lease rates for the property have been about \$6.00 per acre per year.

Resources of the Joshua Brown Property

Resources determine the potential profitability and economic viability of the property as an economic unit. Therefore, evaluating the productive capacities of the resources is very important. This property has four general resources; climate, soils, water supply, and physical facilities.

Climate

Of major importance in the viability of agriculture production is climate. Climatic data will be presented in general form for background information only.

San Luis Obispo County's coastal areas are noted for their mild Mediterranean type climates. A sample of the average temperatures recorded in January and July were 54.3 and 68.7 degrees respectively. Maximum and minimum recorded temperatures are 110 and 20 degrees. The average date for the last killing frost in the spring has been January 30 with the average first killing frost in the fall noted to be December 16. The average growing season in the county coastal area is 320 days. These temperatures would be moderated somewhat on the property because of the close proximity of the ocean and sea breezes enjoyed during the summer months.

The average annual precipitation of the county coastal valley areas is just over 21 inches of rain per year. Most falls between the months of October and April with January and February being the wettest months. The total precipitation for the property may be somewhat higher than average because its located along the shoreline and is in the north part of the County.

Winds are common in the area and tend to blow in land off from the ocean. This produces a moderating effect on the temperatures, both in winter and summer.

Marine layers produce fog that is commonly blown ashore. Therefore, the sea breezes bring with them fog and sea mist that is corrosive to fences and other improvements but prolong the quality and useful life of the pasture forage.

Soils

The predominant soil on the property is Concepcion Loam. It is a moderately deep, moderately well drained soil. Typically the surface layer is dark grayish brown loam about fourteen inches thick. The next layer is light brownish gray sandy loam about five inches thick which has clay underbase. The soil is slightly acidic at the surface and becomes moderately alkaline as depth increases. Permeability of the soil is very

slow and available water holding capacity is moderate or high. This soil is numbered 120, 121, and 123 on the following soils map. The major difference in these plots is slope. The 120 soils have a slope of 2% to 5%, the 121 soil slopes range from 5% to 9%, and the 123 soil slopes range from 15% to 30%. These soils experience gully erosion problems and care must be taken when being used for agricultural purposes. All of these soils are well suited to grazing. They are classified as Class III and Class IV soils.

Other soils on the property include Los Osos Loam, listed on the map as Soil 161. This soil has steep slopes and is moderately suited to grazing. This soil lies in and along the north side of the ravine carved by Leffingwell Creek. It is subject to erosion and evidence of gully erosion is present in the ravine. Most of this soil lies within the boundaries of the parcel that has been sectioned off and transferred to another party. This soil is a Class VI soil.

The last soil found on the property is San Simeon Sandy Loam with 30% to 50% slope. It is listed as Soil 202. This soil is generally stripped in along the northern side and ridges of Leffingwell Creek. It is timber covered and is poorly suited to grazing because of little forage value underneath the trees, its steep slopes, and fertility. This soil is a Class VI soil.

In summary, the soils on the property are generally steep sloped with gully erosion hazards. General disturbance of the soil surface and failure to maintain an adequate plant cover at the surface will result in erosion. In addition, overgrazing will lead to the establishment of undesirable plant species which will lower grazing potential. While one small parcel will support general cultivation, it is so small, isolated, and only capable of supporting low value crops. It is felt there is no potential for cultivated crops on the property. This is borne out by the absence of any cultivation on the property over the recent past.

Complete copies of the soil descriptions are attached toward the end of this document.

Water Supply

Leffingwell Creek borders the property to the north. In addition, there are some small springs on the property, one of which has been developed into a stock watering facility. Otherwise, there are no other sources of water that have been developed. Irrigation water supplies would have to be developed either by well drilling or by importing water onto the property.

Quality of Range Lands

The property displays two characteristics when it comes to the quality of the range land provided. First, in the open areas, the grasses are of sufficient quality and quantity to provide good forage for cattle. But in the forested sections, the range land is poor and the forage not well suited for cattle. This analysis also follows the analysis provided by the soil surveys used in the soils descriptions above, i.e. Soil 202 is not well suited for grazing while the other soils are well suited for grazing.

Physical Facilities

The only physical facilities improvements made on the property are some roads, the fences, and an improved spring for stock watering.

Road access on the property is satisfactory during dry periods. All roads are generally unimproved but provide adequate access to most of the property. At one time, access

across Leffingwell Creek was developed at the bottom of the property close to Highway 1. That crossing has since washed out. Access across Leffingwell Creek must be re-established to provide all-weather access to the subject property.

The current fences are in poor condition. Prior to this year, the property to the south and east of the property was leased by the same proprietor that leased the Joshua Brown Property. Therefore, the conditions of the fences between the two properties was not important and the fence has not received proper maintenance. Recently, some repair work has been done on the fence but its overall condition remains poor and substantial repair or replacement will be required in the next few years. The fence along Highway 1 is in a better state of repair. There is no fence along Leffingwell Creek. A fence will have to be installed along Leffingwell Creek if the subject property is to be used for grazing since cows can easily cross the creek bed and trespass or use the property already sold.

The improved spring is nothing to shout about but with a little work would suffice to provide water for the livestock. Also, Leffingwell Creek runs a little water, although the continuous nature of the flow and the amounts were not researched. It is assumed the property would have sufficient water resource to sustain the livestock that could graze on the property, but support little else. Certainly, scarcity of water would only be a problem during the latter parts of the dry periods of summer and early fall when little rain is received.

Operational Plans

There are three possible agricultural operating plans that could be used for generating economic benefit from the subject property.

They are:

- rent the property for grazing only,
- rent the property for grazing and for oat hay production, or
- run the property as a ranch.

The following sections will evaluate the economic benefit of each operational plan. In evaluating these plans, the only economic costs and benefits considered are the costs and benefits that will change if the subject property's use changes. The base use is considered to be no agricultural use at all. Then the changes in benefits and costs induced through the different operational plans for agricultural use will be determined. Finally, by comparing the results of the different operational plans to the base situation, we can determine if any operational plan induces positive agricultural benefits. It is instructional to keep this analysis technique in mind as the rest of this document is reviewed. Only those things that would need to be changed on the property to accommodate the agricultural operational plans will be discussed. The costs of providing these changes will be deducted from the agricultural revenue generated to arrive at an estimation of economic benefit from agricultural production.

Operational Plan #1

Rent for Grazing Only

As stated previously, the property has been leased to a local rancher. The leasing arrangements provided for a payment of \$0.50 per acre per month. An annual lease

would therefore generate \$6.00 per acre per year. With 197 acres available, a lease would produce rental income to the amount of \$1,182 per year for the property.

Since one of the three parcels of land has changed ownership, a fence will have to be built along Leffingwell Creek. From the west border of the property to the fence fronting Highway 1, it would require about 5400 feet of fence. Much of the terrain is rough and bushy. Two quotes for fence construction were obtained from commercial fencing companies. One company quoted \$5.00 to \$6.00 per linear foot under "rough fencing conditions." The other company quoted a cost of about \$3.00 per linear foot with easy access and few corners. The fence along Leffingwell Creek would **not** have easy access or few corners. In addition, the property line is down the middle of the creek, therefore, the fence would need to cross back and forth over the creek requiring brush removal on the south side of the creek.

For the sake of this analysis a midway point between \$3.00 and \$5.50 was selected. So the estimate used for fence construction is \$4.25 per linear foot resulting in new fencing costs of \$22,950. This investment would have to be made up front while the benefits to the fence, pasture rental income, would be realized over the life of the fence, which is estimated to be about 10 years.

In addition to the new fencing costs, the old fence is in pretty bad shape. Repairs would need to be made on a continuing basis due to deterioration in the fencing materials, falling trees, and the strain placed on fencing by grazing livestock. These repairs are estimated to cost \$0.10 per linear foot per year to maintain the approximately two miles of old fencing. This estimate cost would include the repair materials and the labor to accomplish the task. These repairs are generally made by the leasee of the property. Therefore, Joshua Brown would not need to pay for these repairs. But, eventually a new fence will have to be installed which presents future additional costs associated with using the property for livestock leasing.

It would not be correct to charge the full cost of the fence against the rental income received during the first year. Instead, an estimate of the true annual ownership costs of the fence should be deducted each year. The true annual ownership costs can be estimated by calculating the value of depreciation on the fence that occurs over its useful life and by adding a interest cost on the value of the average investment.

The best and easiest method for calculating depreciation on the new fence is the straight line method. This method assumes that the fence loses equal value each year of its useful life. Straight line depreciation is calculated by subtracting the salvage value of the fence from the original cost of the fence and dividing the result by the useful life. The fence will cost \$22,950 to construct. For these calculations, this investment figure will be rounded off to \$23,000. The fence will last about 10 years and will not have any salvage value. So the relevant calculations are:

$$(\$23,000 - \$0.00) / 10 = \$2,300.$$

Interest costs on the average investment are calculated by finding the average investment and multiplying it by an interest rate. The average investment is found by adding the construction costs of the new fence (\$23,000) to the salvage value (\$0.00) and dividing the result by 2. This is the average investment which is then multiplied by the interest rate percentage to establish the interest costs of this asset. So here are the calculations.

$$((\$23,000 + \$0.00) / 2) * 9\% = \$1,035$$

This is the interest cost on the fencing investment. As the investment in the fence goes from its full value at the start of the ten years down to zero, the average value of the fence is \$11,500. Instead of investing in the fence, the owner of the property could

invest the \$11,500 in some other form of investment that will safely return 9% per year which would give him \$1,035 per year. By adding the annual depreciation of the fence and the average annual interest cost on fencing investment, total annual ownership costs on the new fence are \$3,335 per year.

Now, to rent the property to a rancher for him to run his cows on the property will cost \$3,335 each year in fencing costs. The rancher will pay lease fees of \$1,182 per year. That results in a negative net revenue figure of (\$2,153) from the agricultural use of the property.

The property has neighbors. Suppose they were to share 50-50 in the costs of fencing. The costs of \$1,667 ($\$3,335 / 2$) are still greater than the rental income of \$1,182 and results in a loss of (\$485). Therefore, it is concluded that the property will not return any benefit to the owner through agricultural use as a rental property for grazing purposes.

The lack of sufficient income to pay for fences and other improvements needed to run cattle on range land is a chronic problem that plagues operators with small pastures. The reason this phenomenon occurs is because of the small size of the property involved. The principle is this: **The smaller the pasture, the more it costs to surround it with fence on a per unit of pasture basis (per acre or per animal).**

This principle can best be illustrated using an example. The following spreadsheet calculates the annual costs associated with construction of fences around different sizes of pastures. These annual costs include depreciation and interest cost on average investment as used above. The data in the first spreadsheet are approximations for San Luis Obispo County as a whole. Ten acres per cow is "rule of thumb" for the county. The cost of fence construction is dropped because fencing in other parts of the county may be a little less costly than up Leffingwell Creek, north of

Fencing Costs Based on Cow Numbers for Square Pastures Only

Estimated County Average Data

Acres Required per Cow =		10					
Square Feet per Acre =		43,560					
Cost per Linear Foot of Fence =		\$3.00					
Interest Rate on Investment		9%					
Useful Life of Fence =		15		Years			
Number of Cows	Acres Needed	Linear Feet of Fence Required	Cost for Fencing	Annual	Annual	Annual	Annual
				Ownership Costs	Ownership Costs per Acre	Ownership Costs per Cow	Ownership Costs per Cow
1	10	2,640	\$7,920	\$884	\$88	\$884	\$884
2	20	3,734	\$11,201	\$1,251	\$63	\$625	\$625
3	30	4,573	\$13,718	\$1,532	\$51	\$511	\$511
4	40	5,280	\$15,840	\$1,769	\$44	\$442	\$442
5	50	5,903	\$17,710	\$1,978	\$40	\$396	\$396
10	100	8,348	\$25,045	\$2,797	\$28	\$280	\$280
15	150	10,225	\$30,674	\$3,425	\$23	\$228	\$228
20	200	11,806	\$35,419	\$3,955	\$20	\$198	\$198
25	250	13,200	\$39,600	\$4,422	\$18	\$177	\$177
50	500	18,668	\$56,003	\$6,254	\$13	\$125	\$125
100	1,000	26,400	\$79,200	\$8,844	\$9	\$88	\$88
150	1,500	32,333	\$97,000	\$10,832	\$7	\$72	\$72
200	2,000	37,335	\$112,006	\$12,507	\$6	\$63	\$63

Cambria. The useful life of the fence is increased to 15 years because of a less corrosive environment throughout the county.

Notice the influence of size of pasture on the last two columns labeled cost per acre and cost per cow. If costs are shared by a neighbor, then the annual ownership costs in the last two columns can be divided by 2. The cost of \$12 under the per acre cost column becomes \$6 which matches the revenues available. Notice, that level of costs occurs at the 500 acre size. Any attempt to fence pastures much smaller than 500 acres will result in fencing costs that are too high for the rental income to cover. A rancher may be able to beat these costs by using excess hired labor during slack time to construct fences and does not consider the labor a cost of fence building. But this is not an option for the current owner. Also, please note that these costs are for pastures that are square in shape. Square shapes are less costly to surround with fence than rectangular shapes, such as the subject property.

Now for the subject property and its fencing costs as impacted by size. The second spreadsheet shows the conditions for Cambria and the specifics of the property being evaluated. It has been developed to estimate fencing costs around a pasture that is twice as long as it is wide. It also incorporates data that is appropriate for the Cambria area. Notice, the minimum size for constructing new fencing in difficult terrain around pastures is about 1,800 acres when costs are shared 50 - 50 between landowners. It is true that this is cost of "new fence" for ten years. A well maintained fence may last more than ten or fifteen years, but the subject property experiences weather that is very conducive to rusting of barb wire and rotting of posts. Someone may argue with the figures presented in the spreadsheets, but the principle is still true. **The larger the acreage to be fenced, the less the per animal or per acre costs of the fence.**

Fencing Costs Based on Cow Numbers									
for rectangular pastures only.									
Acres Required per Cow =		12							
Square Feet per Acre =		43,560							
Cost per Linear Foot of Fence =		\$4.25							
Interest Rate on Investment		9%							
Useful Life of Fence =		10		Years					
Number of Cows	Acres Needed	Linear Feet of Fence Required	Cost for Fencing	Annual Ownership Costs	Annual Ownership Costs per Acre	Annual Ownership Costs per Cow			
1	12	3,067	\$13,036	\$1,890	\$158	\$1,890			
2	24	4,338	\$18,436	\$2,673	\$111	\$1,337			
3	36	5,313	\$22,580	\$3,274	\$91	\$1,091			
4	48	6,135	\$26,073	\$3,781	\$79	\$945			
5	60	6,859	\$29,150	\$4,227	\$70	\$845			
10	120	9,700	\$41,225	\$5,978	\$50	\$598			
15	180	11,880	\$50,490	\$7,321	\$41	\$488			
20	240	13,718	\$58,301	\$8,454	\$35	\$423			
25	300	15,337	\$65,182	\$9,451	\$32	\$378			
50	600	21,690	\$92,182	\$13,366	\$22	\$267			
100	1,200	30,674	\$130,365	\$18,903	\$16	\$189			
150	1,800	37,568	\$159,663	\$23,151	\$13	\$154			
200	2,400	43,380	\$184,363	\$26,733	\$11	\$134			

The loss from agricultural operations identified with the Joshua Brown Property emanates from this concept of size of operations. This property is not large enough to take advantage of low fencing costs per acre or per animal.

Operational Plan #2

Grazing Rental and Oat Hay Rental

The only parcel with cultivable characteristics would be Soil 120, a small strip of which borders Highway 1 at the front of the property (see soils map). This location would physically support the growing of a winter forage crop but would not support producing higher valued crops. Forage is grown during the winter time when the seasonal rains provide enough moisture to produce a crop without irrigation. There is no irrigation system in place to support the growing of crops at any other time of the year. The size of the field is insufficient to support the costs involved in establishing an irrigation system and developing a water supply and/or importing water to the property to grow higher valued crops. In addition, the soil is a Class III soil and not capable of producing most crops due to the underlying clay which forms a "hard pan", poor soil structure, and inadequate soil fertility.

Access would have to be provided to cross Leffingwell Creek into the field area. This would be the same access that must be developed to gain year around access to the property. It is assumed that the general access across the creek would suffice for the agricultural use of the property. Therefore, there are no additional access costs between the non-agricultural and the agricultural uses of the property.

Cultivation of this field would prove difficult due to the proximity of Highway 1, a major recreational and transportation route and the adjoining recreational lands. Highway 1 limits accessibility due to recreational traffic. Field equipment is difficult and costly to move. This field is so isolated from lands that have similar uses that

transporting equipment to the field along Highway 1 would be a major job. The difficulty of driving or transporting equipment into the area could become very difficult at certain times.

The close proximity of the recreational properties along Moonstone Beach would severely limit any cultural practices that involved chemicals of any kind. Noise could also prove to be a problem, especially in the early morning hours.

The field being discussed is small. It is estimated to have about 15 acres available for cultivation. This area is so small that, even under the best of conditions, any cultivation would be very difficult to justify economically. Given the problems associated with this small piece of ground, it is not believed that it would be rented by anyone for any length of time. The production gained would not be worth the trouble and the expense. Therefore, this operational plan is not considered feasible and the default is to rent the complete property as grazing land which reverts back to Operational Plan #1. This conclusion is supported by the fact that growing oat hay has not been in the operational plan for the property in the recent past.

Operational Plan #3

Operate the Property as a Ranch

The property suffers from the same problems previously discussed whether it is run as a ranch by the owner or leased to someone else. Fences must be built and the costs of the fences must be covered. The problems associated with the cultivation of the small piece of Soil 120 are the same for an owner\operator as they would be for the renter. There would be two major differences that add costs for the owner as he becomes the operator. These differences are:

1. The owner must purchase the cattle and provide all the facilities, equipment, and care for the 17 head of mother cows.
2. The owner does not have to transport equipment, he must purchase or lease the equipment and then produce enough winter forage to cover the fixed costs of the equipment.

The costs associated with these two activities would not be covered by the additional profits from production. Again, economies of scale or size enter into covering the fixed costs of these two activities just as they did in paying the fixed costs of the fence. The size of the property is insufficient to take advantage of any economies of size. High fixed costs would fail to be covered by agricultural profits generated from operations.

The property is not of sufficient size to operate it as a self-sustaining ranching enterprise. Seventeen mother cows and fifteen acres of winter forage will not produce sufficient income over costs to pay for the fixed costs of fences and upgrades needed to use the property as an agricultural asset.

Summary

As a matter of practicality, the Joshua Brown Property does not generate enough agriculturally related income under any of the agricultural operational plans to pay for the additional costs that must be undertaken in order to generate the agricultural income. Therefore, the property is not capable of generating any benefit to the owner through the leasing of assets or the operation of the property by the owner. The piece of property does not have the productive capacity relative to its size to maintain an agricultural base.

Soil Survey Information

runoff is rapid or very rapid, and the hazard of water erosion is high or very high. The effective rooting depth ranges from 20 to 40 inches, although roots in the subsoil are limited to cracks.

Most areas of these soils are used as rangeland.

These soils are moderately suited or poorly suited to rangeland. Texture and slope make these soils susceptible to sheet and gully erosion if the plant cover is disturbed by overgrazing, improperly placed access roads, or wildfire. Typically, Millsap soil is open grassland with blue oak randomly scattered or concentrated in swales. Major forage plants are annuals. Needlegrass and browse species provide additional forage. Typically, Cieneba soil has a dense stand of old growth brush with small amounts of grasses and forbs. This cover does not adequately protect against soil erosion and is susceptible to wildfire. Old growth brush provides poor habitat for wildlife and is a barrier to movement of livestock and big game animals. On these steep and very steep slopes, erosion can be controlled by maintaining adequate plant residue on the soil surface.

Stock trails can improve grazing distribution by providing better access to forage. Normally, wildfires on the Cieneba soil are extremely hot and destroy the vegetation. This is the main cause of accelerated soil erosion. Following a cool fire or controlled burn, an area is most productive and can provide a combination of grass, browse, fruit, and cover for wildlife and livestock. The major browse species on both soils are buckbrush, chamise, and California scrub oak. Undesirable plants on both soils include woolly yerba-santa and black sage.

Most engineering practices require special design considerations because of slope, erosion hazard, the shallow depth to rock of the Cieneba soil, and the high shrink-swell potential and low strength of the Millsap subsoil. Road construction should include runoff and sediment control structures, minimum grading, and establishment of permanent plant cover on side slopes. A more suitable base material sometimes needs to be brought in from outside sources.

The Cieneba and Millsap soils in this complex are in capability subclass VIIe (15), nonirrigated.

120—Concepcion loam, 2 to 5 percent slopes. This very deep, moderately well drained, gently sloping soil is on marine terraces. It formed in old alluvium weathered from sedimentary rocks. Areas are irregular in shape and range from 30 to 225 acres. The natural vegetation is mainly annual and perennial grasses and forbs with a few areas of scattered brush. Elevation ranges from 10 to 800 feet. The average annual precipitation ranges from 17 to 24 inches, and the average annual air temperature is about 58 degrees F. The average frost-free season ranges from 300 to 330 days, depending on location.

Typically, the surface layer is dark grayish brown loam about 14 inches thick. The next layer is light brownish

gray sandy loam about 5 inches thick. The subsoil is brown or dark brown clay to a depth of 47 inches. The underlying material to a depth of 60 inches or more is sandy clay loam with mixed colors of light brownish gray and light gray. The profile is slightly acid at the surface and becomes moderately alkaline as depth increases. Some small areas of this soil have slightly lighter surface color than is typical, and other areas are less acid in the surface layer.

Included in this map unit are a few small areas of Cropley clay, Los Osos loam, Tierra loam, and San Simeon sandy loam.

Permeability of this Concepcion soil is very slow, and the available water capacity is moderate or high. Surface runoff is slow, and the hazard of water erosion is slight. The effective rooting depth is 60 inches or more, although roots in the subsoil are limited mainly to cracks in the clay. This soil has high shrink-swell potential in the subsoil.

Most areas of this soil are used for small grains and hay crops or as rangeland. In the vicinity of the city of San Luis Obispo, small areas are used for urban development.

The most common dryfarmed crops are small grains, barley hay, and oat hay. Management practices that include crop rotation, cover crops, fertilization, crop residue utilization, and proper tillage help to improve soil tilth, structure, fertility, and water holding capacity. Subsoiling to break up the underlying clay layer is not recommended because this layer can reseal within a relatively short period.

This soil is well suited to rangeland. The dense clay subsoil, however, restricts movement of water and penetration of plant roots. Because of the dense clay subsoil, this soil is subject to gully erosion. This increases the importance of maintaining a permanent plant cover. In wet years, water sometimes ponds in depressional areas and retards early plant growth. Once forage plants are established, with roots penetrating into the upper few inches of the claypan, forage quality commonly remains high into July. Grazing should be delayed until the soil has drained sufficiently and is firm enough to withstand trampling by livestock. This soil typically is open grassland. Major forage is annuals, including burclover and other legumes. California brome, California fescue, and such perennials as purple needlegrass provide forage in localized areas. Undesirable plants include horehound, California sagebrush, and mustard.

In some areas, community development is increasingly important. Building sites and most other engineering practices often require special design considerations because of the high shrink-swell potential, low strength, and hardness to pack of the subsoil. Foundations and footings need to be designed to compensate for these soil characteristics. Care should be taken to avoid removal of the surface layer on areas that are to be

landscaped so that the dense clay subsoil is not exposed. Septic tank absorption fields do not function properly because of the very slow permeability. Absorption lines should be placed below the very slowly permeable layer. Increasing the size of the absorption area helps to compensate for the very slow permeability.

Local road and street design can require that the base material be replaced or covered with a more suitable material in order to reduce maintenance. This soil is well suited to pond reservoir areas. However, embankments, dikes, and levees are hard to pack and can require careful placement of the material or mixing with a more desirable material and maintaining a high degree of compaction and moisture control. The amount and rate of applications of irrigation water must be controlled to prevent waterlogging and excessive runoff. Sprinkler or drip methods of irrigation are best suited to this soil.

This Concepcion soil is in capability units IIIe-3 (14), irrigated and nonirrigated.

121—Concepcion loam, 5 to 9 percent slopes. This very deep, moderately well drained, moderately sloping soil is on marine terraces. It formed in old alluvium weathered from sedimentary rocks. Areas are irregular in shape and range from 10 to 300 acres. The natural vegetation is mainly annual and perennial grasses and forbs with scattered brush and hardwoods. Elevation ranges from 10 to 800 feet. The average annual precipitation ranges from 17 to 24 inches, and the average annual air temperature is about 58 degrees F. The average frost-free season ranges from 300 to 330 days, depending on location.

Typically, the surface layer is dark grayish brown loam about 14 inches thick. The next layer is light brownish gray sandy loam about 5 inches thick. The subsoil is brown or dark brown clay to a depth of 47 inches. The underlying material to a depth of 60 inches or more is sandy clay loam with mixed colors of light brownish gray and light gray. The profile is slightly acid at the surface and becomes moderately alkaline as depth increases. Some small areas of this soil have slightly lighter surface color than is typical, and other areas are less acid in the surface layer.

Included in this map unit are a few small areas of Cropley clay, Los Osos loam, Tierra loam, and San Simeon sandy loam.

Permeability of this Concepcion soil is very slow, and the available water capacity is moderate or high. Surface runoff is medium, and the hazard of water erosion is moderate. The effective rooting depth is 60 inches or more, although roots in the subsoil are limited to cracks in the clay. This soil has high shrink-swell potential in the subsoil.

Most areas of this soil are used for small grains and hay crops or as rangeland. A few areas within the city of San Luis Obispo are used for urban development.

The most common dryfarmed crops are small grains, barley hay, and oat hay. Management practices that include crop rotation, cover crops, fertilization, crop residue utilization, and proper tillage help to improve soil tilth, structure, fertility, and water holding capacity. Subsoiling to break up the underlying clay layer is not recommended because this layer can reseal within a relatively short period. Working tilled areas on the contour or across the slope reduces erosion. Stubble and crop residue left in place after harvest helps to control erosion. Structural measures, such as grassed waterways and water diversions, are sometimes needed to control erosion.

This soil is well suited to rangeland. The dense clay subsoil restricts movement of water and penetration of plant roots. Because of the dense clay subsoil, the soil is subject to gully erosion. This increases the importance of maintaining a permanent plant cover. In wet years, water sometimes ponds in depressional areas and retards early plant growth. Once forage plants are established, with roots penetrating into the upper few inches of the claypan, forage quality commonly remains high into July. Grazing should be delayed until the soil has drained sufficiently and is firm enough to withstand trampling by livestock. This soil typically is open grassland. Major forage is annuals, including burclover and other legumes. California brome, California fescue, and such perennials as purple needlegrass provide forage in localized areas. Undesirable plants include horehound, California sagebrush, and mustard.

In some areas, community development is increasingly important. Building sites and most other engineering practices often require special design considerations because of the high shrink-swell potential, low strength, and hardness to pack of the subsoil. Foundations and footings need to be designed to compensate for these soil characteristics. Care should be taken to avoid removal of the surface layer on areas that are to be landscaped so that the dense clay subsoil is not exposed. Septic tank absorption fields do not function properly because of the very slow permeability. Absorption lines should be placed below the very slowly permeable layer. Increasing the size of the absorption area helps to compensate for the very slow permeability.

Local road and street design can require that the base material be replaced or covered with a more suitable material in order to reduce maintenance. This soil is well suited to pond reservoir areas. However, embankments, dikes, and levees are hard to pack and can require careful placement of the material or mixing with a more desirable material and maintaining a high degree of compaction and moisture control. If terraces, diversions, or grassed waterways are installed, the slow permeability of the subsoil, which affects the amount of runoff, needs to be considered in the design of these structures. The amount and rate of application of irrigation water must be controlled to prevent waterlogging and excessive

Typically, the surface layer is dark grayish brown loam about 14 inches thick. The next layer is light brownish gray sandy loam about 5 inches thick. The subsoil is brown or dark brown clay to a depth of 47 inches. The underlying material to a depth of 60 inches or more is sandy clay loam with mixed colors of light brownish gray and light gray. The profile is slightly acid at the surface and becomes moderately alkaline as depth increases. Some small areas of this soil have slightly lighter surface color than is typical, and other areas are less acid in the surface layer.

Included in this map unit are a few small areas of Diablo clay, Los Osos loam, Millsap loam, and San Simeon sandy loam.

Permeability of this Concepcion soil is very slow, and the available water capacity is moderate or high. Surface runoff is rapid, and the hazard of water erosion is moderate or high. The effective rooting depth is 60 inches or more, although roots in the subsoil are limited mainly to cracks in the clay. This soil has high shrink-swell potential in the subsoil.

Most areas of this soil are used as rangeland.

This soil is well suited to rangeland. The dense clay subsoil restricts movement of water and penetration of plant roots. Because of the dense clay subsoil, the soil is subject to gully erosion. This increases the importance of using proper grazing practices and maintaining a permanent plant cover. Once forage plants are established, with roots penetrating into the upper few inches of the claypan, forage quality commonly remains high into July. This soil typically is open grassland. Major forage is annuals, including burclover and other legumes. California brome, California fescue, and such perennials as purple needlegrass provide forage in localized areas. Undesirable plants include horehound, California sagebrush, and mustard.

Homesite development and most other engineering practices on this soil can require special design considerations because of the high shrink-swell potential, the erosion hazard, and low strength. The soil is hard to pack because of the high clay content in the subsoil. The effects of shrinking and swelling can be minimized by backfilling with material that has low shrink-swell potential and by diverting runoff away from buildings. Septic tank absorption lines should be installed on the contour. Use of sandy backfill for the trench and long absorption lines helps to compensate for the very slow permeability. Because of the erosion hazard, a permanent plant cover should be maintained at all times.

This Concepcion soil is in capability subclass IVe (14), nonirrigated.

124—Corralitos sand, 0 to 2 percent slopes. This very deep, somewhat excessively drained, nearly level soil is on alluvial fans and plains. It formed in alluvium weathered from sedimentary rocks. Areas are irregular in shape and range from 30 to 150 acres. The natural

vegetation is presumed to have been annual grasses. Most areas are presently cultivated. A very few areas are annual grasses with scattered hardwoods. Elevation ranges from 10 to 1,000 feet. The average annual precipitation ranges from 15 to 22 inches, and the average annual air temperature is about 58 degrees F. The average frost-free season ranges from 250 to 330 days, depending on location.

Typically, the surface layer is light brownish gray sand about 24 inches thick. The underlying material to a depth of 60 inches is light gray sand. The profile is medium acid throughout. Some small areas of this soil have thin strata of loamy sand.

Included in this map unit are a few small areas of Mocho silty clay loam and Tujunga loamy sand.

Permeability of this Corralitos soil is rapid, and the available water capacity is low. Surface runoff is slow. The hazard of water erosion is slight, and the hazard of soil blowing is high. The effective rooting depth is 60 inches or more.

Most areas of this soil are used for hay crops and pasture. In the Santa Maria Valley, areas of this soil are used for vegetable crops. A few areas are used as rangeland.

This soil is not well suited to dryland farming because of the coarse texture and low water holding capacity. A cropping system that includes crop rotation, cover crop use, crop residue use, fertilization, and minimum tillage operations should be used. Irrigated vegetable crops and pasture are suited to these soils if proper management is used. Irrigation systems, irrigation water management, and a conservation cropping system are needed on this soil. A cropping system that includes crop rotation or cover crops, crop residue use, fertilization, and proper tillage helps to improve the soil tilth, structure, and water holding capacity and reduce the hazard of soil blowing. Sprinkler or drip irrigation systems are suited to this soil. Furrow irrigation systems should have runs of minimum length to reduce erosion and to help offset the rapid permeability. Apply irrigation water at the rate and amount that allows maximum production and avoids excess runoff or losses through deep percolation. Crops with efficient root systems, such as carrots, or deep rooted crops, such as sugar beets, are well suited to this soil. This soil is well suited to strawberry production if drip irrigation is used.

This soil is moderately suited to rangeland. The sand surface texture makes this soil very droughty. It produces forage for a short period. Maintaining a good plant cover reduces the hazard of soil blowing. Typically, this soil supports annual grasses with scattered oaks and such shrubs as California sagebrush and coyotebush.

Undesirable plants include cocklebur and Russian-thistle. This soil has few limitations for homesite development. When making shallow excavations, support is sometimes needed to prevent caving. If this soil is used for pond reservoir areas, seepage is the main limitation. This can

and the depth to rock can cause seepage problems. This soil, if used for embankments, dikes, and levees, requires a high degree of compaction and moisture control. It is poor as a borrow area because of the depth to rock. When irrigated, controlling the amount of water applied prevents excessive runoff. Because of the slope, the slow permeability, and the moderate rooting depth, sprinkler or drip irrigation methods of irrigation are best suited to this soil.

This Los Osos soil is in capability units IIIe-3 (15), irrigated and nonirrigated.

160—Los Osos loam, 15 to 30 percent slopes. This moderately deep, well drained, moderately steep soil is on foothills and mountain ridgetops. It formed in residual material weathered from sandstone or shale. Areas are irregular in shape and range from 10 to 300 acres. They are normally dissected by drainageways. The natural vegetation is mainly annual grasses and forbs with brush in a few areas. Hardwoods are normally along drainageways. Elevation ranges from 100 to 3,000 feet. The average annual precipitation ranges from 15 to 35 inches, and the average annual air temperature ranges from 56 to 59 degrees F. The average frost-free season ranges from 275 to 350 days, depending on location.

Typically, the surface layer is brown loam about 14 inches thick. The subsoil is yellowish brown clay and light yellowish brown loam to a depth of 32 inches. The underlying material is pale yellow sandy loam to a depth of 39 inches. It lies directly over weathered, fractured sandstone. A few areas have a clay loam surface layer or are deeper to harder rock.

Included in this map unit are small areas of Cibo and Diablo clays, Gazos and Lodo clay loams, Millsap loam, Rock outcrop, and Los Osos soils on slopes of less than 15 percent or more than 30 percent. Also included are Lompico and McMullin soils, which normally occur in areas of dense hardwood canopy.

Permeability of this Los Osos soil is slow, and the available water capacity is low or moderate. Surface runoff is rapid, and the hazard of water erosion is high. The effective rooting depth ranges from 20 to 40 inches. This soil has high shrink-swell potential in the subsoil and is subject to slippage when wet.

Most areas of this soil are used as rangeland. Some areas are also used for urban development.

This soil is well suited to rangeland. The clay subsoil, however, restricts uniform movement of water and penetration of plant roots. The clay subsoil and the moderately steep slopes and loam surface layer make this soil subject to gully erosion, increasing the importance of maintaining a permanent plant cover and leaving adequate plant residue on the soil surface. Grazing should be delayed until the soil has drained sufficiently and is firm enough to withstand trampling by livestock. Well established forage plants that have roots penetrating into the clay subsoil can produce quality

forage into June. This soil is typically under annual grasses. Protected drainageways have an overstory of live oak with an understory of shrubs. These shrubs, which include blue elderberry, bush monkeyflower, toyon, and California coffeeberry, provide browse, fruit, and cover for many kinds of wildlife. The major forage plants are annuals, including burclover and other annual legumes. Purple needlegrass is a perennial forage that is abundant in many areas. Undesirable plants include coyotebush, California sagebrush, and tocalote. Near the coast, milkthistle and mustard are undesirable and increase following soil disturbance. If the range is overgrazed, the proportion of preferred forage plants decreases and the proportion of less preferred plants increases. Livestock grazing should be managed so that the desired balance of plant species is maintained.

Urban development is increasingly important on this soil. Foundations and footings should be designed to offset the moderately steep slopes, the high shrink-swell potential, and the low strength of the clay subsoil. These soil characteristics can require that the subgrade be removed and replaced with a more suitable material or that a high degree of compaction and moisture control be maintained. Local roads and streets can require special design considerations so that maintenance is minimized. The high erosion hazard can be reduced by minimum grading, using runoff and sediment control structures, and establishing a permanent plant cover on side slopes. Septic tank absorption fields do not function properly because of the slope, slow permeability of the subsoil, and the depth to rock. Absorption lines should be placed on the contour and below the slowly permeable layer. Increasing the size of the absorption field helps to compensate for the slow permeability.

This Los Osos soil is in capability unit IVe-1 (15), nonirrigated.

161—Los Osos loam, 30 to 50 percent slopes. This moderately deep, well drained, steep soil is on foothills and mountain ridgetops. It formed in residual material weathered from sandstone or shale. Areas are irregular in shape and range from 10 to 150 acres. They are normally dissected by drainageways. The natural vegetation is mainly annual grasses and forbs with brush in a few areas. Hardwoods are normally along drainageways. Elevation ranges from 100 to 3,000 feet. The average annual precipitation ranges from 15 to 35 inches, and the average annual air temperature ranges from 56 to 59 degrees F. The average frost-free season ranges from 275 to 350 days, depending on location.

Typically, the surface layer is brown loam about 14 inches thick. The subsoil is yellowish brown clay and light yellowish brown clay loam to a depth of 32 inches. The underlying material is pale yellow sandy loam to a depth of 39 inches. This lies directly over weathered, fractured sandstone. A few areas have a clay loam

surface layer, are deeper, or are underlain by harder rock.

Included in this map unit are small areas of Cibo and Diablo clays, Gazos and Lodo clay loams, Rock outcrop, and Los Osos soils that have slopes of less than 30 percent or more than 50 percent. Lompico and McMullin soils normally are in areas of dense hardwood canopy.

Permeability of this Los Osos soil is slow, and the available water capacity is low or moderate. Surface runoff is rapid, and the hazard of water erosion is high. The effective rooting depth ranges from 20 to 40 inches. This soil has high shrink-swell potential in the subsoil and is subject to slippage when wet.

Most areas of this soil are used as rangeland.

This soil is moderately suited to rangeland. The clay subsoil restricts uniform penetration of plant roots. The steep slopes, the loam surface layer, and the clay subsoil make this soil subject to gully erosion. This hazard increases the importance of maintaining a permanent plant cover and leaving adequate plant residue on the soil surface. Grazing should be delayed until the soil has drained sufficiently and is firm enough to withstand trampling by livestock. Well established forage plants that have roots penetrating into the clay subsoil can produce quality forage into June. This soil is typically under annual grasses. Drainageways have an overstory of live oak and an understory of shrubs. These shrubs, which include blue elderberry, bush monkeyflower, toyon, and California coffeeberry, provide browse, fruit, and cover for many kinds of wildlife. Purple needlegrass is a perennial forage that is abundant in many areas. Undesirable plants include coyotebush, California sagebrush, and tocalote. Near the coast, milkthistle and mustard are undesirable and increase following soil disturbance. If the range is overgrazed, the proportion of preferred forage plants decreases and the proportion of less preferred plants increases. Livestock grazing should be managed so that the desired balance of plant species is maintained.

Urban development and most other engineering practices require special design considerations because of the erosion hazard, steep slopes, depth to rock, and the high shrink-swell potential, low strength, and slow permeability of the subsoil. The high erosion hazard can be reduced by minimum grading, installing runoff and sediment control structures, and establishing a permanent plant cover on side slopes. Foundations and footings can require special designs to help overcome the high shrink-swell potential of the clay subsoil. Subgrade or base material should be replaced or covered with suitable soil. Care should be taken to avoid removal of the surface layer on areas that are to be landscaped so that the clay subsoil is not exposed. Septic tank absorption lines should be placed on the contour and below the slowly permeable layer. Increasing the size of the absorption area helps to compensate for the slow permeability.

This Los Osos soil is in capability subclass VIe (15), nonirrigated.

162—Los Osos-Diablo complex, 5 to 9 percent slopes. These gently rolling soils are on foothills and mountain ridgetops. Areas are irregular in shape and range from 10 to 350 acres. The natural vegetation is mainly annual grasses and forbs. Elevation ranges from 200 to 1,500 feet. The average annual precipitation ranges from 15 to 25 inches, and the average annual air temperature is about 59 degrees F. The average frost-free season ranges from 275 to 350 days, depending on location.

This complex is about 35 percent Los Osos soil and 30 percent Diablo soil. The Diablo soil differs from the Los Osos soil by being deep and having a clay texture throughout.

Included in this complex are small areas of Cibo clay, Lodo clay loam, and Millsap loam. Also included are a few areas of soils that are similar to Los Osos soils but are deeper or are underlain by harder rock. Included areas make up about 35 percent of the total acreage.

The Los Osos soil is moderately deep and well drained. It formed in residual material weathered from sandstone or shale. Typically, the surface layer is brown loam about 14 inches thick. The subsoil is yellowish brown clay and light yellowish brown clay loam about 18 inches thick. This is underlain by pale yellow sandy loam to a depth of 39 inches. Weathered, fractured sandstone is at a depth of 39 inches. Some areas have a clay loam surface layer.

Permeability of the Los Osos soil is slow, and the available water capacity is low or moderate. Surface runoff is medium, and the hazard of water erosion is moderate. The effective rooting depth ranges from 20 to 40 inches. This soil has high shrink-swell potential in the subsoil.

The Diablo soil is deep and well drained. It formed in residual material weathered from sandstone, shale, or mudstone. Typically, the surface layer is very dark gray clay about 38 inches thick. The underlying material to a depth of about 58 inches is olive gray clay. Below this is weathered mudstone. This soil is neutral in the surface layer and becomes moderately alkaline and calcareous as depth increases. Some areas have a clay loam or silty clay surface layer.

Permeability of the Diablo soil is slow, and the available water capacity is moderate to very high. Surface runoff is medium, and the hazard of water erosion is slight. The effective rooting depth ranges from 45 to 58 inches. This soil has high shrink-swell potential.

Most areas of these soils are used for hay crops and small grains or as rangeland. A few areas are used for urban development.

The most common dryfarmed crops are grain barley and oat hay. Management practices that include crop rotation, cover crops, fertilization, crop residue utilization,

uses can require special designs because of the moderately steep slope and the high shrink-swell potential, very slow permeability, low strength, and hardness to pack of the subsoil. Septic tank absorption fields do not function properly because of the moderately steep slope, depth to rock, and very slow permeability of the subsoil. Septic tank absorption field trench lines should be placed on the contour and the size of the absorption area increased. Local road and street design can require that the base material be removed or covered with a more suitable material to minimize maintenance. Where grading is necessary for building sites or roads, soil erosion can be controlled by minimum grading, using runoff and sediment control structures, and establishing a permanent plant cover on side slopes.

This San Simeon soil is in capability subclass VIe (15), nonirrigated.

202—San Simeon sandy loam, 30 to 50 percent slopes. This moderately deep, moderately well drained, steep soil is on foothills. It formed in residual material weathered from sandstone. Areas are irregular in shape and range from 5 to 100 acres. The natural vegetation is mainly annual and perennial grasses and forbs with areas of brush or conifers. Elevation ranges from 20 to 500 feet. The average annual precipitation ranges from 18 to 25 inches, and the average annual air temperature is about 55 degrees F. The average frost-free season ranges from 330 to 365 days, depending on location.

Typically, the surface layer is grayish brown, brown, and light yellowish brown sandy loam about 24 inches thick. The subsoil is brown and strong brown, mottled clay to a depth of about 34 inches. This is directly underlain by soft sandstone. The profile is medium acid at the surface and becomes very strongly acid in the subsoil. Some areas of this soil have a loam surface layer. Other places have small areas with a gravelly layer above the sandstone.

Included in this map unit are a few small areas of Concepcion loam and Los Osos loam. In areas covered by a heavy canopy of trees, the air and soil temperatures are a few degrees cooler than the rest of this map unit.

Permeability of this San Simeon soil is very slow, and the available water capacity is very low or low. Surface runoff is rapid, and the hazard of water erosion is high. The effective rooting depth ranges from 20 to 40 inches. The shrink-swell potential of the subsoil is high.

Most areas of this soil are used as rangeland.

This soil is poorly suited to use as rangeland. The clay subsoil restricts uniform water movement and root penetration. Because of the loamy surface layer and clay subsoil, this soil is subject to gully erosion. This increases the importance of maintaining a permanent vegetative cover. This soil is typically covered with Monterey pine and understory shrubs, such as live oak, California coffeeberry, and poison-oak. Other areas are dense brush without the pine overstory. The major

forage is browse and small areas of understory grasses. The grasses are predominantly annuals with some perennials, such as purple needlegrass, wildryes, and fescues. Undesirable plants include chamise and coyotebush. If the range is overgrazed, the proportion of preferred forage plants decreases and the proportion of less preferred plants increases. Livestock grazing should be managed so that the desired balance of plant species is maintained. This soil supports excellent stands of Monterey pine. A basal area of 290 square feet has been measured in stands of Monterey pine on this soil, averaging 19 inches in diameter at breast height. Because of the limited rooting depth, windthrow can be a problem on the more exposed, windy locations. Access roads need to have adequate erosion control measures to prevent accelerated erosion.

Most engineering uses can require special designs because of the steep slopes. Other soil characteristics, such as high shrink-swell potential, very slow permeability, low strength, and hardness to pack of the subsoil, need to be carefully considered in designing any buildings or roads and streets. Careful placement of material and maintaining a high degree of compaction and moisture control during construction are needed. Removal of base material or covering with a more suitable material can be necessary if designing roads and building footings. Septic tank absorption field trench lines should be placed on the contour and the size of the absorption area increased.

This San Simeon soil is in capability subclass VIe (15), nonirrigated.

203—Santa Lucia shaly clay loam, 30 to 50 percent slopes. This moderately deep, well drained, steep soil is on mountains. It formed in residual material weathered from sandstone or shale. Areas are irregular in shape and range from 15 to 650 acres. The natural vegetation is mainly brush or annual grasses and forbs with scattered hardwoods. Elevation ranges from 180 to 2,500 feet. The average annual precipitation ranges from 15 to 35 inches, and the average annual air temperature is about 58 degrees F. The average frost-free season ranges from 275 to 365 days, depending on location.

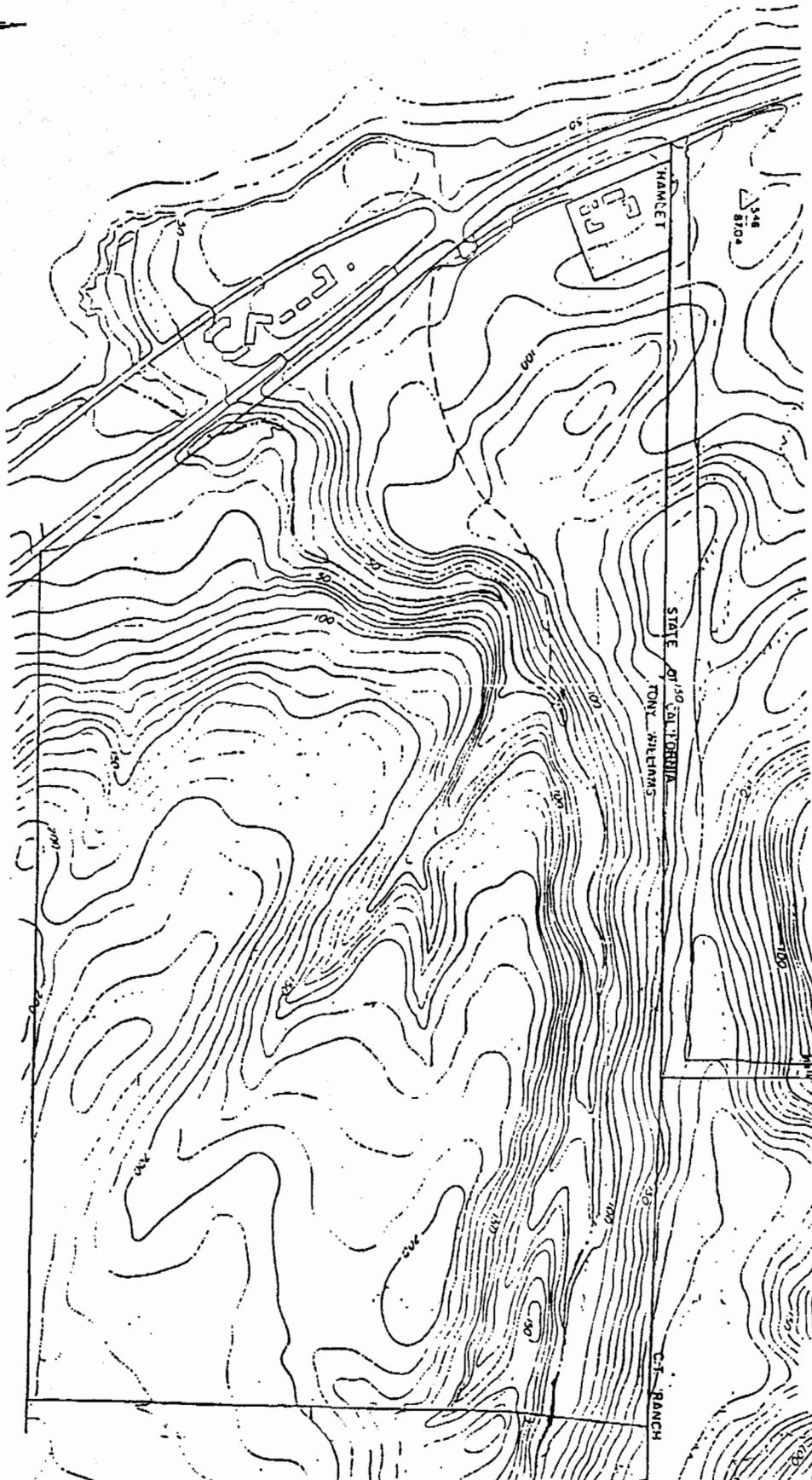
Typically, the surface layer is dark gray shaly clay loam about 17 inches thick. The next layer is grayish brown very shaly clay loam to a depth of 36 inches. This is directly underlain by hard, fractured, acid shale. Some areas of this soil have slopes of less than 30 percent, more shaly fragments, or a shaly loam surface layer. Under dense canopies of woody vegetation, the soil and air temperatures may be cooler than is typical for this soil.

Included in this map unit are a few small areas of Calodo loam, Gazos clay loam, Lompico and McMullin loams, and Nacimiento silty clay loam. The major inclusion in this map unit is Lopez very shaly clay loam.

Topographical Map



PHOTOGRAPHIC DATED: 3/28/78
SCALE: 1"=400'



Resume

of

Kenneth C. Scott

KENNETH C. SCOTT

EDUCATION:

- 1975 Ph.D. Agricultural Economics
Washington State University, Pullman, WA
Academic Concentration:
* Resource Economics
* Economic Development
- 1970 B.S. Agricultural Economics
Brigham Young University, Provo, UT
* Farm and Ranch Management

EMPLOYMENT:

- 1987 - Professor, Agribusiness Department
Present . California Polytechnic State University
San Luis Obispo, CA
* Teach courses in Agricultural Economic Theory, Linear Programming, Principles of Farm and Ranch Management, Advanced Dairy Management, Advanced Crop Management Problems, and Computer Applications in Agriculture
* Coordinate Agribusiness Internship placing about 100 students per year within 350 companies.
- 1980 - Owner-Operator and General Partner
1987 Scott Brothers Dairy, Montevue, ID
* Business consisted of 2200 acres of cropland and 300 dairy cows plus the young stock.
* Duties included financial planning, supervision of field crews, marketing of crops and general farm duties.
- 1978 - Associate Professor, Division of Agriculture
1980 Ricks College, Rexburg, ID
* Designed and taught semester classes on topics of Farm Financial Management, Marketing, Futures Trading and Price Analysis, Farm Records and Accounting to students in the Crop Management and Beef Production Concentrations in a newly established Division of Agriculture.
- 1975 - Assistant Professor, Agricultural Management Department
1978 California Polytechnic State University, San Luis Obispo, CA
* Taught courses in Agricultural Research Methods, Price Analysis, Farm Management, Linear Programming and Agr. Economics.
- 1973 - Research Associate, Agricultural Economics Department
1975 Washington State University, Pullman, WA
* Grant from the Office of Water Resources Research to conduct a recreational study in the Columbia Basin Area of Washington State.

- 1970 - Research Assistant, State of Washington Water Research Center
 1973 Washington State University, Pullman, WA
 * Conducted socio-economic research to establish classification parameters for implementation of the Wild and Scenic Rivers Act in the State of Washington.

PROFESSIONAL ACTIVITIES:

- 1996 - Sabbatical leave approved to work in the California dairy industry in cooperation
 1997 with the UC Davis College of Veterinary Extension to study dairy farm costs and management practices related to herd health management.
- 1995 Consulted for California Coastal Conservancy on its potential role in assisting the local Morros Area Study and Advisory Commission.
- 1995 Presented to PG&E Agribusiness Seminar sponsored by Irrigation Training and Research Center, Cal Poly
- 1992- Lecturer/trainer for Japanese Exchange Council. Assisting annually in class
 Pres room instruction for graduated college students and professional support personnel in areas of farm and ranch management, computer uses in agriculture, and field trips.
- 1994- Developed and conducted student internship exchange program between Cal Poly
 Pres agribusiness students and advanced horticulture students from Instituto Tecnológico Y de Estudios Superiores de Monterrey (ITESM) of Queretaro, Mexico
- 1989 - Developing a computerized dairy enterprise model to simplify enterprise
 Pres budgeting and financial decision making for dairy farmers. Copyright is pending on computer program and User's Manual. Recently converted to Excel and is being marketed nation-side.
- 1987- Served as public member of the California Milk Pooling Producer Review Board
 1995
- 1989 - Consulted for a small strawberry producer to establish the levels of economic
 1993 losses when an input supplier breached a contract to supply a marketing input.
- 1987 - Researched and analyzed with study team the U.S. Army Corps of Engineers
 1992 flood control feasibility study for Calleguas Creek, Ventura County. Performed risk analysis and extensive benefit/cost studies and statistical analysis of acreage, price and production trends in strawberries, celery, broccoli, lettuce and other vegetables and fruits for Ventura, Orange, Santa Barbara, Monterey and Santa Cruz Counties as well as for California and the United States.
- 1990 & Expert Witness on National Economic Development Benefits for the U.S. Senate
 1992 Subcommittee on Flood Control and the U.S. Army Corps of Engineers, Washington D.C..

- 1991 - Consultant for U.S. Agency for International Development through Cal Poly's
 1992 College of Agriculture E.A.R.T.H. Project. Assignment was to train and assist the Commercial Farm Manager in his management functions and analysis techniques to improve the profitability of the Commercial Farm.
- 1989 - Presentations on financial and investment analysis at the USDA, CES Range
 1991 Management School.
- 1990 Collected and analyzed data and co-compiled the agricultural portion of an Environmental Impact Report for converting San Marcos Ranch (Santa Barbara Co.) into a recreational facility.
- 1990 Researched and co-authored economic feasibility study for converting Dalidio property to urban and commercial uses.
- 1987 - Researched and co-authored an EIR agricultural impact assessment for
 1988 expanding the City of Guadalupe's sphere of influence for a general plan update. The State Office of Planning and Research has published and distributed copies of this work as benchmark reference example material.

PARTICIPATION IN PROFESSIONAL ORGANIZATIONS:

Past or Current Member of:

- American Society of Farm Managers and Rural Appraisers
- American Agricultural Economics Association
- Western Agricultural Economics Association
- Phi Kappa Phi National Honorary Society

PUBLICATIONS AND PAPERS PRESENTED

- Scott, Kenneth C., "Economic Feasibility of Rancho Rio Robles", private consulting report for livestock, alfalfa, and wine grape production, 1995.
- Scott, Kenneth C., Dairy Management Problems, El Corral Publications, Cal Poly, San Luis Obispo, CA, 4th Ed., 1994.
- Scott, Kenneth C., Dairy Decisions, A User's Manual, Dairy Decisions, Inc., San Luis Obispo, CA, 1992, 1995.
- McGary, Stephen D. and Kenneth C. Scott, "Calleguas Creek, California, Comments on Economic Analysis presented in U.S. Army Corps of Engineers Reconnaissance Report," presented at the Reconnaissance Report Conference, San Francisco, CA, Aug. 1992.
- Scott, Kenneth C., "Analysis of the Production Costs of New Zealand Kiwifruit with Comparisons to California Production Costs," prepared for the California Kiwifruit Commission, 1991.

Scott, Kenneth C., "Using Computerized Spreadsheets to Model Dairy Farm Operations," Paper presented at the California Association of Veterinarians Annual Training Meeting, Tulare, CA, 1991.

Scott, Kenneth C., "An In-Depth Look at Dairy Appraisal Using Computerized Spreadsheet Budgeting Analysis," Paper presented at Annual Meeting of California Chapter of the American Society of Farm Managers and Rural Appraisers, Yosemite, CA, 1990.

McGary, Stephen D. and Kenneth C. Scott, "Agricultural Economic Considerations of Proposed Conversion of Rancho San Marcos to a County Golf Course," prepared for SAIC, May 22, 1990.

McGary, Stephen D. and Kenneth C. Scott, "Evaluating the Economic Profitability and Financial Feasibility of the Dalidio Property Adjacent to U.S. 101, Southern San Luis Obispo," prepared for Andrew Merriam, Apr. 1990.

Scott, Kenneth C., "The Use of Student Internships in Undergraduate Agribusiness Education," Seminar paper presented at the Annual Meetings of the American Agricultural Economics Association, Baton Rouge, LA, 1989.

Scott, Kenneth C., "Financial Investment Analysis for Dairying," Paper presented at symposium for the Annual Meetings of the American Association of Bovine Practitioners, Kansas City, MO, 1989.

McGary, Stephen D. and Kenneth C. Scott, "Specific Plan Annexation and Sphere of Influence Amendment for the City of Guadalupe," Private Report, 1989.

Scott, Kenneth C., "Financial Herd Health Assessment and Monitoring," Paper presented at a symposium for the Annual Meetings of the American Association of Bovine Practitioners, Calgary, Canada, 1988.

Scott, Kenneth C., "Fresh Strawberry Supply and Demand in California and the United States," prepared for the Ventura County Flood Control Committee, Calleguas Creek Project, 1987.

Scott, Kenneth C., "Distributional Effects of Water Projects: An Empirical Example from the Columbia Basin Project," presented at the American Agricultural Economics Association Meetings, San Diego, CA, August, 1977.

Scott, Kenneth C., and C. Dirck Ditwiler, The Redistributive Consequences of Public Recreation Provision at the Potholes Reservoir - Columbia Basin Project, Washington, State of Washington Water Research Center, Pullman, Washington, Report 25, May, 1976.

Scott, Kenneth C., Income Redistributive Consequences of Recreation Provision in Water Resources Projects: Potholes Reservoir, Columbia Basin Project, Washington State University Press, 1975.