

SAN LUIS OBISPO COUNTY

LEGEND

-  FREEWAY
-  FREEWAY UNDER CONSTRUCTION
-  DIVIDED HIGHWAY MAJOR
-  INTERSTATE HIGHWAY
-  U.S. HIGHWAY
-  CALIFORNIA

Exhibit 1
Vicinity Map
(1 of 2)

Pecho Rock
San
San Luis Obispo
Lone Black
Santa Rosa k

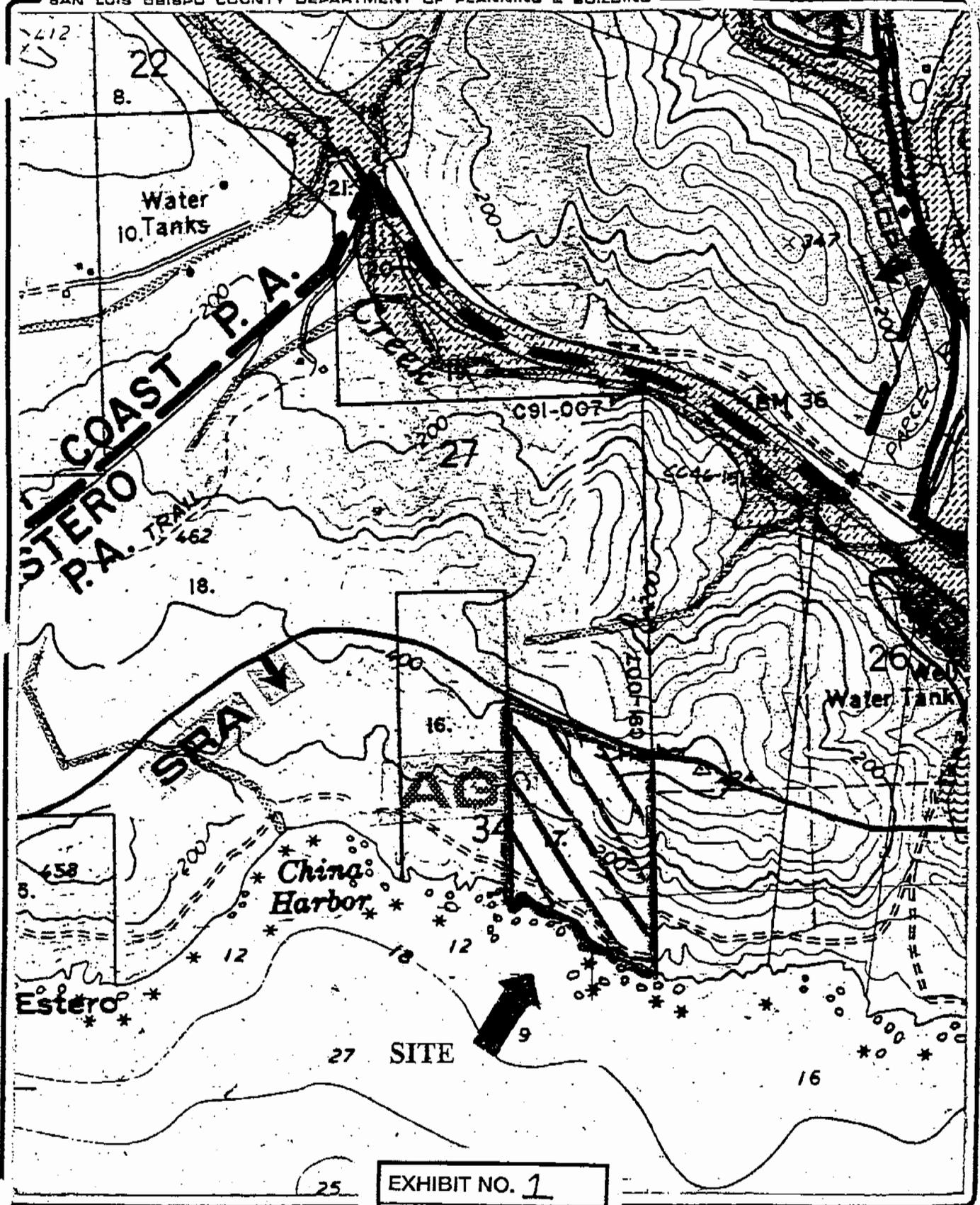
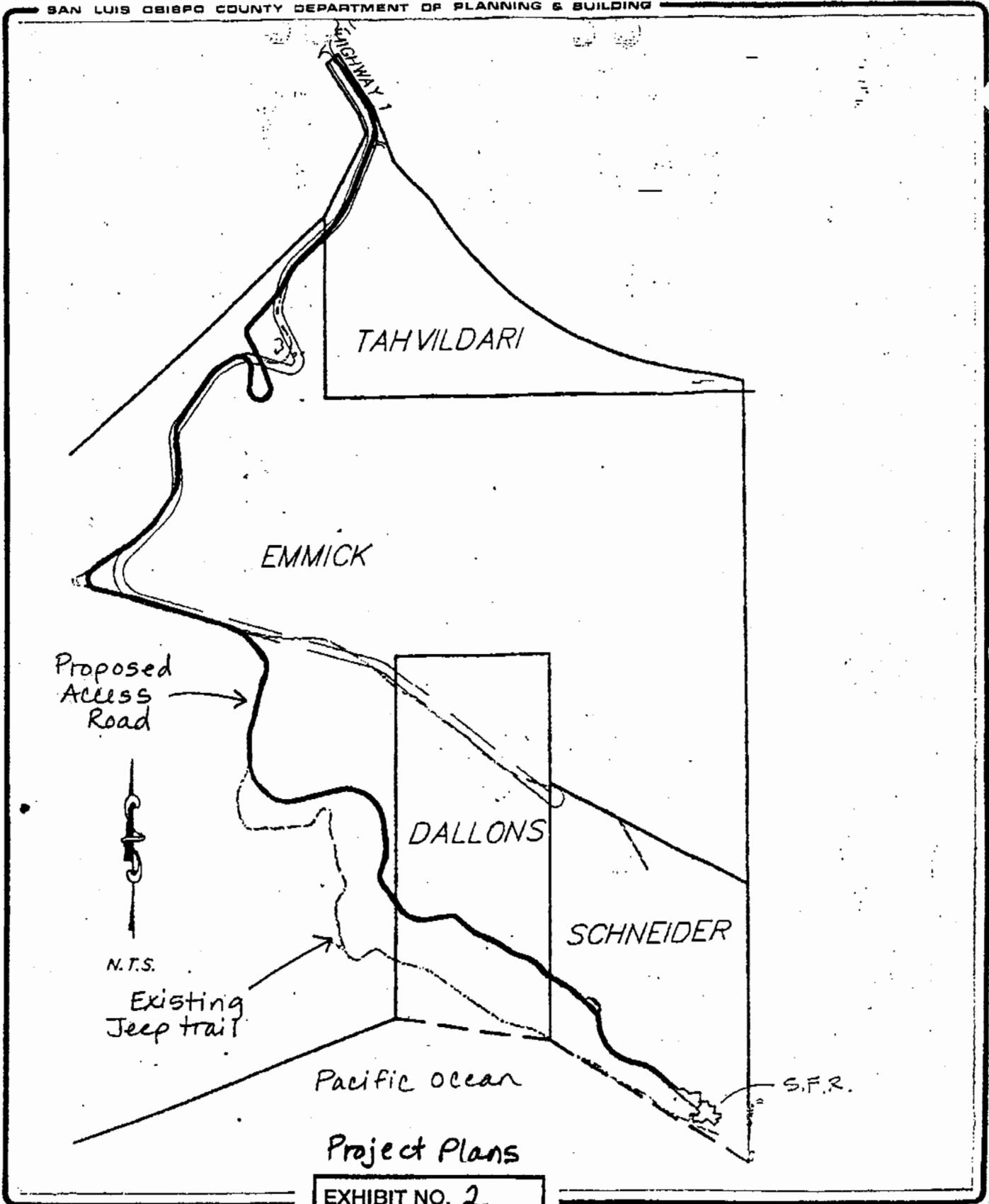


EXHIBIT NO. 1
 APPLICATION NO.
 A-3-SLO-00-40
 (2 of 2)

PROJECT
 Schneider
 (D980010P/D980279V)

TITLE
 Land Use Category Map

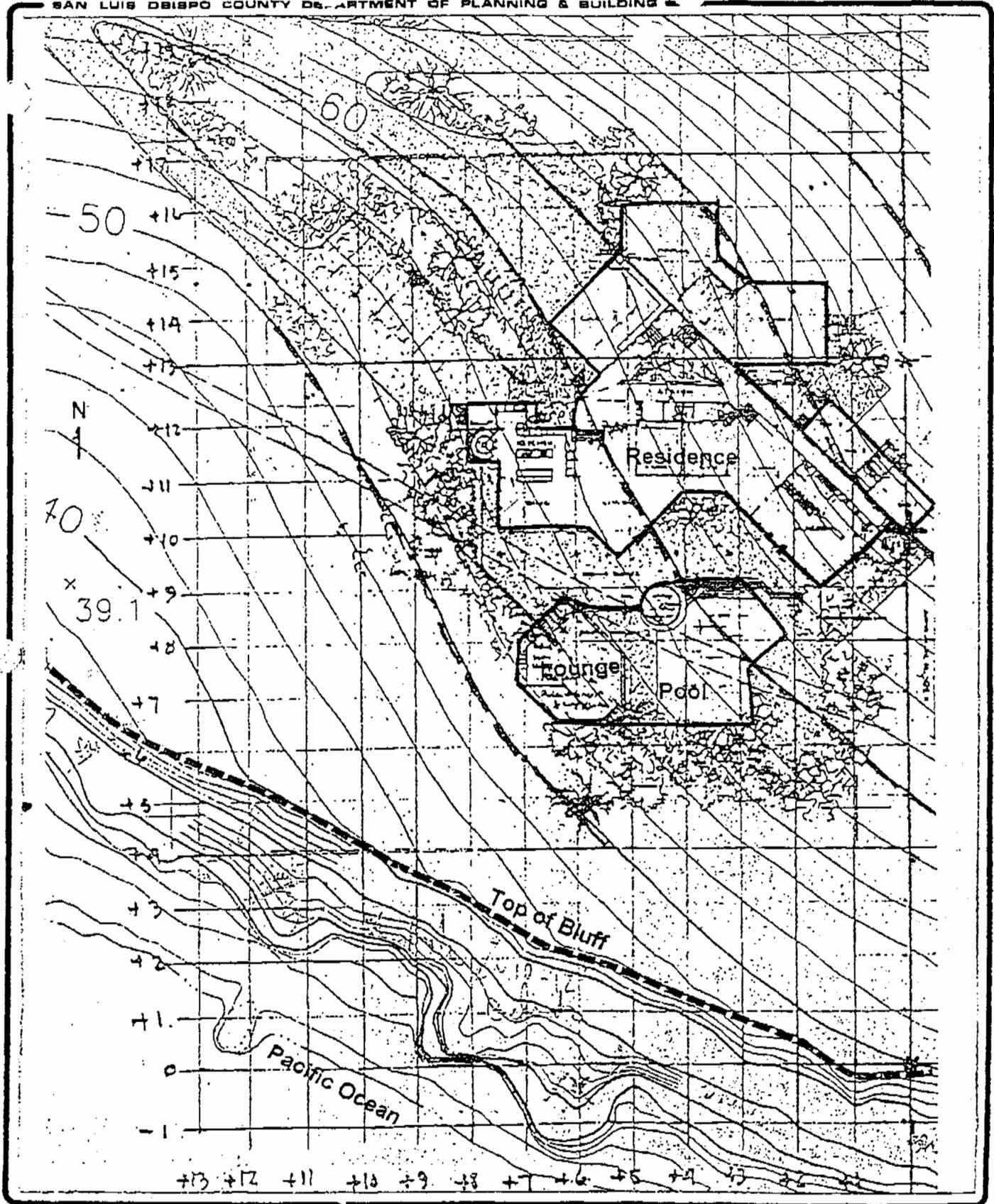


Project Plans

EXHIBIT NO. 2
APPLICATION NO.
A-3-SLO-00-40
(1 of 9)

PROJECT NO. _____
 Schneider
 (D980010P/D980279V)

EXHIBIT _____
 Ownership Pattern Associated
 with the Road Improvements



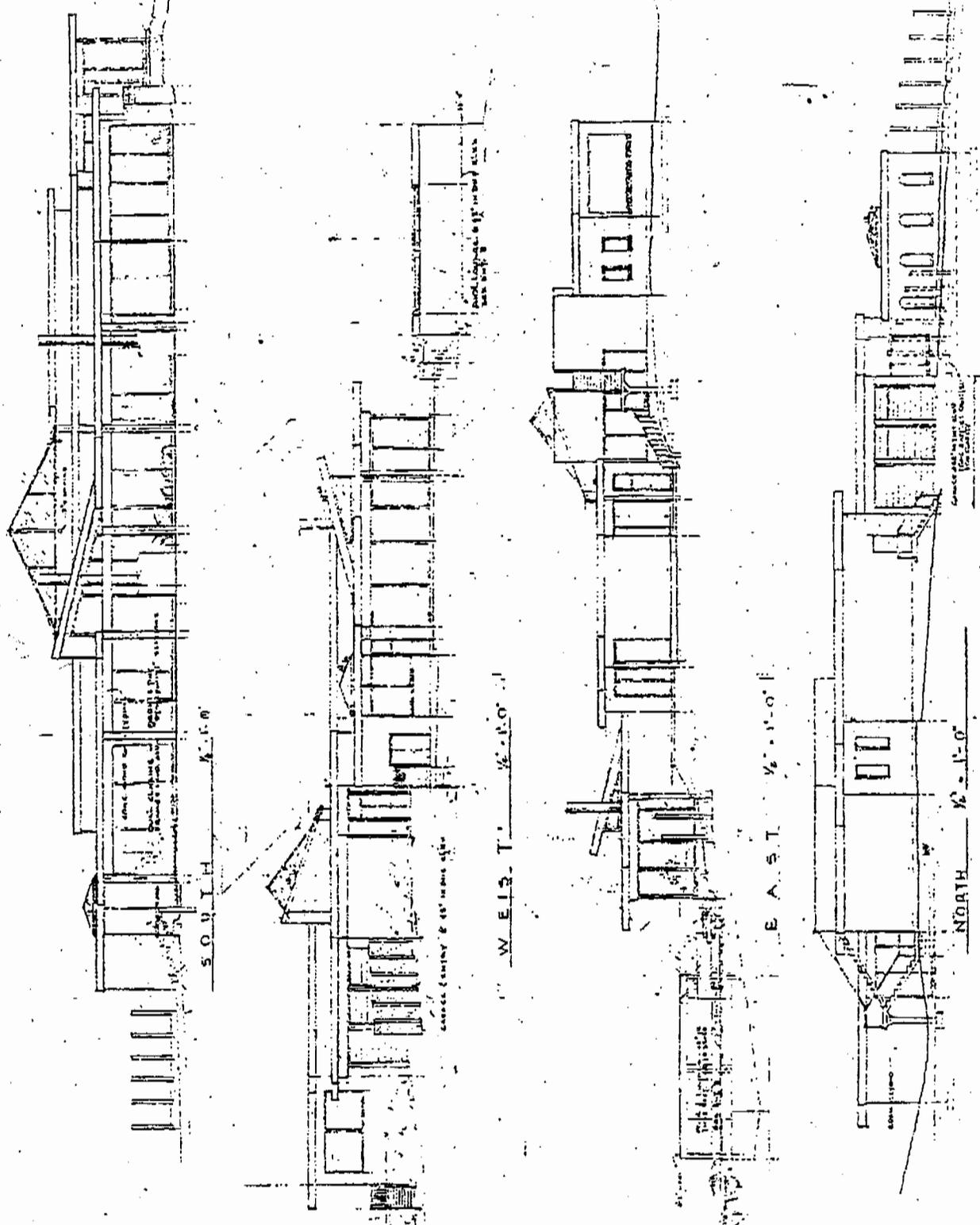
PROJECT

Schneider
(D980010P/D980279V)



EXHIBIT

Detailed Site Plan



PROJECT

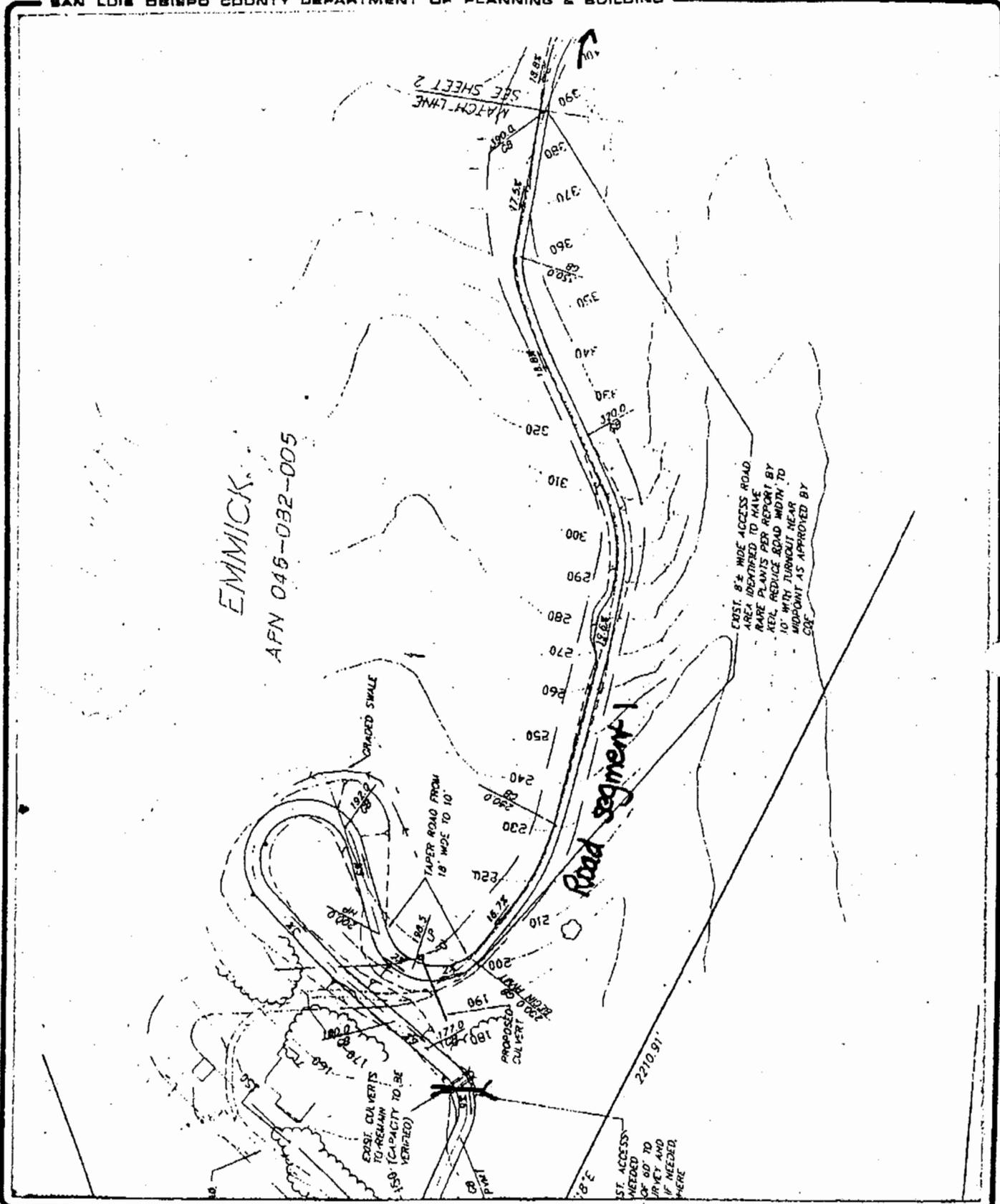
Schneider
(D980010P/D980279V)

Exhibit 2
(4 of 9)



EXHIBIT

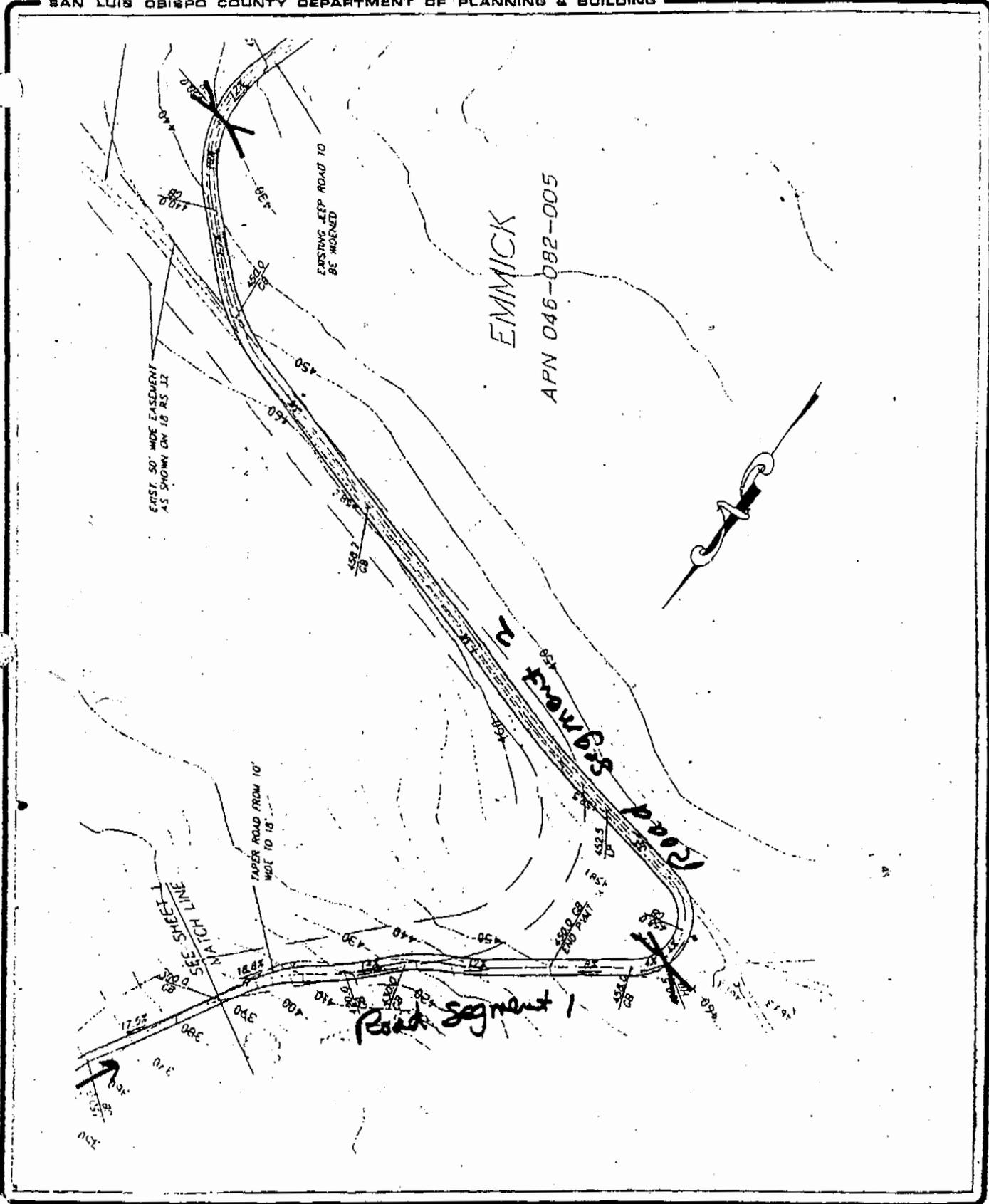
Elevations



PROJECT
Schneider
(D980010P/ D980279V)



EXHIBIT
Access Road



PROJECT

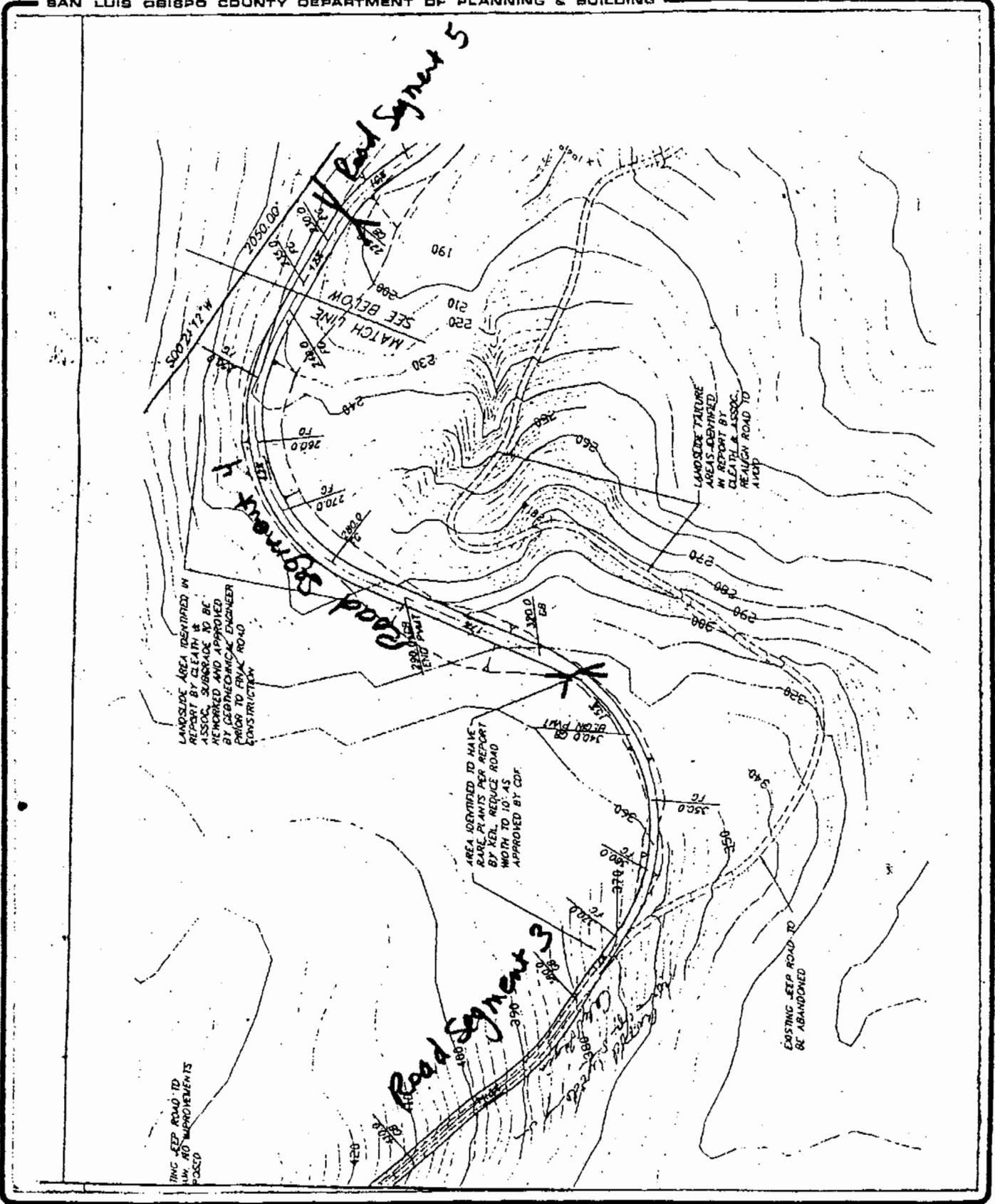
Schneider
(D980010P/ D980279V)

Exhibit 2
(6 of 9)



EXHIBIT

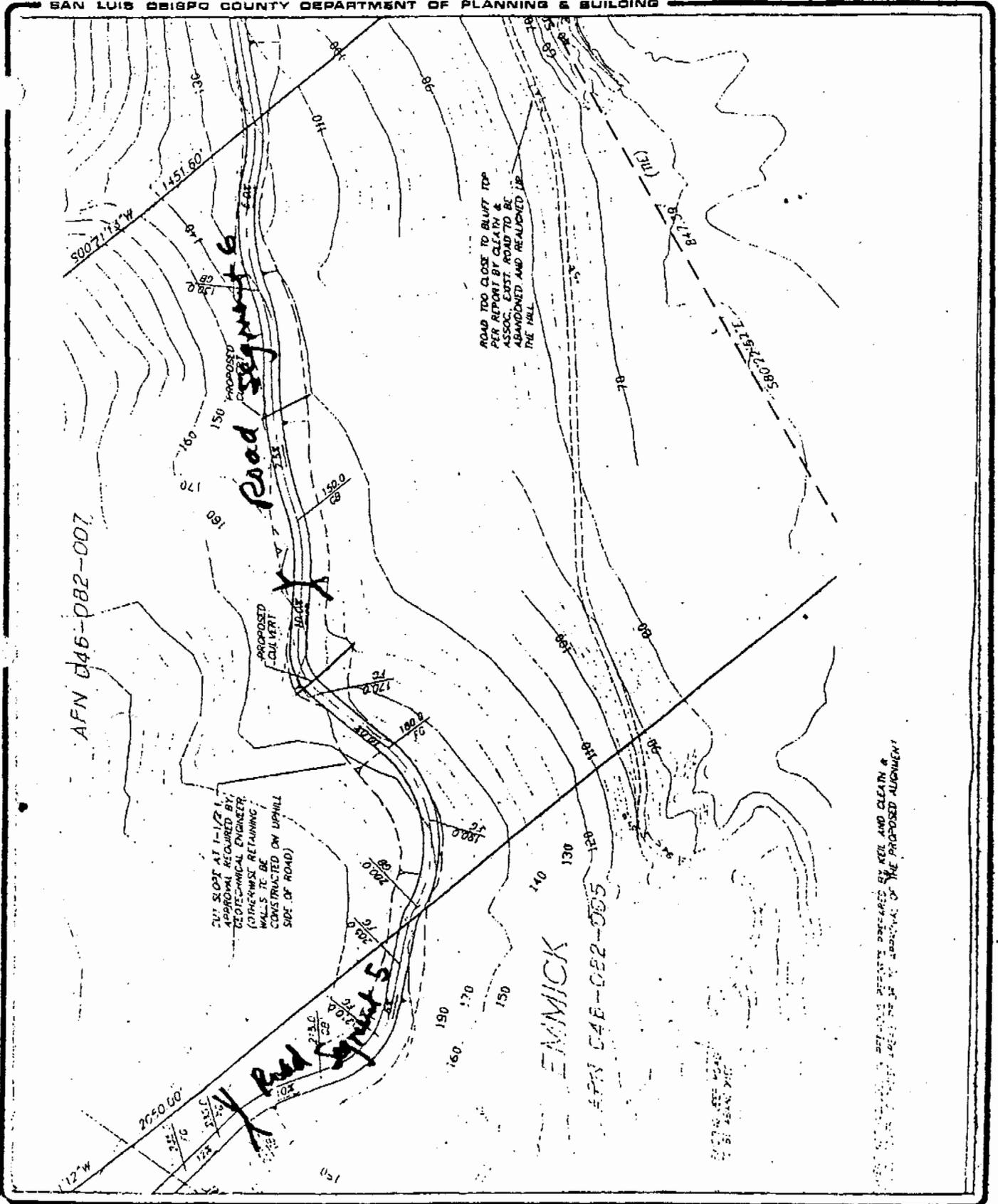
Access Road



PROJECT: Schneider
 (D980010P/ D980279V) **Exhibit 2**
 (7 of 9)



EXHIBIT: Access Road



THIS PLAN SHEET PREPARED BY K&L AND CLEIN & ASSOCIATES, INC. FOR THE ADMINISTRATION OF THE PROPOSED ALIGNMENT

PROJECT

Schneider
(D980010P/ D980279V)



EXHIBIT

Access Road

RECEIVED

MAR 24 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

February 29, 2000

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-SLO-00-139
APPEAL PERIOD 3/27-4/7/2000

Applicant:

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: February 24, 2000

SUBJECT: Minor Use Permit/Coastal Development Permit and Variance D980279V/D980010P

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced applications were approved on the above-referenced date by the following hearing body:

x San Luis Obispo County Planning Commission

A copy of the findings and conditions are being sent to you, along with the Resolution of approval.

This action is appealable to the Board of Supervisors within 14 days of this action. If there are Coastal grounds for the appeal there will be no fee. If an appeal is filed with non coastal issues there is a fee of \$474. This action may also be appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county is required prior to appealing the matter to the California Coastal Commission. The appeal to the Board of Supervisors must be made to the Planning Commission Secretary, Department of Planning and Building, and the appeal to the California Coastal Commission must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (408) 427-4863 for further information on appeal procedures. If you have questions regarding your project, please contact your planner at (805) 781-5600.

Sincerely,

DIANE R. TINGLE, SECRETARY
COUNTY PLANNING COMMISSION

PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Thursday, February 24, 2000

PRESENT: Commissioners Cynthia Boche, Wayne Cooper, Cliff Smith, Chairman Doreen Liberto-Blanc

ABSENT: Commissioner Diane Hull

RESOLUTION NO. 2000-19
RESOLUTION RELATIVE TO THE GRANTING
OF A MINOR USE PERMIT/COASTAL DEVELOPMENT PERMIT

WHEREAS, The County Planning Commission of the County of San Luis Obispo, State of California, did, on the 24th day of February, 2000, grant a Minor Use Permit to DENNIS SCHNEIDER to allow construction of a single family residence and a .125 mile access road in the Agriculture Land Use Category. The property is located in the county on the west side of Highway 1, approximately one mile north of Villa Creek Road, north of the community of Cayucos, APN: 046-082-008, in the Estero Planning Area. County File Number: D980279V/D980010P.

WHEREAS, The Planning Commission, after considering the facts relating to such application, approves this Permit subject to the Findings listed in Exhibit A.

WHEREAS, The Planning Commission, after considering the facts relating to said application, approves this permit subject to the Conditions listed in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 24th day of February, 2000, does hereby grant the aforesaid Permit No. D980279V/D980010P.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six months (6) or conditions have not been complied with, such Permit approval shall become void.

On motion of Commissioner Liberto-Blanck, seconded by Commissioner Boche, and on the following roll call vote, to-wit:

AYES: Commissioners Cooper, Smith, Boche, Chairman Liberto-Blanck

NOES: None

ABSENT: Commissioner Hull

the foregoing resolution is hereby adopted.

/s/ Doreen Liberto-Blanck
Chairman of the Planning Commission

ATTEST:

/s/ Diane Tingle
Secretary County Planning Commission

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PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Thursday, February 24, 2000

PRESENT: Commissioners Cynthia Boche, Wayne Cooper, Cliff Smith, Chairman Doreen Liberto-Blanck

ABSENT: Commissioner Diane Hull

RESOLUTION NO. 2000-20
RESOLUTION RELATIVE TO THE APPROVAL OF A
VARIANCE

WHEREAS, The County Planning Commission of the County of San Luis Obispo, State of California, did on the 24th day of February, 2000, grant a Variance to DENNIS SCHNEIDER to allow construction of a single family residence and a .125 mile access road in the Agriculture Land Use Category. The property is located in the county on the west side of Highway 1, approximately one mile north of Villa Creek Road, north of the community of Cayucos, APN: 046-082-008, in the Estero Planning Area. County File Number: D980279V/D980010P.

WHEREAS, The Planning Commission, after considering the facts relating to such application, approves this Permit subject to the Findings listed in Exhibit A.

WHEREAS, The Planning Commission, after considering the facts relating to said application, approves this permit subject to the Conditions listed in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 24th day of February 2000, does hereby grant the aforesaid Permit No. D980279V/D980010P.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the County Ordinance.

If the use authorized by this Permit, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six months (6) or conditions have not been complied with, such this Permit shall become void.

On motion of Commissioner Liberto-Blanck, seconded by Commissioner Boche, and on the following roll call vote, to wit:

AYES: Commissioners Cooper, Smith, Boche, Chairman Liberto-Blanck

NOES: None

ABSENT: Commissioner Hull

the foregoing resolution is hereby adopted.

/s/ Doreen Liberto-Blanck
Chairman of the Planning Commission

ATTEST:

/s/ Diane Tingle
Secretary Planning Commission

EXHIBIT A
Findings - D980010P/ D980279V

- A. As conditioned the proposed project is consistent with the Local Coastal Program and the Land Use Element of the general plan.
- B. As conditioned, the project or use satisfies all applicable provisions of Title 23 of the San Luis Obispo County Code.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in this particular case, be detrimental to the health, safety or welfare of the general working public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project is subject to Ordinance and Building Code requirements designed to address health, safety, and welfare concerns.
- D. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development.
- E. The project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project..
- F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because a lateral access dedication is required with this project and a vertical access dedication at this particular site is not necessary because existing cattle grazing operations would be adversely affected by increased public access into the agriculture operation and in addition there has been a vertical access required along with approval of Ormsby property westerly of this project..
- G. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which the project is located because alternative locations for the proposed road improvements were reviewed and all options would result in construction on slopes in excess of 30%.
- H. There are special circumstances applicable to the property, related only to size, shape, topography, location, or surrounding, and because of these circumstances, the strict application of Title 23 would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category because the project is located on a site that is almost entirely on slopes in excess of 30 percent and the site would not accommodate development without disturbing steep slopes.

- I. The variance does not authorize a use that is not otherwise authorized in the land use category because roads serving single family dwellings are allowable uses.
- J. The variance is consistent with the provisions of the Local Coastal Program because the project, as designed, incorporates adequate measures to ensure to control erosion and sedimentation.
- K. The granting of the application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

EXHIBIT B
Conditions of Approval (D980010P/D980279V)

Approved Development

1. This approval authorizes the applicant to construct an approximately 10,000 square foot single family dwelling with an attached garage and 2,500 square foot barn. The proposed access road is approximately 1.25 miles in length and will result in the disturbance of an approximately 179,000 square foot area. The road will result in disturbance of slopes greater than 30 percent. A minimum 100 foot bluff top setback shall be maintained for all improvements. **Maximum height of any structure is 22 feet about average natural grade.**

Site Development

2. Site development shall be consistent with the approved site plan, floor plans and elevations.

Archaeological/Historic

3. **At the time of application for construction permits for the residence and access road, the applicant shall submit a plan, for review and approval by the office of the Environmental Coordinator, for historic resource protection of the Low Wong house in the southeast corner of the property and for the abandoned ranch house situated off of the access road. The plan shall include establishment of an area of restricted access to the historic resources marked by fencing/flagging. No workers or construction activities will be permitted within the area of restricted access.**
4. **Prior to issuance of construction permits, a plan for monitoring of all construction activities by a qualified archaeologist shall be submitted for review by the Environmental Coordinator. In the event archaeological resources are unearthed or discovered during any construction activities, the following standards apply:**
 - a. **construction activities shall cease, and the Environmental Coordinator and Planning Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may be accomplished in accordance with state and federal law.**
 - b. **In the event archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department and Environmental Coordinator so that proper disposition may be accomplished.**

Biological/Botanical

5. **Prior to application for construction permits for the access road, the applicant shall retain a qualified botanist to carry out botanical resource mitigation measures including:**
 - a. **Seed collection of *Calystegia subacaulis* ssp. *episcopalis* (Cambria morning glory)**

- for dispersal in conjunction with the revegetation plan.
- b. Collection and transplant to a suitable location of specimens of *Dudleya bochmaniae* (Blochman's dudleya) found within limits of construction disturbance.
 - c. Direct the placement of construction fencing around sensitive plant species areas of occurrence.
 - d. Monitoring of road construction in the area of rare plants. Monitor shall work with construction personnel in the field to reduce/avoid impacts to rare plant populations.
6. **Prior to issuance of construction permits for the access road**, the applicant shall submit a letter verifying that seed collection, placement of fencing and transplanting have been satisfactorily completed.
7. **Prior to issuance of construction permits**, the applicant shall submit a "*Revegetation and Enhancement Plan*" for review and approval of the Planning & Building Department. The plan shall be prepared by a qualified landscape professional in conjunction with a qualified botanist and shall include:
- a. only appropriate non-invasive native species from native on-site parent stock where possible;
 - b. schedule for all planting activities;
 - c. maintenance and irrigation schedule for the revegetated areas (if necessary);
 - d. performance criteria;
 - e. short term and long term erosion control planting measures
 - f. include provisions for the revegetation of all abandoned access routes.
8. **Prior to final inspection**, the applicant shall submit verification of implementation of the approved revegetation plan.

Geologic

9. **At the time of application for construction permits**, the applicant shall submit proof of review of erosion/hillside stabilization and drainage plans by a certified engineering geologist. The plans shall specifically address areas of past failures as identified in the geologic analysis (Cleath; 6/19/1998), and include a drainage plan for runoff from all impervious surfaces addressing the issues unique to bluff top development. A geotechnical engineer must be retained for the issues identified in the Cleath study and for leach field design and placement and plans must be included with the submittal.
10. **Prior to final inspection**, the applicant shall submit evidence of inspection of improvements by a certified engineering geologist.

Drainage Impacts

11. **Prior to any site disturbance or issuance of grading permits or building permits**, the applicant shall submit a Sedimentation and Erosion Control Plan, prepared and signed by a

Registered Civil Engineer, that addresses both temporary and long-term sedimentation and erosion control measures. The plan shall include but not be limited to the measures identified by the Resource Conservation District.

12. All grading activity shall be conducted to prevent damaging effects of erosion, sediment production and dust on the site and on adjoining properties.
13. **Prior to occupancy or final inspection, whichever occurs first**, the Registered Civil Engineer shall verify that the recommendations of the Drainage Plan and the Sedimentation and Erosion Control Plan have been incorporated into the final design and construction. This verification shall be submitted in writing to the Department of Planning and Building for review and approval. If required by the County Engineer, the applicant shall execute a plan check and inspection agreement with the County, so the drainage, sedimentation and erosion control facilities can be inspected and approved before a certificate of occupancy is issued.

Air Quality

14. **During construction/ground disturbing activities**, the applicant shall implement the following particulate (dust) control measures. These measures shall be shown on the grading and building plans.
 - a. Reduce the amount of disturbed area where possible
 - b. Use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency will be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible.
 - c. All dirt stock pile areas should be sprayed daily as needed.
 - d. Permanent dust control measures identified in the approved project revegetation and landscape plans shall be implemented as soon as possible following completion of any soil disturbing activities.
 - e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating native grass seed and watered until vegetation is established.
 - f. All disturbed soil areas not subject to revegetation must be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by APCD.
 - g. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
 - h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.
 - i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114.

Aesthetics

15. **At the time of application for construction permits for the residence, the applicant shall submit a plan showing placement of solid waste storage at the Highway 1, access road intersection, demonstrating sufficient visual screening to reduce visual impact to travelers on Highway 1. The facility designed shall store waste in a shelter that eliminates escape due to wind conditions.**
16. **To reduce the visual impacts associated with the proposed road improvements, areas of the project will limit the amount of cut slopes to the minimum necessary to construct the roadway.**
17. **At the time of application for construction permits, the applicant shall clearly delineate the vertical height of all cut and fill slopes on the project plans and the border of cut slopes and fills rounded off to a minimum radius of five feet. No cut or fill area shall exceed 20 feet in vertical height above or below the existing ground surface (which may require the use of retaining walls to accomplish).**
18. **Prior to issuance of construction permits for the residence, the applicant shall submit a colorboard for the review and approval of the Planning Director. The colorboard shall indicate exterior colors and finishes that avoids light colors (e.g. white stucco) or highly reflective materials and utilizes dark earth tones to reduce visibility of the structure from Highway 1 and the ocean.**
19. **The utilities serving the property shall be installed underground rather than by the use of poles and overhead lines. This requirement applies to electrical service and telecommunications (including cable TV, telephone and data transmission) connections between utility company distribution lines and all proposed structures on the site.**

Landscaping

20. **Prior to the issuance of any construction/ grading permits, submit detailed landscaping plans for all disturbed slopes to the Department of Planning and Building for review and approval. Plans shall include location, species and container size of all proposed plant materials and method of irrigation. All proposed plant material shall be of a drought tolerant variety. The plans shall include the following:**
 - a. **vegetation necessary to reduce the visual impacts associated with the proposed road improvements**
 - b. **utilization of native vegetation**
 - c. **include plants specified in the Revegetation and Enhancement Plan**
21. **Prior to final building inspection, landscaping shall be in accordance with the approved landscaping plan and shall be installed or bonded. If bonded for, landscaping shall be installed within 60 days after final building inspection and thereafter maintained in a viable condition on a continuing basis.**

22. The applicant agrees to have the landscaping maintained for no less than three years by a qualified individual (approved by the county) until the plants are successfully reestablished. At a minimum, this shall include annual monitoring reports for the first three years after planting and thereafter annually until it is determined to be successfully established (80% success rate). The applicant agrees to secure a bond with the county to cover the costs of monitoring and maintaining the site for the minimum three year period.

Agriculture

23. The applicant shall disclose to prospective buyers, the consequences of existing and potential intensive agricultural operations on adjacent parcels including, but not limited to: dust, noise, odors and agricultural chemicals and the county's Right to Farm ordinances currently in effect at the time said deed is recorded.
24. During construction activity, the applicant shall make every effort to move cattle temporarily to a pasture away from the construction area. If this is not possible then the applicant shall provide fencing or some other means of keeping animals away from hazardous areas at the construction site.

Fire Safety Plan

25. Prior to final inspection, the applicant shall provide proof of compliance with an approved safety plan from the CDF.

Public Access

26. Prior to issuance of a construction permit, the applicant shall execute and record an offer of dedication for public access along the shoreline. The offer of dedication shall provide for lateral access of twenty-five (25) feet of dry sandy beach along the shore to be available at all times during the year, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than twenty-five (25) feet.

Recorded Easements

27. Prior to final inspection, the applicant shall provide copies of the recorded easements covering the proposed road alignment. The easement shall cover all road improvements from Highway One to the applicant's property.

Other Permits

28. Prior to issuance of a construction permit, the applicant understands that the appropriate permits, as applicable, will need to be obtained from one or more of the following state and/or federal agencies: California Department of Fish and Game, U.S. Fish & Wildlife Service, U.S Army Corps of Engineers, California Regional Water Quality Control Board.



8.1

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY
CHIEF BUILDING OFFICIAL

PATRICK BRUN
ADMINISTRATIVE SERVICE OFFICER

DATE: FEBRUARY 24, 2000

TO: PLANNING COMMISSION

FROM: LAUREN LAJOIE, DEVELOPMENT REVIEW SECTION
STEVE MCMASTERS, ENVIRONMENTAL SPECIALIST

SUBJECT: SCHNEIDER MINOR USER PERMIT/ COASTAL DEVELOPMENT
PERMIT (D980010P)/ VARIANCE (D980279V)

Attachments: 1. Graphics
2. Correspondence
3. Referral Responses
4. Negative Declaration
5. Botanical Survey
6. Geologic Study

SUMMARY

The applicant is requesting a coastal development permit to construct a single family residence, barn and access road. The proposed access road will be approximately 1.25 mile access road and will result in the disturbance of an approximately 179,000 square foot area. The project requires a variance to authorize the construction of the access road on slopes greater than 30 percent. The project site is located on the west side of Highway 1 approximately 6 miles north of the community of Cayucos. Supervisorial District 2.

RECOMMENDATION

Adopt the resolution approving this minor use permit/ coastal development/ variance permit based on the findings listed in Exhibit A and conditions listed in Exhibit B and approve the Negative Declaration in accordance with the applicable provisions of the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

PROJECT DESCRIPTION

Location: On the west side of Highway 1, approximately one mile north of Villa Creek Road (residence site is approximately 1/2 mile south of China

CCC Exhibit 3

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Schneider (D980010P/ D980279V)
Planning Commission Hearing

January 27, 2000
Page 2

Harbor), north of the community of Cayucos. Estero Planning Area.
APN 046-082-008.

General Plan: Agriculture/Local Coastal Plan/Coastal Appealable Zone/Sensitive Resource Area

Area Standards: **AREAWIDE Site design and Building Construction 6. Site Selection.** Site selection for new development shall be locations not visible from Highway 1. **SENSITIVE RESOURCE AREA Location Criteria - Sloping Sites.** New building sites and driveways are limited to locations where site slopes are less than 30%.

ENVIRONMENTAL SETTING

Existing Uses and Improvements: Undeveloped

Surrounding Zoning and Uses:

- North: Agriculture
- South: Agriculture
- East: Agriculture
- West: Agriculture

Parcel Size: Approximately 40 acres

Topography: Steeply sloping with gently sloping marine terrace

Vegetation: Grasses, riparian, coastal scrub

Water: On-site wells

Sewage Disposal: On-site septic systems

Fire Protection: CDF

Acceptance Date: May 21, 1999

ENVIRONMENTAL DETERMINATION

During the Initial Study process several potential significant impact areas were identified. These included impacts to: Geologic/Slope Stability, Erosion, Biological Resources, Air Quality, Aesthetics and Archaeological/Historic Resources. The impacts that were identified were

determined to be either insignificant, or were mitigated to a point of insignificance. For more detailed analysis refer to the proposed Negative Declaration (Attachment 4).

Geologic/Slope Stability

The proposed project raises several issues in regards to geologic hazards and slope stability. A geologic study (Cleath & Associates; 6/19/98) was prepared that examined the proposed project. The two primary issues of concern are the bluff retreat rate and the stability of the access road.

The proposed home site is located on a marine terrace. The geologist estimated that the annual bluff top retreat rate is approximately 4 inches/year. This equates to a setback of 25 feet to satisfy a minimum of a 75 year retreat. The residence is proposed approximately 100 feet from the bluff edge. With control of surface drainage and the project proposed setback well beyond the minimum, concerns regarding bluff top retreat have been adequately addressed.

The proposed access road follows an existing paved road for about 800 feet west of Highway 1. The access road then follows, in part, the historic agricultural road up the steep slopes of the ridge and down the western side of the ridge to the marine terrace. The road traverses two existing landslides, and proposes deviating from the current agricultural road alignment in order to avoid impacts to botanical resources, increase the setback from the coastal bluff, as well as maintain a reduced grade for emergency vehicle access. In the areas of the landslide, the geologist has recommended geotechnical engineering to stabilize these areas. The issues of steep grades and proximity to bluff top have been addressed with revisions to the road alignment.

Erosion

A geologic analysis (Cleath & Associates; 6/19/98) of the project identified an increased chance of erosion from the grading on steep slopes. Due to sever erodability of the of the project site the Resource Conservation District (RED) was contacted to review the proposal. The RED prepared a report (1/24/2000) expressing concerns with the "in-sloped" road being proposed, which if utilized, will concentrate drainage and exacerbate erosion. Also, some cut and fill slopes are over 20 feet in height, exposing large areas of soils to potential severe erosion. The RED recommended that the road be redesigned to "out-slope" and a separate erosion control plan be prepared. Careful attention to engineering of the road, drainage control and appropriate sedimentation and erosion control treatment of the disturbed area should adequately address the increased chance of erosion that is raised by the project.

Biological Resources

A common issue with bluff top development, especially in the rural areas of the north coast, is potential disturbance, both short and long term, of marine mammals. Some marine mammals, especially harbor seals, are easily disturbed by human activities. The mitigation that has been

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advocated in past by the National Marine Fisheries Service to reduce the impact to less tolerant species, is to keep new development out of the "line of sight" of any haul out locations used by marine mammals. This reduces that amount of noise, light and movement that marine mammals may be subjected to, and reduces any impacts. The proposed residence is set back over 100 feet from the bluff edge, and the bluff itself ranges in height from 38 to 50 feet. The combination of these factors results in a situation that would make it impossible for any marine mammal haul out spots on the beach area to be within the "line of sight" of the homesite. This reduces any potential impacts to marine mammals as a result of the project to a level of insignificance.

The access road and driveway for the residence crosses several vegetation communities. Riparian vegetation is located at the access road's location at Highway 1, where the road crosses Ellylsly Creek. There is an existing culvert crossing, but the crossing appears to have been undermined in at least one location, and will probably require repairs. The repair work may affect the riparian vegetation associated with the Ellylsly Creek. Mitigations have been required that minimize work in sensitive habitat areas, and would require revegetation. The applicant may also be required to obtain permits from the California Department of Fish & Game and Army Corps of Engineers for any proposed work in or near the creek.

A botanical survey was conducted for the proposed project (Keil; 6/4/98, 7/21/99). The access road will also affect two sensitive plant species: Cambria morning glory (*Calystegia subacaulis* ssp. *episcopalis*), and Blochman's dudleya (*Dudleya blochmaniae*). These species are located in the grassland habitat, associated in some areas with rock outcrops. The species are not listed as endangered on the state or federal lists, but are listed as rare (List: 1B) by the California Native Plant Society (CNPS). This means that the species are endangered in a portion of their ranges. Within the project area, the plants appear to be locally abundant. The proposed access road will affect portions of the populations of both of these sensitive plant species. Mitigations have been proposed and agreed to by the applicant to address these impacts.

Air Quality

Due to the length of the access road, there is the potential to generate significant dust during construction. The APCD has standard dust control procedures to reduce the impact of the dust that may be generated from construction activities. The applicant has agreed to incorporate the appropriate measures necessary to reduce the potential impact to a level of significance.

Aesthetics

The proposed residence will not be visible from any public roadway. The proposed access road will be visible from Highway 1, however with appropriate revegetation, the view of the road will be consistent with other dirt/redrock access roads that exist currently on the property as well as the rest of the immediate agricultural area. By limiting the amount of cut and fill slopes to 20 feet, requiring an extensive revegetation plan and requiring the applicant to utilize dark colors on

the proposed buildings, the development of the residence and access road will not result in a significant impact.

At the time the proposed residence is constructed, however, it may be necessary to place a solid waste container (garbage) near the access road intersection with Highway 1. The applicant has agreed to design and construct a facility that will minimize the visual intrusion to the view from Highway 1, as well as protect the waste from the wind disturbance.

Archaeology

An archaeological surface survey (Singer; 6/26/98) was conducted for the residence and access road. No evidence of prehistoric cultural resources were noted during the survey. However, potential "historic" resources were noted that could potentially be affected by the project.

An approximately 700 sq. ft. wooden structure exists on the coastal bluff on the property immediately to the south of the subject property. In fact, a corner of the building may intrude onto the subject property. The building is estimated to be approximately 80 years old, and is associated with Low Wong, a Chinese seaweed farmer. The seaweed farming industry played an important role in the history of the Chinese community on the north coast. The structure is an important due to it's association with an industry and group that played a significant role in the history and development of the region. Since the structure (or at least the majority of it) is not on the subject property, it was not evaluated as to it's interior contents. The condition or the structure, considering its age and length of time without regular maintenance, is fair. This may be due in part to its isolated location, eliminating the likelihood of vandalism as a contributing factor to its deterioration.

The applicant has agreed to mitigate the potential impacts to the structure by preparing a historic resource protection plan. The plan will include exclusion fencing, limitations on access, and procedures for discovery during construction of any resources that may be associated with the historic resource. These measures are sufficient to reduce the impact that may occur as a result of the project to a level of insignificance.

In summary, the Initial Study identified potential impacts the could occur as a result of the project. The applicant has agreed to mitigation measures that successfully reduce the impacts to a level of insignificance. It is appropriate that a Negative Declaration be issued for the project.

ORDINANCE COMPLIANCE

Planning Area Standards (PAS)

Arewide standard 6 states that primary site selection for new development shall be in locations not visible from Highway 1. New development shall be located so that no portion of a structure

8-16

extends above the highest horizon line of ridgelines seen from Highway 1. Development proposals for sites with varied terrain are to include design provisions for concentrating developments on moderate slopes, retaining steeper slopes visible from public roads undeveloped. The applicant is proposing to construct the single family dwelling on the marine terrace, which is the flattest portion of the property and as conditioned will not be visible from Highway One or the community of Cayucos. The proposed access road to serve the dwelling is proposed on steep hillsides and will require retaining walls and extensive revegetation on reduce the visibility of the road from public viewsheds. The project has been conditioned to reduce the potential; visual impacts associated with the project.

The entire project site is located within a sensitive resource area (SRA). North coast shoreline SRA designation is due to the fact that the entire shoreline is a valuable natural resource which must be protected from excessive and unsightly development. Development should be concentrated in the least sensitive portion of the properties and native vegetation is to be retained as much as possible. In addition, development especially on bluff top, shall be designed and situated to minimize adverse impacts on marine resources.

Coastal Zone Land Use Ordinance (CZLUO)

The CZLUO establishes grading standards for the siting of new development. The ordinance requires that grading for the purpose of creating a site for a structure or other development shall be limited to slopes less than 20 percent. If a residence cannot be reasonably sited on less than 20 percent slope, then consideration shall be given to the specific characteristics of the site and surrounding area including: the proximity of nearby streams or wetlands, erosion potential, slope stability, amount of grading necessary, neighborhood drainage characteristics, and measures proposed by the applicant to reduce potential erosion and sedimentation.

OTHER AGENCY INVOLVEMENT

Letters were received from the California Coastal Commission and the California Regional Water Quality Control Board regarding concerns associated with the proposed project.

California Regional Water Quality Control Board: RWCQB expressed concerns involving the proposed septic system which will be located on slopes exceeding 30%. They recommend septic systems not be used on slopes which exceed 20% and prohibit disposal on slopes exceeding 30%. They also stated that projects disturbing more than five acres of land during construction are regulated under the Statewide NPDES General Permit for discharge of storm water associated with construction activity.

The California Coastal Commission: the Coastal Commission indicated that the project should be designed to protect the views to and along the ocean and scenic coastal areas, in addition to public roadways. Design of the project should also blend with the rural character of the area.

**Schneider (D980010P/D980279V)
Planning Commission Hearing**

**February 24, 2000
Page 7**

New development should be screened with native vegetation. Measures should be taken to reduce light and glare impacts. Other concerns include bluff top setbacks, soil classification, public access and surrounding land uses. The Coastal Commission recommends comprehensive mapping that clearly delineates the topography of the area. They also recommend a condition that the applicant record a "Right to Farm" statement on the deed.

North Coast Advisory Council - The NCAC send a letter in November 1999 expressing concerns with this project. To address their concerns the applicant took several NCAC representatives to the property to familiarize them with the project site. The NCAC has scheduled this item to be heard again at their February 14, 2000 meeting. Staff will update the Commission on the outcome of the discussion.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
HEARING IMPAIRED: (415) 904-5200



APR 04 2000

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Sara Wan and Christina Desser
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105 (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Construction of a 10,000 square foot single family residence and 2,500 square foot barn on a coastal blufftop lot with approximately 1.25 mile access road (including slopes in excess of 30%), resulting in a total disturbance area of approximately 179,000 square feet.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

West side of Highway 1, approximately one mile north of Villa Creek Road (residence site is approximately 1/2 mile south of China Harbor), north of the community of Cayucos, San Luis Obispo County (APN 046-082-008).

4. Description of decision being appealed:

- a. Approval; no special conditions:
b. Approval with special conditions: X
c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-00-040
DATE FILED: 4/7/2000
DISTRICT: Central Coast District

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

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

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other: _____

6. Date of local government's decision: February 24, 2000

7. Local government's file number: D980279V/D980010P

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Dennis Schneider
8758 La Jolla Scenic Drive North
La Jolla, CA 92037

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

(1) Bill Martony
P.O. Box 294
Cayucos, CA 93430

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section which continues on the next page.

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

(see attached)

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

SECTION V. Certification

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

[Signature]
Signature of Appellant(s) or Authorized Agent

Date April 3, 2000

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

Section VI. Agent Authorization

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

Signature of Appellant(s) CCC Exhibit 4
Date (page 3 of 6 pages)

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

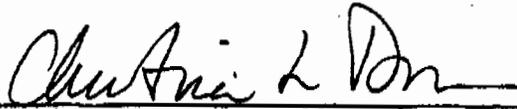
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(see attached)

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 4/3/2000

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

CCC Exhibit 4
(page 4 of 6 pages)

CALIFORNIA COASTAL COMMISSION

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

**Reasons for Appeal: San Luis Obispo County Coastal Development Permit D980010P/D980279V (Schneider)**

The proposed construction of an approximately 10,000 square foot single family dwelling with an attached garage, 2,500 square foot barn and proposed 1.25 mile access road, requiring a variance for grading on slopes in excess of 30%, is inconsistent with the policies and ordinances of the San Luis Obispo County Local Coastal Program, as detailed below.

1. San Luis Obispo County LCP Environmentally Sensitive Habitats Policies 1, 2, and 27, and Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.170 (d) prohibit new development proposed within or adjacent to locations of environmentally sensitive habitats from significantly disrupting the resource, and within an existing resource, allows only those uses dependent on such resources. In addition, Environmentally Sensitive Habitats Policies 28 and 33 require that native trees and plant cover, and vegetation which is rare or endangered, shall be protected against significant disruption of habitat value. The proposed access road crosses several vegetation communities, affecting riparian vegetation and at least two sensitive plant species. It is possible that an alternative roadway configuration would avoid disruption of these environmentally sensitive habitats.
2. San Luis Obispo County LCP Agriculture Policies 1, 3, and 4, and CZLUO Section 23.04.050(a) prohibit development on prime agricultural land and allow development on non-prime agricultural land only if it can be demonstrated that all agriculturally unsuitable land on the parcel has been developed, and that structures are sited to reduce negative impacts on adjacent agricultural uses. An analysis of the location of prime agricultural soils (defined by CZLUO Section 23.11.030) on the site was not submitted with the project proposal, and the location of the barn is not shown on project plans; therefore, it is unknown whether or not the proposed structures are located on prime agricultural soils and that development has been located in the area least suitable for agricultural production.
3. San Luis Obispo County LCP Public Works Policy 1 and CZLUO Section 23.04.430 require new development to demonstrate that adequate public or private service capacities are available to serve the proposed development. The proposed development is located outside the Cayucos Urban Services Line and evidence has not been provided to conclude that adequate water services currently exist on-site.
4. San Luis Obispo County LCP Visual and Scenic Resources Policies 1, 2, and 4, CZLUO Section 23.07.164(e), and Planning Area Standards for Sensitive Resource Areas require new development to be sited to protect unique and attractive features of the landscape, views to and along the ocean and scenic areas, and minimize its visibility from public view corridors. In addition Visual and Scenic Resources Policy 5 and CZLUO Section 23.05.034 require grading, major vegetation removal and landform alterations within public view corridors to be minimized. The proposed development (located within the Sensitive Resources Area combining designation) includes a 1.25 mile access road leading to a large residence on a coastal bluff, and a barn at an undisclosed location. The siting and design of this 10,000 square foot house and related structures poses significant adverse impacts to the rural open space character of this area, especially as viewed from the ocean. Even if the residence were sited to minimize visibility from public view corridors, it is not known whether or not the proposed barn will have adverse impacts on visual resources, and it is

evident that the access road will be seen from public viewing areas and will require extensive grading and landform alteration. It is possible that an alternative roadway configuration and structural siting would avoid or reduce adverse impacts to visual and scenic resources in the area.

5. San Luis Obispo County LCP Hazards Policy 2 prohibits new development from creating or contributing to erosion or geological instability. The access road will require cutting and filling of the hillside, retaining walls and extensive revegetation, and the proposed route traverses at least two areas subject to landslides. As such, alternative roadway routes and development sites should be considered that would not require such extensive landform alteration, increasing the chances for erosion and contributing to the geologic instability of the hillsides.
6. The project does not conform to CZLUO Section 23.05.030(e) because the extent of the proposed grading and associated site disturbance is excessive when compared to the use proposed (residential); has the potential to result in erosion and increase the potential for hazards to life or property (see number 5, above); and, will potentially have substantial adverse long-term visual effects (see number 4, above). The proposed roadway will have a width of 18 feet, which appears to be a larger roadway than what is required to accommodate this residential use. As such, the width and/or location of the access road should be modified to achieve conformance with this LCP standard.
7. The variance allowing grading on slopes greater than 30% does not conform to CZLUO Section 23.01.045d, which limits the approval of variances to situations where the variance does not constitute a grant of special privileges inconsistent with the land use category in which the property is situated. In this case, the property is designated for agricultural production; however, the variance is intended to allow for residential development, and is not necessary to allow for agricultural use of the property. In addition, there may be alternative locations for the proposed development that would minimize the need for grading on steep slopes. Thus, approval of the variance constitutes a grant of special privileges that are inconsistent with the site's agricultural designation.
8. San Luis Obispo County LCP Shoreline Access Policy 2 encourages new development to provide public access from the nearest public roadway to the shoreline and along the coast. A condition of approval requires the applicant to make an offer to dedicate a lateral accessway of twenty-five (25) feet of dry sandy beach along the shore, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than twenty-five (25) feet. However, given the topography of the area and the location of the mean high tide, the actual area available for public access may be very limited and/or impossible to traverse. As such, the dedicated lateral access may be inadequate in terms of fulfilling the objective of this policy, and alternative locations for the accessway may need to be considered.

Approximate Location of Residence

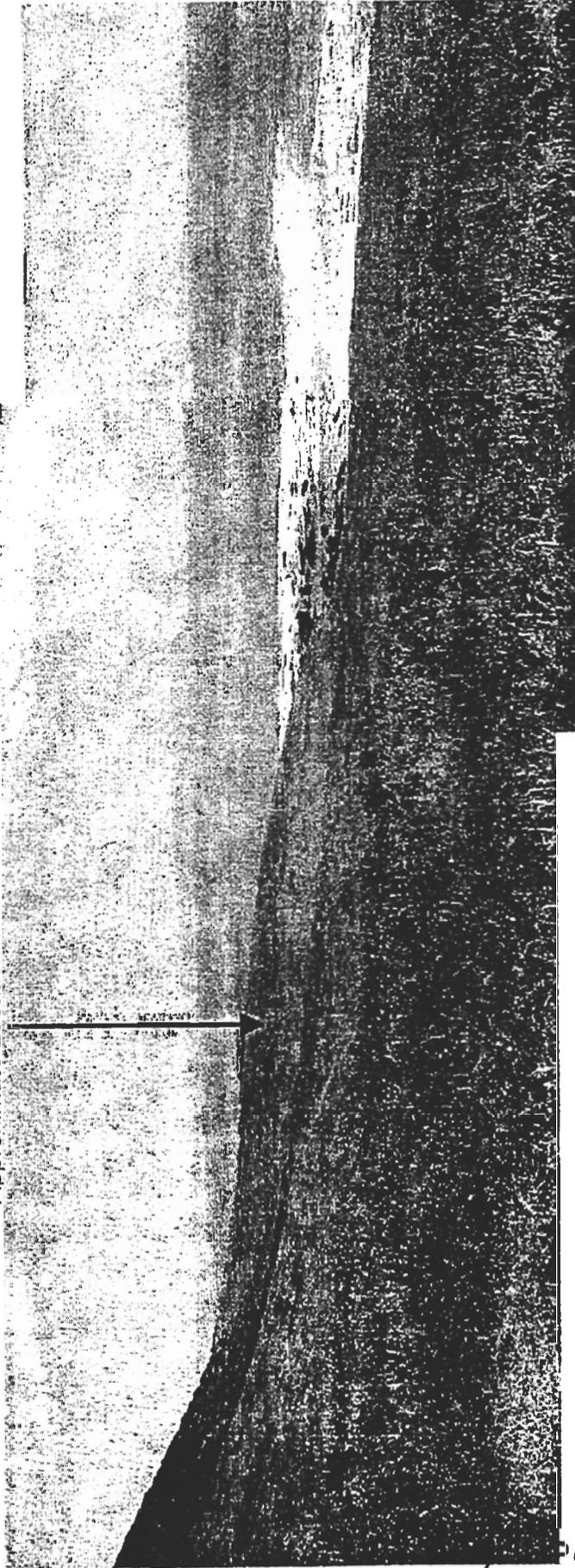
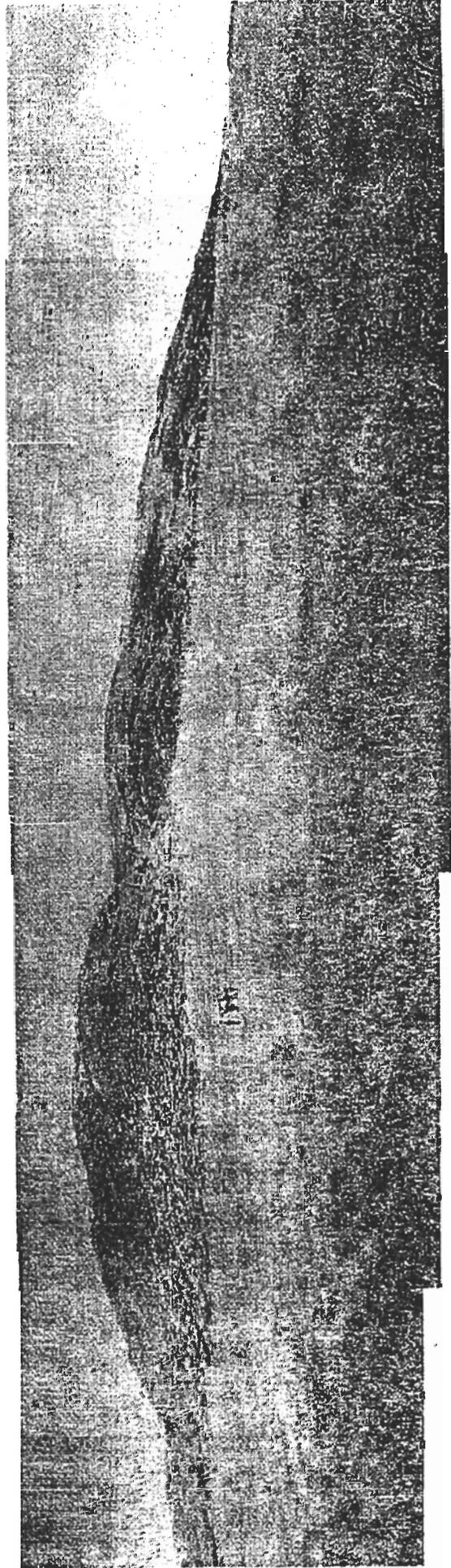
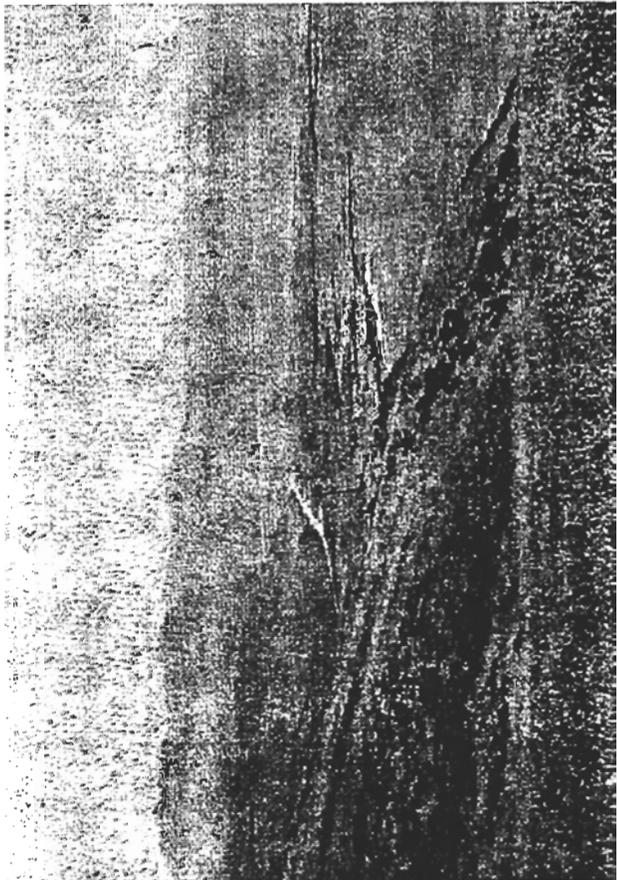


Exhibit 5
(1 of 3)

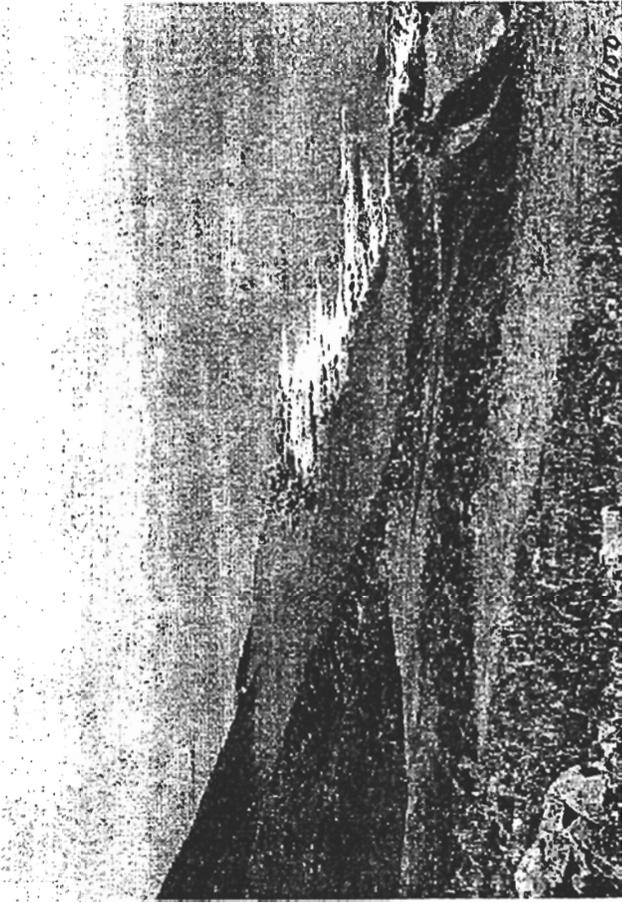
Schneider Property as viewed from Dallons' Property (looking southeast)



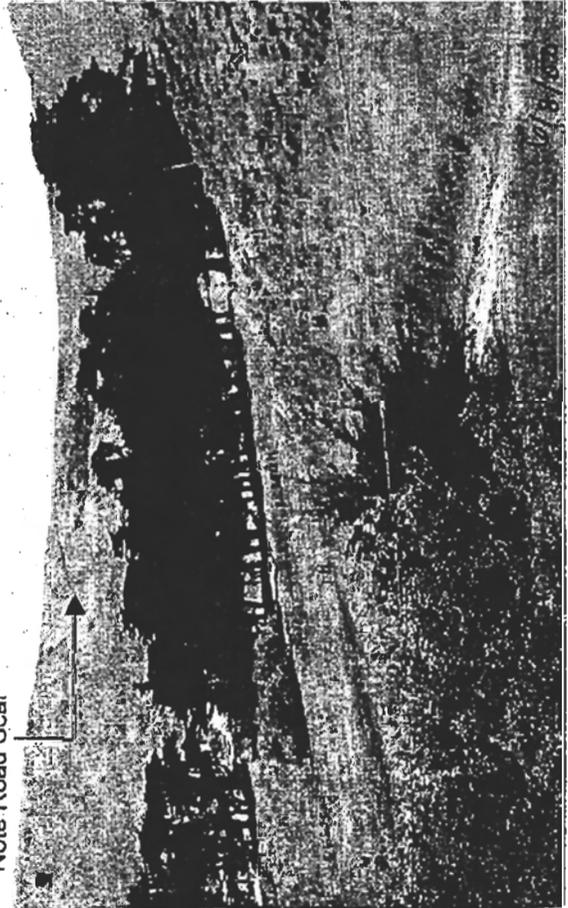
Schneider Property (looking north from near blufftop) -- People standing at approximate location of residence



Looking east towards Cayucos from Schneider Ridgeway

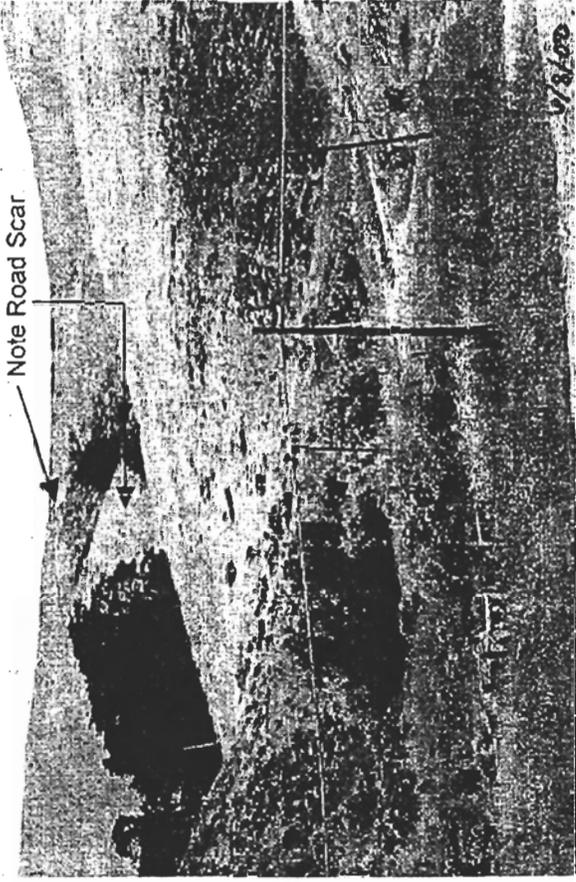


Schneider Property as viewed from Emmick Property



Note Road Scar

Existing Access Road as viewed from Highway 1



Note Road Scar

Existing Entrance & Access Road as viewed from Hwy 1



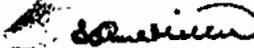
Approx.
Location
of HOME

VIEW FROM SEA WEST RANCH TO
PROPOSED HOMESITE

CCC Exhibit 5
(page 3 of 3 pages)

FILED
SAN LUIS OBISPO
SUPERIOR COURT

JAN 19 2007


DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

DENNIS C. SCHNEIDER,
Plaintiff and Appellant,

Case No.: CV 040488
PEREMPTORY WRIT

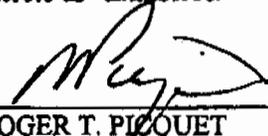
v.

CALIFORNIA COASTAL COMMISSION,
Defendant and Respondent.

This Court hereby orders that a peremptory writ shall issue commanding the California Coastal Commission to vacate its decision and rehear the matter consistent with the Court of Appeals opinion, Attached hereto as "Exhibit A."

///

DATED: January 18, 2007


ROGER T. PICQUET
Judge of the Superior Court

W:\COURT\PS\DL\LOCKS\JUDGES\PICQUET\CV040488SCHNEIDER v CACSTL COMM_PerempWrit.doc

CERTIFIED FOR PUBLICATION

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

RECEIVED
SAN LUIS OBISPO
SUPERIOR COURT

JUN 29 2006

1-16-07
ML

BY AL
DEPUTY CLERK

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

COURT OF APPEAL - SECOND DIST.

FILED

JUN 28 2006

JOSEPH A. LANE, Clerk
Deputy Clerk

JUN 29 2006

DENNIS C. SCHNEIDER,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL
COMMISSION,

Defendant and Respondent.

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

YEGAN, J.

We concur:

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO
Civil Division

CERTIFICATE OF MAILING

DENNIS SCHNEIDER VS. CAL COASTAL COMMISSION	CV040488
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Sanders, Gregory W.
Attorney for Plaintiff
NOSSAMAN, GUTHNER, KNOX, & ELLIOT, LLP
18101 Von Karman, Suite 1800
Irvine CA 92612 1047

Miramontes, Rosana
Attorney for Defendant
Deputy Attorney General State of CA
300 South Spring Street, Suite 1702
Los Angeles CA 90013

Under penalty of perjury, I hereby certify that I deposited in the United States mail, at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the foregoing addressed to each of the above
OR

If counsel has a pickup box in the Courthouse that a copy was placed in said pickup box this date.

WAYNE HALL, Court Executive Officer

by *Wayne Hall*, Deputy Dated: 1-19-07

RECEIVED
AUG 18 2006
CALIFORNIA
COASTAL COMMISSION

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication:

AUG 16 - 06

Location of communication:

MEETING AT MY OFFICE

(If communication was sent by mail or facsimile, indicate the means of transmission.)

COUNTY GOV. CENTER

Identity of person(s) initiating communication:

DENNIS SCHNEIDER

Identity of person(s) receiving communication:

KATCHO ACHADJIAN

Name or description of project:

SCHNEIDER PROPERTY/40ACRE COASTAL PARCEL
COASTAL DP - D980010P/D980279V

Description of content of communication:

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

SEE ATTACHED

HIST. OF PROJECT / LOCATION OF HOUSE IS Hwy 1, Cayucos
COURT RULING - Re loan case - legal findings

Project Notebook provided to KATCHO Achadjian.

AUG 16 - 06

Date

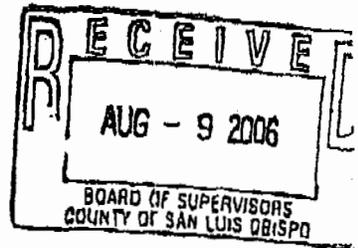


Signature of Commissioner

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.

Dennis & Sharon Schneider
581 Baywood Way
Los Osos, California 93402



August 7, 2006

Supervisor K. H. Katcho Achadjian
Board of Supervisors
1055 Monterey Street, Room D-430
San Luis Obispo, California 93408

HAND DELIVERED

Re: August 16, 2006 meeting with Dennis & Sharon Schneider

Dear Supervisor Achadjian,

The purpose of our request for a meeting with you is two fold. First, to explain the circumstances of our ongoing project appeal by the California Coastal Commission, and second, to request your assistance in presenting our position to individual Commission members and express to them our desire to arrive at a solution that complies with the spirit of the Coastal Act and respects the rights of an individual property owner to a legal and appropriate use of their land.

Our proposal for a single family home on our 40 acre coastal parcel was granted a minor use permit by the San Luis Obispo Planning Commission on February 29, 2000 after nearly two years of thorough analysis by Planning Department staff (2) [Encl tab #'s]. This County staff decision was appealed to the Coastal Commission by Commission members Wan and Desser (3). We responded to commission staff's multiple requests for information for over four years while never being advised of staff's opinions on the critical issues. We eventually requested a hearing in front of the Commission members on April 15, 2004 to bring the appeal to a resolution.

Twenty days prior to this hearing the Commission staff issued a report imposing 51 conditions for approval on our residential project (4). Two of the most important conditions specified a substantial reduction in size of our home, and moving the building site to a geologically unstable location on the property. Our pre hearing response to staff's report is detailed in our letter to the Commission dated April 9, 2004 (5). This letter documented the undisputed evidence in the record that did not support the staff's position (6, 7). Ultimately, the Commission chose to approve the staff report and its conditions (8). The principal basis for denial of our project was the visual impact of our home on views from the ocean. (It is noteworthy that our County approved building site cannot be seen from any public road or highway, public park, or private road or residence. Hence, the only

CCC Exhibit 7
(page 2 of 52 pages)

Dennis & Sharon Schneider
August 8, 2006
Page 2

remaining vantage point was a view from the ocean (1).) Four months later the Commission staff issued revised findings which imposed an additional project condition that denied us the right to physically protect our home from the documented unstable geology unique to the location of the project site that they had selected (9, 10).

We filed suit contesting that the Commission's ruling was not supported by the administrative record, the certified San Luis Obispo Local Coastal Plan, or the California Coastal Act itself. Superior Court Judge R. Piquet ruled in favor of the Coastal Commission on June 30, 2005. We appealed this decision to the California 2nd District Appellate Court. They ruled unanimously in our favor on June 28, 2006 and reversed Judge Piquet's decision. A copy of the ruling is attached (11). The Appellate Court's ruling is significant in two respects. One, it was a legal rebuke of the Commission's interpretation of the California Coastal Act regarding off shore views of the coastal lands that applies to all of the California coast. Second, the remedy imposed by the Appellate Court warned of the project specific danger to life and property that the Commission staff had created by their disregard for the unstable geological conditions in arbitrarily locating our home in harm's way (12).

In order to build our home we believe the conditions imposed by the Commission related to the location of the residence on the property and its size have to be modified. We would like the opportunity to discuss our project and these conditions with you. We are asking for your assistance in finding a solution and your aid in brokering a satisfactory agreement with the Commission members.

We realize that you have many demands placed upon your time and have provided the enclosed binder which contains the pertinent documents, some further information, and an indexed summary in the event you need clarification or additional information.

We look forward to meeting with you and we thank you in advance for the opportunity to discuss our problem and its hopeful resolution.

Very truly yours,



Dennis & Sharon Schneider

Encl.

CCC Exhibit 7
(page 3 of 52 pages)

CALIFORNIA COASTAL COMMISSION

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



June 11, 2007

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

Subject: *Coastal Development Permit Application No. A-3-SLO-00-040*

Dear Mr. Schneider:

Based on our recent telephone conversation, I understand that you will be out of the Country during the month of July, and that you would therefore like the hearing on the above referenced permit application to be scheduled for the Coastal Commission August 8 - 10 2007 meeting in San Francisco. We also discussed some of the updated information that the Commission staff would like to obtain, in order to address any circumstances that may have changed since we completed our earlier analysis of the project. In particular, I identified the following items that the Commission staff would like you to provide in order to ensure we have current and accurate information.

1. Alternative Access

As we have previously observed, the option of obtaining an access easement along the existing driveway that serves the aquaculture facility, and across the intervening property to your proposed building site, would significantly reduce the environmental impacts associated with the construction of the currently proposed driveway. It is our understanding that the owner of the property located between your property and the aquaculture facility recently obtained an easement to use the existing driveway. Implementation of this option, if feasible, would minimize project impacts on coastal views, rare native plants, and agricultural land in accordance with the requirements of the San Luis Obispo County Local Coastal Program, and could thereby eliminate the need for staff to again recommend that the development be relocated to the northern portion of the property. We therefore recommend that you pursue acquisition of such an easement, and provide us with a description of your efforts and the response you receive.

2. Biological Surveys

As detailed by the biological reports prepared for the project, the proposed driveway is located in close proximity to populations of the Cambria morning glory, listed as 1B (Plants Rare and Endangered in California and Elsewhere) by the California Native Plant Society (CNPS), and the Blochman's dudleya, also listed as 1B by CNPS. It is our understanding that the alignment of the proposed driveway was developed to avoid these plants, based on their locations documented in 1998 and again in 1999. Given the amount of time that has passed since the original biological surveys, and the possibility that their locations may have changed, we request that you provide an updated survey for these plants, as well as any other special status plants or animals, that may currently be present in all areas that will be disturbed during project construction.

CCC Exhibit 7
(page 4 of 52 pages)

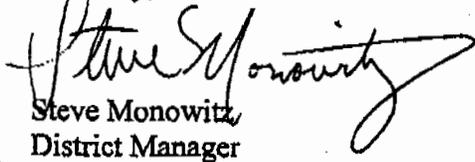
Mr. Dennis Schneider
June 11, 2007
Page 2

3. Geotechnical Analyses

In response to the previous staff report, you raised concerns regarding the geologic hazards associated with the building envelope recommended by staff. Please provide the geologic data and/or technical reports that explain these hazards so we can address your concerns in our re-evaluation of the application. In addition, we request that you update and supplement the previous geotechnical reports to evaluate any new information regarding the adequacy of the proposed bluff setback distance. For example, we recommend that the prior analyses be updated to address new information available in recent reports regarding shoreline erosion and sea level rise (e.g., *2007 USGS National Assessment of Shoreline Change Part 4: Historical Coastal Cliff Retreat along the California Coast*), and any changes in shoreline configuration or dynamics that have occurred since the initial analyses were completed.

In order for us to have adequate time to consider and address this information in our staff report for an August hearing, we will need to receive it no later than July 13, 2007. Thank you in advance for your anticipated cooperation. Please feel free to contact me if you have any questions.

Sincerely,



Steve Monowitz
District Manager

The Law Office of Marshall E. Ochylski
Post Office Box 14327
1026 Palm Street, Suite 210
San Luis Obispo, California 93406

Telephone: (805) 544-4546
Facsimile: (805) 544-4594
E-mail: MOchylski@SLOlegal.com

RECEIVED

JUL 17 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Transmittal via Email
Original to Follow

July 13, 2007

Mr. Steve Monowitz,
District Manager
Central Coast Area Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: California Coastal Commission
CDP Application No. A-3-SLO-00-040

Dear Mr. Monowitz:

I am writing in response to your letter dated June 11, 2007 in which you request updated information regarding the above-referenced permit application. I would like to address the specific items identified in that letter.

1. **Alternative Access**

Dr. Schneider has pursued the acquisition of an easement along the existing driveway that serves the aquiculture facility with the Alexanders and his request was denied. Without this easement there is no reason to pursue an easement across the intervening property to the proposed building site. We do not believe that the denial of this request should form the basis for a staff recommendation that the proposed development be relocated to the northern portion of the property.

2. **Biological Surveys**

The necessity of submitting an updated survey of the listed plants that were previously identified and located on the site is addressed in the enclosed July 11, 2007 letter prepared by David J. Keil, Ph D., consulting biologist for the project. A copy of that letter is attached to this letter. Dr. Keil succinctly states that "as a botanist with many years of field experience in central coastal California" . . . "I would not expect either [listed] species to have expanded its range much if at all beyond the areas where they were documented in 1998 and 1999." Based on his

CCC Exhibit 7
(page 6 of 52 pages)

Mr. Steve Monowitz
Coastal Commission CDP No. A-3-SLO-00-040
July 13, 2007

analysis of the site, there is no necessity to undertake any further field work without evidence that there were oversights in the original field surveys.

3. Geotechnical Analysis

An explanation of the geological hazards attendant to the staff proposed building envelope is clearly stated in the April 5, 2004 letter from Cleath and Associates and the April 7, 2007 Preliminary Engineering Geology Evaluation prepared by GeoSolutions, Inc. that were previously forwarded to the Commission as exhibits to the April 9, 2004 letter from Gregory Sanders. (Copies of these documents are not included as part of the email transmittal of this letter but are included in the copy of this letter being sent via express mail to your office.) The significant geological constraints identified in these documents obviate the need for any additional reports.

It must be noted that the presence of significant geological hazards on the staff proposed building envelope has already been addressed and adjudicated in the attached decision of the appellate court in the matter of *Dennis C. Schneider v. California Coastal Commission*. The specific language of the decision on page 10 related to that proposed building site makes the determination that the "geological hazards are significant and include 40 degree slopes and large boulders." This decision renders moot the relocation of the structures to that location.

The adequacy of the proposed bluff setback distance is addressed in the enclosed July 9, 2007 letter prepared by Cleath & Associates. Mr. Cleath clearly states that "our recent site reconnaissance found conditions similar to those discussed in our 1998 report with much less erosion than 4 inches per year of the bluff top since the last time of measurement." Based on this analysis of the physical site conditions, there is no reason to prepare any further geotechnical analysis.

We anticipate that this information provides a complete current file of all the information required to assure that this application is scheduled for the Commission's August 2007 meeting in San Francisco.

Thank you for your consideration.

Very Truly Yours,



Marshall E. Ochylski,
Attorney at Law

MEO/ec
attachments

CCC Exhibit 7
(page 7 of 52 pages)

Mr. Steve Monowitz
Coastal Commission CDP No. A-3-SLO-00-040
July 13, 2007

cc: Dr. Dennis Schneider
David Neish
David Breemer, Esq.

RECEIVED

JUL 17 2007

940 Del Rio Avenue
San Luis Obispo, CA 93407
11 July 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dennis C. Schneider, Ph.D.
Biokinetic Engineering, Inc.
715 Santa Maria Ave. #A
Los Osos, CA 93402

Subject: Coastal Development Permit Application No. A-3-SLO-00-040

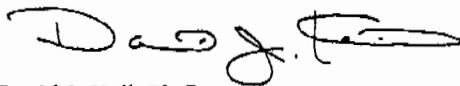
In a letter dated 11 June 2007, Mr. Steve Monowitz, Coastal Commission District Manager, requested an updated survey of the Schneider Property for Blochman's dudleya and Cambria morning-glory "as well as any other special status plants and animals that may currently be present in all areas that will be disturbed during project construction." The justification for this request was "the amount of time that has passed since the original biological surveys" and "the possibility that their locations may have changed."

As a botanist with many years of field experience in central coastal California, I can address the likelihood that Blochman's dudleya and Cambria morning glory will have significantly changed locations during the past eight years. Occurrences of these species are subject to site-specific environmental conditions and to disturbance. The overriding site-specific factor within central coastal California for both species is soil composition. Both occur on clay-rich grassland soils, sometimes in association with areas of serpentine parent material. Soil type distribution is very unlikely to have changed during the past eight years. Although number or stature of individuals comprising a population may vary from year to year in response to variations in amount and distribution of precipitation and other climatic factors, I would not expect either species to have expanded its range much if at all beyond the areas where they were documented in 1998 and 1999.

Disturbances can affect populations of species by eliminating individuals, by decreasing available habitat, or by increasing weed competition. Agricultural land use on the project site during the past eight years has been a continuation of past practices, and disturbances would be those associated with cattle ranching. Because of their low stature, neither is likely to be directly impacted by grazing. Blochman's dudleya might be negatively impacted by trampling by cattle. Cambria morning glory would be less susceptible to this damage because of its extensive system of rhizomes. It is possible that agricultural practices have disturbed the existing populations of these two species, but this seems unlikely to be the case for the one population of the Cambria morning glory that might be disturbed by road construction.

No other special status plants were encountered during the two years in which the original survey and the follow-up survey were carried out. The Coastal Commission's request for further survey work to look for such plants seems extraordinary unless they have information that such species were overlooked in my original field work.

Sincerely,



David J. Keil, Ph.D.
Consulting Botanist

CCC Exhibit 7
(page 9 of 52 pages)

RECEIVED

JUL 17 2007

April 5, 2004

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Cleath & Associates
Engineering Geologists
Ground Water
(805) 543-1413
1500 Oceanview Drive
San Luis Obispo
California 93405

Dennis Schneider
715 Santa Maria Avenue, Suite A
Los Osos, CA 93402

Subject: Geologic Conditions of the CCC Staff Proposed Residential Development Envelope

Dear Mr. Schneider:

I have reviewed the proposed residential development envelope sited by the Coastal Commission staff (shown on CCC Exhibit No. 7) and the Special Conditions described on page 11 of the Appeal A-3-SLO-00-04 Staff Report for the Schneider SFD and herein present geologic conditions existing in this area. The referenced page and exhibit are attached for reference purposes. The 50' by 100' proposed site is 10 feet east of the western property line and about 300 feet inland from the coastal bluff.

The site has a ground surface slope of up to 10 feet vertical over 30 feet horizontal. This slope would require considerable grading for a building pad. The structural height specified in the Special Conditions ("12" feet in height above average natural grade") would be difficult to apply to this site and require significant excavation/construction challenges. Additionally, the site is in an area where the road to the well has been proposed and would require that a new road alignment be proposed.

The site is situated near the upper edge of the coastal terrace and is underlain by alluvial/colluvial terrace deposits. Above the site, the slope steepens and the Cretaceous age sandstone formation crops out. Due to the steepness of the ridge, rock falls occur onto the upper edge of the terrace and could impact the proposed site.

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 in the past based on the topography of the alluvial fan and as reflected in the vegetative coloration noted in the attached aerial photograph. A debris flow coming out of this canyon was observed during one of my visits to the site.

In conclusion, the site proposed by the Coastal Commission staff has some significant geologic constraints including a steep slope and the potential for rock falls and debris flows. The County approved building site is on a much flatter slope and should not experience rock falls or debris flows. Therefore, the County approved building site is a much preferred building site to the site proposed by the Coastal Commission staff.

Sincerely,

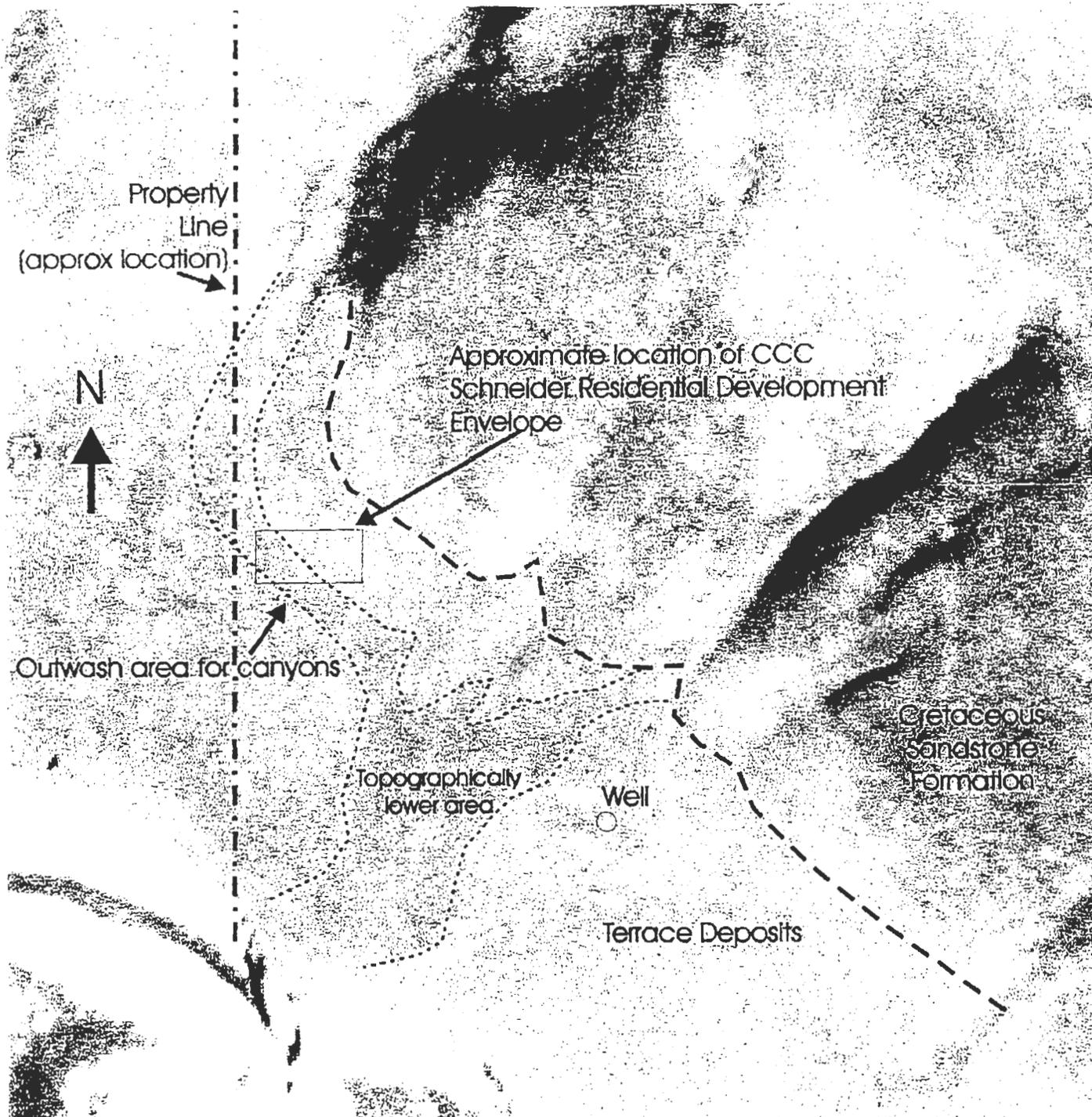
Timothy S. Cleath
Certified Engineering Geologist #1102



C:\Projects\schneider\cccr\cccr\logos.mxd

CCC Exhibit 7
(page 10 of 52 pages)

001936



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



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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



GeoSolutions, INC.

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(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).

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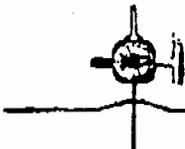
The Coastal Commission location of the proposed residence is situated on the side of a hill that maintains both Unnamed sandstone and Terrace Deposits.

PRELIMINARY EVALUATION

The proposed Coastal Commission Schneider-residence location is situated along a natural slope approximately 40 degrees (83 percent slope) in steepness. A large drainage gully is present to the west and north. Picture #1 is a view east depicting this location. Picture #2 is a view upslope at this proposed building location where sandstone rocks and boulders are present on the surface of the mountain slope. Along the base of the slope at this location, fields of boulders up to at least 2-feet in diameter, are present. Picture #3 depicts a rock field located downslope of the proposed Coastal Commission residence location.

The following are engineering geologic criteria that apply to the Coastal Commission proposed Schneider-residence site (Site):

1. The presence of boulder-fields at the base of the steep mountain front suggests that there is a very high potential for rockfall hazard. The presence of boulders protruding from the surface of the mountain suggest future hazard exists. This hazard would be mitigated with a tall rock-fence (cables and I-beams), a series of walls upslope of the residence, or the house being set back a large lateral distance from the face of the slope. The simple solution would be to locate the residence in flatter portions of the Marine Terrace Deposits to allow run-out of these rocks. As an alternative, there are locations on the Marine Terrace that do not maintain rock fields and thus, no mitigation would be necessary. The San Luis Obispo County approved site would require no rockfall mitigation.
2. Due to the steep slopes associated with this Site, a large fill pad would be necessary. To construct the fill pad, massive grading that involves a keyway excavated into bedrock (very deep at the downhill edge), a 2:1 (horizontal:vertical) fill slope, and large cuts into bedrock upslope of the residence would be necessary. Geotechnically, the fill slope requires deep fill to preclude differential settlement between the Terrace deposits and sandstone bedrock. This fill pad would be out of character with the surrounding slope. Due to gentle slopes at the San Luis Obispo County approved site, only minor cut and fill into Terrace Deposits would be necessary.
3. According to the Uniform Building Code, building clearance from ascending slopes should be setback a distance of $H/2$ (H is height of slope) but need not exceed 15 feet maximum. In general, buildings below slopes shall be set a sufficient distance from the slope to provide protection from slope drainage, erosion and shallow failures. It is GeoSolutions, Inc. opinion that the house on a pad at the stated location would need to be set a distance of 15 feet from the slope. This setback distance would increase the size of the fill pad needed at this Site. No setback is required for the San Luis Obispo County approved site due to distance from toe of slope.



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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

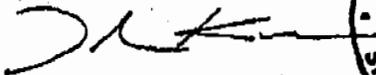
It is GeoSolutions, Inc. opinion that the Coastal Commission proposed residence location is located in a high-geologic hazard area that requires large amounts of mitigation to justify.

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.

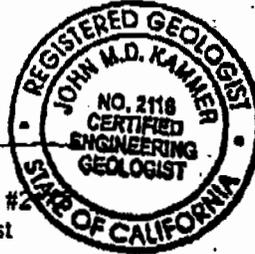
Should you have any questions regarding content of this report or other concerns, please do not hesitate to contact us at 805-543-8539.

Sincerely,

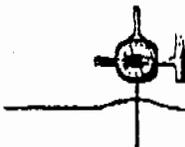
GEOSOLUTIONS, INC.



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



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April 7, 2004

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REFERENCES

Cleath and Associates, June 19, 1998, Geologic Hazards and Bluff Retreat Study on Proposed Residence and Driveway in coastal area near Harmony, San Luis Obispo County, California, APN 046-082-008.

GeoSolutions, Inc., February 20, 2000, Roadway Feasibility Discussion, Proposed Schneider Residence, China Cove, APN 046—082-008, Cayucos Area, San Luis Obispo, California, by

Hall, Clarence A., and Prior, Scott W., 1975, Geologic Map of the Cayucos-San Luis Obispo Region, San Luis Obispo County, California. United States Geological Survey Map MF-686.

Triad/Holmes Associates, October 26, 1999, Schneider Residence Access Road Grading Plan, APN 046-082-008, China Harbor, Cayucos, California.



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CALIFORNIA
COASTAL COMMISSION
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Cleath & Associates
Engineering Geologists
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(805) 543-1413
1390 Oceanalre Drive
San Luis Obispo
California 93405



July 9, 2007

Dennis Schneider
715 Santa Maria Avenue, Suite A
Los Osos, CA 93402

Subject: Response to letter from Mr. Monowitz requesting an update of the bluff erosion retreat rate study including a review of the US Geological Survey Shoreline Erosion Review

Dear Mr. Schneider:

Cleath & Associates has reviewed the June 11, 2007 letter from Mr. Monowitz of the California Coastal Commission and herein provide a review of the US Geologic Survey Cliff Retreat Study and a description of current bluff conditions.

US GEOLOGICAL SURVEY SHORELINE EROSION REVIEW

The 2007 USGS National Assessment of Shoreline Change Part 4: Historical Coastal Cliff Retreat along the California Coast, currently being published as a "preliminary open file report", states that "the rates of retreat presented in this report represent conditions from the 1930s to 1998 and are not intended for predicting future cliff edge positions or rates of retreat". Also "Rates of change are being published for the purpose of regional characterization. The results and products prepared by the USGS and are not intended for comprehensive detailed site specific analysis of cliff retreat." (Page 2, Use of Data).

As a part of their study, they estimate the uncertainties and errors of their methodology in documenting bluff retreat. The uncertainty on the end-point rates, using a best estimate for California cliff edges is +/- 0.2 metres per year (equivalent to +/- 7.87 inches per year). This is an extremely high level of uncertainty for site specific studies in locations where the total estimated average retreat rate developed by the USGS is 0.2 metres per year, such as this region (Page 19). The closest specified area where the retreat rate was high along the Morro Bay region coastline is 3 or 4 kilometres north of Cayucos beach (depending on whether you refer to the text or to Table 5). The subject property is located about seven kilometres from Cayucos beach.

The USGS states that in the Morro Bay Region "retreat occurs primarily as a result of erosion of the poorly lithified marine terrace deposits that overlie the Franciscan Complex.". The geologic unit in this area of the coastline is shown on the USGS geologic map of the area as the "Cretaceous age unnamed sedimentary



rocks" not the "Franciscan rocks" (U.S. Geologic Survey Miscellaneous Field Studies Map MF Map 599, 1974).

Figure 27 in the US Geologic Survey preliminary open file report provides a graphic showing the cliff retreat rates and spacial distribution of rates for the Morro Bay region. Given the location of the subject property seven kilometres from Cayucos beach as identified on this graph, the retreat rate estimated by the USGS could be somewhere between 0 and 0.25 m/yr +/- 0.2 m/yr. This estimate covers too high a range and error to be of value in estimating the retreat rate at the subject site.

Finally, a review of the references for this report shows that there are no references related to the geology of the subject site location nor to any other studies done specifically on the coastal retreat rates for the area from Morro Bay to Cambria.

Considering the limitations stated for this report, the uncertainty of the data, the different bedrock geology and the range of the retreat estimates for the area of the property, this preliminary report does not provide meaningful specific data for the property.

UPDATE OF 1998 BLUFF RETREAT STUDY

We have re-visited the proposed building envelope vicinity to observe any changes to the bluff and re-assess the estimated bluff retreat rate recommended by our 1998 Geologic Hazards and Bluff Retreat Rate Study. Our estimate of the average bluff retreat rate in that report was that it was less than 4 inches per year in that study.

The distance from the old building to the top of bluff on the eastern property line was previously measured in 1998 at "about 12 feet from the bluff. The 1992 topographic map location for the top of bluff adjacent to the old building is not shown due to lettering on the map, so that no distance can be measured off of the map. Today's measurement of the same old building to the top of bluff at its closest point is 12.8 feet from the top of bluff. Therefore, there has been no measurable loss of bluff top at this location over the past 9 years.

The western property boundary point near the bluff marked by a survey pipe is noted on the 1992 topographic map at about 21 feet from the top of bluff. The measurement from the same survey pipe to the top of bluff today is 20'7". This is a more accurate measurement than is taken from the topographic map and should be rounded to the nearest foot. Even if rounded down to 20 feet, there would be a change of one foot over fifteen years- for a retreat rate of less than one inch per year.



A general reconnaissance of the bluff top did not find any major failures that have occurred since our previous report (no dirt at the base of the bluff, no major escarpments that incise into the bluff top trend). There were many areas where cracks parallel to the bluff face exist about one foot inland of the bluff top and also areas where the slope undercuts the root-bound soil a few inches and a few locations where small slips have occurred over the past few years. Therefore, some erosion of the bluff is occurring but, it is largely within the terrace deposits. On the parcel to the west of this parcel, near the property boundary, there is some undercutting of the bedrock beneath the terrace deposits where moisture is evident but moisture is not very evident on the bluff face on the property. There are several areas where the bluff face and bluff top terrace deposits are covered by vegetation such as coastal shrub or iceplant, suggesting fairly old slopes. There are also areas where, at one time or another, there have been roadways cut into the bluff. These are mostly terminated by the bluff face after a short distance and in some of these cases, rutting has occurred where runoff has flowed on these short roadways.

SUMMARY

In summary, our recent site reconnaissance found conditions similar to those discussed in our 1998 report with much less erosion than 4 inches per year of the bluff top since the last times of measurement. The US Geological Survey preliminary open file report is too general with too high a level of uncertainty to yield specific retreat rates for the bluff erosion on the subject property.

Sincerely,



Timothy S. Cleath
Certified Engineering Geologist #1102



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Transmittal via Email (without Attachments)
Original to Follow via U.S. Postal Service

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DEC 06 2007

November 29, 2007

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

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: California Coastal Commission
CDP Application No. A-3-SLO-00-040

Dear Mr. Bishop:

This office represents Dr. Dennis Schneider with regard to an appeal to the California Coastal Commission of approval by the San Luis Obispo County Planning Commission a coastal development permit (minor use permit) for construction of a single family residence, barn and driveway on his 40.6 acre parcel of real property located north of Cayucos on the Harmony Coast. This appeal was originally filed on April 7, 2000, following approval of the above referenced coastal development permit (minor use permit) by the County of San Luis Obispo on February 24, 2000.

Scope of Review by Coastal Commission under Peremptory Writ

As Commission staff is well aware, the project was previously heard by the Coastal Commission on April 15, 2004, subsequently litigated in the Superior Court of San Luis Obispo County, and appealed to the Court of Appeals of the State of California. On June 28, 2006, the appellate court in the matter of *Dennis C. Schneider v. California Coastal Commission* ordered the superior court "to issue a peremptory writ commanding the California Coastal Commission to vacate its decision and to rehear the matter consistent with this opinion." The decision and a copy of the peremptory writ are included with the letter.

The primary issue before the court was the "an ocean boater's 'right to view' of the coastline as a factor in regulating development." The wrongful inclusion of this factor

in the analysis of the consistency of the project with the Coastal Act led the Commission to attach conditions to the project limiting the size, height, and location of the structures, and other developmental restrictions on portions of the site that are sheltered from public view. These represent the specific conditions that the appellate court directed the Commission to reconsider in light of its decision. The scope of the decision does **not** allow the Commission to revisit portions of its action that were consistent with the court's decision, including changes to the access road to the property from Highway 1.

Further, the court's recognition of the existence of geological hazards on the staff's proposed building site was included as a statement of fact in the written decision of the appellate court. The court 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."

On July 17, 2007, staff issued a revised report to comply with the appellate court's order for the Commission to rehear the matter. This staff report ignores the clear directives of the court regarding the development conditions imposed on the structures including the geologically unstable location of the residence building envelope and is therefore not consistent with the decision of the appellate court and cannot be considered by the Commission.

Alternative Access

Consideration of an alternate access to Dr. Schneider's property is an issue that cannot be raised at this time as a matter of law because no conditions regarding access have changed since the Commission's finding and the subsequent appellate court ruling. Notwithstanding this legal reality, Dr. Schneider has asked that I review the history of this topic.

Alternative access across the Abalone Farm is an issue that has been raised by Commission staff since the date that the project was first appealed to the Commission. Indeed, it has been discussed for more than four years in written correspondence with Commission staff. This topic was raised yet again in a June 11, 2007 letter from Mr. Steve Monowitz after the decision of the appellate court required the Commission to rehear the appeal, and continued to be discussed by staff in subsequent telephone conversations with Dr. Schneider's representative. Documentation has been provided by representatives of Dr. Schneider to Commission staff as early as September 18, 2003 stating that Dr. Alexander, the owner of the real property on which the abalone farm is located, would not grant an access easement to Dr. Schneider. This fact was confirmed in subsequent correspondence sent to Coastal staff dated September 23, 2003, December 10, 2003, and April 9, 2004. Copies of this correspondence are included with this letter. This issue was further addressed in a letter from my office to Mr. Steve Monowitz dated July 13, 2007 in which we confirmed that Dr. Alexander was still not willing to grant an

Mr. Jonathan Bishop
Coastal Commission CDP No. A-3-SLO-00-040
November 28, 2007

access easement across his real property to Dr. Schneider. Subsequent to that letter, Dr. Schneider received the attached letter from Dr. Alexander dated September 23, 2007, which once again reiterates his refusal to grant access across his property.

It is abundantly clear from the above facts that gaining access across Dr. Alexander's property is not now, nor has it ever been, a viable option for development on Dr. Schneider's property. Dr. Schneider believes that the continued attempts by staff to resurrect this issue have negatively impacted the timely consideration of the appeal by the Commission and has adversely impacted a fair consideration of the appeal by the Commission.

I hope that the above discussion clarifies Dr. Schneider's positions on the above matters. If you have any questions, or require additional information, please contact my office. Although we were prepared to proceed with a hearing of this matter at the December meeting, Dr. Schneider accepts your representation that our appeal will be heard forthwith and we anticipate that you will be able to get a commitment to have the appeal placed on the agenda of the Commission's January 2008 meeting.

Thank you for your attention to this matter.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/ec
attachments

cc: Hope Schmeltzer, Esq.
Chief Counsel
California Coastal Commission
San Francisco, California

John Saurenman, Esq.
Supervising Deputy Attorney General
Los Angeles, California

Rosana Miramontes, Esq.
Deputy Attorney General
Los Angeles, California

Mr. Jonathan Bishop
Coastal Commission CDP No. A-3-SLO-00-040
November 28, 2007

Mr. Patrick Kruer, Chairman
California Coastal Commission
La Jolla, California

Dr. Dennis Schneider
San Luis Obispo, California

David Neish
David Neish & Associates

J. David Breemer, Esq.
Pacific Legal Foundation

Filed 6/28/06

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

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Roger T. Picquet, Judge
Superior Court County of San Luis Obispo

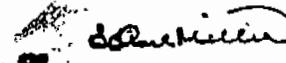
James S. Burling and Lawrence G. Salzman, for Plaintiff and Appellant.

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.

FILE ^{GWS}

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SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

DENNIS C. SCHNEIDER,
Plaintiff and Appellant,

Case No.: CV 040488
PEREMPTORY WRIT

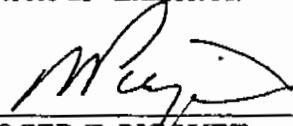
v.

CALIFORNIA COASTAL COMMISSION,
Defendant and Respondent.

This Court hereby orders that a peremptory writ shall issue commanding the California Coastal Commission to vacate its decision and rehear the matter consistent with the Court of Appeals opinion, Attached hereto as "Exhibit A."

///

DATED: January 18, 2007


ROGER T. PICQUET
Judge of the Superior Court

W:\COURTOPS\DOUCKS\JUDGES\PICQUET\CV040488SCHNEIDERvCACSTLCOMM_PerempWrit.doc

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September 18, 2003

REFER TO FILE NUMBER

280451-0001

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SEP 19 2003

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

VIA FACSIMILE AND OVERNIGHT MAIL

Steve Monowitz, Coastal Planner
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Schneider Property - Report on Shared Road Access Investigation

Dear Mr. Monowitz:

Thank you for meeting with Dennis Schneider and me on August 22, 2003 to discuss disposition of the appeal of the coastal development permit approved by the County of San Luis Obispo on February 24, 2000 for development of a single family residence on Mr. Schneider's property located north of Cayucos ("Property"). We appreciate your willingness to move this matter along. The purpose of this letter is to provide you with the results of Mr. Schneider's attempts to secure an alternate access route to the homesite located on the marine terrace portion of the Property.

You will recall that Mr. Schneider accesses the Property by way of a shared road easement from Highway 1. The marine terrace portion of the Property is presently accessed via a shared road easement that extends from the top of the ridge that traverses the Property and adjoining properties. Mr. Schneider will replace the existing road to the marine terrace with a road in the location depicted on the photosimulations provided to you after the August 22 meeting. This is the access road approved by the County of San Luis Obispo with the coastal development permit for the property.

In order to minimize the impacts associated with multiple access roads serving the various parcels in the vicinity of the Property, you asked that we investigate the potential for an alternate access route that would serve all of the various parcels. In accordance with your request, Mr. Schneider discussed the possibility of access through the abalone farm to the south of the Property with Mr. John Alexander, the proprietor of the abalone farm and owner of the

001847

CCC Exhibit 7
(page 37 of 52 pages)

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Steve Monowitz, Coastal Planner

September 18, 2003

Page 2

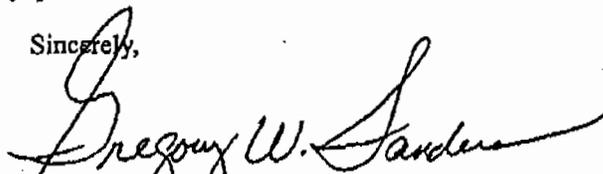
real property on which it is situated. Mr. Schneider determined that Mr. Alexander will not grant an easement over the abalone farm property for access to the Property under any circumstance.

Mr. Schneider also discussed with Mr. Jeff Sanders, owner of the property immediately north of the Property, the possibility of access to the parcel that lies between the Property and the abalone farm utilizing Mr. Schneider's easement for Highway 1 and the road to the marine terrace. Such an access easement would require the approval of Mr. Sanders (among other owners of property encumbered with the easement), as the road from Highway 1 and the road to the marine terrace traverses his property. Mr. Sanders will not approve an access easement to serve the parcel between the Property and the abalone farm.

Mr. Schneider has made a diligent, good faith effort to acquire an alternate, shared access route to the marine terrace portion of the Property. Unfortunately, he has been foreclosed from acquiring such access by the refusal of neighboring property owners to grant him the necessary access easements. There are no other feasible alternate access routes to the marine terrace portion of the Property. Accordingly, the only feasible access to the marine terrace homesite is as depicted on the photosimulations provided to you.

Thank you again for your cooperation with this matter. Please let us know if you need further information or have any questions.

Sincerely,



Gregory W. Sanders

of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

GWS/dsb

001848

CCC Exhibit 7
(page 36 of 52 pages)

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September 24, 2003

REFER TO FILE NUMBER

280451-0001

VIA FACSIMILE AND OVERNIGHT DELIVERY

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SEP 25 2003

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

✓ Steve Monowitz, Coastal Planner
✓ Jonathan Bishop, Coastal Planner
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: Schneider Property - Further Report on Shared Access and Appeal
Hearing Schedule

Dear Messrs. Monowitz and Bishop:

This letter shall serve to memorialize my telephone conversations with Jonathan Bishop of September 19 and 22, 2003 regarding the issue of share access for the Schneider and surrounding properties located north of Cayucos and scheduling of the appeal hearing on the Schneider property ("Property").

In a discussion with Steve McMasters of the County of San Luis Obispo Planning and Building Department, it was determined that the proposed environmental impact report to address access and other issues regarding the Pierson property has not commenced. In fact, Mr. Pierson has not even deposited the cost to prepare the environmental impact report with the County. In addition, Mr. McMasters reported hearing that the Pierson property is, or soon will be, for sale and that Mr. Pierson is now concentrating his real property development efforts in the Creston area of San Luis Obispo County. Mr. McMasters also believes that Mr. Pierson has secured an access easement over the adjacent abalone farm property. The fact that the property may be for sale and access over the abalone farm property secured is a good indication that the environmental impact report for an alternative access to the Pierson property will not commence. Finally, even if the environmental impact report is completed and the alternative access route for the Pierson property is approved, the alternative access route partially meanders through the abalone farm property. Accordingly, an easement from the owner of the abalone farm property in favor of Mr. Schneider and his successors in interest would be necessary in order for the access route to serve the Schneider property. As we reported in our letter to Steve Monowitz of

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CCC Exhibit 7
(page 39 of 52 pages)

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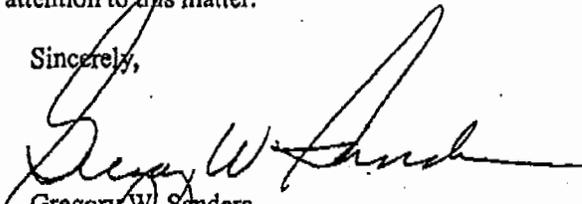
Steve Monowitz, Coastal Planner
Jonathan Bishop, Coastal Planner
September 24, 2003
Page 2

September 18, 2003, the owner of the abalone farm will not grant an easement to Mr. Schneider under any circumstances.

With regard to scheduling of the appeal hearing on the Schneider property, we were disappointed to hear that the appeal will not be heard at the October, 2003 meeting of the Coastal Commission. As you know, the appeal has been pending since April, 2000. We do appreciate your commitment to place the appeal on the agenda of the November, 2003 meeting of the Coastal Commission. In the meantime, please call if you have any questions or need further information.

Thank you for your attention to this matter.

Sincerely,



Gregory W. Sanders
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

GWS/dsb

001850

CCC Exhibit 7
(page 40 of 52 pages)

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December 10, 2003

REFER TO FILE NUMBER
280451-0001

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DEC 11 2003

VIA OVERNIGHT DELIVERY

Diane Landry, Staff Director
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Schneider Property - Alternative Access

Dear Ms. Landry:

We continue to represent Mr. Dennis Schneider with regard to all matters pertaining to the appeal to the California Coastal Commission of a Minor Use Permit approved by the County of San Luis Obispo for construction of a single family residence, access road and ancillary facilities on his property located north of Cayucos ("Property"). This letter responds to your request that we discuss with Messrs. Alexander and Pierson, owners of the parcels of real property to the south of the Property, the prospects of acquiring access to the Property over their parcels.

Mr. Schneider has had several discussions with Mr. Alexander over the past two weeks regarding the access issue. Unfortunately, Mr. Alexander will not grant Mr. Schneider an access easement over his property. Inasmuch as Mr. Alexander will not grant Mr. Schneider an access easement, no discussions regarding access have been held with Mr. Pierson. We now have no alternative other than to have the appeal placed on the agenda of the Coastal Commission for a decision.

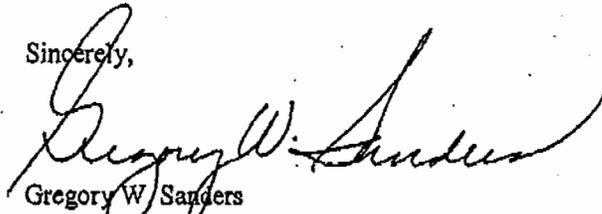
001875
CCC Exhibit 7
(page 41 of 52 pages)

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Diane Landry, Staff Director
December 10, 2003
Page 2

Please let me know if you have any questions or need further information regarding this matter.

Sincerely,



Gregory W. Sanders
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

GWS/dsb

001876

CCC Exhibit 7
(page 42 of 52 pages)

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April 9, 2004

REFER TO FILE NUMBER
280451-0001

VIA HAND DELIVERY

Mike Reilly, Chairman and
Members of the California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Hearing On Substantial Issue Determination and Appeal of Coastal
Development Permit (Minor Use Permit) for Single Family Residence,
Barn and Driveway - Dennis Schneider, Applicant
(Appeal No. A-3-SLO-00-040, Item No. Th7a, April 15, 2004)

Dear Chairman Reilly and Members of the Coastal Commission:

We represent Dr. Dennis Schneider 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, barn and driveway (collectively "Project") on his 40.6 acre parcel of real property located north of Cayucos on the Harmony Coast, approximately one-half mile south of China Harbor ("Property"). The location of the Property is depicted on the maps attached hereto as Exhibit "A." 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.

We are pleased to inform you that Dr. Schneider is in agreement with all of the recommended Standard Conditions of Approval set forth in section 6A of the Appeal Staff Report Substantial Issue Determination & DeNovo Hearing, dated March 25, 2004 (with Staff Report Addendum, dated March 26, 2004) ("Staff Report") for this Project and all of the recommended Special Conditions of Approval set forth in section 6B of the Staff Report, with the exception of that portion of Special Condition 1 related to construction of a barn, and Special Conditions 2(a), (b) and (c), 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. Accordingly, the purposes and scope of this letter are limited to a)

CCC Exhibit 7
(page 43 of 52 pages)

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Mike Reilly, Chairman and
Members of the California Coastal Commission
April 9, 2004
Page 2

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. (Staff Rpt. pp. 2, 13 & 33-35.) The Property and several adjoining parcels are served by an existing substantial and permanent reinforced concrete bridge that crosses Ellysley Creek. Photographs of the bridge deck and structure are attached hereto as Exhibits "B" and "C." 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 be highly visible from Sea West Ranch. (Staff Rpt. pp. 2, 27 & 28.) 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 "D," 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 residence will be visible from Estero Park. (Staff Rpt. p. 28.) As with views of the residence and barn at the sites approved by the Planning Commission from the Sea

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Mike Reilly, Chairman and
Members of the California Coastal Commission
April 9, 2004
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West Ranch, the residence and barn are shielded from view from the entire Estero Park area, including Cayucos Point. A prominent natural brow that rises approximately thirty feet (30') from the floor of the marine terrace and extends from the base of the marine terrace bluff to the coastal bluff on the parcel immediately southeast of the Property, which is plainly visible in the photographs attached hereto as Exhibit "E." shields the Planning Commission approved residence and barn sites from all vantage points within the Estero Park area. The viewshed protection afforded by this prominent natural brow is clearly evident in the photograph taken from a vantage point within Estero Park attached hereto as Exhibit "F" and the four (4) computer simulations (together with a map depicting the vantage points within Estero Park of the views of the Property and a matrix indicating no net viewshed gain from relocating the site of the residence and eliminating the barn, as proposed in the Staff Report) attached hereto as Exhibit "G." The photograph and computer simulations clearly demonstrate that the residence and barn at the sizes, heights and locations approved by the Planning Commission will not be visible from Estero Park because they will be hidden behind the aforementioned brow.

4. The barn component of the Project approved by the Planning Commission is 2,500 square feet. (Staff Rpt. pp. 1, 7, 23 & 27.) Attached hereto as Exhibit "H" is Exhibit B Conditions of Approval imposed on the Project by the Planning Commission. Condition 1 (Approved Development) provides that the barn shall be 2,000 square feet.

5. The proposed residential development poses significant adverse impacts to the rural open space character of the Harmony Coast. (Staff Rpt. pp. 2, 5, 23, 27 & 29.) 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 discussed above and attached hereto as Exhibit "E" and the photograph of the Harmony Coast taken from Estero Park attached hereto as Exhibit "F" clearly illustrate 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, leaving the maximum amount of unobstructed viewshed from offshore to the northwest. 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 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.

6. The driveway to the residential site will disturb an approximately 179,000 square foot area. (Staff Rpt. pp. 8 & 23.) 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 ignores a number of pertinent facts. Prior to discussing these facts, we note that there is an internal inconsistency in the Staff Report with regard to the

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amount of alleged disturbance that will be caused by the driveway. The Staff Report at page 8 alleges that 179,000 square feet will be disturbed. The Staff Report at page 23, however, provides that "147,000 square feet of road base will be needed to access the development." This discrepancy is significant. Of greater significance, however, is the miscalculation of the square area the driveway will encompass. Assuming the driveway is 1.25 miles in length as approved by the Planning Commission (as the Staff Report maintains), 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 in the Staff Report by 100 per cent or more.

With regard to facts ignored by the Staff Report, a) the existing driveway is paved from Highway One 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, 147,000 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 follow the existing jeep trail to the greatest degree feasible . . ." 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, which is clearly depicted on the aerial photograph attached hereto as Exhibit "J." The remainder of the driveway, with some minor deviations, will follow the alignment of the existing driveway, including the present access from Highway One 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.

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

The topographic map of the Property attached hereto as Exhibit "K" and Exhibit 7 of the Staff Report illustrate 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 "L," 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.

The letter of April 5, 2004 from Timothy S. Cleath, Certified Engineering Geologist, Cleath & Associates, attached hereto as Exhibit "M" 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 "N." Clearly, the residence site recommended in the Staff Report is subject natural hazards from geologic and flood conditions. In addition to the geologic and hydrologic constraints that prevent construction of the residence at that location, the site is located on a slope with a grade of 30 percent. As Mr. Cleath notes in his letter, "The site (recommended in the Staff Report) has a ground surface slope of up to 10 feet vertical over 30 feet horizontal. This slope would require considerable grading for a building pad. The structural height specified in the Special Conditions (12 feet in height above average natural grade) would be difficult to apply to this site and require significant excavation/construction challenges." (Emphasis added.) In addition, 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, 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. The elevation of the residence site recommended in the Staff Report also presents a significant problem. As the topographic map attached at Exhibit "J" illustrates, the site is located at an elevation of between 110 and 130 feet above sea level. At that height, the residence would rise above the natural landforms that shield the residence at the site approved by the Planning Commission from public view.

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. As illustrated in the side view elevation of the residence depicted in Exhibit "O" attached hereto, 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 swale that enables the residence to be constructed at an elevation

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of approximately 55 to 75 feet above sea level, or approximately 55 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 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.) Further, 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 Legal 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 proffered 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.

Other than the argument that reduction of the size of the residence will reduce impacts on public viewsheds from offshore (which is an untenable argument as discussed below), all of the arguments in the Staff Report in favor of reducing the size of the footprint and height 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,"

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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 and height of the residence.

The only objective argument the Staff Report attempts to make in terms of a legal basis to require a reduction in the size and height of the residence approved by the Planning Commission is to reduce the visual impact of the residence from offshore viewing areas. This argument, however, has no legal foundation. Public Resources Code section 30251 establishes the jurisdictional limits of viewshed protection for the Coastal Commission and the LCP. Section 30251 provides, in pertinent part, "Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas . . .," not from the ocean to the shore. (Emphasis added.) Further, Public Resources Code section 30603(b) limits grounds for appeal to the Coastal Commission to "an allegation that the development does not conform to the standards set forth in the certified local coastal program. . . ." The LCP is consistent with Public Resources Code section 30251 in that it does not require protection of coastal viewsheds from offshore. Accordingly, the Coastal Commission cannot impose a reduction in the size and height of the residence approved by the Planning Commission under the guise of protection of the viewshed of the Harmony Coast from offshore.

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 5B (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."

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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. Special Condition 2(i) as recommended by the Staff Report (to which Dr. Schneider has agreed) and 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.

Without citing any evidence whatsoever, 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." This conclusion ignores Special Conditions 9 and 10 which the Staff Report recommends be imposed on the Property (to which Dr. Schneider has agreed), which require acknowledgment of and agreement with an Agricultural Hold Harmless and Indemnity Agreement and recordation of an Agricultural and Resource Conservation Area encumbrance against the Property. These Special Conditions will insure that the Property continues to function as an integral part of the cattle grazing operations presently conducted in conjunction with neighboring properties.

In addition to the foregoing, 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 "P," 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

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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.

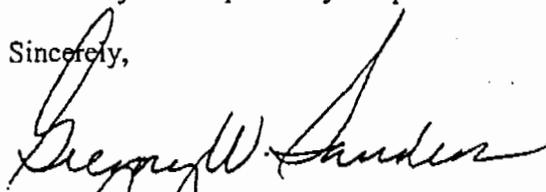
E. There Is No Legal Basis For Removal Of the Barn From the Entitlements Approved By the Planning Commission.

The Staff Report sets forth in the Staff Report Addendum a revised Special Condition 2(c) which provides, in pertinent part, "This permit does not authorize construction of the 2,500 square foot accessory barn In the event that the applicant would like to pursue an agricultural accessory structure, such as a barn, in the future as part of a bonafide agricultural operation, an amendment to this permit will be necessary" 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(c) 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(c), the LCP or in any other statute or regulation that governs the uses to which the Property may be put.

As discussed above, the barn will produce no viewshed impacts from any public viewing area, with the sole exception of views from offshore over which the Coastal Commission has no jurisdiction, as discussed above. 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 attention to this matter. We will be present at the hearing on this matter on April 15, 2004 to offer oral testimony and respond to your questions.

Sincerely,



Gregory W. Sanders
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

GWS/dsb

Enclosures

CCC Exhibit 7
(page 51 of 52 pages)

001898

Sep. 23, 07

Dennis Schneider
581 Baywood Way
Los Osos CA 93430

Dear Mr Schneider:

You have asked, on numerous occasions, about permission to access our driveway.

While we think highly of you and your wife, we must refuse. We wish you the best with your plans to build a home in this area, but using our driveway, in addition to being inconvenient for you, is not possible for us and we must refuse.

Sincerely,

Carol Alexander

Carol Alexander

John Alexander

John Alexander

