

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# Th21a

**Prepared January 9, 2013 for January 10, 2013 Hearing**

**To:** Commissioners and Interested Persons

**From:** Madeline Cavalieri, District Manager  
Louise Warren, Staff Counsel  
Daniel Robinson, Coastal Planner

**Subject: STAFF REPORT ADDENDUM for Th21a  
Claim of Vested Rights Number 3-12-013-VRC (McCarthy)**

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. In the time since the staff report was distributed, staff has received comments from the Applicants' representative (letter dated January 3, 2012 and fax dated January 8, 2013; see attached), and has identified several points in need of clarification. Thus staff is recommending certain changes to the staff report dated December 20, 2012. These changes do not modify the basic staff recommendation, which is still that the Applicants' vested rights claim be denied. Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strike through~~ format indicates text to be deleted; note that the intent is for footnote references to be continuous in the amended report, even if the numbers shown here aren't):

**1. Modify text on staff report page 8 as follows:**

*The ~~sole~~ first piece of evidence presented by the Applicants in support of their claim of a vested right is San Luis Obispo County Planning Commission Resolution No. 2011-019. This is the resolution granting a CDP for development of a single-family residence and related development on the Property that has been appealed (A-3-SLO-11-061). The Applicants have not submitted evidence of any building or other permits issued for development of the Property or water lines to the Property prior to February 1, 1973. ~~They also have not~~ The Applicants submitted the 1966 Contract which forms the basis of their claim that they have rights as third party beneficiaries of that contract. In the absence of the 1966 Contract, the Commission has analyzed the Applicants' vested rights claim as if they are, in fact, third party beneficiaries of this contract. The Commission does not, however, find in this report that this assertion is accurate. As discussed below, the 1966 Contract cannot form the basis for a vested rights claim exempting the Applicants from coastal permitting requirements, so it is unnecessary for the Commission to resolve whether the Applicants are third party beneficiaries under the 1966 Contract.*

The Applicants also submitted: an October 3, 1983 contract for water services between San Luis Obispo County, on behalf of County Service Area No. 12 and San Miguelito Associates, the Applicants' predecessor in interest; an email chain between Gregory W. Sanders, attorney for the Applicants, and Paavo Ogren, Director of Public Works for San Luis Obispo County, generally discussing special tax assessments for properties within Zone 3 of the San Luis Obispo County Flood Control and Water Conservation District; and copies of 2012/2013 property tax bills for Assessor Parcel Numbers 076-231-063 and 076-231-065.

**2. Modify text on staff report page 9 as follows:**

***Water Rights***

A vested right acts as an exemption, allowing an applicant who would otherwise need to obtain a coastal development permit before undertaking the proposed development to be exempt from permitting requirements. The Applicants claim to be seeking a vested right to receive water service from CSA 12, but they have not identified on what basis one would need to secure a CDP before obtaining a contractual right to receive water (excluding any infrastructure needed to get the water to a specific property).

*In the cover letter for their vested rights claim (January Letter),<sup>8</sup> the Applicants argue that they have a vested right to water as third party beneficiaries to the 1966 Contract. The Applicants describe third party beneficiary law and summarize their interpretation of the 1966 Contract. What the Applicants are really asserting is that they have a contractual right to obtain water from CSA 12. The determination of the scope of the Applicants' contractual rights under the 1966 Water Contract, however, is not development, as that term is defined in the Coastal Act, and the Commission may only grant a vested right for development.<sup>9</sup>*

The Applicants also submitted an agreement that the Applicants' predecessor-in-interest negotiated with CSA 12 to obtain a certain volume of water for several properties, including the Applicants' property. While this contract might provide the Applicants with the contractual right to a certain volume of CSA 12 water, the Applicants have not explained why this contract would exempt them from any CDP permitting requirements, which is ultimately what a vested right is. Thus, this contract does not establish a basis for a vested right. ...

**3. Add the following footnote at the end of the second sentence in the first full paragraph on staff report page 11 as follows:**

In its January 3, 2013 submittal, the Applicants have included an email from the County's Director of Public Works stating that voters in Zone 3 of the San Luis Obispo County Flood Control and Water Conservation District approved a special tax for construction of the Lake

---

<sup>8</sup> January 17, 2012 letter from Gregory W. Sanders of Nossaman to Dan Carl, District Manager of the Central Coast District of the Coastal Commission, at page 2.

<sup>9</sup> In their January 3, 2013 letter to the Coastal Commission, the Applicants do not describe how the right to water service is itself development, they simply assert that because the County's LCP establishes the limits within which CSA 12 water service may be provided, that the right to water service is the proper subject of a vested rights claim. The County's LCP includes the policies to be applied when an applicant seeks a CDP. Thus, the LCP provision at issue properly regulates development associated with CSA 12 water, but it does not follow that the right to CSA 12 water is itself development. For example, a CDP would be needed to construct a water tank to store CSA 12 water on the property, so the LCP's limitation on CSA 12 water would apply to an application for such development, even though a CDP would not be needed to prove that the property owner had the right to such water.

Lopez Dam. In its January 8, 2013 submittal, the Applicants also provided a 2012/2013 property tax bill identifying an assessment of \$27.14 for Lopez Dam Remediation. The Applicants have not, however, provided evidence of whether their predecessor-in-interest ever paid such a special tax and how much was paid. The current assessment of some \$27 identified as Lopez Dam remediation is for a very small amount. Thus, even if such a special tax to fund a dam could be used to establish a vested right to obtain private water service, which would be a novel application of vested rights law, the Applicants have not provided evidence that such tax constituted a “substantial liability”.

**4. Modify text on staff report page 11 as follows:**

*Second, there are in fact several cases analyzing Section 30608’s vested rights language in the context of non-physical development, and each of them applies the vested rights analysis laid out in Avco. For example, in Billings (103 Cal.App.3d at 735-36) the court held that applicants had not established a vested right to subdivide their property because they had not obtained all governmental approvals necessary to complete the subdivision. The court also found that the plaintiff had only spent \$520 after issuance of a tentative permit, so that the “good faith reliance” (i.e. substantial work and substantial liabilities) necessary to establish a vested right was missing in that case (Id. at 735-36). Similarly, in South Central Coast Regional Commission v. Charles A. Pratt Construction Co., Inc. ((1982) 128 Cal.App.3d 830, 845-46) the court held that a subdivider is entitled to a vested right under the Coastal Act only if he was entitled to final map approval under the Subdivision Map Act at the time the property became subject to Coastal Act requirements. Although these are both cases in which the development at issue, a subdivision, did not involve actually constructing anything, each court cited Avco for the proposition that a “vested right to complete a project arises only after the property owner has performed substantial work, incurred substantial liabilities, and has shown good faith reliance upon a governmental permit” (Id. at 841-42; Billings, 103 Cal.App.3d at 735). In Pratt, the court simply did not reach the issues of substantial work and substantial liabilities because it found that all necessary government approvals had not been issued, so a vested right was not appropriate, as a claimant must establish all three prongs of the Avco test to obtain a vested right.<sup>10</sup> Thus, even if one assumes that the vested rights claim at issue here does not involve physical development, the Applicants must still establish that they obtained all necessary governmental approvals to complete the development and that they performed substantial work and incurred substantial liabilities in good faith reliance on those governmental approvals. As explained above, the Applicants have not established that they meet any of these requirements, much less all of them.*

Finally, the Applicants argue that the **factors** used to determine a vested right may change, depending on the nature of the vested right. They have not, however, cited a vested right case under the Coastal Act that used factors other than those laid out by the Supreme Court in Avco. The Applicants note that the Supreme Court found that “the **extent** of a vested right is determined by the terms and conditions of the permit or approval on which the owner relied”

---

<sup>10</sup> The Applicants erroneously assert that these cases stand for the proposition that one need not establish substantial work and substantial liabilities to obtain a vested right. The vested rights claim was rejected in each of these cases, though, so they do not provide support for the circumstances in which a vested right is properly issued. More importantly, each case cites the Avco standard, including the need to establish substantial work and substantial liabilities, as the appropriate standard for assessing a vested rights claim.

(Avco, 17 Cal.3d at 795, emphasis added). It is not that the **factors** the court uses to determine whether a vested right exists differ from case to case, as the Applicants claim, but that the **extent** of the right itself (i.e. the scope of the exempt development) is based on the scope of the original governmental approvals. The Applicants must therefore meet the Avco standard to prevail on their claim for a vested right.

...

*Thalia***RECEIVED**

JAN 08 2013

California Coastal Commission,  
Central Coast Area

VIA FACSIMILE

ATTORNEYS AT LAW

18101 Von Kaman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878John J. Flynn III  
D 949.477.7634  
jflynn@nossaman.com

Refer To File #: 400494-0001

January 8, 2013

Mary K. Shallenberger, Chair  
California Coastal Commission and Commission Members  
Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, CA 95060**Re: Rob and Judi McCarthy Single Family Residence: Vested Right to Water  
Service From County Service Area 12 (Application No. 3-12-013-VRC)  
(Agenda No. 21)**

Dear Chair Shallenberger and Members of the Commission:

As you know, we submitted a letter with exhibits to you on January 3, 2013. Attached hereto for addition to the record on the McCarthys' vested rights claim is a true and correct copy of a property tax bill for the subject property, showing inclusion of tax charges for the Lopez Dam Remediation Project, identified on the tax bill as "Lopez Dam Remed. Bd." The original assessments have been paid off, as impliedly confirmed by Paavo Ogren, Public Works Director for San Luis Obispo County, in the email chain with Gregory W. Sanders of this firm, submitted to you with our January 3 letter.

As stated, we ask that this tax bill be made a part of the record in support of the McCarthys' vested rights claim, Application No. 3-12-013-VRC.

Very truly yours,

  
John J. Flynn III  
of Nossaman LLP

JJF/rrg

Enclosures

cc: Charles Lester, Executive Director  
Daniel Robinson, Coastal Planner  
Hope Schmeltzer, Chief Counsel

# 2012/13 SECURED TAX BILL

01283

*11/28 pd cl # 4922*

2012/13

10-19-12

112-021

076,231,063

20839

2012/13 076,231,063 42

FOR CITIES, COUNTY, SCHOOLS, OTHER TAXING AGENCIES  
IN SAN LUIS OBISPO COUNTY

## FRANK L. FREITAS

PROPERTY DESCRIPTION: 0 NEEDS ROAD NAME AVLB

County Tax Collector  
1055 Monterey Street, Rm D-290  
County Government Center  
San Luis Obispo, CA 93408

ASSESSED OWNER AS OF 01-01-2012  
SAN MICHELITO PARTNERS, CALIF, PTE

PROPERTY CLASSIFICATION ASSESSED VALUE TAXING AGENCY

LAND	215,084	PROP 13 TAX RATE	1.00000	2,660.84
IMPROVEMENTS	51,000	STATE WATER PROJ	.00400	10.64
PERSONAL PROPERTY		LOPEZ DAM REMED BD	.00992	26.38
FIXTURES/EQUIPMENT		AV TAX SUBTOTAL	1.01392	2,697.86

The total value listed above less the exemptions listed below equal the net property value.

EXEMPTION AMOUNT

### Tax Information on the Web!

See [www.slocounty.ca.gov/tax](http://www.slocounty.ca.gov/tax)

The Tax Collector is not responsible for payments made on wrong assessments. Be sure this bill is for property on which you are obligated to pay taxes.

**SEE REVERSE SIDE FOR IMPORTANT TAXPAYER INFORMATION**

\*\*\*\*\* DUPLICATE BILL or Records

We accept as negotiable instruments only checks and money orders drawn in U.S. dollars on U.S. banks.

NET PROPERTY VALUE	FIRST INSTALLMENT	SECOND INSTALLMENT	TOTAL
266,084	1,348.93	1,348.93	2,697.86
	DUE DATE: 11-01-12 DELINQUENT: 12-10-12	DUE DATE: 02-01-13 DELINQUENT: 04-10-13	TAX DUE

# 2012/13 SECURED TAX BILL

01284

*11-16-12 pd of # 4896*

2012/13

10-19-12

112-041

076,231,065

FOR CITIES, COUNTY SCHOOLS, OTHER TAXING AGENCIES  
IN SAN LUIS OBISPO COUNTY

20839

2012/13 076,231,065 97

## FRANK L. FREITAS

PROPERTY DESCRIPTION:

PM 54-38 PTN PAR 2

0 NEEDS ROAD NAME AVLB

County Tax Collector  
1055 Monterey Street, Rm D-290  
County Government Center  
San Luis Obispo, CA 93408

ASSESSED OWNER AS OF 01-01-2012

SAN MIGUELITO PARTNERS, A CALIF. PTE

PROPERTY VALUE ALLOCATION	ASSESSED VALUE	TAXING AGENCY	TAX RATE/TITLE	AMOUNT
LAND	7,754	PROP 13 TAX RATE	1.00000	77.54
IMPROVEMENTS		STATE WATER PROJ	.00400	.30
PERSONAL PROPERTY		LOPEZ DAM REMED BD	.00992	.76
FURNITURE / EQUIPMENT		AV TAX SUBTOTAL	1.01392	78.60

The total values listed above less the exemptions listed below equal the net property value.

EXEMPTION	AMOUNT

### Tax Information on the Web!

See [www.slocounty.ca.gov/tax](http://www.slocounty.ca.gov/tax)

The Tax Collector is not responsible for payments made on wrong assessments. Be sure this bill is for property on which you are obligated to pay taxes.

**SEE REVERSE SIDE FOR IMPORTANT TAXPAYER INFORMATION**

\*\*\*\*\* DUPLICATE BILL \*\*\*\*\* Records

We accept as negotiable instruments only checks and money orders drawn in U.S. dollars on U.S. banks.

NET PROPERTY VALUE	PROPERTY TAXES	ASSOCIATED DOCUMENTS	TOTAL
7,754	39.30	39.30	78.60
	DUE DATE: 11-01-12	DUE DATE: 02-01-13	
	DELINQUENT: 12-10-12	DELINQUENT: 04-10-13	TAX DUE

Frank L. Freitas, CPA

San Luis Obispo County Treasurer ♦ Tax Collector ♦ Public Administrator

Telephone (805) 781-5831

Fax (805) 781-5362

Duplicate Bill Information

The enclosed duplicate tax bill has been generated due to a change of title (new owner, transfer to or from a trust), as indicated in the Assessor's records. As the owner of this property, you are responsible for this tax bill.

Please direct any questions to the Tax Collector's Office at (805) 781-5831.

**Taxes on the Web (TOW):** Tax amounts and payment information can be found on the Tax Collector's website at: [www.slocounty.ca.gov/tax](http://www.slocounty.ca.gov/tax)



Thala

ATTORNEYS AT LAW

18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

John J. Flynn III  
D 949.477.7634  
jflynn@nossaman.com

Refer To File #: 400494-0001

VIA OVERNIGHT DELIVERY

January 3, 2013

Mary K. Shallenberger, Chair  
California Coastal Commission and Commission Members  
Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

RECEIVED

JAN 04 2013

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**Re: Rob and Judi McCarthy Single Family Residence: Vested Right to Water Service From County Service Area 12 (Application No. 3-12-013-VRC) (Agenda No. 21)**

Dear Chair Shallenberger and Members of the Commission:

We represent Rob and Judi McCarthy, the applicants for a Coastal Development Permit to construct a single family residence on a parcel of property within the Pirates Cove property (sometimes identified as the "Ontario Ridge" property in County of San Luis Obispo planning documents) situated between the eastern boundary of the Avila Beach Community Services District and the western boundary of the City of Pismo Beach (the "Property"). This letter responds to the Staff Report for the January 9, 2013 hearing, specifically pertaining to the McCarthys' claim of a vested right to water service from CSA 12.

**1. The McCarthys' Right to Service From CSA 12 Is a Proper Subject for a Vested Rights Determination by the Commission.**

The Staff has correctly advised the Commission: "The Applicants assert that they are third party beneficiaries to a 1966 contract between County Service Area Number 12 (CSA 12) and the San Luis Obispo Flood Control and Water Conservation District (1966 Contract)." The Staff has also advised the Commission, however, that "[d]etermining the extent of the Applicants' rights under the 1966 Contract or whether they have a valid water right is not "development" for which the Applicants may obtain a vested right."

First, before responding further to the Staff Report, it is important to state clearly that there are two different aspects to the McCarthys' right to water service: (1) the right itself to water service (irrespective of the mode of delivery, or connection to the CSA 12 system), and (2) the right to install pipelines to connect the McCarthy's property to the CSA 12 delivery system. Though it is not clear from the Staff Report, the McCarthys' vested rights claim pertains **only** to the first aspect, that is, the right in itself to be served by CSA 12.

5+

The Staff contends that the right to service in itself is not a proper subject of a vested rights determination, because the right to service is not "development" within the meaning of the Coastal Act (Pub. Resources Code, § 30106). If that is true, then of course there is no need for a Coastal Development Permit ("CDP") to establish such right to service, and, logically, no need for Local Coastal Program ("LCP") consistency. The LCP is relevant only if "development" is sought that requires consistency with the LCP.<sup>1</sup>

By contrast, the planning staff for San Luis Obispo County took the position that if the McCarthys' property is going to be served *at all* (regardless of the manner in which it is delivered, whether by pipeline or by truck, for example), the LCP must first be amended so as to move the Urban Services Line ("USL") of the County LCP. The McCarthys went to great lengths to establish conclusively during the County CDP administrative proceedings that an LCP amendment to move the USL was *not* necessary. The County Planning Commission ultimately rejected the County staff recommendation and found that movement of the USL was not necessary for CSA 12 to provide water service to the McCarthy property.

The McCarthys reasonably concluded that a Commission-vested rights determination was necessary because the Commission Staff had previously agreed with the County staff's position (overruled by the County Planning Commission) that movement of the USL by way of an LCP amendment was necessary for the McCarthys to receive service from CSA 12. Moreover, the Commission Staff has, in its separate Staff Report concerning the appeal from the County's issuance of the CDP (Appeal No. A-3-SLO-11-061), stated as much:

In 2010, the Applicants requested a determination by the County Planning Director as to whether the property could be served by an extension of public water utilities from County Service Area 12. Because the LCP does not allow the extension of public services to serve development that is located outside the LCP's USL, and instead requires development outside the USL to be served by adequate private on sight water and wastewater disposal systems, the [County] Planning Director determined that the property would need to be within the USL to receive such water. In other words, before the sight could be served in this way, the LCP would need to be amended to change the USL boundary to include this sight. ***Commission staff at the time commented and concurred with this determination.*** (Emphasis added.)

---

<sup>1</sup> At page 9 of the Staff Report, the Staff also cites Coastal Act section 30412 in support of the contention that the State Water Resources Control Board, and not the Coastal Commission, is "the appropriate authority in California for administering water rights." But the McCarthys' vested rights claim is not about water rights; it is about a right to water *service* pursuant to a contract. As with the Staff's position that the McCarthys' vested right to water service is not "development" for the purpose of a vested rights determination, if it is the Staff's position that under section 30412 the Coastal Commission has no authority to require an LCP amendment as a condition of the McCarthys' obtaining water service from CSA 12, then there is in fact no need for a vested rights determination.

Notably, the Staff refers to the USL as a growth-control mechanism, and not merely a regulation of the direct physical impacts of pipeline installation per se.

If it is now the Staff's position that (irrespective of the mode of delivery) no LCP amendment for relocation of the USL is required as a condition of CSA 12 service to the McCarthy property, there is certainly no need for a vested rights determination. If, however, the Commission Staff **does** take the position that movement of the USL by way of an LCP amendment is a necessary pre-condition of the McCarthys' obtaining water service from CSA 12 pursuant to the 1966 Contract, then there is an obvious need for such a determination.

## 2. The Logic of the Staff's Legal Argument Supports the Finding of a Vested Right to CSA 12 Water Service.

In addition to contending that a vested rights determination is not proper because the McCarthys' right to water service, according to the Staff, is not "development," the Staff also contends in its report that the McCarthys' right to such service has not vested, relying primarily on the analysis articulated by the California Supreme Court in *AVCO Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. The Staff's argument has unnecessarily confused the issue, especially as applied to the very simple vested rights claim presented by the McCarthys. The Staff Report suggests that the same factors (that is, those articulated in *AVCO*) must be applied to every vested rights claim. However, as is clear from a review of the cases cited both by the McCarthys and by the Commission Staff, the factors that establish the existence of a vested right differ from case to case, depending upon the **nature of the right asserted**. For example, the plaintiff in *AVCO* wished to complete construction. In that case, the California Supreme Court ruled that the existence of a vested right to **complete construction** rested on whether the property owner had performed "substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government." In **this** case, the only vested right claimed by the McCarthys is the right to receive water service from CSA 12 pursuant to the 1966 Contract. As even the Supreme Court itself acknowledged in *AVCO*, as characterized by the Staff Report: "Therefore, the extent of a vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed or came into effect (*Id.* at 795)." The approval on which the McCarthys' vested right claim is based is solely the 1966 Contract. As such, application of the "substantial work/substantial liabilities" criteria is precluded, because the McCarthys' do not claim a vested right to construct **anything**.<sup>2</sup>

The Commission Staff also concedes in its report that in subdivision map cases a vested right to subdivide can be found where all map conditions have been satisfied citing *Billings v. California Coastal Com.* (1980) 103 Cal.App.3d 729, and *South Central Coast Regional Commission v. Charles A. Pratt Construction Co., Inc.* (1982) 128 Cal.App.3d 830. The test in such cases is not whether there has been "substantial work/substantial liabilities." Therefore, as we have stated, the facts required to establish a vested right depend entirely upon the nature and scope of the right asserted.

---

<sup>2</sup> Note also that the Staff's contention that an LCP amendment is required for service to the McCarthys' property creates the potential for an unlawful takings and/or impairment of contract.

Even assuming, for the sake of argument, that the substantial work/substantial liabilities criteria applied in this case (they do not), they can be satisfied by the McCarthys' predecessors' payment of taxes in reliance upon the rights established by the 1966 Contract.

**3. The Fact That the Commission Was Not a Party to the 1966 Contract Is Legally Irrelevant.**

Finally, the Staff contends that the Commission cannot be estopped to deny the McCarthys' right to CSA 12 water service because the Commission is not a party to the 1966 Contract on which the vested rights claim is based. That argument entirely misses the point. The fact that the Coastal Commission was not a party to the government actions creating the vested right is legally irrelevant. Section 30608 of the Coastal Act *presumes* a situation in which the Coastal Commission was *not* a party to the government action giving rise to the estoppel, since the Coastal Commission did not exist at the time the rights came into existence. Moreover, in this case, the question is whether CSA 12 (the County) would be estopped to deny water service under the contract. CSA 12 *would* be estopped by the Contract; therefore, the McCarthys have a vested right to CSA 12 service. Those vested rights came into existence prior to 1972.

**4. Additions to the Commission's Record.**

We are submitting herewith for addition to the Commission's record the letter authored by this law firm on behalf of San Miguelito Partners LP, dated August 20, 2010, and addressed to Anne Wyatt, Chairperson of the San Luis Obispo Planning Commission, and the attachments thereto. In addition, though the Commission Staff has not disputed the existence of the 1966 Contract or history of taxes paid in reliance thereon, we are submitting herewith for addition to the Commission's record the following:

1. The November 21, 1966 "Contract Between San Luis Obispo County Flood Control and Water Conservation District and County of San Luis Obispo, on Behalf of County Service Area No. 12 for a Water Supply";
2. The October 3, 1983 "Contract Between the County of San Luis Obispo on behalf of County Service Area No. 12 and San Miguelito Associates, for Assignment of Rights to Water Supply and for Assumption of Obligations";
3. The September 19, 2000 Resolution of the County of San Luis Obispo Board of Supervisors, No. 2000-389, approving a water supply contract with the San Luis Obispo County Flood Control and Water Conservation District, amending and restating the November 21, 1966 Contract, with the August, 2000, Contract attached thereto; and
4. Email chain between Gregory W. Sanders, attorney for the McCarthys, and Paavo Ogren, Director of Public Works for the County of San Luis Obispo, confirming history of special property taxes for construction/remediation of Lopez Dam and Reservoir.

We also ask, because of the potential overlap of issues, that the Commission's record for appeal A-3-SL-O-11-061 be added to the record in support of the McCarthys' vested rights claim.

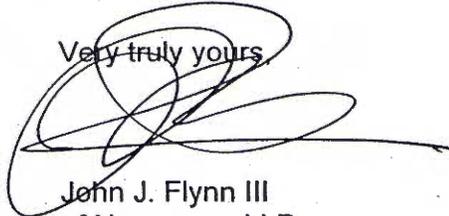
**5. Conclusion.**

The McCarthys, in their letters of January 17 and March 12, 2012, established a vested right to water service from CSA 12. The Commission Staff has taken the position that the right to service in itself is not a proper subject for a vested rights determination. If that is the case, then the McCarthys' rights to such service does not require an amendment of the County LCP to move the Urban Services Line. If the Commission Staff concedes the latter point, then there is no need for a vested rights determination. If, however, the Commission Staff takes the position that the LCP must be amended to move the USL as a pre-condition of the McCarthys' obtaining service from CSA 12, then there is a need for a vested rights determination.

Finally, as established above, the "substantial work/substantial liabilities" criteria applied by the court in *AVCO* do not apply to the vested rights determination to be made in this case, since the criteria to be applied are governed by the nature of the right asserted. The McCarthys claim only a vested right to water service from CSA 12, a right established by contract. Nevertheless, the payment of taxes by the McCarthys' predecessors suffices for any "substantial liabilities" that might, contrary to law, be deemed necessary.

Thank you very much for your consideration of our letter, and the vested rights claim that it supports.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Flynn III", is written over the typed name and firm name below.

John J. Flynn III  
of Nossaman LLP

JJF/rrg

Enclosures

cc: Charles Lester, Executive Director  
Daniel Robinson, Coastal Planner  
Hope Schmeltzer, Chief Counsel

Exhibit A

CONTRACT BETWEEN SAN LUIS OBISPO COUNTY  
FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT AND COUNTY OF SAN LUIS OBISPO, ON BEHALF OF  
COUNTY SERVICE AREA NO. 12 FOR A WATER SUPPLY

This contract, made this 21st day of November, 1966,  
by and between the San Luis Obispo County Flood Control and Water  
Conservation District, established by Chapter 1294 of the 1945  
Statutes of the State of California, hereinafter referred to as the  
"District" and / County of San Luis Obispo, on behalf of  
County Service Area No. 12, a public  
agency in the State of California, duly organized, existing and  
acting pursuant to the laws thereof, hereinafter referred to as the  
"Agency",

W I T N E S S E T H :

WHEREAS, the Zone 3 Project will develop a supply of water  
available for use within the District; and

WHEREAS, the lands and inhabitants of the Agency are in need  
of additional water for beneficial uses; and

WHEREAS, the District desires to sell to public  
water distribution agencies, including the Agency, the water  
developed by the Zone 3 Project under terms and conditions which,  
as far as practicable and consistent with the ultimate use of the  
water, shall be fair and equitable to all such agencies and the  
inhabitants of the District; and

WHEREAS, the Agency desires to contract with the district for

a water supply to be for the use and benefit of the lands and inhabitants served by the Agency and for which the Agency will make payment to the District upon the terms and conditions herein-after set forth;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by the parties hereto as follows:

Article 1. Definitions.

When used in this contract, the following terms shall have the meanings hereinafter set forth:

(a) "Project" shall mean the Zone 3 Project described in Resolution No. 377-65 and Ordinance No. 813 of the District adopted August 17, 1965, consisting of the following works and improvements:

- (1) Lopez Dam and Reservoir
- (2) Recreational Facilities related to Lopez Reservoir
- (3) Lopez Dam-Arroyo Grande Conduit System
- (4) Arroyo Grande-Avila Conduit System
- (5) Arroyo Grande-Oceano Conduit System
- (6) A Water Treatment Plant
- (7) A Terminal Reservoir
- (8) All land, easements, rights-of-way, pumping plants, pipes, valves, fittings, machinery and other property necessary for any of the foregoing.

(b) "Year" shall mean the 12-month period from July 1 to June 30, both dates inclusive.

(c) "Other agency" shall mean any other water distribution agency having the legal power to do so, which executes a contract with the District for the purchase of a supply of project water, other than surplus water.

(d) "Zone 3" shall mean Zone 3 of the District.

(e) "Unit" shall mean those facilities which collectively make up the Project and delineated as follows:

- (1) Unit A shall consist of the Lopez Dam and Reservoir, including access roads, fish trapping facilities and outlet works, all expenses of issuing and selling bonds, all monies necessary to fund interest on bonds prior to the first project payments by water contractors; the recreational facilities related to the Lopez Reservoir, including necessary land; and all engineering and legal fees for the entire project.
- (2) Unit B shall consist of the terminal reservoir, a pumping plant and bypass conduit, the water treatment plant and the Lopez Dam-Arroyo Grande Conduit system. The Lopez Dam-Arroyo Grande Conduit system shall be defined as that portion of the pipeline conduit and all appurtenances from the Lopez Dam outlet works to and including a bifurcation structure located at the intersection of the Highway 101 south frontage road and Brisco Road in Arroyo Grande.
- (3) Unit C shall consist of that portion of the Arroyo Grande-Avila conduit system consisting of the pipeline conduit and all appurtenances from the bifurcation structure which is a part of Unit B to the intersection of the Highway 101 south frontage road and Eighteenth Street in Grover City.

- (4) Unit D shall consist of the Arroyo Grande-Oceano Conduit system. The Arroyo-Grande-Oceano Conduit system shall be defined as that portion of the pipeline conduit and all appurtenances from the south end of the Lopez Dam-Arroyo Grande Conduit system to a connection to the Oceano water system at the intersection of Lancaster Drive and Elm Street in Arroyo Grande.
- (5) Unit E shall consist of that portion of the Arroyo Grande-Avila conduit system consisting of the pipeline conduit and all appurtenances from the west end of Unit C to the intersection of the Highway 101 south frontage road with Vista del Mar in Shell Beach.
- (6) Unit F shall consist of that portion of the Arroyo Grande-Avila conduit system consisting of the pipeline conduit and all appurtenances from the west end of Unit E to Avila Water Company tank No. 3 at approximately elevation 365.

(f) "Bonds" shall mean those bonds authorized for the project by the electorate of Zone 3 at the election held on September 28, 1965.

Article 2. Term of Contract.

This contract shall become effective when the District has executed contracts for an aggregate of 4530 acre-feet of annual entitlements of project water, as set forth in Article 5(c) of this and similar contracts with other agencies, and shall remain in effect for the repayment period of any bonds authorized for the project by the electorate of Zone 3 at the election held on September 28, 1965, or for fifty (50) years, whichever is shorter.

Article 3. Option For Continued Service.

After the expiration of the term of this contract, the Agency shall be entitled to continued service forever under the following conditions unless otherwise agreed to:

(a) Service of water in annual amounts up to and including the Agency's maximum annual entitlement as set forth in Article 5 hereof. If the Agency gives the District written notice of its desire to discontinue service of all or a portion of its maximum annual entitlement, such notice shall constitute a waiver of all rights thereafter to such portion of its maximum annual entitlement.

(b) Service of water at no greater cost to the Agency than would have been the case had this contract continued in effect.

(c) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder. Other terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and conditions provide for continued service for a limited number of years only, the Agency shall have the same option to receive continued service here provided for upon the expiration of that and each succeeding period of continued service.

Article 4. Validation.

Either the District or the Agency may file and diligently prosecute to a final decree in a court of competent jurisdiction a proceeding in mandamus or other appropriate proceeding or action for the judicial examination, approval, and confirmation of the proceedings had for the organization of the Agency and the proceedings of the governing body of the Agency and of the Agency leading up to and including the making of this contract and the validity of the provisions thereof.

Article 5. Contract Entitlement.

(a) Year of Initial Water Delivery.

The first year in which water will be made available to the Agency is presently estimated to be 1969-70. To the extent practicable, the District shall notify the Agency of any change in this estimate.

(b) Obligation of District to Complete Facilities.

Subject to the availability of funds, the District shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project in such a manner and at such times that water will be available to the Agency in or before the year specified in subdivision (a) of this Article.

(c) Agency's Annual Entitlement to Water.

Commencing with the year in which water is first made available, each year the District shall make available for delivery to the Agency, to the extent possible, 540 acre-feet of water.

(d) Sale of Surplus Water.

If during any year the supply of project water, after appropriate allowances for holdover storage, exceeds the total of the annual entitlements for all agencies, the District shall offer to sell and deliver 11.92 percent of such surplus water to the Agency at a price equal to the operation, maintenance, replacement and administration costs incurred by the District for the storage,

treatment, sale and delivery of such surplus water. The District may offer to sell and deliver any such surplus water not purchased by the Agency under the terms provided for above to any prospective purchaser, without right of renewal, in a manner and at prices which will return to the District the largest net revenue practicable, but in no event at prices less than that at which such water is offered to the Agency. Any revenues derived from the sale of such surplus water shall be used to reduce the District's net annual costs for operation, maintenance, replacement and administration of project facilities.

Article 6. Water Shortages.

At times there may occur a shortage during any year in the quantity of water available for delivery to the Agency by the District pursuant to this contract. In such event no liability shall accrue against the District or any of its officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of drought, or unavoidable causes. In any year in which such a shortage may occur for any cause so that the total quantity of water available to the District for distribution to the Agency and other agencies is less than the total of all quantities contracted for by the Agency and other agencies, the District shall apportion 11.92 percent of such total quantity of water available to it to the Agency.

The District shall give the Agency written notice as far in advance as possible of any such reduction in delivery to it.

Article 7. Delivery of Water.

All water to be furnished pursuant to this contract will be delivered to the Agency at a point or points mutually agreeable with the San Luis Obispo County Flood Control and Water Conservation District and any entities intering into contract with County Service Area No. 12 for water service pursuant to this Contract.

If the Agency desires to change its point of delivery or install additional points of delivery, it may do so if it furnishes all funds to cover any District expenses involved, or if it undertakes the construction of the necessary conduits and appurtenances at its own expenses; provided, the Agency shall not undertake any such construction until it has first obtained District approval of the plans and specifications for such work. Upon the receipt of a request for such a change in place of delivery and the deposit of the required funds, the District shall diligently proceed to make such a change.

Article 8. Measurement.

All water furnished pursuant to this contract shall be measured by the District at each point of delivery established pursuant to Article 7 hereof with equipment satisfactory to the District and the Agency. Said equipment shall be installed, operated and maintained by the District. All determinations relative to the measuring of water shall be made by the District and upon request by the Agency, the accuracy of such measurement shall be investigated by the District. Any error appearing therein will be adjusted. The Agency may inspect such measuring equipment for the purpose of determining the accuracy thereof. The District will install, or cause to be installed, backflow prevention devices in connection with such measuring devices to prevent water delivered to the Agency or other agencies from returning to the District's lines.

Article 9. Time for Delivery of Water.

The amounts, times, and rates of delivery of water to the Agency during any year shall be in accordance with a water delivery schedule determined in the following manner:

(a) On or before January 1 of each year the Agency shall submit in writing to the District a preliminary water delivery schedule, subject to the provisions of this Article and Article 5 indicating the amounts of water desired by the Agency during each month of the succeeding three (3) years.

(b) Upon receipt of a preliminary schedule, the District shall review it and after consultation with the Agency, shall make such modifications in it as are necessary to insure that the amounts, times, and rates of delivery to the Agency will be consistent with the available supply of water from the project, considering the then current delivery schedules of all other agencies. On or before April 1 of each year, the District shall determine and furnish to the Agency a water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the Agency during each month of that year.

(c) A water delivery schedule may be amended by the District upon the Agency's written request. Proposed amendments shall be submitted by the Agency within a reasonable time before the desired change is to become effective, and it shall be subject to review and modification by the District in like manner as the schedule itself.

(d) In no event shall the district be obligated to deliver water to the Agency at a combined

total instantaneous rate of flow exceeding 0.78 cubic  
feet per second.

Article 10. Responsibilities for Delivery and Distribution of Water Beyond Delivery Structures.

After such water has passed the delivery structures established in accordance with Article 7, neither the District nor its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Agency or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water beyond said delivery structures.

Article 11. Water Quality.

All water delivered to the Agency under this contract shall meet all State of California and San Luis Obispo County minimum water quality requirements for water for domestic use.

Article 12. Curtailment of Delivery for Maintenance Purposes.

The District may temporarily discontinue or reduce the amount of water to be furnished to the Agency for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of such water to the Agency. Insofar as it is feasible the District will give the Agency due notice in advance of any such temporary discontinuance or reduction, except in the case of emergency, in which case no notice need be given. In the event of such discontinuance or reduction, the District will make available upon resumption of service, as nearly as may be feasible, and to the extent water is available to it, the quantity of water which would have been available to the Agency in the absence of such discontinuance or reduction.

Article 13. Rate and Method of Payment.

(a) Rate of Payment.

Commencing with the year in which water is first made available, and each year thereafter, the Agency shall pay to the District a minimum annual charge, to be determined as set forth in subdivision (b) of this Article, for the water made available under this contract for such respective year, plus a monthly variable charge, to be determined as set forth in subdivision (c) of this Article, for each acre-foot of water actually delivered to the Agency during such year.

(b) Minimum Annual Charge.

The minimum annual charge shall be determined in accordance with the following principles:

- (1) The first two and one-half million dollars (\$2,500,000) of bonds sold and all other bonds not allocated by principle (2) below shall be deemed to have been sold for the purpose of financing the costs of Unit A.
- (2) The amount of bonds sold for each of the other respective Units, B, C, D, E and F, shall be deemed to be equal to the District's engineer's final estimate of the costs of each such unit less the amount of any Federal or State grant received applicable to that unit.
- (3) Any recreation grants received from the State of California under the Davis-Grunsky Act shall be used to finance the construction of Unit A or to pay the interest and principal on any bonds in excess of the first two and one-half million dollars (\$2,500,000) deemed to have been sold for

the purpose of financing the costs of Unit A.

The minimum annual charge shall be the total of the following payments:

(1) After deducting any interest and principal payments made from recreation grants pursuant to principle (3) above, the Agency shall pay 11.92 percent of the remainder which the District is obligated to pay during the succeeding year for the interest and principal on that amount of bonds in excess of two and one-half million dollars (\$2,500,000) deemed to have been sold for the purpose of financing the costs of Unit A.

(2) The Agency shall also pay the following percents of the amount which the District is obligated to pay during the succeeding year for interest and principal on the bonds deemed to have been sold for the purpose of financing the costs of Units B, C, D, E and F:

Unit B	<u>11.92</u>
Unit C	<u>14.90</u>
Unit D	<u>0.00</u>
Unit E	<u>25.93</u>
Unit F	<u>100.00</u>

(3) The Agency shall also pay the following percents of the District's net annual costs, other than pumping energy costs, as determined by the District, for the operation, maintenance, replacement and administration of each respective unit:

Unit A	<u>8.67</u>
Unit B	<u>11.92</u>
Unit C	<u>14.90</u>

Unit D	<u>0.00</u>
Unit E	<u>25.93</u>
Unit F	<u>100.00</u>

(c) Variable Charge.

The sum of the monthly variable charges to the Agency and all other agencies shall be an amount which is estimated to be sufficient to compensate the District for pumping energy charges incurred during such respective month. The variable charge shall be determined for each month during which water is made available to the Agency under this contract by (1) dividing the District's actual cost of pumping energy during that month by the total acre-feet of water delivered by the District during such month to the Agency and all other agencies pursuant to this contract and similar contracts with such other agencies, and (2) multiplying this acre-foot charge by the number of acre-feet of water delivered by the District to the Agency during such month.

Article 14. Time of Payment.

(a) Time of Payment of Minimum Annual Charges.

On or before January 1 of each year the District shall notify the Agency in writing of the amount of its minimum annual charge for the next succeeding year. The Agency shall pay one-half of the minimum annual charge for each year on or before July 1 of such year. The Agency shall pay the remaining one-half of such minimum annual charge on or before January 1 of that year.

(b) Time of Payment of Variable Charges.

Within fifteen days after the end of each month the District shall calculate and bill the Agency for the variable charge for such month. The Agency shall pay this charge on or before the last day of the month in which it receives such bill.

Article 15. Default.

The Agency shall establish and cause to be collected all fees, charges and other sums necessary to enable it to make in full all payments to be made pursuant to this contract on or before the date such payments become due and it will use all of its authority and resources to meet these and other obligations under this contract. In the event of any default by the Agency in the payment of any money required to be paid to the District hereunder, the District in its discretion may suspend delivery of water during the period when the Agency is delinquent in its payment for or obligations due to the District under the terms of this contract. Action taken pursuant to this Article shall not deprive the District of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

Article 16. Obligation of Agency to Make Payments.

(a) Character of Obligation.

The obligations of the Agency arising out of or pursuant or incidental to this contract including, without limiting the generality of the foregoing, the obligations of the Agency to pay to the District the sums becoming due the District for water made available hereunder, shall constitute a general obligation of the Agency and the Agency shall use all the powers and resources available to it under the law to collect the funds necessary for and to pay its obligations to the District under this contract. The Agency as a whole is obligated to pay to the District the payments becoming due under this contract, notwithstanding any individual default by its water users, constituents or others in the payment to the Agency of assessments, taxes, tolls, or other charges levied by the Agency.

(b) Refusal of Water Does Not Affect Obligation.

The Agency's failure or refusal to accept delivery of project water to which it is entitled under this contract shall in no way relieve the Agency of its obligation to make payments to the District as provided for herein.

Article 17. Interest on overdue Payments.

Upon each charge to be paid by the Agency to the District pursuant to this contract which shall remain unpaid after the same shall have become due and payable, interest shall accrue at the rate of one-half ( $\frac{1}{2}$ ) of one (1) percent per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and the Agency hereby agrees to pay such interest. In no event shall such interest be compounded.

Article 18. Area Served by Agency.

Water delivered to the Agency pursuant to this contract shall not be sold or otherwise disposed of by the Agency for use outside the boundaries of Zone 3 as they now or hereafter may exist, without the prior written consent of the District.

Article 19. Changes in Organization of Agency.

The Agency will furnish the District with maps showing the territorial limits of the Agency and the service area or areas of its water distribution system. Throughout the term of this contract, the Agency will promptly notify the District of any changes, either by inclusion or exclusion, in said territorial limits and service area or areas. The Agency shall take no action to exclude any lands from the Agency or its service area or areas without the prior written assent of the District.

Article 20. Remedies Not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

Article 21. Contracts to be Uniform.

Contracts executed by the District with other agencies shall be substantially uniform with respect to basic terms and conditions.

Article 22. Amendments.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law. The District shall make available to the Agency at all times during the normal hours of business at the District offices for the Agency's inspection copies of all water sale contracts now or hereafter executed by the District with all other agencies and of any amendments thereof. Before the District agrees to amend any other agency's contract it shall give the Agency written notice of its intent to do so, and if any other agency's contract is amended, the District shall offer to amend this contract in substantially the same manner.

Article 23. Opinions and Determinations.

Where the terms of this contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

Article 24. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other breach, default or matter.

Article 25. Notices.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be signed for the District and for the Agency by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

Article 26. Assignment.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the District.

Article 27. Inspection of Books and Records.

The proper officers or agents of the Agency shall have full and free access at all reasonable times to the account books and official records of the District insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof at the Agency's expense, and the proper representatives of the District shall have similar rights in respect to the account books and records of the Agency.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

APPROVED AS TO FORM AND SUFFICIENCY:

JAMES W. POWELL  
District Attorney

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By *Frank H. Kimball*  
Chairman of the Board of Supervisors

By *Robert J. Schum*  
Deputy District Attorney

ATTEST:

*A. E. MacCough*  
County Clerk

COUNTY OF SAN LUIS OBISPO, ON BEHALF OF COUNTY SERVICE AREA NO. 12

By *Frank H. Kimball*  
Chairman of the Board of Supervisors

EXHIBIT A

CONTRACT BETWEEN THE COUNTY OF SAN LUIS OBISPO  
ON BEHALF OF COUNTY SERVICE AREA NO. 12 AND  
SAN MIGUELITO ASSOCIATES, FOR ASSIGNMENT OF RIGHTS  
TO WATER SUPPLY AND FOR ASSUMPTION OF OBLIGATIONS

This contract, made this 3 day of October,  
1983, by and between the County of San Luis Obispo, on behalf  
of COUNTY SERVICE AREA NO. 12, a public agency in the State of  
California, duly organized, existing and acting pursuant to the  
laws thereof, hereinafter referred to as "Service Area", and  
San Miguelito Associates, a California Limited Partnership,  
hereinafter collectively referred to as "Contractor".

W I T N E S S E T H

WHEREAS, Service Area and the San Luis Obispo County Flood  
Control and Water Conservation District, hereinafter referred  
to as "District", entered into a water supply contract dated  
November 21, 1966, and an amendment thereto dated July 19,  
1968, and which are hereinafter referred to collectively as  
"Water Supply Contract"; and

WHEREAS, Water Supply Contract gives Service Area a right  
to an annual entitlement of 337 acre-feet of water, to the  
extent that it is possible for District to deliver such amount  
to Service Area; and

WHEREAS, the lands of Contractor are within the Service  
Area and the inhabitants of such lands who are and will be  
served by Contractor are in need of water for beneficial uses;  
and

EXHIBIT A

WHEREAS, Service Area desires to sell to the inhabitants of Service Area, including those served by Contractor, the water to be made available to it pursuant to the Water Supply Contract, under terms and conditions which, as far as practicable and consistent with the ultimate use of the water, shall be fair and equitable to all inhabitants of Service Area; and

WHEREAS, Contractor desires to contract with Service Area for a water supply to be for the use and benefit of the lands and inhabitants served by Contractor and for which Contractor will make payments upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is hereby mutually agreed by the parties hereto as follows:

1. Service Area hereby assigns to Contractor its rights, title and interest to 2.96 percent of its annual entitlement to water under Water Supply Contract each and every year during the mutual terms of this contract and Water Supply Contract (said percent being approximately ten (10) acre-feet per year of water).

2. All water to be furnished to Contractor pursuant to this contract will be delivered to Contractor at a point on Contractor's property to be mutually agreed upon by Service Area and Contractor, and all costs and expenses of any required connection at said delivery point will be paid to Service Area by Contractor within 30 days following the date of an invoice

therefor. Any and all water furnished to Contractor pursuant to this contract shall be used within County Service Area No 12 and none of the said water shall be used outside the boundaries of said County Service Area No. 12.

3. Contractor hereby agrees to assume the obligation of and to pay for 2.96 percent of each and every payment for Units A through G and 5.43 percent (except as said 5.43 percent may be modified by paragraph 4, below) of each and every payment for Unit J, as set forth in Water Supply Contract, which Service Area is required to make to District pursuant to Water Supply Contract. Contractor shall make all such payments to Service Area no later than 15 days prior to the date each prospective payment is due to District from Service Area.

4. If at any time during the mutual terms of this contract and Water Supply Contract, changes are made in annual water entitlement assignments delivered through Unit J, which changes or alters Contractor's percentage (5.43 percent as of the date of this contract) of all such annual entitlements to be delivered through said Unit J, then Contractor's obligations and payments for said Unit J shall be adjusted in direct proportions to such changes.

5. This contract is subject to the obligations and limitations imposed by Water Supply Contract, including all amendments thereto, and is intended to be in conformance and harmony with same. Water Supply Contract, and all amendments thereto, are hereby incorporated herein by this reference in

all respects as though set forth in full at this point. Contractor hereby expressly agrees to the provisions of Water Supply Contract, and all amendments thereto, imposing obligations and limitations upon it and further expressly agrees that nothing in this contract shall be deemed to require Service Area to perform any obligation in conflict with Water Supply Contract.

5. In addition to the above payments which Contractor is obligated to make to Service Area pursuant hereto, Contractor agrees to pay to Service Area such service charges as may be imposed by Service Area's total and complete water costs, including, but not limited to, direct, indirect and administrative costs.

7. Service Area shall have the right to cancel this contract and take back the ownership of the rights, title, and interest to said 2.96 percent of annual entitlement to water referred to in paragraph No. 1 of this contract. Service Area may exercise said right by giving to Contractor notice in writing thereof; and the right, title and interest to said 2.96 percent of annual entitlement to water shall be automatically reassigned to and become the property of Service Area 30 days after the giving of such notice; provided further, however, that, if Contractor is not in default of any of the provisions of this contract, Service Area shall, at Contractor's request, thereafter sell water to Contractor at retail, with Contractor paying therefor to Service Area such periodic service charges

as may be deemed by Service Area to be necessary to recover Service Area's total and complete costs and expenses thereof, including, but not limited to, direct, indirect and administrative costs; and, provided further, that the quantity of water which Service Area shall be obligated to sell to Contractor at retail pursuant hereto shall not exceed the quantity of water to which Contractor was entitled under this contract prior to the giving of the 30-day notice referred to hereinabove, and ~~said obligation of Service Area to sell water to Contractor shall exist for a period of two years from the date of said cancellation and no longer.~~

8. Contractor's failure to make payments in accordance with provisions of this contract shall constitute a breach of this contract and Service Area shall have the right to terminate the delivery and supply of water hereunder without notice to Contractor.

9. Contractor shall not assign this contract or any interest therein without the prior written consent of both Service Area and District.

10. This contract shall be binding on assigns, transferees, and successors to the parties hereto.

11. No waiver by Service Area of any failure by Contractor to comply with any term or condition hereof shall be or be construed to be a waiver by Service Area of any similar or other failure by Contractor to comply with any term or condition hereof.

12. All notices to Contractor hereunder shall be delivered by first class mail, postage prepaid, to the following address, to-wit:

San Miguelito Associates  
c/o Howard, Howard and Barnara  
4350 Von Karman Ave., Suite 350  
Newport Beach, CA 92660

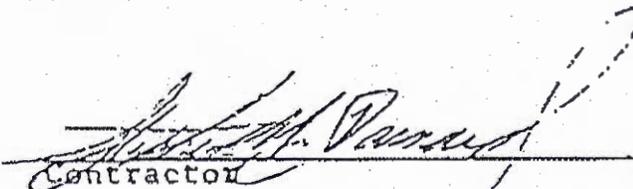
13. All notices to Service Area hereunder shall be sent by first class mail, postage prepaid, to the following address, to-wit:

County Engineering Department  
County Government Center, Room 207  
San Luis Obispo, CA 93408

Attention: Special Districts Administrator

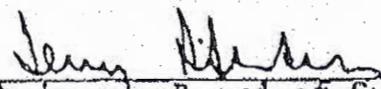
14. This contract shall not be valid until and unless approved by the District.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

  
Contractor

\_\_\_\_\_  
Contractor

COUNTY OF SAN LUIS OBISPO  
ACTING ON BEHALF OF  
COUNTY SERVICE AREA NO. 12

By:   
Chairman, Board of Supervisors

This Assignment is hereby approved by the San Luis Obispo County Flood Control and Water Conservation District.

By: Henry Menden  
Chairman of the Board of Said District

ATTEST:

[Signature]  
County Clerk and Ex-Officio Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.

By: [Signature] 9-26-83  
Jon M. Jenkins  
Deputy County Counsel

AMENDMENT NO. 1 TO CONTRACT BETWEEN THE COUNTY OF SAN LUIS OBISPO ON BEHALF OF COUNTY SERVICE AREA NO. 12 AND SAN MIGUELITO ASSOCIATES, FOR ASSIGNMENT OF RIGHTS TO WATER SUPPLY AND FOR ASSUMPTION OF OBLIGATIONS

WHEREAS, on October 3, 1983, the County of San Luis Obispo, on behalf of County Service Area No. 12, hereinafter referred to as "CSA-12" and San Miguelito Associates, a California limited partnership, hereinafter collectively referred to as "Contractor", entered into that certain contract entitled: "Contract Between the County of San Luis Obispo on Behalf of County Service Area No. 12 and San Miguelito Associates, for Assignment of Rights to Water Supply and for Assumption of Obligations"; and,

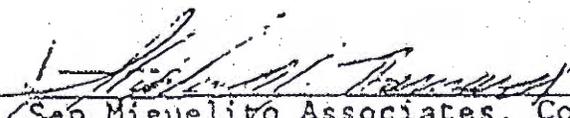
WHEREAS, CSA-12 and Contractor now desire to amend said Contract.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN CSA-12 and Contractor that the said Contract is and shall be amended by deleting from paragraph 7 thereof the following language:

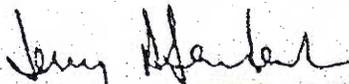
"... and said obligation of service area to sell water to contract shall exist for a period of two years from the date of said cancellation and no longer."

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on this \_\_\_\_\_ day of November, 1983.

CONTRACTOR

  
San Miguelito Associates, Contractor

COUNTY OF SAN LUIS OBISPO  
Acting on Behalf of CSA-12

By:   
Chairman of the Board of Supervisors

This Assignment is hereby approved by the San Luis Obispo County Flood Control and Water Conservation District.

By: *[Signature]*  
Chairman of the Board of Said District

ATTEST:

*[Signature]*  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By: *[Signature]*  
Deputy County Counsel

Dated: November 1, 1983



EXHIBIT A

**IN THE BOARD OF SUPERVISORS**  
County of San Luis Obispo, State of California

Tues day September 19, 2000

PRESENT: Supervisors Harry L. Oviatt, Shirley Bianchi, K.H. "Katcho" Achadjian,  
and Chairperson Peg Pinard

ABSENT: None

RESOLUTION NO. 2000-389

**RESOLUTION OF THE BOARD OF SUPERVISORS OF  
THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA,  
ACTING AS THE GOVERNING BODY OF SAN LUIS OBISPO  
COUNTY SERVICE AREA #12, APPROVING A WATER SUPPLY  
CONTRACT WITH THE SAN LUIS OBISPO COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

WHEREAS, this Board of Supervisors (the "Board"), acting as the governing body of San Luis Obispo County Service Area #12 (the "Service Area") has been presented with a form of Water Supply Contract (the "Contract") by the San Luis Obispo County Flood Control and Water Conservation District (the "District"), respecting the water to be provided through the District's Lopez Dam facility, including its appurtenances (collectively, the "Facility"); and

WHEREAS, the Service Area has heretofore purchased water from the Facility for its water enterprise, pursuant to an existing water supply contract with the District; and

WHEREAS, the Service Area now wishes to insure the availability of water from the Facility and to that end wishes to approve the terms of the Contract and to authorize its execution;

NOW, THEREFORE, the Board of Supervisors of the County of San Luis Obispo, acting as the governing body of San Luis Obispo County Service Area #12, does hereby resolve and determine as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The terms and provisions of the Contract, as presented to and reviewed by this meeting of the Board, are hereby approved, and the Vice Chair of the Board is hereby authorized and directed to execute the Contract in the name and on behalf of the Service Area, in substantially the form presented to and approved at this meeting of the Board, and the Clerk of the Board is hereby authorized and directed to attest to the signature of the Board.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of San Luis Obispo County, acting as the Governing Board for the San Luis Obispo County Service Area #12, at a regular meeting of said Board held on September 19, 2000, by the following vote:

AYES: Supervisors Achadjian, Ryan, Ovitt, Bianchi, Chairperson Pinard

NOES: None

ABSTENTIONS: None

ABSENT: None

By PEG PINARD  
Vice Chairman of the Board of Supervisors  
of San Luis Obispo County, acting as the  
Governing Board for San Luis Obispo  
County Services Area #12

ATTEST:

By: Julie L. Rodewald  
County Clerk of San Luis Obispo County  
BY: CHERIE ASPURGO Deputy Clerk  
[SEAL]

APPROVED AS TO FORM AND  
LEGAL EFFECT:

James B. Lindholm, Jr.  
County Counsel  
County of San Luis Obispo

By: [Signature]  
Date: 9/17/00  
L:\MANAGEMENTS\500396987.L\RS.L\hd.sk

STATE OF CALIFORNIA, }  
County of San Luis Obispo, } ss.

I, Julie L. Rodewald, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this 25th day of September, 2000.

(SEAL)

CD-325

Julie L. Rodewald  
County Clerk and Ex-Officio Clerk of the Board  
of Supervisors  
By: [Signature]  
Deputy Clerk

CONTRACT BETWEEN

SAN LUIS OBISPO COUNTY FLOOD CONTROL

AND

WATER CONSERVATION DISTRICT

AND

SAN LUIS OBISPO COUNTY SERVICE AREA #12

FOR A WATER SUPPLY

Dated as of

August \_\_, 2000

TABLE OF CONTENTS

Page No.

Article 1. Definitions ..... 3

Article 2. Term of Contract ..... 11

Article 3. Validation ..... 12

Article 4. Distribution and Sale of Project Water ..... 13

    (A) Legally Required Water Releases ..... 13

    (B) Entitlements ..... 13

    Surplus Water Rates ..... 14

    (D) Surplus Water ..... 15

Article 5. Water Shortages ..... 15

Article 6. Completion of Seismic Remediation Improvements ..... 16

Article 7. Delivery of Water ..... 18

Article 8. Measurement ..... 18

Article 9. Time for Delivery of Project Water ..... 19

Article 10. Responsibility for Delivery and Distribution of Water Beyond Delivery Points ... 20

Article 11. Operation and Maintenance of Project and Water Enterprise ..... 20

Article 12. Water Quality ..... 24

Article 13. Curtailment of Delivery of Project Water for Maintenance Purposes ..... 24

Article 14. Rate and Method of Payment ..... 25

    (A) *Allocation of Total Project Costs and Debt Service* ..... 25

    (B) *Agency Contract Payments* ..... 26

    (C) *Agency Credits against Contract Payments* ..... 27

    (D) *Quarterly Variable Charges* ..... 29

    (E) *Use by District of Total Contract Payments* ..... 29

Article 15. Take-or-Pay Obligation of Agency ..... 30

Article 16. Pledge; Establishment and Collection of Rates and Charges ..... 30

Article 17. Default .....	31
Article 18. Failure to Levy, Set or Collect Taxes, Rates and Charges .....	33
Article 19. Area Served by Agency .....	34
Article 20. Changes in Organization of Agency .....	34
Article 21. Agency's Obligations Several and Not Joint; Limited Step-up Provisions and Reimbursement .....	34
Article 22. Contracts to Be Uniform .....	36
Article 23. Amendments .....	36
Article 24. Opinions and Determinations; Good Faith; Information to Be Provided to Zone 3 Advisory Committee .....	38
Article 25. Waiver of Rights .....	39
Article 26. Notices .....	39
Article 27. Assignment .....	39
Article 28. Inspection of Books and Records .....	40
Article 29. Severability .....	40
Article 30. Water Right .....	41
Article 31. Wheeling of Water .....	41
Article 32. Execution in Counterparts .....	42
Article 33. Governing Law .....	42
EXECUTION .....	43

**CONTRACT BETWEEN SAN LUIS OBISPO COUNTY  
FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT AND SAN LUIS OBISPO COUNTY SERVICE AREA #12  
FOR A WATER SUPPLY**

This Contract (the "Contract"), made this \_\_\_ day of August, 2000, by and between the San Luis Obispo County Flood Control and Water Conservation District (the "District"), established under and pursuant to Chapter 1294 of the 1945 Statutes of the State of California (the "State") and the San Luis Obispo County Service Area #12, a public agency organized and existing under the laws of the State of California, acting pursuant to the laws of such State (the "Agency"), amends and restates that certain contract for a water supply by and between the District and the Agency, dated November 21, 1966, as amended (the "Prior Supply Contract"), with reference to the following facts:

**WITNESSETH:**

WHEREAS, the District has heretofore constructed, improved and operated a public works project (the "Project," as more particularly defined below) that provides a supply of water available for use within the District; and

WHEREAS, the State now requires the District to make certain repairs and improvements to the Project for public safety reasons, which improvements (the "Seismic Remediation Improvements") must be financed with the proceeds of certain future obligations of the District; and

WHEREAS, the lands and inhabitants within the jurisdiction of the Agency are in need of water provided by the Project for beneficial uses; and

WHEREAS, the District has provided water from the Project to the City of Grover Beach, the City of Pismo Beach, the City of Arroyo Grande, the Oceano Community Services District and County of San Luis Obispo Service Area No. 12 (being, collectively, the Agency and the Other Agencies, as hereinafter defined) since 1966, pursuant to several water supply contracts, including the Prior Supply Contract (collectively, the "Prior Supply Contracts"), and the parties now wish to amend and restate the Prior Supply Contracts, preserving the same basic structure and obligations; and

WHEREAS, the District desires to sell to public water distribution agencies, including the Agency and the Other Agencies, the water provided by the Project under terms and conditions which, as far as practicable and consistent with the ultimate use of the water, shall be fair and equitable to all such agencies and to the inhabitants of the District; and

WHEREAS, the Agency desires to contract with the District for a water supply to be for the use and benefit of the lands and inhabitants served by the Agency and for which the Agency will make payment to the District upon the terms and conditions hereinafter set forth; and

WHEREAS, the District and the Agency wish to provide for the financing of the Seismic Remediation Improvements and Additional Projects (as defined herein), and for the future

maintenance of the Project in order to preserve the water supply provided by the Project to the Agency; and

WHEREAS, obtaining the necessary financing for the Seismic Remediation Improvements and Additional Projects (as defined herein) will aid the District in meeting its intended communitywide results of: maintaining and encouraging a safe, healthful and pleasant living environment, and encouraging a strong and viable economy;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by the parties hereto, as follows:

Article 1. Definitions. When used in this Contract, the following terms shall have the meanings hereinafter set forth:

"Additional Projects" shall mean those capital projects to be undertaken by the District in addition to the Seismic Remediation Improvements which have the effect of (i) preserving and maintaining the Safe Yield of the Project (a "Type I Additional Project"); (ii) maintaining the quality of water provided by the Project (a "Type II Additional Project"); or (iii) any other capital project agreed to by the Agency and all of the Other Agencies (a "Type III Additional Project").

"Calendar Quarter" shall mean each three-month period commencing on January 1, April 1, July 1 and October 1 of each year.

"Calendar Year" shall mean the twelve-month period from January 1 of a calendar year to December 31 of the same calendar year, both dates inclusive.

"Capital Costs" shall mean costs expended by the District at or appurtenant to the Project, for permanent improvements to the Project or equipment which is capitalizable on the books of the District.

"Capital Reserves" shall mean those reserves established by the District for the Scheduled Maintenance of the Project or for anticipated costs of upgrade and improvements likely to be imposed by Governmental Authority (each, an "External Requirement") in order for the District to continue to operate the Project for water supply purposes, established either (a) on a year-to-year basis by the District in its annual budgets, copies of which shall be provided to the Agency promptly following adoption, or (b) on a multi-year basis by the District through the development and promulgation to the Agency of a long-term capital improvement plan of the District; provided, however, that no Type III Additional Projects shall be funded from Capital Reserves; and provided further, that the District shall not expend any portion of Capital Reserves for any External Requirement until and unless such External Requirement becomes a final order of such Governmental Authority, not subject to further appeal.

"Contract Payments" shall mean those payments due from the Agency to the District hereunder, as more particularly set forth in Article 14 hereof.

"County Board" shall mean the Board of Supervisors of the County of San Luis Obispo, California.

"Coverage Account" shall mean the account established for the Agency either with the District or with a Depository, as provided in Article 18 hereof.

"Coverage Factor" shall mean 25% of Agency Debt Service, determined in accordance with Article 14 hereof, calculated for each Fiscal Year.

"Debt Service" shall mean, in the aggregate, (a) principal and interest (or mandatory sinking fund payments, installment or lease or similar payments due) with respect to all Tax-Exempt Obligations at the time outstanding in accordance with their terms, provided that capitalized interest funded from the proceeds of Tax-Exempt Obligations need not be taken into account, (b) annual costs of administering the Tax-Exempt Obligations, including the annual fees of any trustee or paying agent therefor, and (c) the costs, if any, of annual credit enhancement for the Tax-Exempt Obligations.

"Depository" shall mean a financial institution designated for the deposit and administration of the Coverage Account of the Agency, as and when appointed in accordance with Article 18 hereof.

"Entitlements" shall mean the quantity of water to be distributed to the Agency under this Contract and to the Other Agencies under their Water Supply Contracts with the District, as established in Article 4(B) hereof and of such other Water Supply Contracts.

"Fiscal Year" shall mean the twelve-month period from July 1 of a Calendar Year to June 30 of the immediately following Calendar Year, both dates inclusive.

"General Obligation Bonds" shall mean those certain general obligation bonds of the District, issued pursuant to authorization received from the voters of the District at the election conducted on March 7, 2000, in an aggregate principal amount of not to exceed \$13,200,000, supported by a levy of *ad valorem* taxes throughout the District.

"Governmental Authority" shall mean any State, federal or local governmental authority with cognizance over the District or the Project, or any portion thereof, empowered to regulate or control any aspect of its or their operations.

"Operating Segment," as to the Agency, shall mean the segment of the Project constructed for, and providing service directly to, the Agency, which, as at the date hereof, consists of Unit(s) A, B, C, E, F, G, H, I and J.

"Operation and Maintenance Costs" shall mean the reasonable and necessary current expenses of maintaining, repairing and operating the Project, including District administrative expenses directly attributable to Project function, but excluding Capital Reserves and Debt Service, all computed in accordance with generally accepted accounting principles applicable to enterprise funds of government agencies.

"Other Agency" shall mean any other water-distributing public agency of the State, which, having the legal power to do so, executes a water supply contract with the District substantially identical to this Contract, except for agency information, dates, Unit participations, Proportionate Share and Percentage Share, other than for the purpose of purchasing Surplus Water, including, as of the date hereof, The City of Arroyo Grande, The City of Grover Beach, Ocean Community Services District, and The City of Pismo Beach.

"Percentage Share" shall mean the Agency's aggregate attributed share, by percentage, of charges for Operation and Maintenance Costs and Capital Reserves for any given Water Year for each respective Unit, as compared to all of the charges for Operation and Maintenance Costs and Capital Reserves attributable to each such Unit levied against the Agency and all Other Agencies, and as specified for the Agency below:

Unit A	7.44%
Unit B	7.44
Unit C	17.40
Unit D	0.00

Unit B	29.64
Unit F	45.73
Unit G	100.00
Unit H	100.00
Unit I	100.00
Unit J	100.00

"Project" shall mean (A) the 1965 Zone 3 Project described in Resolution No. 377-65 and Ordinance No. 813 of the District, adopted August 17, 1965, consisting of the following works and improvements: (i) Lopez Dam and Reservoir, (ii) Lopez Dam-Arroyo Grande Conduit System, (iii) Arroyo Grande-Avila Conduit System, (iv) Arroyo Grande-Oceano Conduit System, (v) water treatment plant, (vi) terminal reservoir, (vii) all land, easements, rights-of-way, pumping plants, pipes, valves, fittings, machinery and other property necessary for any of the foregoing, and (B) the Seismic Remediation Improvements.

"Proportionate Share" shall mean the percent of the total Entitlements available to the Agency, as compared to the aggregate of all Entitlements given to the Agency and all Other Agencies hereunder and under all Water Supply Contracts in any given Water Year, as set forth in Article 4(B) hereof.

"Rates and Charges" shall mean the rates and charges imposed and collected by the Agency for the provision of water services by its Water Enterprise, or, if the Agency shall instead have levied special taxes as described in Article 14(C)(b) below, such special taxes.

"Recreational Budget Transfers" shall mean the annual transfer ordered by action of the County Board from revenues earned from recreational uses of the Project, based on the

percentage of recreational usage, initially established under the terms of County Board Resolution No. 2000-133, adopted on April 4, 2000.

"Safe Yield" shall mean the safe yield of the Project, calculated and established from time to time in accordance with the provisions of Article 4 hereof, being 8,730 acre-feet of water as of the date hereof.

"Scheduled Maintenance" shall mean the maintenance tasks for the Project which are required to be accomplished less frequently than annually, a portion of the cost of which is set aside in each annual budget of the District in anticipation of such requirement.

"Seismic Remediation Improvements" shall mean those certain improvement, more particularly described on Exhibit A hereto, to the 1965 Zone 3 Project required by State mandate, and necessary in order for the Project to continue to operate as a supplier of water to the District, the Agency and the Other Agencies.

"Surplus Water" shall mean the water available from the Project following distributions of water described in Article 4, paragraphs (A), (B) and (C) hereof.

"Tax-Exempt Obligations" shall mean those certain obligations executed and delivered by or on behalf of the District, representing and evidencing interests of the owners thereof in certain installment payments to be made by the District for the acquisition of the Project, whose proceeds are to be used to finance or reimburse the costs of the Seismic Remediation improvements, in an aggregate principal amount of not to exceed the net amount, following the application of proceeds of sale of the General Obligation Bonds, required to complete the Seismic Remediation Improvements pursuant to State mandate and the District's competitive bid process for such Improvements.

"Total Contract Payments" shall mean all of the payments due from the Agency and the Other Agencies pursuant to Article 14 hereof and the same Article of the other Water Supply Contracts.

"Total Project Costs" shall mean, for any given Water Year, the aggregate amount necessary to provide for (i) Operation and Maintenance Costs; (ii) Debt Service; and (iii) Capital Reserves, as calculated by the District in accordance with Article 14 hereof and noticed to the Agency and the Other Agencies.

"Unit" shall mean those facilities which collectively make up the Project, delineated as follows:

(1) "Unit A" shall consist of the Lopez Dam and Reservoir, including access roads, fish trapping facilities and outlet works, all expenses of executing and delivering the Tax-Exempt Obligations, all moneys necessary to fund interest with respect to the Tax-Exempt Obligations prior to receipt of the first payments under this Contract and the other Water Supply Contracts, and all engineering and legal fees for the entire Project.

(2) "Unit B" shall consist of the terminal reservoir, a pumping plant and bypass conduit, the water treatment plant and the Lopez Dam-Arroyo Grande Conduit System. The "Lopez Dam-Arroyo Grande Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the Lopez Dam outlet works to and including a bifurcation structure located at the intersection of the Highway 101 south frontage road and Brisco Road in Arroyo Grande.

(3) "Unit C" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the bifurcation structure which is a part of Unit B to the intersection of the Highway 101 south frontage road and Eighteenth Street in Grover City.

(4) "Unit D" shall consist of the Arroyo Grande-Oceano Conduit System. The "Arroyo Grande-Oceano Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the south end of the Lopez Dam-Arroyo Grande Conduit System to a connection to the Oceano water system at the intersection of Lancaster Drive and Elm Street in Arroyo Grande.

(5) "Unit E" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the

west end of Unit C to the intersection of the Highway 101 south frontage road with Vista del Mar in Shell Beach.

(6) "Unit F" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit E to the intersection of the Shell Beach Road with El Portal Drive in Pismo Beach.

(7) "Unit G" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit F to the intersection of Avila Road (San Luis Obispo County Road No. 3016) with Ontario Road (San Luis Obispo County Road No. 33090).

(8) "Unit H" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to the intersection of First Street and San Juan Street in the community of Avila Beach.

(9) "Unit I" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit H to the Port San Luis Harbor District Tank site.

(10) "Unit J" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to a storage take site at an approximate elevation of 260 feet above sea level located at a point approximately 1,300 feet westerly of the center line of Highway 101 and 1,500 feet southerly of Avila Drive (San Luis Obispo County Road No. 13015).

"Water Enterprise" shall mean the water system operated and to be operated by the Agency for sales of water to the general public within its jurisdiction.

"Water Supply Contracts" shall mean the water supply contracts respecting Project output, entered into by and between the District and the Other Agencies.

"Water Year" shall mean the twelve-month period from April 1 of a Calendar Year to March 31 of the immediately following Calendar Year, both dates inclusive.

"Zone 3" shall mean the area comprising Zone 3 of the District.

"Zone 3 Advisory Committee" shall mean that certain advisory committee comprised of representatives of the District, the Agency and each of the Other Agencies, appointed by the District, the Agency and the Other Agencies, from time to time and meeting at scheduled intervals to advise the District on matters relating to the Project, this Contract and the Water Supply Contracts.

Article 2. Term of Contract. This Contract shall become effective when the District has executed (a) this Contract with the Agency; and (b) Water Supply Contracts with Other Agencies; which, taken in the aggregate, establish Entitlements for at least 4,530 acre-feet of water from the Project, as set forth in Article 4(B) of this Contract and of such other Water Supply Contracts, and the District shall promptly advise the Agency in writing of the effective date hereof. This Contract shall remain in effect through the later of (i) the date which is six (6) months following the repayment of the final Certificate of Participation outstanding; or (ii) the date which is thirty (30) years from the effective date hereof; provided, however, that the term of this Contract shall automatically be extended for additional periods of five (5) years from the scheduled expiration date hereof, so long as the Agency has not, by the date which is 180 days prior to the scheduled expiration date hereof, given written notice to the District to the effect that it wishes to terminate this Contract. The Agency understands and agrees that each of the Other Agencies has the right to terminate its Water Supply Contract on similar terms and that, if any Other Agency shall so elect to terminate its Water Supply Contract, the Entitlement and corresponding obligations of such Other Agency shall be apportioned among the Agency and the remaining Other Agencies, based upon a recalculation of Proportionate Share or Percentage Share, based, where appropriate, on their access to and use of Units, or as otherwise unanimously agreed by the Agency (unless the Agency shall have withdrawn), all remaining Other Agencies and the District.

The parties hereto understand and agree that the Project must be constructed in accordance with State mandate and that its costs are determined through a competitive bid process applicable to public works undertaken by the County and its agencies, now set for a date on or about September 14, 2000 (the "Project Bids"). Notwithstanding the foregoing paragraph, therefore, the Agency and Other Agencies (collectively, the "Participating Agencies") may rescind their approval of their respective Water Supply Contract and declare it cancelled and of no further force or effect, but only if, following the County's opening of the Project Bids, the lowest response bidder for the remaining work on the Project submits a Project Bid which, taken together with the other Project Costs, would result in a total Project Cost in excess of \$30,000,000 (Thirty Million Dollars). The District covenants and agrees to provide prompt notice, and in any event within 48 hours of its determination of the apparent winning Project Bid, to the Participating Agencies of the then-estimated total Project Costs. The Participating Agencies shall have twenty (20) calendar days from the date of receipt of such notice to exercise their rights of termination and rescission hereunder; such exercise shall be evidenced by delivery of written notice of such participating Agency's election to the District and to each other Participating Agency. The District covenants and agrees not to award any construction contract based on the Project Bids until after the foregoing twenty-day period has elapsed.

Article 3. Validation. Either the District, the Agency or any Other Agency may file and diligently prosecute to a final decree in a court of competent jurisdiction a proceeding in *mandamus* or other appropriate proceeding or action for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and for the participation of the Agency in the Project hereunder, or for the validation of the Installment Purchase Agreement which is the basis for the Tax-Exempt Obligations, or any of them, or the proceedings of the governing body of the

Agency leading up to and including the making of this Contract and the validity of the provisions thereof and hereof.

Article 4. Distribution and Sale of Project Water. The following provisions govern the distribution of water from the Project to the Agency, to the Other Agencies and for other purposes, in the priorities set forth below:

(A) Legally Required Water Releases. The parties hereto acknowledge and agree that Project water is subject to certain releases and minimum storage requirements imposed by law which are not affected by the terms hereof.

(B) Entitlements. Subject to the foregoing, the District shall make available to the Agency in each Water Year, to the extent possible, 337 acre-feet of Project water. The District will, in order to satisfy this entitlement and the entitlements of Other Agencies, set aside from the Safe Yield the total of 4,530 acre-feet of Project water which will be distributed to the Agency and the Other Agencies, as established under Article 4(B) hereof and of their respective Water Supply Contracts. The Agency's Entitlement comprises 7.44 percent of the aggregate Entitlements awarded under all the Water Supply Contracts, including this Contract. Such percentage comprises the Agency's Proportionate Share hereunder. Notwithstanding the foregoing, the aggregate Entitlements available under this Contract and under the Water Supply Contracts may be reduced, following written notice given to the Agency from the District, due to (1) permanent or long-term restrictions imposed upon the District caused by (i) extreme changes in long-term meteorological patterns that reduce the Safe Yield assumptions for the Project; or (ii) multi-year drought conditions; or (2) temporary or short-term limitations based upon (i) reduced ability of the Project either to treat or distribute water because of *force majeure*; (ii) drought conditions; or (iii) water quality standards which reduce the safe, treated output of the Project at the time.

(C) Surplus Water Rates. Project water remaining after the distribution of Project water as described in paragraphs (A) and (B) above shall comprise "Surplus Water" hereunder. Surplus Water shall be sold in accordance with the provisions of this paragraph.

(1) Surplus Water shall first be offered by the District to the Agency and the Other Agencies in accordance with their Proportionate Shares, with a price for such Surplus Water to be established based on the Operation and Maintenance Cost of the District incurred in delivering the Surplus Water actually purchased by the Agency or the Other Agencies. If the Agency or any Other Agency shall commit in writing to purchase Surplus Water from the District under this subparagraph, it shall be obligated to pay for such Surplus Water, whether or not in fact ordered from the District or accepted by the Agency, so long as such Surplus Water was in fact available for the period in question. Neither the Agency nor any Other Agency shall resell Surplus Water at any time to third parties, without the prior written consent of all Other Agencies.

(2) The District may offer to sell and deliver any Surplus Water not purchased by the Agency or the Other Agencies hereunder to any other prospective purchaser without right of renewal, in a manner and at prices which will return to the District the largest net revenue practicable, but in no event at prices less than those at which such Surplus Water is offered to the Agency, unless the Agency is first allowed another opportunity to purchase such Surplus Water at the lower price, and in each case, attempting to recapture the Operation and Maintenance Cost, the variable costs, if any, and Debt Service attributable to the volume of Surplus Water actually purchased by such third parties, at the highest price the market will then bear.

(3) All revenues derived by the District from the sale of Surplus Water to the Agency, any Other Agency or any third party hereunder shall be applied as a credit to the obligations of the Agency and the Other Agencies, based on the Percentage Shares of the Agency and each Other Agency.

(D) Surplus Water. Beginning with the 2000-01 Water Year, Surplus Water shall be the portion of the Safe Yield for Project water remaining after distributions of water during the said previous Water Year, as described below.

Surplus Water shall be calculated for each Water Year by subtracting from the Safe Yield of the Project an amount equal to the sum of the quantity of water released downstream during the immediately prior Water Year, which shall not exceed 4,200 acre feet unless legally required by Article 4(A) hereof, and the quantity of Entitlement water delivered to the Agency and the Other Agencies during the immediately prior Water Year, excluding downstream releases and Entitlement deliveries that occurred during the period of time that the District determined that continuous spillway flow was occurring at Lopez Dam.

The District shall notify the Agency of the total amount of Surplus Water available for the current Water Year, and once so declared by the District, said amount shall not be changed by the District without first obtaining the consent of the Agency and all Other Agencies.

Surplus Water purchased by the Agency will be delivered to Agency in the manner provided for the delivery of its Entitlement and to the extent that all of said surplus water purchased by Agency is not so delivered by the end of the Water Year in question, then such undelivered amount shall revert to District and shall not thereafter be available to Agency.

Article 5. Water Shortages: From time to time during the term of this Contract, there may occur a shortage in the quantity of Project water available for delivery to the Agency by the

District under this Contract, including, without limitation, for the reasons enumerated in Article 4(B). In such event, no liability shall accrue against the District or any of its officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of any reason beyond the control of the District. In any Water Year during which such a shortage has caused a reduction as described in said Article 4(B), so that the total quantity of the Entitlements available for the District to distribute is less than the total established in said Article 4(B), following giving of notice by the District as provided in Article 4(B), the Proportionate Share of the Agency and each Other Agency under its Water Supply Contract shall be applied to such reduced amount in determining the volume of Project water to be delivered to the Agency and such Other Agencies in such Water Year.

Article 6. Completion of Seismic Remediation Improvements. The Agency understands and acknowledges that the District intends to commence and complete the Seismic Remediation Improvements with due diligence; in order to finance the construction of the Seismic Remediation Improvements, the Agency understands and agrees that the District will have to cause the execution and delivery of the Tax-Exempt Obligations on terms and conditions favorable to the District, the Agency and the Other Agencies, to be established at the time of sale of the Tax-Exempt Obligations. In particular, the Agency covenants and agrees that:

(A) The District shall contract for the public works comprising the Seismic Remediation Improvements on such terms as the District, in its sound business judgment, may deem in the best interests of the District, the Agency and the Other Agencies, but only following consideration by the Zone 3 Advisory Committee of any such contracts in excess of the minimum standards for contracts of a similar type then mandated for formal approval by the County Board (the

"County Standards"); provided, however, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(B) The District may engage, but only (except in an emergency, in which case no such consideration shall be required as a precondition) following consideration by the Zone 3 Advisory Committee of any such contracts in excess of County Standards, contractors and consultants, including, without limitation, environmental specialists, engineers, financial consultants, underwriters, attorneys and accountants (collectively, the "Consultants"), as may be necessary in order to plan and construct the Seismic Remediation Improvements and to issue and sell the Tax-Exempt Obligations, on such terms and conditions as the District shall determine; provided, however, that the District and the Agency hereby covenant and agree that all such contracts already in place as of the effective date of this Contract shall be deemed noticed to and considered by the Zone 3 Advisory Committee; and provided further, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(C) The District may authorize and sell at either public or private sale, or cause to be executed and delivered, the Tax-Exempt Obligations at any time following the effective date hereof, to provide for the financing or reimbursement to the District of the costs of the Seismic Remediation Improvements, to establish a reserve fund for the Tax-Exempt Obligations and to pay the costs of delivery thereof;

(D) The Agency will execute and provide such instruments, certificates and agreements as may be necessary in order for the District to deliver the Tax-Exempt Obligations, including, without limitation, information for inclusion in the disclosure document for the Tax-Exempt Obligations and a continuing disclosure agreement to permit compliance with Rule 15c2-12

of the Securities and Exchange Commission, respecting the Agency's financial condition and operations; and

(E) The Agency will cooperate with the District and its Consultants in connection with the planning and construction of the Seismic Remediation Improvements and the authorization and delivery of the Tax-Exempt Obligations.

The District covenants and agrees to use its best efforts to complete the Seismic Remediation Improvements by a date no later than June 30, 2002.

Article 7. Delivery of Water. All water to be furnished to the Agency pursuant to this Contract shall be delivered to the Agency at a point or points mutually agreeable between the District and any entities entering into a contract with the Agency for water services pursuant to this Contract.

If the Agency shall desire at any time during the term of this Contract to change the address at which it receives water from the District hereunder, or to install additional points of delivery, it may do so if it furnishes all funds necessary to cover any District expenses involved, or if it undertakes the construction of the necessary conduits and appurtenances at its own expense; provided that the Agency shall not undertake any such construction until it has first obtained District approval of the plans and specifications for such work. Upon the receipt of a request for a change in or addition to the place of delivery of water thereunder, and the deposit of any required funds as set forth in this paragraph, the District shall, if it has elected to perform its own construction of conduits and appurtenances, diligently proceed to construct the same.

Article 8. Measurement. All water furnished pursuant to this Contract shall be measured by the District at each point of delivery established pursuant to Article 7 hereof with equipment satisfactory to the District and the Agency. Said equipment shall be installed, operated and maintained by the District. All determinations relative to the measuring of Project water shall be

made by the District and, upon request of the Agency, the accuracy of such measurement shall be investigated by the District and certified to the Agency in writing. Any error appearing in the course of such investigation and certification shall be cause for an adjustment by the District. The Agency may inspect any such measuring equipment for the purpose of determining the accuracy thereof, at its own expense at reasonable times upon reasonable notice. The District will install, or cause to be installed, backflow prevention devices in connection with such measuring equipment to prevent Project water delivered to the Agency or to the Other Agencies from returning to the District's lines.

Article 9. Time for Delivery of Project Water. The amounts, times and rates of delivery of Project water to the Agency during any Water Year shall be in accordance with a water delivery schedule determined in the following manner:

(A) On or before October 1 of each Calendar Year, the Agency shall submit in writing to the District a preliminary water delivery schedule subject to the provisions of this Article and Article 4, indicating the amounts of water desired by the Agency during each month of the succeeding three (3) Water Years.

(B) Upon receipt of a preliminary schedule the District shall review it and after consultation with the Agency shall make such modifications in it as are necessary to insure that the amounts, times and rates of delivery to the Agency will be consistent with the available supply of water from the Project, considering the current delivery schedules of all Other Agencies. On or before January 1 of each Calendar Year, the District shall determine and furnish to the Agency a water delivery schedule for the next succeeding Water Year, which shall show the amounts of water to be delivered to the Agency during each month of that Water Year.

(C) A water delivery schedule may be amended by the District upon the Agency's written request, and subject to (i) the circumstances described in Article 4(B) hereof and (ii) the pre-

existing requirements of the District under the water delivery schedules with the Other Agencies for the same period of time. Proposed amendments to such schedules shall be submitted by the Agency within a reasonable time prior to the date the desired change is to become effective, and they shall be subject to review and modification by the District in the same manner as the preliminary water schedule described in paragraph (B) above.

(D) In no event shall the District be obligated to deliver Project water to the Agency at a combined instantaneous rate of flow exceeding 0.47 cubic feet per second.

Article 10. Responsibility for Delivery and Distribution of Water Beyond Delivery Points. After Project water has passed the delivery points established in accordance with Article 7 above, neither the District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Agency or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water beyond said delivery points, and the Agency shall defend, indemnify and hold harmless the District and its officers, agents and employees from and against any such damages or claims of damage.

Article 11. Operation and Maintenance of Project and Water Enterprise. The parties hereto acknowledge and agree that the primary goal of the District shall be to maximize deliveries of Project water, subject to Safe Yield and cost considerations, as to which the District shall be expected to exercise sound business judgment.

(A) The District covenants and agrees that it will operate and maintain the Project, as improved by the Seismic Remediation Improvements, in accordance with all governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such

zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the District. The District further covenants and agrees that it will maintain and operate the Project and all pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind in or that shall be placed in any building or structure or made a part of any conduit or easement now or hereafter at any time constituting part of the Project in good repair, working order and condition, and that it will from time to time inspect and test all Project facilities against then-current water supply industry standards, and to pursue or recommend all necessary and proper replacements, repairs, renewals and improvements thereto.

(B) In order to satisfy its covenants set forth in this Article, the District shall determine, prior to each Water Year, the amount of Capital Reserves necessary for the Project for the upcoming Water Year, shall prepare its draft annual budget by no later than March 1 to reflect such Capital Reserves, shall provide copies of each such budget to the Zone 3 Advisory Committee, the Agency and the Other Agencies for review and comment, prior to its distribution to and consideration by the Board of Supervisors of the County, and shall, if deemed necessary or advisable, develop and promulgate to the Agency and the Other Agencies a multi-year improvement plan for the Project, reflecting the annual requirements for Capital Reserves.

(C) At any time, or from time to time, without the consent of the Agency or any Other Agency, the District shall be entitled to undertake the construction or equipping of any Additional Project or other improvements to or repairs of the Project not comprising a Type III Additional Project, but only if (i) it shall determine that such Additional Project, improvements or repairs are necessary in order to keep the Project functioning at the levels and to maintain the water supply at the quality required hereunder and under the other Water Supply Contracts; or (ii) competent Governmental Authority shall direct such Additional Projects, improvements or repairs;

provided that, before an Additional Project other than a Type III Additional Project, improvements or repairs may be ordered pursuant to direction of competent Governmental Authority, the District, the Agency and the Other Agencies shall be afforded notice thereof and the opportunity to oppose the imposition of such requirement before a court of competent jurisdiction; only if a final judgment is thereafter rendered, in favor of such Additional Project, improvements or repairs, or if no such opposition is filed, shall an Additional Project other than a Type III Additional Project, improvements or repairs be constructed or made pursuant to this clause (ii). Emergency repairs to the Project may, notwithstanding the above, be made by the District without the requirement of notice and opportunity to oppose described herein. It is the intention of the parties hereto that the District shall, as and when necessary, be deemed to assign its rights to pursue opposition to the creation of any obligations hereunder by a Governmental Authority to the Agency and/or the Other Agencies, as their interests may appear, in recognition of the status of the Agency and the Other Agencies as third party beneficiaries hereof and real parties in interest. No preexisting right of the Agency or the Other Agencies to pursue actions administratively, by law or in equity associated with the construction, maintenance and operation of the Project shall be abrogated by the Agency or such Other Agencies by its or their execution of this Contract or the other Water Supply Contracts.

(D) For its part, the Agency covenants and agrees:

(1) not to sell, lease or otherwise dispose of its Water Enterprise or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Water Enterprise, nor to enter into any agreement or lease which would impair the operation of the Water Enterprise or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this Contract; *provided, however*, that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Water

Enterprise may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Water Enterprise below the levels required under this Contract;

(2) to maintain and preserve the Water Enterprise in good repair and working order at all times, operate the same in an efficient and economical manner and pay all operation and maintenance costs of the Water Enterprise as they become due;

(3) not later than the first day of each Fiscal Year, to adopt and make available to the District a budget approved by its governing board setting forth the amounts budgeted to be paid under this Contract;

(4) to comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Enterprise and all other contracts affecting or involving the Water Enterprise to the extent that the Agency is a party thereto;

(5) not to create or allow any lien on or payment from the revenues of the Water Enterprise or any part thereof prior to or superior to its obligation to pay amounts payable under this Contract;

(6) to procure and maintain such insurance relating to the Water Enterprise which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; *provided*, that the Agency shall not be required to procure or maintain any such insurance unless such insurance is commercially available at reasonable cost; and *provided further*, that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water enterprises in the State of California;

(7) to pay and discharge all taxes, assessments and others governmental charges which may hereafter be lawfully imposed upon the Water Enterprise or any part thereof when the same shall become due; duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Enterprise, that are not being contested in good faith; and

(8) if all or any material part of the Water Enterprise shall be taken by eminent domain proceedings, or if the Agency receives any insurance proceeds resulting from a casualty loss to any material portion of the Water Enterprise, the proceeds thereof shall be used to construct or install replacements for the condemned or destroyed components of the Water Enterprise or to prepay the Agency's share of Debt Service under this Contract.

Article 12. Water Quality. All water delivered to the Agency under this Contract shall meet all State of California and San Luis Obispo County minimum water quality standards for water for domestic use.

Article 13. Curtailment of Delivery of Project Water for Maintenance Purposes. The District may temporarily discontinue or reduce the amount of water to be furnished to the Agency for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of Project water to the Agency hereunder. Insofar as it is feasible, the District will give the Agency advance notice of any such temporary discontinuance or reduction, except in the case of emergency, in which case no advance notice need be given. In the event of such discontinuance or reduction, the District will apply its best efforts to minimize the duration and severity of service interruption hereunder and shall, as nearly as possible, make available to the Agency Project water sufficient to make up for any shortfall in deliveries of water to the Agency during the period of curtailment.

Article 14. Rate and Method of Payment. Commencing with the first Water Year during which Project water is made available to the Agency hereunder, the Agency shall pay to the District in advance and on a semiannual basis, its Contract Payments, calculated and paid in accordance with the further provisions of this Article, for the Project water made available under this Contract for such Water Year, plus a variable charge, to be determined as set forth in paragraph (D) of this Article, to be calculated on a quarterly basis and paid in arrears.

(A) *Allocation of Total Project Costs and Debt Service.* On or before April 1 of each Calendar Year, the District shall calculate, or cause to be calculated, Total Project Costs for the Fiscal Year commencing on the immediately following July 1. The District shall deduct from the calculated Total Project Costs for such Fiscal Year: (1) the general *ad valorem* property taxes to be received by the District during the Fiscal Year in question; provided that any *ad valorem* taxes levied and paid to provide debt service on the District's General Obligation Bonds outstanding at any time shall be restricted to use for the payment of debt service on such General Obligation Bonds and shall not be included in the deducted amount represented by the foregoing clause; and (2) a sum equal to Recreational Use Revenues received by the District during the Fiscal Year about to be concluded. The result shall comprise the Total Contract Payments due, collectively, from the Agency hereunder and from the Other Agencies under their respective Water Supply Contracts.

In determining the Debt Service portion of Total Project Costs during any Fiscal Year to be supported by the Agency, the District shall make the following calculations:

- $[(G.O. \text{ Debt Service}) + (\text{Installment Debt Service})] - (\text{District Revenues}) = \text{Allocable Debt Service ("ADS")}$
- $[(\text{Proportionate Share}) \times \text{ADS}] = \text{Annual Agency Obligations ("AAO")}$
- $\text{AAO} - (\text{G.O. Tax Collections}) = \text{Agency Debt Service}$

For purposes of the above calculations, the term "*G.O. Debt Service*" above refers to the debt service on the District's General Obligation Bonds; the term "*Installment Debt Service*" refers to the installment payments due with respect to the Tax-Exempt Obligations; the term "*Proportionate Share*" refers to the Agency's Proportionate Share hereunder; the term "*District Revenues*" refers to the amounts available to the District under the second sentence of this paragraph (A) of Article 14; and the term "*G.O. Tax Collections*" refers to amounts collected to support the General Obligation Bonds within the boundaries of the Agency during the Fiscal Year in question, based upon then-current levies; *provided, however*, that in the case of County Service Area No. 12, such boundaries shall be deemed to include that area comprising Avila Beach Community Services District, as well as the area comprising such County Service Area No. 12. In no event shall Agency Debt Service, as calculated above, be a figure less than zero. The foregoing calculations shall be performed by the District each Fiscal Year and shall be made available to the Agency with respect to each Other Agency, as well.

No more frequently than annually, the District shall retain a certified public accountant, or firm thereof, with the approval of the Zone 3 Advisory Board, which shall be responsible for reviewing and confirming the Agency Debt Service figures resulting from the foregoing calculations, and reporting the same to the Agency, the District and each Other Agency.

(B) *Agency Contract Payments.* Unless the Agency shall, in accordance with paragraph (C) below, be entitled to an offsetting credit, the Agency shall be obligated to pay to the District:

(1) on or before July 1 and the immediately following January 1 of each Fiscal Year, a sum equal to one-half of its Percentage Share of charges for Operation and Maintenance and Capital Reserves for such Fiscal Year;

(2) on or before July 1 of each Fiscal Year, a sum equal to Agency Debt Service, as calculated under paragraph (A) above; and

(3) on or before the fifteenth day following the end of each Calendar Quarter during a Fiscal Year, the variable charge calculated in accordance with paragraph (D) below for the Calendar Quarter ending on the last day of the Calendar Quarter most recently concluded.

(C) *Agency Credits against Contract Payments.* The following shall constitute credits against the obligations of the Agency to pay Contract Payments to the District:

(1) (a) If, prior to the date upon which the District causes the Tax-Exempt Obligations to be sold, the Agency shall contribute, in cash, a sum as and for its Proportionate Share of the total amount of costs and expenses projected by the District as the basis for the Seismic Remediation Project, or any portion of its Proportionate Share, so that the aggregate principal component of the Tax-Exempt Obligations is reduced by such sum, the Agency's Proportionate Share of Debt Service, and therefore, of Total Project Costs, shall be reduced accordingly; and

(b) If the Agency shall, following the date of delivery of the Tax-Exempt Obligations, successfully implement a financing plan within its jurisdiction to fund all or a portion of Debt Service during the term of the Tax-Exempt Obligations through the levy of *ad valorem* property taxes, special assessments or special taxes, then the Agency shall be entitled to a credit from amounts paid under such levy as though such amounts were paid directly by the Agency hereunder, subject to the prior approval of each rating agency then rating the Tax-Exempt

Obligations and any bond insurer then providing insurance therefor; provided, however, that the District shall be made a third-party beneficiary of any pledge of such alternate source of revenues, with the power to enforce collection thereof, in the event the Agency should fail to do so; and

(c) The Agency shall be entitled to a credit equal to a Percentage Share of the net revenues the District shall have received from the sale of Surplus Water and from the delivery of any water wheeled for Wheeling Customers, as defined in and pursuant to the provisions of Article 31, during the Fiscal Year in question; in determining the amount of such wheeling credits against the obligations of the Agency hereunder, the District shall apportion its net revenues from the foregoing sources, taking into account the particular Unit or Units through which delivery of Surplus Water or wheeled water was made, and shall compare the Agency's Percentage Share for such Unit or Units with the aggregate Percentage Share for all Other Agencies and the Agency for such Unit or Units.

(2) On or before December 1 of each year, the District shall deliver to the Agency a statement as to the actual Operation and Maintenance Costs and Capital Reserve charges incurred or imposed during the Fiscal Year most recently concluded, and shall set forth in such statement its determination as to whether the amounts theretofore paid by the Agency as its Percentage Share of estimated charges for Operation and Maintenance Costs and for Capital Reserves were in excess of or less than its Percentage Share of such costs and charges for the Fiscal Year most recently concluded. If the Agency shall have paid less than its Percentage Share of actual Operation and Maintenance Costs and charges for Capital Reserves for such Fiscal Year, the Agency shall remit the difference to the District within (180) days of the date upon which it receives such a statement; if the Agency shall have paid more than its Percentage Share of such costs and charges

for such Fiscal Year, the District shall rebate the difference to the Agency promptly following its delivery of the closing statement, and, in any event, within thirty (30) days thereafter.

(D) *Quarterly Variable Charges.* The sum of quarterly variable charges to the Agency and the Other Agencies shall be an amount which is estimated to be sufficient to compensate the District for actual Project pumping energy charges incurred during the respective Calendar Quarter. The variable charge shall be determined for each Calendar Quarter during which Project water is made available to the Agency under this Contract by (1) dividing the District's actual cost of pumping energy during that Calendar Quarter by the total acre-feet of Project water delivered by the District during such Calendar Quarter to the Agency and all Other Agencies pursuant to this Contract and the other Water Supply Contracts, and (2) multiplying this acre-foot charge by the number of acre-feet of Project water delivered by the District to the Agency during such Calendar Quarter. The District shall notify the Agency in writing of such variable charge by a date no later than the fifteenth day following the end of each Calendar Quarter, for the variable charges attributable to the Calendar Quarter most recently concluded.

(E) *Use by District of Total Contract Payments.* During the term of this Contract and of the other Water Supply Contracts, the District shall proceed with due diligence to collect Total Contract Payments as and when due, and shall apply amounts collected in the following order of priority:

- (1) to the payment of Operation and Maintenance Costs;
- (2) to the payment of Debt Service with respect to the Tax-Exempt Obligations; and
- (3) to the replenishment or funding of Capital Reserves for the Project, in accordance with the provisions set forth in Article 10 hereof.

Article 15. Take-or-Pay Obligation of Agency. Commencing on the first date upon which Project water is provided under this Contract, the Agency shall pay all amounts due hereunder, including, without limitation, under Article 14 hereof, without reduction or offset of any kind, whether or not the Project or any part thereof is then operating or operable or its service is suspended, interfered with, reduced or curtailed or terminated in whole or in part, due to any of the reasons outlined in Articles 4(B), 5 and 13 or otherwise, and such Agency payments shall not be conditional upon the performance or nonperformance by any party for any cause whatsoever, including the Other Agencies; provided, however, that savings from nonoperation of the Project shall be apportioned among the Agency and the Other Agencies in accordance with their Percentage Shares.

The Agency's failure or refusal to accept delivery of Project water to which it is entitled under this Contract shall in no way relieve the Agency of its obligation to make payments to the District as provided for herein.

Article 16. Pledge; Establishment and Collection of Rates and Charges. The Agency, unless it shall have paid cash as its share of the Total Project Costs, as provided in Article 14(C)(1) hereof, hereby pledges gross water sale revenues of its Water Enterprise to its obligations under this Contract, and covenants and agrees to establish, fix and collect Rates and Charges from the customers of its Water Enterprise at levels sufficient to produce revenues from the Water Enterprise at least equal to (A) the costs of operating and maintaining the Water Enterprise, plus (B) the Agency's Contract Payments, calculated in accordance with Article 14(B) hereof, including (C) the Agency's Proportionate Share of Debt Service, plus (D) the Coverage Factor for the Debt Service portion of the Agency's Contract Payments; provided, however, that the provisions of Article 21(C) hereof may impose upon the Agency a surcharge following the occurrence of any payment default

by the Agency. The Agency acknowledges and agrees that its obligations hereunder shall comprise, for accounting purposes, an operation and maintenance expense of its Water Enterprise.

Article 17. Default. (A) The following shall constitute events of default hereunder:

(1) The Agency shall fail to make timely payment in full of all amounts due from the Agency under the terms of this Contract; or

(2) The Agency shall fail to establish or collect, or cause to be collected, all fees, charges and other sums necessary to enable it to make the payments required hereunder, as provided in Article 16 hereof, and, following thirty (30) days' written notice from the District to the Agency, shall fail to remedy such failure to the satisfaction of the District; or

(3) The Agency shall fail to perform any other obligation or covenant hereunder and shall fail to remedy such failure to the satisfaction of the District within thirty (30) days following the Agency's receipt of written notice from the District, or for such additional time as is reasonably required, in the sole discretion of the District, to correct the same; or

(4) The Agency shall file any petition or institute any proceedings under any act or acts, State or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment to such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the Agency seeks or prays to be adjudicated a bankrupt or is to be discharged from any or all of its debts or obligations, or offers a reorganization of its obligations for the benefit of creditors, or asks for similar relief.

(B) Upon the occurrence of an event of default hereunder, the District shall be entitled to proceed to protect and enforce the rights vested in the District by this Agreement by appropriate judicial proceedings as the District may deem most effective, either in equity or law.

Without limiting the generality of the foregoing, the District shall be entitled to pursue any of the following remedies:

(1) The District may suspend the delivery of water hereunder during the period when the Agency is delinquent in its payment for or other obligations to the District hereunder, but only following notice to the Agency and the imposition of such remedy following a formal hearing conducted by the County Board;

(2) The District may compel the Agency, or its governing board, by action or suit in equity to account to the District as the trustee of an express trust;

(3) The District may pursue by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the District hereunder; and

(4) The District may proceed in *mandamus* or other suit, action or proceeding at law or in equity to enforce its rights against the Agency (and its board, officers, agents and employees) and to compel the Agency to perform and carry out its duties and obligations under the law and its covenants and obligations as set forth herein.

The use by either party to this Contract of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provide hereunder or by law or equity.

(C) Upon each charge to be paid by the Agency to the District pursuant to this contract which remains unpaid after the same shall have become due and payable, interest shall accrue at an annual rate equal to that earned by the County Treasurer's investment fund as provided in Government Code Section 16480 *et seq.* calculated monthly on the amount of such delinquent payment from and after the due date when the same becomes due until paid, and the Agency hereby agrees to pay such interest; provided, that no interest shall be charged to or be paid by the Agency

unless such delinquency continues for more than thirty (30) days. The Agency hereby agrees to pay such interest to the District, whether or not the District shall pursue any of the remedies specified in this Article. In no event shall default interest be compounded.

Article 18. Failure to Levy, Set or Collect Taxes, Rates and Charges; Establishment of Coverage Account. If the Agency for any reason shall fail or refuse to establish or levy taxes or Rates and Charges sufficient to satisfy the requirements of Article 16 hereof, or if the Agency shall be precluded from establishing rates and charges at the levels required in said Article 16, then the Agency shall promptly notify the District of such fact, in writing, and shall establish either (a) with the District; or (b) with a Depository designated by the Agency to the District in writing; a Coverage Account, into which the Agency shall deposit, from the first lawfully available funds therefor, an amount equal to one year's Coverage Factor for the Debt Service portion of the Agency's Contract Payments hereunder. The Coverage Account shall be invested in accordance with applicable provisions of the Government Code, subject to any limitations established pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, applicable to surplus moneys of the Agency and shall be and remain available to the Agency and to the District as a source of funds to remedy any shortfall in the payment of Agency Contract Payments hereunder. The Coverage Account shall be pledged to the District for the purposes described herein, and the Agency covenants and agrees to execute such instruments as may be necessary in order to effect a pledge of amounts on deposit in the Coverage Account, acknowledging and agreeing as well to follow the advice of special tax counsel to the District in connection with the pledge and investment of the Coverage Account, as may be necessary or advisable in order to maintain the tax status of the Tax-Exempt Obligations.

If at any time following the establishment of the Coverage Account hereunder, the Agency shall again be able to and shall collect rates and charges as required under Article 16 hereof,

the Coverage Account may be released to the credit and name of the Agency for any lawful purpose thereof, upon delivery to the District of evidence satisfactory to the District that (i) the Agency has successfully levied rates and charges for its Water Enterprise at the appropriate levels for at least one full Fiscal or Water Year since the Coverage Account was first created, and (ii) the Agency is then current on all payments due under this Contract; whereupon, the District shall either release the Coverage Account to the Agency or shall direct the Depository to do so, free from the lien described herein.

Article 19. Area Served by Agency. Water delivered to the Agency pursuant to this Contract shall not be sold or otherwise disposed of by the Agency for use outside the boundaries of Zone 3 as they may now or hereafter exist, without the prior written consent of the District.

Article 20. Changes in Organization of Agency. The Agency will furnish the District with maps showing the territorial limits of the Agency and the service area or areas of its water distribution system. Throughout the term of this Contract, the Agency will promptly notify the District of any changes, either by including or exclusion, in said territorial limits and service area or areas. The Agency shall take no action to exclude any lands from the Agency or its service area or areas without the prior written consent of the District.

Article 21. Agency's Obligations Several and Not Joint; Limited Step-up Provisions and Reimbursement. (A) Except as provided in paragraph (B) of this Article, the Agency and the Other Agencies shall be solely responsible and liable for performance under this Contract or under the other Water Supply Contracts, as applicable. Their obligations to the District to make payments under this Contract and the other Water Supply Contracts are expressly recognized by the District as several, and not joint, and no default on the part of one of the Other Agencies shall, in and of itself, create an event of default hereunder. The Coverage Account of the Agency, if any is

established hereunder, shall not be available for any shortfall in payments under any of the other Water Supply Contracts, unless otherwise directed or approved in writing by the Agency.

(B) In the event that the Agency or any Other Agency (each, a "Delinquent Agency") shall fail to pay its Contract Payments hereunder or under the Other Agency's Water Supply Contract, as appropriate, for any reason, then the Contract Payments for each non-delinquent agency (each, a "Non-Delinquent Agency") then participating in the Project shall be increased for the particular Water Year by an amount equal to the sum of Contract Payments not paid in full by Delinquent Agencies (collectively, the "Shortfall"); *provided, however,* that Non-Delinquent Agencies shall contribute to the Shortfall in a proportion determined by dividing the Debt Service portion of the Contract Payments attributable to each particular Non-Defaulting Agency by the aggregate Debt Service portions of the Contract Payments attributable to all Non-Defaulting Agencies; and *provided further,* that the Agency in no event shall be required under this paragraph to contribute to the Shortfall by an amount in any Water Year exceeding the amount which is 20% of the portion of the Agency's Contract Payments representing Debt Service for that Water Year.

(C) If payments are made by Non-Delinquent Agencies under the foregoing paragraph (B) during any Water Year, the District shall, beginning on the first date upon which payments are due from a Delinquent Agency and not paid in accordance with its Water Supply Contract (each, a "Due Date"), declare a default as to such Delinquent Agency under its Water Supply Contract and shall be entitled to curtail all deliveries of Project water under such Water Supply Contract to such Delinquent Agency; notwithstanding the foregoing, such Delinquent Agency shall nonetheless continue to be obligated under its Water Supply Contract for amounts paid on its behalf by the Non-Delinquent Agencies, until it has reimbursed each Non-Delinquent Agency in full. Amounts advanced by the Non-Delinquent Agencies hereunder are immediately due and payable

by the responsible Delinquent Agency, and, if not so paid, and notwithstanding the provisions of Article 17(C), incur interest on the unpaid portion until paid in full at a rate per annum equal to the average rate for the County Treasury Pool, plus two percent (2.0%) per annum, for the month for which the County Treasury Pool rate was most recently calculated, based on a 360-day year of twelve 30-day months; provided, however, that payments to be made as reimbursements under this paragraph (C) are deemed and understood to be subordinate to the obligations of the Delinquent Agencies to pay their Proportionate Shares of Debt Service.

(D) Shortfalls in Total Contract Payments shall be remedied under this Article prior to the District's making any withdrawal from the debt service reserve fund established, or under the reserve surety bond posted, for the Tax-Exempt Obligations, if any, drawings on or under which shall be delayed until and unless insufficient moneys are available from Non-Defaulting Agencies hereunder.

(E) The District covenants and agrees to enforce the provisions of this Water Supply Contract with due diligence, including, without limitation, the provisions of this Section for the benefit of the owners, from time to time, of the Tax-Exempt Obligations.

Article 22. Contracts to Be Uniform. Water Supply Contracts executed by the District with the Other Agencies shall be substantially uniform with respect to basic terms and conditions, when compared with this Contract, but shall provide for different dates, quantities of water to be delivered, water delivery points, Proportionate Shares and Percentage Shares and payment amounts.

Article 23. Amendments. This Contract shall be subject to amendment at any time by mutual agreement of the parties hereto, except insofar as any proposed amendments are in any way contrary to applicable law, or would have a material adverse effect upon the owners of any of the Tax-Exempt Obligations. As a condition to any amendment to this Contract or to the other

Water Supply Contracts, the District shall first have received written confirmation from the rating agency or agencies then providing a rating for the Tax-Exempt Obligations, to the effect that the proposed amendments will not adversely affect the rating of the Tax-Exempt Obligations and, in the event that the Tax-Exempt Obligations, or any portion thereof, shall be covered by municipal bond insurance, the District shall have received prior written consent to such proposed amendments from the provider of such bond insurance. Amendments may be effected upon the following conditions:

(A) Amendments to this Contract or the other Water Supply Contracts which have the effect of replacing the Agency's or any Other Agency's Proportionate Share of Project water or Percentage Share of Total Contract Payments with water purchases by or revenues contributed from either (i) the Agency or some Other Agency or (ii) a new customer, shall be subject to the approval only of those entities whose Proportionate Shares or Percentage Shares will be affected, and the District.

(B) Upon the written request of the Agency or any Other Agency, the District may order the construction or equipping of any Type III Additional Project; provided, however, that the requesting Agency or Other Agency shall first demonstrate to the satisfaction of the District that either (i) the proposed Type III Additional Project will be economically feasible with the financial support of only the requesting Agency and/or Other Agencies who voluntarily participate (whose Percentage Shares will thereafter be appropriately adjusted); or (ii) the Agency and all of the Other Agencies will consent to the funding of the Type III Additional Project and will agree to increase Total Project Costs sufficiently to provide for the costs thereof. The financing of a Type III Additional Project may be accomplished through the levy of additional Capital Reserves, the issuance of additional bonds or other evidences of indebtedness or otherwise. The undertaking of

Type I or Type II Additional Projects shall not require the consent of the Agency or any Other Agency nor the amendment of this Contract.

(C) Amendments to this Contract and to the other Water Supply Contracts other than those specified above shall be approved only upon the prior written and unanimous consent of the District, the Agency and all Other Agencies.

Article 24. Opinions and Determinations: Good Faith; Information to Be Provided to Zone 3 Advisory Committee. (A) Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The District and the Agency shall each act in good faith in performing their respective obligations as set forth in this Contract.

(B) The Zone 3 Advisory Committee, created by appointment of designated representatives made by the Agency, each Other Agency and the District, is hereby continued for the purpose of advising the District regarding administrative and operational concerns affecting the Project. The District covenants and agrees to present to the Zone 3 Advisory Committee, at its regularly scheduled or specially called meetings, the following items for advice and comment, in each case, prior to final presentation of the same item to the Board of Supervisors of the County:

(i) the annual budgets for the District;

(ii) the approval of each non-emergency Capital Project which has not theretofore been included in an annual budget of the District; it being understood and agreed that emergency repairs and improvements shall be exempt from any requirement for preview established hereby;

(iii) the mid-year review of actual fiscal performance of the Project, provided for the then-current Fiscal Year, and in any event, prior to March 31 of each calendar year, which may, to the extent practicable, be combined with the review of the District's annual budget for the next Fiscal Year; and

(iv) amendments to the methodology or formula established in County Board Resolution No. 2000-133, adopted April 4, 2000, with respect to the making of Recreational Budget Transfers.

Article 25. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Contract, shall not be deemed to be a waiver with respect to any other breach, default or matter hereunder, nor as to a breach or default occurring or having occurred under any other Water Supply Contract.

Article 26. Notices. All notices that are required either expressly or by implication to be given by either party to the other under this Contract shall, if given in writing, be executed on behalf of the District or for the Agency by such authorized officers as they may each, from time to time, authorize in writing for such purposes. All notices shall be deemed to have been given and delivered if delivered personally or if deposited, postage prepaid, with the United States Postal Service for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown on the signature page of this Contract; provided, however, that either party may give written notice to the other of a change in such notice address.

Article 27. Assignment; Pledge. The provisions of this Contract shall apply to and bind the successors and assigns of the respective parties, including any assignee hereof designated in connection with the execution and delivery of the Tax-Exempt Obligations, but no assignment or transfer of this Contract by the Agency, or any part hereof or interest herein, shall be valid until

and unless approved by the District; *provided, however*, that no further assignment by the District shall be valid until and unless approved by the Agency and all of the Other Agencies; and *provided further*, that, so long as any Tax-Exempt Obligations are outstanding, no such assignment shall be effective until such time as the District has received assurances from each rating agency then rating the Tax-Exempt Obligations, to the effect that such transfer shall not adversely affect the rating on the Tax-Exempt Obligations, and, so long as any Tax-Exempt Obligations are then being insured by a municipal bond insurance company, until such time as the District has received the written consent from such bond insurer as to such assignment. The Agency understands and acknowledges that the District intends to pledge amounts received and to be received hereunder and under the other Water Supply Contracts to a financial institution and/or nonprofit corporation as further support for its obligations under the Tax-Exempt Obligations.

Article 28. Inspection of Books and Records. The authorized officers of the Agency shall have full and free access at all reasonable times to the account books and official records of the District insofar as the same pertain to the matters and services provided for in this Contract, with the right at any time during regular office hours of the District to make copies thereof at the Agency's expense, and the authorized officers of the District shall have similar rights in respect to the account books and records of the Agency for its Water Enterprise.

Article 29. Severability. Any provision of this Contract that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof of affecting the validity, enforceability of legality of such provision in any other jurisdiction.

Article 30. Water Rights. No provision of this Contract shall be considered to be in derogation of any existing waiver of right(s) or claim(s) to Water Right(s) by or any agreements concerning Water Rights of either party hereof, including but not limited to overlying, prescriptive, appropriative, riparian, or pueblo rights, nor shall it be construed to result in any relinquishment or adjustment of any such Water Rights or claims thereof; and, in particular, no provision of this Contract shall be considered to diminish, reduce or affect, in any way, either party's rights pursuant to California Water Code Section 1005.1 and/or Section 1005.2

Article 31. Wheeling of Water. As used in this Article, the term "Existing Contractor" shall refer to this Agency and any Other Agencies presently having a contract with the District for the delivery of Project water; any person other than an Existing Contractor which shall arrange for the delivery of water other than Project water from the District under the terms hereof shall be described as a "Wheeling Customer." The Agency, as an Existing Contractor, shall be entitled to have additional water wheeled to it by the District through the various Units of the Project, at the actual cost of such wheeling, determined in accordance with the terms and conditions of the existing contracts by and between the District and the Agency or Other Agencies for the delivery of State Project Water to the Agency or Other Agencies through the Project.

If at any time during the term of this Contract, the District delivers water, other than Project water, through any Unit of the Project to any Wheeling Customer, said Wheeling Customer shall be required to pay for such delivery service in a manner and at prices which will return to the District the largest net revenue practicable, but in no event shall such deliveries be effected at charges less than those applicable to the delivery of Project water to the Agency through the same Unit or Units.

In determining the appropriate charges for water delivered to a Wheeling Customer hereunder, the District shall take into account the particular Unit or Units through which delivery of such water is made, shall compare the Operation and Maintenance Costs and Debt Service costs apportionable to such Unit or Units with Total Project Costs, and shall further compare the amount of water delivered to Wheeling Customers through such Unit or Units with the amount of Project water delivered to Existing Contractors through such Unit or Units for the same period of time.

In calculating credits to the Existing Contractors from the delivery of water to Wheeling Customers under this Contract and the other Water Supply Contracts, the District shall apportion such credits according to the Unit or Units through which such water was in fact delivered, as described in the preceding paragraph.

The provisions of this Article shall be subject to any contracts which the District may execute with the United States of America for any grants from the Department of Housing and Urban Development.

Article 32. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same document.

Article 33. Governing Law. This Contract shall be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts made and performed in such State.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date first above written.

SAN LUIS OBISPO COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

By   
Chair, Board of Supervisors

Address for Notices  
Engineering Department  
County Government Center  
San Luis Obispo, California 93408  
Attn: County Engineer

APPROVED AS TO FORM:  
COUNTY COUNSEL

By   
Senior Deputy County Counsel

ATTEST: JULIE L. RODEWALD  
COUNTY CLERK

By   
Deputy

SAN LUIS OBISPO COUNTY  
SERVICE AREA #12

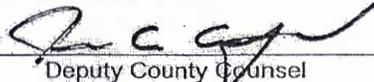
BY   
Vice Chair, Board of Supervisors

Address for Notices  
Engineering Department  
County Government Center  
San Luis Obispo, California 93408  
Attn: County Engineer

ATTEST:

By \_\_\_\_\_  
County Clerk

APPROVED AS TO FORM:  
COUNTY COUNSEL

By   
Deputy County Counsel

-----Original Message-----

From: pogren@co.slo.ca.us [mailto:pogren@co.slo.ca.us]  
Sent: Monday, December 12, 2011 9:44 PM  
To: Sanders, Greg  
Cc: Ramirez, Carol; ldetwiler@co.slo.ca.us; twright@co.slo.ca.us  
Subject: RE: Nossaman Public Records Request

Greg

I am not aware of any assessments on property tax bills for CSA 12. If you provide an Assessor's Parcel Number I can have someone double-check.

What you may be identifying is the special tax that voters in Zone 3 of the San Luis Obispo County Flood Control and Water Conservation District approved, by more than a 2/3rds voter approval, for debt service relating to a portion of the costs of the Seismic Remediation Project / debt service. Yes Zone 3 voters also approved a special tax for a portion of the Dam's original construction costs / debt service. This should not, however, be confused with assessments, nor should it be confused with the contract revenues charged to those who are obtaining water for operations and debt on the water treatment plant and distribution infrastructure etc, as identified in the water contracts.

Paavo Ogren  
Director of Public Works  
pogren@co.slo.ca.us  
805-781-5291 (w)  
805-781-1229 (fax)

From: "Sanders, Greg" <gsanders@nossaman.com>  
To: <pogren@co.slo.ca.us>, <ldetwiler@co.slo.ca.us>  
Cc: "Ramirez, Carol" <cramirez@nossaman.com>,  
<twright@co.slo.ca.us>  
Date: 12/12/2011 09:43 AM  
Subject: RE: Nossaman Public Records Request

Paavo - Many thanks for forwarding the two contracts. I have just one more question.

On the property tax bills for the parcels in CSA 12, there is an assessment for the Lake Lopez Dam seismic remediation project. Was there also an assessment in the 1960s and later for the original infrastructure costs? I assume from your email below that was the case, but it wasn't clear.

Thanks, again, for all your help.

Greg Sanders

Gregory W. Sanders  
Attorney at Law  
NOSSAMAN LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
gsanders@nossaman.com  
T 949.833.7800 F 949.833.7878  
M 949.533.3429  
Home Office: 805.927.3252  
www.nossaman.com  
Subscribe to E-Alerts here: [www.nossaman.com/subscribe.aspx](http://www.nossaman.com/subscribe.aspx)

PLEASE NOTE: The information in this e-mail message is confidential. It may also be attorney-client privileged and/or protected from disclosure as attorney work product. If you have received this e-mail message in error or are not the intended recipient, you may not use, copy, nor disclose to anyone this message or any information contained in it. Please notify the sender by reply e-mail and delete the message. Thank you.

-----Original Message-----

From: pogren@co.slo.ca.us [mailto:pogren@co.slo.ca.us]  
Sent: Thursday, December 08, 2011 3:22 PM  
To: Sanders, Greg; ldetwiler@co.slo.ca.us  
Cc: Ramirez, Carol; twright@co.slo.ca.us  
Subject: RE: Nossaman Public Records Request

Greg

Yes we will transmit the additional contracts. The 1960's contract was re-written in 2000 prior to the Lopez Dam Seismic Remediation Project. We will send you both.

As far as paying the costs, yes CSA 12 has paid its proportional cost of Lopez Dam construction (completed 1968), the water treatment plant and pipelines etc... (and is currently paying for its share of debt on the Seismic Remediation Project and the Water Treatment Plant Upgrade)... as well as its share of O&M. Assessments were not used as defined under assessment law, however. The cost sharing has been accomplished through the terms and conditions of the various contracts. Lopez (Zone 3 of the Flood Control District) bills CSA 12 pursuant to contract provisions to cover costs, and CSA 12 bills its subcontractors pursuant to the contract provisions it has with those subcontractors. It should be clear once we get you the other contracts.

Paavo Ogren  
Director of Public Works  
pogren@co.slo.ca.us  
805-781-5291 (w)  
805-781-1229 (fax)

From: "Sanders, Greg" <gsanders@nossaman.com>  
To: <pogren@co.slo.ca.us>, "Ramirez, Carol" <cramirez@nossaman.com>

Cc: <twright@co.slo.ca.us>  
Date: 12/08/2011 03:01 PM  
Subject: RE: Nossaman Public Records Request

Thanks for forwarding this. Do you have a copy of the November 21, 1966 water supply contract by and between the San Luis Obispo County Flood Control and water Conservation District and County Service Area No. 12?  
Also, can you shed light on how the pipeline/pumping infrastructure between Lake Lopez and Avila was paid for? Were the benefitted landowners assessed for the cost of the infrastructure?

Thanks,

Greg Sanders

Gregory W. Sanders  
Attorney at Law  
NOSSAMAN LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
gsanders@nossaman.com  
T 949.833.7800 F 949.833.7878  
M 949.533.3429  
Home Office: 805.927.3252  
www.nossaman.com  
Subscribe to E-Alerts here: [www.nossaman.com/subscribe.aspx](http://www.nossaman.com/subscribe.aspx)

PLEASE NOTE: The information in this e-mail message is confidential. It may also be attorney-client privileged and/or protected from disclosure as attorney work product. If you have received this e-mail message in error or are not the intended recipient, you may not use, copy, nor disclose to anyone this message or any information contained in it. Please notify the sender by reply e-mail and delete the message. Thank you.

-----Original Message-----

From: ldetwiler@co.slo.ca.us [mailto:ldetwiler@co.slo.ca.us] On Behalf Of pogren@co.slo.ca.us  
Sent: Thursday, December 08, 2011 2:23 PM  
To: Ramirez, Carol  
Cc: Sanders, Greg; pogren@co.slo.ca.us; twright@co.slo.ca.us  
Subject: Re: Nossaman Public Records Request

Carol,

Thank you for your patients with our response to your PRR dated 11/15/11. Attached is what we could find in our department files & LAFCO sent us a history/timeline. We will be going over to our Clerk Recorder to see if there is any other information regarding the formation and if we are able to find anything, we will gladly send that to you as well.

Included in attached PDF:

CSA #12 History & Timeline of LAFCO Actions  
Special Districts CSA No. 12 information  
April 25, 1966 Resolution No. 194-66 "Resolution Establishing County Service Area No. 12"  
CSA 12 Contact List  
Example of Contract between the County of San Luis Obispo Acting on Behalf of County Service Area No. 12 and "Contractor" of Rights to Water Supply and for Assumption of Obligations."

Please let me know if you need any other information and I will be glad to help.

(See attached file: PRR 11-15-11 CSA 12 Formation.pdf)

Leanne Detwiler  
Administrative Services Officer  
(805) 781-4495  
For  
Paavo Ogren  
Director of Public Works  
pogren@co.slo.ca.us  
805-781-5291 (w)  
805-781-1229 (fax)

From: "Ramirez, Carol" <cramirez@nossaman.com>  
To: <pogren@co.slo.ca.us>  
Cc: "Sanders, Greg" <gsanders@nossaman.com>  
Date: 12/06/2011 11:12 AM  
Subject: Nossaman Public Records Request

Good morning, Paavo --

Thank you very much for your return call regarding our Public Records Request for documents related to formation of County Service Area No. 12.

Attached is a copy of our Nov. 15 letter. We understand your staff is working on our request. If you have any questions, please contact either Greg Sanders or me.

Thank you.

Carol J. Ramirez, CLA  
Legal Secretary  
to G. Sanders, M. L. Coffee, and H.  
Bjelland  
NOSSAMAN LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
cramirez@nossaman.com  
T 949.833.7800 F 949.833.7878

SUBSCRIBE TO  
E-ALERTS  
nossaman.com

PLEASE NOTE: The information in this e-mail message is confidential. It may also be attorney-client privileged and/or protected from disclosure as attorney work product. If you have received this e-mail message in error or are not the intended recipient, you may not use, copy, nor disclose to anyone this message or any information contained in it. Please notify the sender by reply e-mail and delete the message. Thank you. [attachment "Nossaman Public Rec. Request.pdf" deleted by Leanne Detwiler/PubWorks/COSLO]



ATTORNEYS AT LAW

18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

John J. Flynn III  
D 949.477.7634  
jfflynn@nossaman.com

Refer To File #: 270797-0001

VIA FACSIMILE AND U.S. MAIL

**FILE**

August 20, 2010

Anne Wyatt, Chairperson  
Planning Commission  
County of San Luis Obispo  
976 Osos Street, Room 200  
San Luis Obispo, CA 93408

**Re: Appeal of Director's Determination on Requirement for General Plan/Local Coastal Program Amendment: Pirates Cove Property (Ontario Ridge)**

Dear Chairperson Wyatt and Members of the Commission:

This law firm represents San Miguelito Partners LP ("San Miguelito"), owner of the Pirates Cove property (sometimes identified as the "Ontario Ridge" property in County of San Luis Obispo planning documents), situated adjacent to the eastern boundary of the Avila Beach Community Services District and the western boundary of the City of Pismo Beach (the "Property").

We are writing in support of our client's June 30, 2010 appeal of a Director's Determination, set forth in a letter from Ms. Kami Griffin, dated June 16, 2010, to Gregory W. Sanders of this law firm. In Ms. Griffin's June 16 letter, she takes the position that (1) the provision of water service by County Service Area No. 12 ("CSA 12") to the Property requires a Local Coastal Program ("LCP") amendment, and (2) physical extension of the CSA 12 water line to the property will require issuance of a coastal development permit. As demonstrated below, Ms. Griffin's reading of the LCP is erroneous, and cannot be sustained on the basis of the plain language thereof.

In support of this appeal, we first affirm the positions stated by Mr. Sanders in his letter to Ms. Griffin of May 12, 2010, with one exception: After further review of the LCP, we agree with Ms. Griffin that the urban reserve line ("URL") and the urban services line ("USL") for Avila Beach are not coterminous. However, the fact that the two lines are different in no way undercuts the only conclusion that can be reached on the basis of the County's LCP: The LCP *already* provides for service of water by CSA 12 to the Property. Therefore, provision of such service does not require an LCP amendment. (Mr. Sanders' letter of May 12 and Ms. Griffin's letter of June 16 are included with the staff report, as Attachment 3 [4-12 thru 4-15], and Attachment 4 [4-16 thru 4-18].)



**I. San Miguelito Partners Has a Vested Right to Provision of Water Service by  
CSA 12.**

On January 23, 2007, the County of San Luis Obispo Department of Public Works issued to San Miguelito Partners a Conditional Intent to Serve Water Letter (Exh. 1), which included eight conditions of approval, only one of which involved a further discretionary approval, which has since been satisfied. There is *no* reference in the Intent to Serve Letter to the need for amendment of the LCP for relocation of the Avila Beach USL. Likewise, on June 18, 2007, Victor Holanda, Director of the County Department of Planning and Building, authored a letter to an appraiser retained by the Trust for Public Land ("Trust"), in which Mr. Holanda lists the conditions to providing water service to the Property pursuant to the Intent to Serve Letter. There is *no* reference in Mr. Holanda's June 18, 2007 letter to relocation of the Avila Beach USL. (Exh. 2.)

As evidenced by Exhibit 3, in 2008 the County's own appraiser, for appraisal of Parcels 1, 2, 3 and 5, *assumed* provision of water service pursuant to the Intent to Serve Letter. There is no reference in the appraisal to the need for relocation of the USL; the purchase price paid by the County accepted as a given, without any reference to relocation of the USL, provision of water service in accordance with the Intent to Serve Letter.

The only condition set forth in the Intent to Serve Letter that involved a discretionary action was Condition 7, which required completion of a contractual transfer of 4 acre-feet of water per year from the City of Pismo Beach's Lake Lopez water allocation to San Miguelito Partners. That condition has since been satisfied: On June 1, 2009, San Miguelito Partners entered into a Contract for Assignment of Water Supply and Assumption of Obligation with County Service Area No. 12. (Exh. 4.) The County *Board of Supervisors*, in its capacity as the governing body of CSA 12, approved the agreement, which contained *no* conditions requiring amendment of the LCP for relocation of the Avila Beach USL. The contract for water service is a "take or pay" contract which, as you know, requires San Miguelito Partners to pay whether or not it uses the water allotted by the agreement. Since entry into the agreement, San Miguelito Partners has faithfully made its payments under the agreement, and the County has accepted payment.

As a result of the County's issuance of the Intent to Serve letter, entry into the Water Service Agreement, and San Miguelito Partners' payments thereunder, San Miguelito Partners has acquired a vested right to continued water service by CSA 12. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791.)

In addition, the County is now estopped to deny provision of water service to the Property by CSA 12. The California Supreme Court, in *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, long ago described the elements necessary for proof of an estoppel:

"1) The party to be estopped must be apprised of the facts;



- 2) He must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;
- 3) The other party must be ignorant of the true stated facts; and;
- 4) He must rely upon the conduct to his injury.”

(Id. at p. 442.)

All of the *Mansell* elements are satisfied in this case. The County was certainly apprised of the facts, since it was a party to both the Intent to Serve letter and the Water Service Agreement; the County intended that its conduct should be acted upon, as evidenced by the Intent to Serve letter and Water Service Agreement, neither of which contained any conditions requiring relocation of the Avila Beach USL, and the County has since accepted payments from San Miguelito Partners under the Water Service Agreement; San Miguelito Partners, having received from the County in neither the Intent to Serve Letter nor the Water Service Agreement (nor from any other source) notice of the contention that provision of water service from CSA 12 was conditioned upon relocation of the Avila Beach USL, was ignorant of the true state of facts; and San Miguelito Partners has clearly relied upon the County's conduct to its injury, having made payments under the Water Service Agreement, all of which have been accepted by the County.

The California Supreme Court in *Mansell* also held that the estoppel must be “of sufficient dimension to justify any effect upon public interest or policy which would result in the raising of an estoppel.” (Id. at pp. 496-497.) In this case, there can be no adverse effect on the public interest or policy because, as demonstrated overwhelmingly below, provision of water service to the Property by CSA 12 does not require a relocation of the Avila Beach USL. Therefore, no LCP amendment is required.

## 2. Movement of the USL Is Not Required for Provision of Service to Rural Residential Areas.

Ms. Griffin, in her June 16 letter, relies upon the portion of the LCP Framework for Planning set forth below:

Areas of communities located between the urban service and urban reserve lines are sometimes designated on the LUE maps for *urban* uses, at Residential Single-Family densities or greater.

In such areas the land use categories applied are “holding zones,” where development of designated uses would be appropriate when urban services and facilities can be provided and the USL is amended to include those areas. (Framework, 4-3, emphasis added.)



The County's use of "holding zones," and the above reference to amending the USL, apply *only* in those situations where the subject property is designated for development "at Residential Single-Family densities or greater." The LUE designation for the Property is Rural Residential ("RR"). The Framework provision relied upon by Ms. Griffin does not apply.

The County staff has also taken the position in the staff report for the August 26 appeal hearing that Table H (4-5 of the Framework) limits rural properties to individual wells. In fact, there is no such limitation. The staff report omits the language that immediately precedes Table H:

The urban and village reserve lines establish the boundary between urban and rural (city and country) land uses and the different types of public services needed for area residents. Table H indicates the types of services that *generally* would be appropriate in areas with urban, suburban and rural densities as shown in the Land Use Element area plans.

(LCP Framework for Planning, 4-5, emphasis added.)

The LCP's use of the word "generally" expresses the clear intent to avoid imposition of a preclusive limitation. The LCP does *not* use the term "generally" anywhere else to describe land use restrictions and limitations. Table H, therefore, does not limit Rural Residential properties to provision of service by individual wells.

### **3. No LCP Amendment Is Required Since the LCP Already Provides for Water Service by CSA 12 to the Property.**

Because the LCP already provides for water service by CSA 12 to the Property, no LCP amendment is required for such service.

First, it is incumbent upon San Miguelito Partners to call to the Commission's attention a very troubling, untrue and misleading statement contained in the staff report, in the first paragraph of the Staff Response re Appeal Question #1 (4-2 of the staff report). The last sentence of that paragraph states:

In fact, it was the Planning Departments [sic] position in a memo from Pat Beck (attachment 5) dated July 29, 2002 that when LAFCo approved an outside users agreement to allow for CSA-12 to provide water to these properties, that the County's Local Coastal Program required an amendment to include these lots within the Urban Services Line (USL).

The statement reflected in the above quotation is untrue, and highly misleading. The statement leads the reader to believe that the Planning Department had previously taken the position in 2002 that provision of water service by *CSA 12* would require an amendment of the



USL. In fact, as a careful review of Attachment 5 (4-19 thru 4-23) will reveal, the position taken by the Planning Department was that the Avila Beach USL must be amended for approval of an outside user agreement between the *Avila Beach Community Services District* and San Miguelito Partners. Nowhere does the July 29, 2002 memo from Pat Beck address the direct provision of water service by CSA 12 to the property.

In fact, the logic of Ms. Beck's July 29, 2002 memo supports the position of San Miguelito Partners: At page 4 of the memo (4-22 of the staff report), referring to water and sewer service, Ms. Beck questions the need to relocate the Avila Beach USL if, in effect, the water was actually to be provided by the City of Pismo Beach. Likewise, in this case, using Ms. Beck's own logic, there is no need to relocate the Avila Beach USL since water service will be provided by CSA 12.

Set forth below is Table C of the San Luis Bay Area Plan (Coastal), entitled "Special Districts: San Luis Bay Planning Area":

TABLE C SPECIAL DISTRICTS SAN LUIS BAY PLANNING AREA		
SPECIAL DISTRICT	SERVICE AREA	SERVICES PRESENTLY PROVIDED
<i>County Service Area No. 12</i>	<i>Port San Luis Harbor west of Avila Beach area east Avila townsite including Ontario Ridge, Avila Valley, and Squire Canyon area</i>	<i>Acquisition and distribution of Lopez Reservoir water</i>
Oceano Community Services District	Oceano	Acquisition and distribution of groundwater and Lopez water; street lighting, collection and transporting of sewage, fire protection
Avila Lighting District	Avila Beach	Street lighting
South SLO County Sanitation District	Arroyo Grande, Oceano Halcyon, Grover City	Sewage treatment and disposal
Avila Beach County Water District	Avila Beach	Fire protection, water and sewer service
Port San Luis Harbor	Entire South County from Cuesta Grade to Santa Maria River	Development, maintenance and operations of harbor piers and facilities



Arroyo Grande Public Cemetery District	Arroyo Grande and outlying areas	Full cemetery services
Coastal San Luis Resource Conservation District	Extends from southern Arroyo Grande through Pismo Beach, San Luis Obispo, Morro Bay and Cayucos to join the Las Tablas Resource Conservation District	Prevention of soil erosion, agriculture education and water conservation

(Area Plan, 3-2, emphasis added; Table D of the San Luis Bay Area Plan, at 3-4, details CSA 12's water entitlement and consumption.)

The LCP, as demonstrated above, *already* states clearly that the Property (in Ontario Ridge) is located within the service area of CSA 12, and that water service is counted among the "Services Presently Provided." Indeed, the Property has been located within the Sphere of Service for CSA 12 since long before the LCP was adopted.

Attachment 7 to the staff report confirms that the property is located within the service area of CSA 12. The staff agrees. (Staff report, 4-2, Response re Appeal Question #1.) The LCP Framework for Planning states that the Sphere of Service is the equivalent of the USL in the Land Use Element:

The definitions of the sphere of influence and sphere of service correspond directly to the definitions of the Urban Reserve and Urban Reserve Lines (respectively) in the Land Use Element.

(Framework, 4-6.)

Because the LCP itself equates the USL with the Sphere of Service, and because Table C states unequivocally that water service is *now* provided by CSA 12 to the Property, no amendment of the LCP is required.

Nevertheless, the staff report also erroneously contends, relying upon Public Works Policy 1, that "development outside the USL shall only be allowed if there is on-site water." Again, because the LCP equates the USL with the Sphere of Service, and because the Sphere of Service includes the Property, the staff's position cannot be sustained. The point of Public Works Policy 1 is stated in the first paragraph thereof: "New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development." Because the Sphere of Service is equivalent to the USL, and because the LCP already provides for water service to the Property by CSA 12, provision of such service complies with *both* the letter and the spirit of the LCP. No LCP amendment is necessary.



**4. The LCP Itself Calls for Relocation of the USL *After* Utility Improvements Are Scheduled and Constructed.**

As quoted by Ms. Griffin herself in her June 16, 2010 letter, the LCP Framework for Planning states:

*As improvements are scheduled and constructed, the USL may be expanded accordingly. (Emphasis added.)*

The Coastal Plan Policies also state:

The urban services line allows for orderly phasing of community expansion within an urban reserve line, as illustrated in Figure 4. *The USL should be reviewed on an annual basis*, along with the growth projections and service capabilities on which it is based.

(Coastal Plan Policies, 8-9, emphasis added.)

Likewise, at 8-10 of the Coastal Plan Policies, Figure 8-1 appears, a copy of which is attached. Note that the USL is defined on Figure 8-1 by the LCP as follows:

Area where urban services exist or are to be extended within the five to ten years after each LUE review. USL reviewed *yearly* to evaluate whether location is realistic in terms of community growth patterns and capacity of community resources. (Emphasis added.)

In other words, expansion of the USL, according to the plain language of the Framework, is discretionary and, in any event, *follows* the scheduling and construction of improvements.

**5. The Avila Beach CSD Urban Services Line Is Irrelevant to Water Service for the Property.**

Ms. Griffin has insisted that provision of water service to the Property requires relocation of the *Avila Beach* USL. There is no rational basis whatever for this interpretation of the LCP. Water service to the Property will not be provided by the Avila Beach Community Services District, but instead by CSA 12. Though it should be obvious, it bears emphasizing that *no* water service infrastructure will be extended from Avila Beach to the Property.

The LCP San Luis Bay Area Plan provides further support for the conclusion that the Avila Beach USL is irrelevant to water service by CSA 12. The Area Plan states, at 3-8:

As Avila Beach grows, the community and LAFCO should consider consolidating services into a community services district,



including services now provided by CSA No. 12, Avila Beach County Water District and the Avila Beach Lighting District. The CSD should include all lands within the urban reserve line, with provision of services based on "zones of benefit" so that service costs are borne by users.

Therefore, the LCP Area Plan acknowledges that CSA 12 is a separate entity that *now* provides water service. And, as already demonstrated above, Pat Beck, in her July 29, 2002 memo to LAFCO, challenged the logic of relocating the Avila Beach USL if water service was actually to be provided by another provider. An LCP amendment is not required for a continuation of the status quo.

**6. The Physical Extension of the Water Line to the Property Does Not Require a Coastal Development Permit.**

The physical extension of the CSA 12 water line to the Property is exempt from the requirement to obtain a coastal development permit ("CDP"). CSA 12, a public entity, will own and operate the water turnout from the main line in Avila Beach Drive to the water meter, wherever the meter is located. The position taken by Ms. Griffin in her June 16 letter on the need for a permit for the extension of a water service line cannot be supported by the plain language of the County's Coastal Zone Lane Use Ordinance. Mr. Sanders correctly quoted the ordinance, which reads:

The installation, testing and placement in service, or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided that the county may, where necessary, require reason-able [sic] conditions to mitigate any adverse impacts on coastal resources including scenic resources.

Ms. Griffin responded in her letter of June 16 as follows:

This exemption does not apply because this is not a public works project as defined in the coastal zone land use ordinance. Public Works refers to projects that are publically funded or are for a public use for which your project is neither. The water lines to your lots are for private domestic use.

First, contrary to what Ms. Griffin states in her letter, there is nothing in the Coastal Zone Land Use Ordinance that limits application of the public works exemption to projects that are "publically funded or are for a public use." No such language appears in the ordinance. Neither can any such limitation be found in the Coastal Act. Section 30114 of the Coastal Act defines "Public Works" to mean:



All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utilities subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

“Public Works” therefore refers to the provision of water, not to the development to be served by water. There is, therefore, nothing in the County’s ordinance or in the Coastal Act that supports Ms. Griffin’s argument.

Further, even if the public works exemption did not apply, both section 30610, subdivision (f), of the Coastal Act and section 23.03.040 d. (6) provide an exemption for:

Installation, testing, placement and service, or the replacement of any necessary utility connection between an existing service facility and any development that has previously been granted a permit.

(See Attachment 11 to staff report, 4-35, quoting the CZLUO; section 30610, subd. (f), is to the same effect.)

Finally, the staff report, for the first time, contends that the exemption does not apply because there is no “approved development.” That is another mistaken assertion. First, the County itself issued a coastal development permit (COAL 96-036) to San Miguelito Partners for a lot line adjustment in 1996. (See Exh. 5.) A lot line adjustment is an approval pursuant to the Coastal Act. (*La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 240-242.) If it were not, the County would not have issued a CDP. In addition, an application for a Minor Use Permit, which functions as a CDP, is pending for development of Parcel 2. Therefore, however one defines “approved development,” the condition is satisfied (or, in the case of Parcel 2, will be), and the exemption applies.

## 7. Conclusion.

As demonstrated above, the insistence upon an LCP amendment as a condition of obtaining water service from CSA 12 to the Property cannot rationally be supported by the plain language of the LCP. It is our hope that the Planning Commission will overrule the Director’s determination.

We submit this letter in support of our appeal without prejudice to the right to submit further argument or other evidence in support, including further argument or evidence provided at the Commission’s hearing.

Anne Wyatt, Chairperson  
Planning Commission  
County of San Luis Obispo  
August 20, 2010  
Page 10



Thank you very much for your consideration of our appeal.

Very truly yours,

John J. Flynn III  
of Nossaman LLP

JJF/rrg

Enclosures

cc: Timothy McNulty, Esq. (via facsimile, email and U.S. Mail)



# SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: [pwd@co.slo.ca.us](mailto:pwd@co.slo.ca.us)

January 23, 2007

Greg Sanders  
6585 Buckley  
Cambria Ca 93428

Subject: County Service Area No. 12 (Avila Area); Conditional Intent to Provide Water Service Letter, for Parcels 1 – 4 of Parcel Map No. COAL 96-036

Dear Mr. Sanders:

The following is a Conditional Intent to Serve Water Letter for the above described project located in County Service Area No. 12 (CSA 12), California. CSA No. 12 is ready and willing to provide water service to the subject property, provided the following conditions are met.

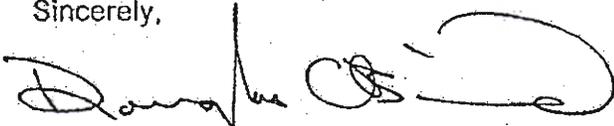
1. All work performed by the County Department of Public Work's Utilities Division staff for the subject project shall be billed to and reimbursed by the Applicant through and in accordance with the attached Checking and Inspection Agreement (C&I) for this project. The applicant must sign and return the C&I with the required deposit prior to District staff performing any additional work for this project.
2. The Applicant shall employ an engineer of work to provide inspection during the course of construction, to certify to the County Director of Public Works that the improvements were installed in accordance with the improvement plans, and to submit as-built plans to the County Director of Public Works. If the engineer of work is other than the designing engineer, or is replaced during the course of construction, the County Director of Public Works shall be notified in writing; and each such engineer of work shall certify as to their respective involvement. The County Director of Public Works, or his designated representative, may make such additional inspection as is deemed necessary and shall be available to review field conditions and/or proposed changes with the engineer of work.
3. The Applicant shall design, construct, and install all required water line extensions (including all necessary water system improvements) and fire protection improvements (as required by the local fire protection agency) in accordance with the attached Checking and Inspection Agreement.

EXHIBIT 1

4. The Applicant shall comply with the conditions attached hereto and described as "General Conditions for Additions to District Facilities".
5. The Applicant shall comply with the conditions attached hereto and described as "Contractor Requirements for Protection Against Water Distribution System Contamination".
6. The Applicant shall comply with the conditions attached hereto and described as "County Procedural Memorandum O-3 (Waterline Disinfection Procedures)".
7. Prior to provision of water service, the Applicant, CSA 12 and the City of Pismo Beach shall complete the process to contractually transfer 4 acre-feet of water per year from Pismo Beach's CSA 12 water allocation to the Applicant.
8. Prior to provision of water service to the individual lots described above, Applicant shall pay to District all remaining applicable water connection fees, meter charges, etc.

If you have any questions regarding this letter please feel free to call me at (805) 781-5116.

Sincerely,



DOUGLAS C. BIRD  
Hydraulic Operations Administrator

Attachments

File: CSA 12 - Correspondence

L:\UTILITY\JAN07\San Mig Partners intent to serve.doc.db.taw

5

## ENGINEERING CHECKING AND INSPECTION AGREEMENT

WHEREAS, San Miguelito Associates, hereinafter referred to as "Applicant", has applied to construct certain water system improvements & additions for the purpose of providing water service to four (4) properties (Hereinafter "Project") to County Service Area No. 12 (Avila Area) a political subdivision of the State of California, hereinafter referred to as "County"; and,

NOW, THEREFORE, THIS AGREEMENT made and entered into this \_\_\_\_\_ day of, \_\_\_\_\_, 20\_\_\_\_ by and between the Applicant and County;

### WITNESSETH:

1. Applicant has submitted to San Luis Obispo County Department of Public Works an initial deposit in the amount of \$1,000. Said deposit shall be utilized to reimburse the County for work performed in accordance with the provisions of this agreement. On a monthly basis, the San Luis Obispo County Department of Public Works will provide an invoice to the Applicant for costs incurred by the Department for the previous month. Within 15 days of receipt of the invoice, the Applicant shall submit payment to the Department for the amount of the invoice in order to reestablish the deposit to its initial amount. Amounts unpaid thirty (30) days from the date of the County's invoice shall bear interest at the rate of one-half percent per month beginning thirty (30) days after the date of the invoice. Upon completion of the work performed in accordance with the provisions of this agreement, any unspent portion of the deposit shall be returned to the Applicant.
2. The Applicant shall reimburse the County for the cost of checking of the project improvement plans; research for, and consultation with, the Applicant in the development of those plans and the cost of inspection of any such improvements by the San Luis Obispo County Director of Public Works, or his designated representative. For all services rendered by County personnel, the Applicant shall be charged and pay to the County the actual cost.
3. Permission is hereby granted to the County, or its authorized agent, to enter upon the land which is the subject of the project for the purpose of inspection of any and/or all work to be done under the agreement.
4. The Applicant shall employ a California Registered Civil Engineer (RCE) of work to design all proposed water distribution mains, service laterals, valves and associated appurtenances, provide inspection during the course of construction, to certify to the County Director of Public Works that the improvements were installed in accordance with the improvement plans, and to submit as-built plans to the County Director of Public Works. If the engineer of work is other than the designing engineer, or is replaced during the course of construction, the County Director of Public Works shall be notified in writing; and each such engineer of work shall certify as to their respective involvement. The County Director of Public Works, or his designated representative, may make such additional inspection as is deemed necessary and shall be available to review field conditions and/or proposed changes with the engineer of work.
5. Besides guarantees required elsewhere, the Applicant shall and does hereby guarantee all workmanship and material for a period of three (3) years from and after the date of acceptance of the work by the District and shall repair or replace any or all work and

material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the District is or becomes defective during the period of said guarantee without expense whatsoever to the District.

6. It is understood and agreed by and between the Parties, hereto, that this agreement shall bind the heirs, executors, administrators, successors and assigns of the respective Parties to this agreement.
7. The Applicant shall defend, indemnify and save harmless the San Luis Obispo County, its officers, agents and employees from any and all claims, demands, costs, expenses, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Applicant or of agents, employees, or independent contractors directly responsible to the Applicant, providing further that the foregoing shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by the Applicant, the Applicant's agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Applicant to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

In Witness Whereof, the Applicant has hereunto set his hand and the County has caused these presents to be signed and its corporate seal hereto affixed by its duly sworn and authorized officers the day and year herein above written.

\_\_\_\_\_  
Applicant

COUNTY AGENCY

\_\_\_\_\_  
Noel King  
Director of Public Works

BILLING ADDRESS:

Name (if different) \_\_\_\_\_

Street and PO Box \_\_\_\_\_

\_\_\_\_\_  
City State Zip

710-2103  
\_\_\_\_\_  
Phone No. (8 a.m. - 5 p.m.)

File: Districts/CSA 10A - Correspondence

U:\WPWINWPDOCS\DOCS\Lopez Project\CSA12\san miguelito c&i.wpd January 25, 2007 Doug Bird

**General Conditions for Additions to District Facilities  
County Water Works and County Service Areas  
Department of Public Works - County of San Luis Obispo**

The General Conditions below describe the requirements of the Applicant, the Applicant's engineer, and the construction of the improvements.

**Submitted Drawings and Agreement to Provide Service** - Your submittal of engineering drawings (and specifications, if applicable), and our review is required as the basis to provide water or wastewater service, and any Agreement to accept your facilities. Any changes to our accepted plans must be re-submitted to the Department of Public Works for consideration; as-constructed plans shall reflect any such changes.

**Construction** - Any construction within the County right-of-way is subject to the approval of the Director of Public Works. All plans and specifications shall be reviewed and signed as approved by District staff prior to any construction. Construction shall be performed in accordance with the Approved Plans, and within the guidelines of all applicable County Specifications (County Department of Public Works Standard Improvement Specifications and Drawings). No connection to the existing system shall be permitted unless all work performed is acceptable to the County Director of Public Works.

**Submitted Drawings and Signature Block** - A signature block shall be provided for the Utilities Division Manager and the County Director of Public Works. The title blocks shall be provided on each original mylar (or vellum) sheet which shows the pipeline connection or related details. The title blocks shall read as follows:

RECOMMENDED FOR APPROVAL BY:

\_\_\_\_\_, DATE: \_\_\_\_\_  
UTILITIES DIVISION MANAGER, RCE 42090

APPROVED BY:

\_\_\_\_\_, DATE: \_\_\_\_\_  
S.L.O. COUNTY DEPUTY DIRECTOR OF PUBLIC WORKS, RCE

A note (smaller font) shall be provided below the signature blocks which reads as follows:  
"DISTRICT REVIEW AND APPROVAL OF PLANS COVERS ONLY THOSE FACILITIES WITHIN THE PUBLIC RIGHT OF WAY".

An as-built revision block shall be provided for each original drawing.

**Contractor Requirements for Protection Against Distribution System Contamination (Water Systems only)** - The text of these requirements shall appear in the Owner's bid packet project Specifications, or on the construction plans. See the Attachment "Contractor Requirements for Protection Against Distribution System Contamination".

Submittal of the contractor's proposed method of connection to the existing system is required. Submit these details to Doug Bird, Hydraulic Operations Administrator, Department of Public

## Contractor Requirements for Protection Against Water Distribution System Contamination

### County Water Works and County Service Areas Department of Public Works - County of San Luis Obispo

The following text shall direct the contractor and shall appear in the Owner's bid packet project Specifications, or on the construction plans:

**Submittal and Approval of Proposed Method for Performing "Hot tap" and Line Sterilization-** Under no circumstances shall distribution system water be permitted to enter the water line extension until a passing bacteria test has been obtained. In addition, only Water District personnel are permitted to open valves connecting to the distribution system. Water line (or piping modifications) filling and flushing water must be taken from a source other than the distribution system; such as from a fire hydrant or water service, adequately protected by a reduced pressure backflow preventer. All disinfection related work must be done in accordance with County Procedural Memorandum O-3 (attached) and in accordance with County Standards. Specific questions regarding backflow protection may be addressed to Henry Ruiz, County Backflow Prevention Specialist, Environmental Health Division, telephone (805) 781- 5567.

The following submittal of information is required prior to the contractor scheduling any work involving connections to the distribution system. District review and approval of an acceptable disinfection method for tapping of the water main and the water line extension (or piping modifications) will be required prior to the performing any work. The Engineer shall submit for review a sketch of the proposed connections, and a brief written discussion of the following details:

1. How the hot tap will be performed, and how contamination of the distribution main will be prevented during the procedure;
2. The methods planned to fill, disinfect, flush, and bacteria test the water line extension (or piping modifications) from a protected source.

Submit your proposed procedure to the District, Department of Public Works, Room 207, County Government Center, San Luis Obispo, 93408 for review a minimum of five working days in advance of performing work.

**Coordination with Operations Personnel -** A pre-construction meeting at the work site with the contractor and Engineer will be required in order to discuss inspection procedures, compaction testing, scheduling of work, and bacteria testing. Call the District staff at 438-5349 at least 48-hours prior to performing any work.

**Water Quality Sampling -** Physical and bacteriological water samples of the service line (or piping modifications) shall be collected by County staff, and analyzed by the County Water Quality Laboratory prior to connection to the District distribution system. Call the District staff at 438-5349 for the scheduling of water sample collection after the appropriate disinfection procedure.

Attachment: County Procedural Memorandum O-3

U:\WP\WIN\WPD\OCS\DOCS\Lopez, Project\CSA12\San Miguelito Requirements for Protection Against Contamination.wpd



# SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: [pwd@co.slo.ca.us](mailto:pwd@co.slo.ca.us)

July 15, 2002

## PROCEDURAL MEMORANDUM 0-3 (Revised)

**TO:** Division Heads  
Hydraulics Personnel

**FROM:** Director of Public Works

**SUBJECT:** Waterline Disinfection Procedures

The following memorandum outlines the revised procedures to be followed by laboratory personnel, water operators, inspectors and contractors for the disinfection and testing of new waterline extensions and/or water mains. This procedure is an extraction from the American Waterworks Association (AWWA) Standards for Disinfecting Water Mains (C651-99) and the new drinking water requirements from the California Department of Health Services. **Note: This Memorandum should be included in specifications for all waterline projects.**

This standard presents essential procedures for disinfecting new and repaired water mains, including installation of fire hydrants. All new water mains shall be disinfected before they are placed in service. All water mains taken out of service for inspection, repair, or other activities that might lead to contamination of water shall be disinfected before they are returned to service. Additionally, steps shall be taken to prevent contaminated materials from entering the water main during storage, construction, or repair.

Any activity associated with this procedure that may disrupt or affect the overall water system in regard to: system pressure, water supplied to consumers, contamination of existing lines, or other major events must be cleared through the Water Quality Manager prior to commencing that activity.

### BASIC DISINFECTION PROCEDURE

The basic disinfection procedure shall be:

1. Inspect all materials to be used to insure the integrity of the materials.
2. Prevent contaminating materials from entering the water main during storage, construction, or repair and noting potential contamination at the construction site.
3. Remove, by flushing, those materials that may have entered the water main.

4. Chlorinate any residual contamination that remains in the new water main using the "continuous-feed" method as described below. Note that "tablet/granule" and "slug" methods are no longer acceptable.

Before the main is chlorinated, it shall be filled to remove air pockets and flushed to remove particles. The flushing velocity in the main shall not be less than 2.5 ft/s.

Water supplied from a temporary backflow-protected connection to the existing distribution system or other approved supply source shall flow at a constant metered rate into the newly installed water main. The point of entry shall not be more than 5 feet from the beginning of the new line.

Liquid Sodium hypochlorite solution conforming to ANSI/AWWA B300 standards shall be fed at or before the entry point in an amount sufficient to produce not less than 25 mg/L of free chlorine residual throughout the new main and its appurtenances. Chlorine application shall not cease until the entire main is filled with the heavily chlorinated water.

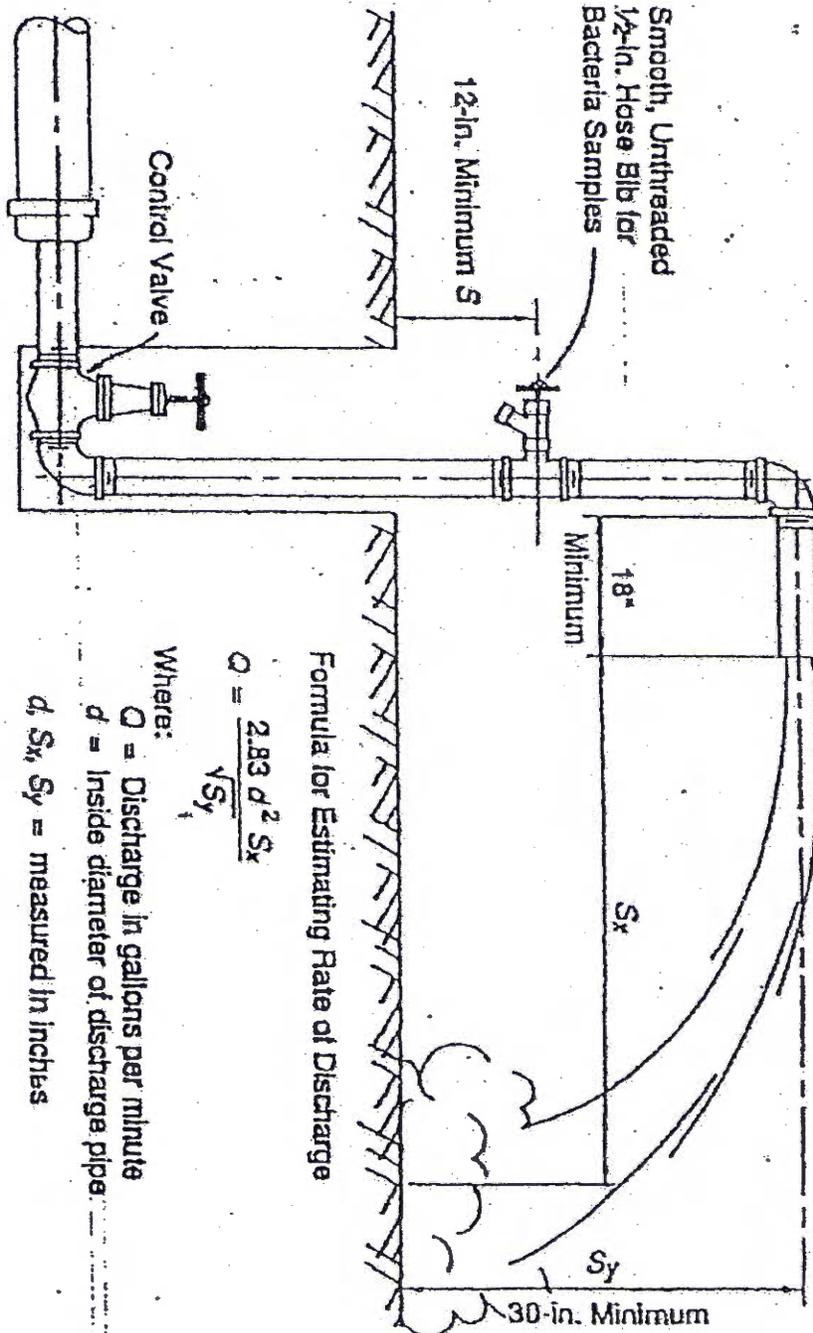
The chlorinated water shall be retained in the main for a minimum of 24 hours, during which time all valves and hydrants in the treated section shall be operated to ensure disinfection of the appurtenances. At the end of the 24 hour period, the treated water in all portions of the main shall have a free chlorine residual of not less than 10 mg/L.

#### FINAL FLUSHING

1. Clear the main of heavily chlorinated water. After a 24-hour retention period, heavily chlorinated water should not remain in prolonged contact with pipe. In order to prevent damage to the pipe lining or to prevent corrosion damage to the pipe itself, the heavily chlorinated water shall be flushed from the main fittings, valves, and branches until chlorine measurements show that the concentration in the water leaving the main is not higher than that generally prevailing in the distribution system or acceptable for domestic use (typically 2ppm).
2. Dispose of heavily chlorinated water. The environment to which the chlorinated water is to be discharged shall be inspected. If there is any question that the chlorinated discharge will cause damage to the environment, then a neutralizing chemical shall be applied to the water to be wasted to neutralize thoroughly the chlorine residual remaining in the water. Where necessary, Federal, State and local regulatory agencies should be contacted to determine special provisions for the disposal of heavily chlorinated water.

#### BACTERIOLOGICAL TESTS

1. **Standard conditions.** After final flushing and before the new water main is connected to the distribution system, two consecutive sets of acceptable samples, taken at least 24 hours apart, shall be collected from the new main. At least one set of samples shall be collected from every 1,200 ft of the new water main, plus one set from the end of the line and at least one set from each branch. All samples shall be tested for bacteriological (chemical and physical) quality in accordance with Standard Methods for the Examination of Water and Wastewater; and shall show



WATER DISINFECTION H-5

Formula for Estimating Rate of Discharge

$$Q = \frac{2.83 d^2 S_x}{\sqrt{S_y}}$$

Where:

- Q = Discharge in gallons per minute
- d = Inside diameter of discharge pipe
- S<sub>x</sub>, S<sub>y</sub> = measured in inches

NOTE: This figure applies to pipes up to and including 8-in. (200 mm) diameter.



SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

June 18, 2007

Todd O. Murphy, MAI,  
Schenberger, Taylor, McCormick & Jecker, Inc.  
1306 Higuera St.  
San Luis Obispo, CA 93401

Subject: Trust for Public Lands Appraisal of the Pirates Cove Property

Dear Mr. Murphy:

I understand that you have been commissioned by the Trust for Public Land to undertake an appraisal of the "Pirates Cove" property ("property"), located on the coast between the City of Pismo Beach and the town of Avila Beach. I further understand that the appraisal is needed in conjunction with a contemplated acquisition of the Property by the State Coastal Conservancy that is being facilitated by the Trust for Public Land. The purpose of this letter is to clarify the development constraints imposed by the geotechnical issues that impact the property and the status of a water "will serve" letter issued for the property by the County Department of Public Works.

The County of San Luis Obispo has taken no action on a proposed recommendation contained in an administrative draft of an environmental impact report prepared for a proposed General Plan/Local Coastal Program amendment for the Property to impose a development setback line from a landslide condition that exists on Parcel 5 of the Property. In fact, that application for a General Plan/Local Coastal Plan amendment has been withdrawn by the applicant. Consistent with County policy, the administrative draft environmental impact report does not have any standing at this point in time.

In the event a subsequent coastal development permit application is submitted for development of the property, the County will review all of the reports provided by the applicant that describe the existing landslide condition. Prior reports were prepared by the geotechnical engineering firm of Geolnsite, Inc., peer reviews of the Geolnsite, Inc. report were prepared by Fugro West, Inc. and Treadwell Rollo. The County may require an update of the Geolnsite and other reports to insure that the conditions on the property have not materially changed. Specific requirements for setbacks from the landslide, foundation engineering and other safety measures will be developed from the data and recommendations

976 Osos STREET, ROOM 300 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

EMAIL: [planning@co.slo.ca.us](mailto:planning@co.slo.ca.us) • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

EXHIBIT 2

Todd O. Murphy, MAI

June 18, 2007

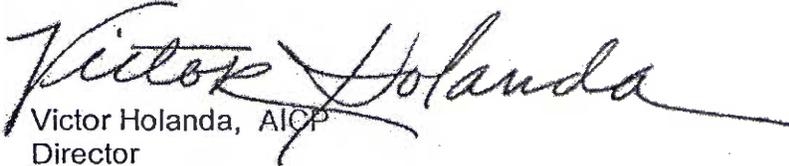
Page 2

contained in these reports after review and approval by appropriate county officials.

You have a copy of the water "will serve" letter issued for the property by the County Department of Public Works in January, 2007. However, there are a number of conditions set forth in the "will serve" letter that must be satisfied before delivery of water by County Service Area 12, including approval of plans to convey the water to the Property from an existing water line in Avila Beach Drive and construction of the necessary infrastructure. All costs associated with satisfaction of the conditions of approval are the responsibility of the owner of the Property.

This letter is intended to assist you in completion of your appraisal of the property. Should you have any questions or need further information regarding these matters, please do not hesitate to contact me or John Euphrat at 805 781-5194 or by email at jeuphrat@co.slo.ca.us.

Sincerely,

A handwritten signature in cursive script that reads "Victor Holanda". The signature is written in black ink and is positioned above the typed name and title.

Victor Holanda, AICP  
Director

# SCHENBERGER, TAYLOR, McCORMICK & JECKER

Emeritus

Principals of the Firm

May 6, 2008

Mr. Pete Jenny  
Deputy Director of Parks  
County of San Luis Obispo  
1087 Santa Rosa Street  
San Luis Obispo, California 93408

Dear Mr. Jenny:

## Introduction

As requested, I have completed an inspection, analysis, and current market value estimate of the fee simple interest in that real property commonly known as:

**Pirate's Cove  
Parcels 1, 2, 3, and 5  
Parcel Map COAL 96-036  
123.49± Gross Acres/96.08 Net Acres  
1616 Cave Landing Road  
Avila Beach, California**

Enclosed is our report showing the results of our investigation. These conclusions are based on an analysis of the subject property and the available market data.

The purpose of this report is to estimate the current market value of this property. The intended use of this report is for possible acquisition purposes. No other use of this appraisal report is intended by the appraiser. The intended users of this report are the County of San Luis Obispo and the State of California. No other users of this appraisal report are intended by the appraiser.

This 302-page appraisal report has been completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) and appraisal requirements of the California Department of General Services.

**EXHIBIT 3**

## Assumptions and Conditions of Appraisal

Your attention is directed to the *Assumptions and Conditions of Appraisal* section of this report wherein all significant assumptions and conditions of this appraisal are detailed. Among these, the following key assumptions and conditions are identified:

- Excluded Portions

- Parcel 4 - The current ownership of the subject property also includes an additional 9.36-acre oceanfront parcel. As requested, this appraisal specifically excludes Parcel 4.
- Telecom Site - The subject property includes an existing telecommunications site with leases currently generating \$122,000± per year. As requested, this appraisal specifically excludes valuation of the telecom site.

- Parcel Size - According to the San Luis Obispo County Assessor's Office records and Parcel Map COAL 96-036, the size of the subject property (Parcels 1, 2, 3, and 5) has been identified as 123.49± gross acres. Tidal action and active bluff retreat along the southern property line may result in some net loss of acreage to the subject property and a smaller usable parcel size.

The net-usable acreage estimate of 96.08 acres excludes Parcel 5, which is open-space-restricted/publically usable land, and not privately usable.

For purposes of this appraisal, these approximate acreage estimates are assumed to be correct. Any substantial variation between the estimated property size and the actual surveyed property size may have an impact on the market value of the subject property and warrant a reappraisal.

- Title Report - A Preliminary Report prepared by First American Title Company, dated November 3, 2006, was provided to the appraiser. It is assumed that there are no exceptions to title or adverse title conditions other than those shown in the Preliminary Report.
- Water Supply - The subject property and Parcel 4 benefit from water entitlements, specifically 4 acre-feet of Lopez Lake water allocation, sufficient to build four estate residences. This is documented in a "Conditional Intent to Provide Water Service" letter issued by the San Luis Obispo County Public Works Department (copy in *Aidenda* of this report).

A main delivery pipeline and distribution lines need to be installed, together with a booster pump and water storage tank. Information provided by Cannon

Associates indicates that this is physically feasible, and they have provided a project cost estimate to accomplish this.

This appraisal assumes that the water rights to build three estate residences will be conveyed with the subject property, and are specifically included in this appraisal.

Underground Oil Pipelines - These parcels are crossed by two buried underground oil pipelines identified as both "active" and "inactive." These were previously used to transport oil products to the former Unocal tank farm located contiguous to the west of this property. At present, these pipelines are not actively used to transport oil. It is my understanding that Unocal seeks to retain the right to use the "active" pipeline for possible future oil pipeline needs. The inactive line can be retired in place, or sections removed if necessary for site grading, etc.

Site Contamination - This appraisal assumes no site contamination resulting from past use of the oil pipelines crossing this property. No environmental assessment report was provided.

Extraordinary Assumption - Geologic Conditions - An "Overview of Geologic Conditions" report prepared November 2006 by Geosinsite, Inc., identifies active and dormant landslides on portions of this property, as well as inactive earthquake faults and bluff/sea cliff retreat.

This analysis by Mr. William Cole, CEG, with Geosinsite, Inc. (previously with Cotton, Shires & Associates, Inc. [CSA]) indicates that Parcels 1 to 4 of Parcel Map COAL 96-006 are **safely buildable to four estate single-family residences.**

The CSA/Geosinsite conclusions are similar to those reached by prior work by GeoSolutions, Inc. The CSA work was peer-reviewed by two additional firms - Fugro West and Treadwell & Rollo.

Conversely, another geologist, Mr. Donald Asquith, who was involved with an EIR study on this property, disputes the conclusions of the GeoSolutions and CSA investigations regarding the geologic stability of the site. The geologic stability issue is further discussed in the body of this report.

In conclusion, Mr. Asquith's reservations and comments are considered; however, the concurrence of four Certified Engineering Geologist (CEG)-credentialed experts is given greater weight after reviewing the available information, and provides the justification for accepting the physical

Group D - Bulk Sale Data

This data group reflects three sales of groups of rural estate parcels. This data is useful for establishing a bulk discount range for this type of property.

Market Value Range - Total Property

Due to the complexity of this property, a market value range is considered to be an appropriate means to evaluate and convey the most probable selling price/market value. The estimated market value range of the subject property, subject to the assumptions and conditions of appraisal as of April 30, 2008, is:

\$4,500,000 to \$5,000,000

Market Value Conclusion

After carefully evaluating the subject property and all available pertinent information, the appraiser concludes that the estimated current market value of the subject property, "as is," subject to the assumptions and conditions identified in this report, as of April 30, 2008, is:

Market Value Range

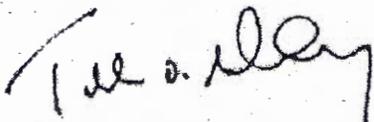
\$4,500,000 to \$5,000,000

Market Value Conclusion

*Four Million Seven Hundred Fifty Thousand Dollars  
(\$4,750,000)*

Thank you for this opportunity to be of service. Please contact me with any questions at (805) 544-2472, Extension 15.

Respectfully submitted,



Todd O. Murphy, MAI, ARA  
Principal of the Firm  
California License #AG002286

TOM:jsi

**CONTRACT FOR ASSIGNMENT OF WATER SUPPLY  
AND FOR ASSUMPTION OF OBLIGATIONS**

This Contract made 1 day of JUNE, 2009 by and between the County of San Luis Obispo acting on behalf of County Service Area No. 12, a public agency located in the County of San Luis Obispo, State of California, hereinafter called "Service Area", and San Miguelito Partners hereinafter referred to as "Contractor(s)";

**WITNESSETH:**

**WHEREAS**, the County of San Luis Obispo acting on behalf of County Service Area No. 12 ("Service Area") and San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District" entered into a water supply contract dated November 21, 1966, and an amendment thereto dated July 19, 1968, and an amendment thereto dated August 19, 2000, and which are hereinafter referred to collectively as "Water Supply Contract"; and,

**WHEREAS**, Water Supply Contract gives Service Area a right to an entitlement of 337 acre-feet of water annually, to the extent that it is possible for District to deliver such amount of water to Service Area; and,

**WHEREAS**, the lands of Contractor(s) are within the Service Area and the inhabitants of such lands who are and will be served by Contractor(s) are in need of additional water for beneficial uses; and,

**WHEREAS**, Service Area desires to sell to the inhabitants of Service Area, including those served by Contractor(s), the water to be made available pursuant to the Water Supply Contract, under terms and conditions which, as far as practicable and consistent with the ultimate use of the water, shall be fair and equitable to all inhabitants of Service Area; and,

**WHEREAS**, Contractor(s) desire to contract with Service Area for a water supply to be for the use and benefit of the lands and inhabitants served by Contractor(s) and for which Contractor(s) will make payments upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, it is hereby mutually agreed by the parties hereto as follows:

1. Service Area hereby assigns to Contractor(s) its rights to 4 acre-feet of water from Service Area's annual entitlement to water under the Water Supply Contract.

2. All water to be furnished to Contractor(s) pursuant to this contract shall be delivered to Contractor(s) at a point on Contractor's property to be mutually agreed upon by Service Area and Contractor(s). All costs and expenses of any required connection at said delivery point shall be the sole responsibility of the Contractor and shall be prepaid to Service Area by Contractor(s). Any and all water furnished to Contractor(s) pursuant to this contract shall be used within "Service Area" and none of the said water shall be used outside the boundaries of said "Service Area".

3. Contractor(s) hereby agree to assume the obligation of and to pay for 1.18 percent of each and every payment for Units A through G and 2.18 percent (except as said 2.18 percent may be modified by paragraph 5, below) of each and every payment for Unit J, as set forth in Water Supply Contract, which Service Area is required to make to District pursuant to Water Supply Contract. Contractor(s) shall make all such payments to Service Area no later than 15 days prior to the date each prospective payment is due to District from Service Area.

4. Contractor(s) shall make all payments required hereby on or before the date such payments become due as outlined herein. A late penalty of one (1) percent per month or, the maximum allowed by law, on the unpaid balance shall accrue on all overdue payments.

5. At any time during the term of this contract, Service Area shall have the right to make changes in the annual water entitlement assignments delivered through Unit J, and in the event that such changes alter Contractor's percentage (2.18 percent as of the date of this contract) all of such annual entitlements to be delivered through said Unit J, then Contractor's obligations and payments for said Unit J shall be adjusted in direct proportion to such changes.

6. This contract is subject to the obligations and limitations imposed by the Water Supply Contract, including all amendments thereto, and is intended to be in conformance and harmony with same. The Water Supply Contract and all amendments thereto, are hereby incorporated herein by this reference in all respects as though set forth in full at this point. Contractor(s) hereby expressly agree to the provisions of the Water

Supply Contract imposing obligations and limitations upon it and further expressly agrees that nothing in this contract shall be deemed to require Service Area to perform any obligation in conflict with the Water Supply Contract. Contractor(s) further agree that Service Area shall have the right to enter into such future amendments to the said Water Supply Contract as the Service Area may deem reasonable and necessary.

7. In addition to the above payments which Contractor(s) are obligated to make to Service Area pursuant thereto, Contractor(s) agree to pay to Service Area such service charges as Service Area may impose on Contractor(s) in order that Service Area recover its total and complete costs, including, but not limited to, direct, indirect and administrative costs.

8. Service Area shall have the right to cancel this contract and take back the ownership of the rights in annual entitlement to water referred to in paragraph No. 1 of this contract. Service Area may exercise said right by giving to Contractor(s) notice in writing thereof; and the right to annual entitlement to water shall be automatically reassigned to and become the property of Service Area 30 days after the giving of such notice; provided further, however, that, if Contractor(s) are not in default of any of the provisions of this contract, Service Area shall, at Contractor's request, thereafter sell water to Contractor(s) at retail, with Contractor(s) paying therefore to Service Area such periodic service charges as may be deemed by Service Area to be necessary to recover Service Area's total and complete costs and expenses thereof, including, but not limited to, direct, indirect and administrative costs; and, provided further, that the quantity of water which Service Area shall be obligated to sell to Contractor(s) at retail pursuant hereto shall not exceed the quantity of water to which Contractor(s) were entitled under this contract prior to the giving of the 30-day notice referred to hereinabove.

9. Contractor's failure to make payments in accordance with provisions of this contract shall constitute a breach of this contract and Service Area shall have the right to terminate the delivery and supply of water hereunder and Service Area shall have the right to cancel this contract and take back the ownership of the rights, title, and interest in annual entitlement to water referred to in paragraph No. 1 of this contract without future obligation to sell water to Contractor(s). This provision shall apply whether or not

Contractor(s) have physically connected to, or taken delivery from Service Area and upon Contractor's receipt of 30 day-notice from Service Area.

10. Contractor(s) shall not assign this Contract or any interest therein without the prior written consent of the Service Area.

11. This contract shall be binding on the assigns, transferees and successors of the parties hereto.

12. No waiver by Service Area of any failure by Contractor(s) to comply with any term or condition hereof, shall be or shall be construed to be a waiver by District of any similar or other failure by Contractor(s) or comply with any term or condition hereof.

13. All notices to Contractor(s) hereunder shall be delivered by first class mail, postage prepaid, to the following address, to-wit:

SAN MIGUELITO PARTNERS, C/O BOB HOWARD  
9 RED ROCK LANE  
LAGUNA NIGUEL, CAL. 92677

14. All notices to Service Area hereunder shall be sent by first class mail, postage prepaid, to the following address, to-wit:

Utilities Division  
County Public Works Department  
County Government Center, Room 207  
San Luis Obispo, CA 93408

15. This contract shall not be valid until and unless approved by District.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

COUNTY OF SAN LUIS OBISPO, ACTING ON BEHALF OF COUNTY SERVICE AREA NO. 12

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

Dated: \_\_\_\_\_

(CONTRACTOR) BY SAN MIGUELITO PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP

BY: SAN MIGUELITO ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP

(CONTRACTOR) BY: HOWARD & HOWARD, INC., A CALIFORNIA CORPORATION,  
ITS GENERAL PARTNER

By: Robert W. Howard  
ROBERT W. HOWARD, SECRETARY

Date: 1 JUNE 2009

ATTEST:

County Clerk and Ex-Officio Clerk  
of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN  
County Counsel

By: Patricia J. Foran  
Deputy County Counsel

Dated: 5/19/09

L:\UTILITY\JUN09\BOS\CSA12 to San Mig Partners contract.doc.DB:mac

**Staff Report**  
**San Luis Obispo County Department of Planning and Building**

---

**B-1-1**

**DATE:** DECEMBER 2, 1996

**TO:** SUBDIVISION REVIEW BOARD

**FROM:** JAMES CARUSO, ASSOCIATE PLANNER  
ERIC WEIR, ENVIRONMENTAL SPECIALIST

**SUBJECT:** TENTATIVE LOT LINE ADJUSTMENT/COASTAL DEVELOPMENT  
PERMIT FOR SAN MIGUELITO PARTNERS/CANNON & ASSOCIATES  
(COAL 96-036)

**ATTACHMENTS:** 1. Findings  
2. Conditions  
3. Graphics  
4. Letters

**SUMMARY**

The applicant proposes to adjust the lot lines between five (5) existing parcels of 91.8 acs, 4.3 acs, 13.6 acs, 20.0 acs and 3.4 acs. The adjusted parcels are proposed to be 20.16 acs, 54.52 acs, 31.34 acs, 10.0 acs and 27.13 acs. in size.

**RECOMMENDATION**

Based on the findings in Exhibit A and conditions of approval in Exhibit B approve the lot line adjustment in accordance with Section 21.02.030 of the Real Property Division Ordinance.

**Project Description**

**Location:** North and south sides of Cave Landing Road, approximately 1/4 mile east of Avila Beach Drive, adjacent to the City of Pismo Beach, in the San Luis Bay Planning Area. Supervisorial District No. 3.

**General Plan:** Residential Rural

**Combining Designations:** Sensitive Resource Area, Geologic Study Area, Local Coastal Plan

**Area Standards:** Non applicable

**ENVIRONMENTAL SETTING****EXHIBIT 5**

December 2, 1996  
COAL 96-036

Page No. 2

B-1-2

Existing Uses and Improvements: Parcel 5 contains a parking lot and trail to beach; parcel 5 contains a cellular phone antenna site; remainder of the parcels are undeveloped

**Surrounding Land Uses (and Categories):**

North: Undeveloped (Open Space)

South: Pacific Ocean

East: Residential Single Family (Residences)

West: Open Space/Industrial (Tank Farm/Undeveloped)

Area: 133.14 acres

Topography: Moderately to very steeply sloping

Vegetation: Grasses; forbs; scattered oaks; pepper tree

Water Supply: To be provided by Avila CSD

Sewer Service: To be provided by Avila CSD

ACCEPTANCE DATE: October 23, 1996

**ENVIRONMENTAL DETERMINATION**

This project was determined to be categorically exempt (Class 5a) on November 6, 1996 by the Environmental Coordinator.

**DISCUSSION**

Project Description

The site, consisting of five parcels, were part of a larger land holding that was annexed into the City of Pismo Beach and developed into single family residential uses. The portion of the site remaining in the county jurisdiction includes the parking area and trail to the Pirate's Cove beach. Proposed parcel 5 contains these quasi-public use areas. A cellular phone installation is situated at the top of proposed parcel 1.

The applicant has submitted several studies including hazard footprint from the adjacent Unocal tank farm, bluff retreat, visual analysis, archaeological studies and botanical reports. Building control lines are proposed for the four proposed residential uses parcels that account for the constraints studied in these reports.

Services

Currently, the proposed project site is not located within the USL or URL of any water and sewer service provider. The applicant has arranged for services to be provided by the recently formed Avila Beach Community Services District for both water supply and sewage disposal.

✓ The county's Local Coastal Plan requires development to be served by this provider to be

December 2, 1996  
COAL 96-036

Page No. 4

B-1-4

EXHIBIT B: CONDITIONS OF APPROVAL FOR COAL 96-036

1. If a map is filed, it shall show:
  - a. All public utility easements.
  - b. All approved street names.
2. Any private easements described in the title report must be shown on the map, with recording data.
3. When the map is submitted for checking, or when the certificates of compliance are filed for review, provide a preliminary title report to the County Engineer or the Planning director for review.
4. All conditions of approval herein specified are to be complied with prior to the recordation of the map or certificates of compliance which effectuate the recordation. Recordation of the map is at the option of the applicant. However, if a map is not filed, recordation of the certificates of compliance is mandatory.
5. The map or certificates of compliance shall be filed with the County Recorder prior to transfer of the adjusted portions of the property or the conveyance of the new parcels.
6. In order to consummate the adjustment of the lot lines to the new configuration when there is multiple ownerships involved, it is required that the parties involve quit claim their interest in one or more of the new parcels. Any deeds of trust involving the parcels must also be adjusted by recording new trust deeds concurrently with the map or certificates of compliance.
7. Prior to final approval of the lot line adjustment, the applicant shall prepay all real property taxes.
8. After approval by the Subdivision Review Board, compliance with the preceding conditions will bring the proposed adjustment into compliance with the Subdivision Map Act and Section 21.02.030 of the Real Property Division Ordinance.
9. The lot line adjustment will expire two years (24 months) from the date of the approval, unless the map or certificates of compliance effecting the adjustment is recorded first. Adjustments may be granted extensions of time. The applicant must submit a written request with the appropriate fees to the Planning Department prior to the expiration date.
10. Prior to recordation of the map or certificates of compliance, the applicant shall offer parcel five for dedication to the public.

\*\*\*\*\*  
\*\*\* MULTI TX/RX REPORT \*\*\*  
\*\*\*\*\*

TX/RX NO 0717  
PGS. 35  
TX/RX INCOMPLETE  
-----  
TRANSACTION OK  
(1) 2\*18057811242  
(2) 2\*18057814221  
ERROR INFORMATION  
-----



**NOSSAMAN** LLP

**Facsimile**

Attorneys at Law  
18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800 | F 949.833.7878  
nossaman.com

Date: 8/20/10 Time: Pages: 35 [including cover page]

---

To: **Anne Wyatt, Chairperson**  
Company: **Planning Commission**  
**County of San Luis Obispo**  
Fax: **(805) 781-1242** Phone: **(805) 781-5600**

---

To: **Timothy McNulty, Esq.**  
Company: **County of San Luis Obispo**  
Fax: **(805) 781-4221** Phone: **(805) 781-5400**

---

From: John J. Flynn III Phone: 949.833.7800  
e-mail: jflynn@nossaman.com

Client#: 270797  
Matter#: 0001

Message: Please see correspondence transmitted herewith.

**ORIGINAL WILL BE SENT VIA U.S. MAIL**

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# Th21a

Filed: 4/12/2012  
Staff: D.Robinson/L.Warren - SC/SF  
Staff Report: 12/20/2012  
Hearing Date: 1/10/2013

## CLAIM OF VESTED RIGHTS STAFF REPORT

**Claim Number:** 3-12-013-VRC

**Claimant:** Rob and Judi McCarthy

**Project Location:** Water pipelines between Avila Beach Road and the north (uphill) side of Cave Landing Road on Ontario Ridge, between Avila Beach and Pismo Beach in unincorporated San Luis Obispo County (APNs 076-231-063 and 065).

**Development Claimed:** Domestic water service from San Luis Obispo County Service Area Number 12 (CSA 12).

**Staff Recommendation:** Denial

---

### SUMMARY OF STAFF RECOMMENDATION

The Applicants, Rob and Judi McCarthy, describe the development claimed to be exempt from coastal development permit (CDP) requirements as: “[d]omestic water service from San Luis Obispo County Service Area No. 12.” The Applicants assert that they are third party beneficiaries to a 1966 contract between County Service Area Number 12 (CSA 12) and the San Luis Obispo Flood Control and Water Conservation District (1966 Contract). Determining the extent of the Applicants’ rights under the 1966 Contract or whether they have a valid water right is not “development” for which the Applicants may obtain a vested right. To the extent that this is what they Applicants seek, staff recommends that the Commission deny their claim for a vested right.

An alternate interpretation of the Applicants’ vested right claim is that they are seeking a vested right to have CSA 12 water actually delivered to APNs 076-231-063 and -065 (“the Property”).<sup>1</sup> This makes sense when one considers that the vested rights claim is associated with an appeal of a San Luis Obispo County CDP decision that is currently pending before the Commission (Appeal Number A-3-SLO-11-061). In that appeal, the County approved a CDP for single-family residential and related development on the Property and for a water line to be extended from Avila Beach Drive to the Property to serve the residential development. The question of whether such water pipeline extension is allowed outside the LCP’s Urban Services Line (USL) (the Property is located outside of the USL) is a primary appeal contention. Following the filing of the appeal, the Applicant submitted this vested rights claim. Per the Applicants’ request, the two hearings are both being scheduled for the same Commission meeting.

A vested rights exemption enables one who obtains all valid governmental approvals for development and performs substantial work and incurs substantial liabilities in good faith reliance on those approvals to complete the development authorized by those approvals, even if the law changes prior to completion. A vested right does not allow any other new development to be completed without compliance with existing laws. The Applicants have not provided any evidence of prior government approvals to construct the pipelines and other infrastructure necessary to have water delivered to the Property nor have they provided any evidence that they performed substantial work or incurred substantial liabilities in good faith reliance on any governmental approvals.

Staff is therefore recommending that the Applicants’ vested rights claim be denied. The motion is found on page 3 below.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>3</b>
<b>II. FINDINGS AND DECLARATIONS .....</b>	<b>3</b>
A. LEGAL AUTHORITY AND STANDARD OF REVIEW .....	3
B. BACKGROUND REGARDING PROPERTY .....	6
C. DEVELOPMENT CLAIMED AS EXEMPT FROM COASTAL ACT REQUIREMENTS.....	8
D. EVIDENCE PRESENTED BY CLAIMANT.....	8
E. ANALYSIS OF CLAIM OF VESTED RIGHTS FOR WATER SERVICE .....	9
F. CONCLUSION.....	13

### EXHIBITS

Exhibit 1 – McCarthy Property Location Maps

Exhibit 2 – McCarthy Vested Rights Claim and Associated Letters

---

<sup>1</sup> Based on the documents in the record, Commission staff cannot definitively determine whether the Applicants’ property consists not only of APN 076-231-063 but also of APN 076-231-065, but a review of applicable parcel maps, and purported parcel acreage, suggests that the project spans both assessor parcels.

## I. MOTION AND RESOLUTION

Staff recommends that the Commission deny the vested rights claim. Pursuant to California Code of Regulations, Title 14, Section 13203, the Executive Director has made an initial determination that the vested rights claim (Coastal Commission file number 3-12-013-VRC) has not been substantiated. Staff therefore recommends that the claim be rejected. To implement this recommendation, staff recommends a **NO** vote on the following motion. Following the staff recommendation will result in failure of the motion and a determination by the Commission that the development described in the claim requires a coastal development permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Vested Rights Claim 3-12-013-VRC is substantiated and that the development described in the claim does not require a coastal development permit, and I recommend a no vote.*

***Resolution for Denial of Claim:** The Commission hereby determines that Vested Rights Claim 3-12-013-VRC is not substantiated and adopts the findings set forth below.*

## II. FINDINGS AND DECLARATIONS

### A. LEGAL AUTHORITY AND STANDARD OF REVIEW

#### **Basic Statutory Provisions**

The California Coastal Act (Coastal Act) requires that a coastal development permit (CDP) be obtained before development is undertaken in the coastal zone. Coastal Act Section 30600(a)<sup>2</sup> states in relevant part:

*. . . in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . . wishing to perform or undertake any development in the coastal zone, . . . shall obtain a coastal development permit.*

Coastal Act Section 30106 defines the term “development” in relevant part as:

*. . . the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the*

---

<sup>2</sup> The Coastal Act is at Public Resources Code sections 30000 to 30900.

*Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure,...*<sup>3</sup>

An exception to the general requirement that one obtain a CDP before undertaking development within the coastal zone is that if one has obtained a vested right to complete the development prior to enactment of the Coastal Zone Conservation Act of 1972 (the Coastal Initiative) or the Coastal Act of 1976, whichever is applicable, a permit is not required. Section 30608 of the Coastal Act states:

*No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commencing with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.*

The effective date of the division (i.e., the Coastal Act of 1976) is January 1, 1977. The Property was also subject to the permitting requirements of the Coastal Act's predecessor statute, the Coastal Zone Conservation Act of 1972, which went into effect on February 1, 1973. The Coastal Zone Conservation Act required a CDP for new development on this site occurring on or after February 1, 1973. Thus, the critical date for evaluating this Vested Rights Claim is February 1, 1973.

### **Procedural Framework**

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations (CCR). These regulations require that Commission staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from CDP requirements to complete that specific development only. However, no substantial change in any such development may be made until obtaining either a CDP or approval pursuant to another provision of the Coastal Act. If the Commission instead finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements. Per 14 CCR Section 13200, the burden of proof is on the claimant.

### **Standard of Review**

Section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development. Neither the Coastal Act nor the Commission's regulations articulate a specific standard for determining whether a person has obtained such a

---

<sup>3</sup> The definition of development included in the Coastal Zone Conservation Act of 1972 (i.e., Proposition 20, "the Coastal Initiative"), which applied to the subject property and became effective on February 1, 1973 contains substantially the same definition of development as the Coastal Act. For purposes of this claim of vested right, the applicable language in the Coastal Initiative is: "change in the intensity of use of water, ecology related thereto, or of access thereto" (former California Public Resources Code Section 27103).

right. Thus, to determine whether the vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence.

“The vested rights theory is predicated upon estoppel of the governing body” (*Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 977).<sup>4</sup> Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government “is of sufficient dimension to justify any effect upon public interest or policy” that would result from the estoppel (*Raley*, 68 Cal.App.3d at 975).<sup>5</sup> Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project (*Raley*, 68 Cal.App.3d at 976).

The seminal decision regarding vested rights under the Coastal Act is *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785.<sup>6</sup> In *Avco*, the California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete that construction in accordance with the terms of the permit (*Id.* at 791). The court contrasted the affirmative approval of the proposed project through the issuance of a permit with the existence of a zoning classification, which provides no specific authorization for any given project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning (*Id.* at 796; accord, *Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357).

The acquisition of a vested right thus depends on good faith reliance by the claimant on a governmental representation that the project is fully approved and legal. The scope of a vested right is limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel (*Id.* at 793). One cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to a project it has not in fact approved (*Id.* at 797). Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed or came into effect (*Id.* at 795).

There are many vested rights cases involving the Commission (or its predecessor agency). The courts have consistently focused on whether the developers had acquired all of the necessary

---

<sup>4</sup> Quoting *Spindler Realty Corp. v. Monning*, (1966) 243 Cal.App.2d 255, 269, quoting *Anderson v. City Council*, (1964) 229 Cal.App.2d 79, 89.

<sup>5</sup> Quoting *City of Long Beach v. Mansell*, (1970) 3 Cal.3d 462, 496-97.

<sup>6</sup> The Applicants claim, without support, that *Avco* does not apply to their vested rights claim because it interpreted the narrower vested rights provision of the Coastal Zone Conservation Act. No court interpreting Section 30608 has made this distinction. To the contrary, courts interpreting Section 30608 have either explicitly cited *Avco* or otherwise relied on the test laid out in *Avco* of substantial work performed and substantial liabilities incurred in good faith reliance on governmental approvals to establish a vested right. (See, e.g., *Billings*, 103 Cal.App.3d at 735; *Tosh v. California Coastal Commission*, (1979) 99 Cal.App.3d 388, 393; *South Central Coast Regional Commission v. Pratt*, (1982) 128 Cal.App.3d 830, 841-42.)

government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, had begun their development before the Coastal Act (or its predecessor) took effect, and had incurred substantial liabilities in pursuit of the development.<sup>7</sup> The frequently cited standard for establishing a vested right is that the claimant had to have “performed substantial work, incurred substantial liability and shown good faith reliance upon a governmental permit” in order to acquire a vested right to complete such construction (*Tosh*, 99 Cal.App.3d at 393 (citing to *Avco* 17 Cal.3d at 791)).

Thus, the standard of review for determining the validity of this claim of vested rights can be summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to February 1, 1973. Typically this would include a building permit or other legal authorization, such as final map approval for a subdivision (*Billings*, 103 Cal.App.3d at 736).
2. The claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental approval. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies (*Raley*, 68 Cal.App.3d at 975-76).

As indicated above, the burden of proof is on the claimant to substantiate the claim of vested right (14 CCR Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588). A narrow view of vested rights should be adopted to avoid seriously impairing the government’s right to control land use policy (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844 (citing, *Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797)). In evaluating a claimed vested right to continue a nonconforming business or activity (i.e., a use that fails to conform to current zoning laws/regulations), courts have stated that it is appropriate to “follow a strict policy against extension or expansion of those uses” (*County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687 (holding that a property owner had obtained a vested right to continue mining operations at a quarry that had been in continuous use for more than 50 years)).

## **B. BACKGROUND REGARDING PROPERTY**

### **Location**

The Property is located on the north (uphill) side of Cave Landing Road in the unincorporated area of Avila Beach in San Luis Obispo County (see Exhibit 1 for location maps). The Property

---

<sup>7</sup> See, e.g., *Patterson v. Central Coast Regional Commission* (1976), 58 Cal. App. 3d. 833; *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785; *Tosh v. California Coastal Commission* (1979) 99 Cal.App.3d 388; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729. *Halaco Engineering Co. v. South Central Coast Regional Commission* (1986), 42 Cal. 3d 52 (metal recycling).

is approximately 37 acres and lies approximately 500 feet north/uphill of a parking/access area for Pirates Cove Beach, a popular public beach access area and scenic overlook, and the jumping off point for a continuous public access trail extending to Pismo Beach. The Property is situated at an elevation of approximately 350 feet above sea level.

The Property slopes up from Cave Landing Road to the top of Ontario Ridge on the north side of the project site. The Property is located in the LCP-designated Ontario Ridge Sensitive Resource Area (SRA), within the LCP's Residential Rural land use category and the San Luis Bay Planning Area. Ontario Ridge, characterized by gently sloping hills covered in oak woodlands, chaparral and grassland habitats, separates the residential areas of Pismo Beach from the residential areas of Avila Beach and provides a scenic backdrop for both coastal areas. A majority of the surrounding land use is open space (e.g., the Sycamore Mineral Springs to the north) with a smaller percentage, on County owned land east and south of the subject property, accommodating visitor serving recreational pursuits (parking, beach and trail access). The Property is visible from Cave Landing Road and the various public access facilities thereto, as well as from Avila Beach Drive and the town of Avila Beach at certain elevations/locations.

Although there are no construction plans in the record for the required water infrastructure, the Commission estimates that the project would require approximately 2,400 linear feet of potable water pipeline to provide a connection from the nearest CSA 12 water lines (from the corner of Avila Beach Drive and Cave Landing Road) to the Property, and an additional 1,000 linear feet of pipeline to extend the lines to the proposed residential development footprint at the Property (i.e., associated with current Appeal A-3-SLO-11-061). This would require extensive grading to install the lines subsurface along Cave Landing Road and then to the proposed building site under the proposed access driveway from Cave Landing Road. Such pipeline development would thus nearly all be within the developed public roadway prism, and under a proposed private residential driveway. The direct physical impacts from such development itself would be expected to be no different from standard trenching and piping projects, requiring typical and normal construction BMPs, but public access along Cave Landing Road would be impacted for the duration of such construction. Probably the most problematic impact, in addition to the public access impact that would be associated with such a project, is related to LCP conformance (i.e., as indicated above, whether such a pipeline is even allowed outside the USL) and the potential for both prejudicing future public service projects that extend past the USL, as well as the related potential for this and other such projects to induce inappropriate growth outside of the USL, contrary to the LCP's direction and objectives.

### **County CDP Approval**

On August 26, 2010 the San Luis Obispo County Planning Commission heard an appeal of the County Planning Director's determination regarding water service to the Property. This determination involved the use of public or community water service for the Property outside the USL, and permitting requirements for installation of infrastructure related to bringing the water to the Property as part of the proposed residential development associated with current Appeal A-3-SLO-11-061. The Planning Director determined that the property would need to be within the USL to receive community water from CSA 12, and the Applicants appealed this decision to the Planning Commission. The Planning Commission partially upheld the Applicants' appeal and made the determination that the Property, while outside the USL, is within the sphere of service of the water purveyor (CSA 12) and could receive water service without amending the General

Plan maps and the LCP to include the property within the USL. The Planning Commission also determined that the Applicants needed a CDP to construct the water line infrastructure needed to obtain water at the Property, so this water line extension was included as part of the CDP application for the residential development at the Property.

On July 28, 2011, the Planning Commission approved a CDP for the Applicants to construct a 5,500 square-foot single-family residence and a 1,000 square-foot secondary residence above a detached 1,000 square-foot garage/workshop, along with site preparation for building pads, roads and septic systems that includes approximately 9,368 cubic yards of grading (both cut and fill), a 10,000 gallon water tank for fire suppression, and landscaping. In addition, County approval authorized the extension of water lines and utilities from Avila Beach Drive up Cave Landing Road to the project site and associated grading for the residence to receive water service from CSA 12 (as described above and as currently under appeal in A-3-SLO-11-061).

### **C. DEVELOPMENT CLAIMED AS EXEMPT FROM COASTAL ACT REQUIREMENTS**

The Applicants describe the development claimed to be exempt from CDP requirements as: “[d]omestic water service from San Luis Obispo County Service Area No. 12.” The Applicants assert that they are third party beneficiaries to a 1966 contract between CSA 12 and the San Luis Obispo Flood Control and Water Conservation District (1966 Contract). According to the Applicants, the 1966 Contract has the effect of allowing landowners within CSA 12 who paid a special property tax to provide some funding for construction of the Lake Lopez Reservoir to obtain water from CSA 12.

### **D. EVIDENCE PRESENTED BY CLAIMANT**

The sole evidence presented by the Applicants in support of their claim of a vested right is San Luis Obispo County Planning Commission Resolution No. 2011-019. This is the resolution granting a CDP for development of a single-family residence and related development on the Property that has been appealed (A-3-SLO-11-061). The Applicants have not submitted evidence of any building or other permits issued for development of the Property or water lines to the Property prior to February 1, 1973. They also have not submitted the 1966 Contract which forms the basis of their claim that they have rights as third party beneficiaries of that contract. In the absence of the 1966 Contract, the Commission has analyzed the Applicants’ vested rights claim as if they are, in fact, third party beneficiaries of this contract. The Commission does not, however, find in this report that this assertion is accurate. As discussed below, the 1966 Contract cannot form the basis for a vested rights claim exempting the Applicants from coastal permitting requirements, so it is unnecessary for the Commission to resolve whether the Applicants are third party beneficiaries under the 1966 Contract.

## **E. ANALYSIS OF CLAIM OF VESTED RIGHTS FOR WATER SERVICE**

### **Water Rights**

In the cover letter for their vested rights claim (January Letter),<sup>8</sup> the Applicants argue that they have a vested right to water as third party beneficiaries to the 1966 Contract. The Applicants describe third party beneficiary law and summarize their interpretation of the 1966 Contract. What the Applicants are really asserting is that they have a contractual right to obtain water from CSA 12. The determination of the scope of the Applicants' contractual rights under the 1966 Water Contract, however, is not development, as that term is defined in the Coastal Act, and the Commission may only grant a vested right for development.

Determining the scope of contractual water rights is not within the Commission's jurisdiction. In fact, Coastal Act Section 30412 identifies the State Water Resources Control Board as the appropriate authority in California for administering water rights. Thus, determining whether an Applicant has a valid water right is neither development nor within the Commission's jurisdiction, so to the extent that the Applicants are seeking a vested right to CSA 12 water based on recognition of the scope of their water rights under the 1966 Contract, such claim is hereby denied.

### **Water Delivery to the Property**

An alternate interpretation of the Applicants' vested right claim is that they are seeking a vested right to have CSA 12 water actually delivered to the Property. A vested rights exemption enables one who obtains all valid governmental approvals for development and performs substantial work and incurs substantial liabilities in good faith reliance on those approvals, to complete the development authorized by those approvals, even if the law changes prior to completion. A vested right does not allow any other new development to be completed without compliance with existing laws (*Aries*, 48 Cal.App.3d at 551 (holding that at most the developer could complete only the development already fully authorized under its existing grading permits)). The Applicants have not provided any evidence of prior government approvals to construct the pipes and other infrastructure necessary to have water delivered to the Property nor have they provided any evidence that they performed substantial work or incurred substantial liabilities in good faith reliance on those approvals.

### *No Prior Government Approvals*

The Applicants assert that their claim to water from CSA 12 is "development", subject to CDP requirements, and therefore to exemption as a vested right, because exercising their right to water from CSA 12 will "change the intensity of, and access to, water for the Property and in the CSA 12 service territory" (January Letter at page 2). The Commission has never found that once a permit has been properly issued for the infrastructure needed to deliver water to a property that the use of that water, in and of itself, is development requiring a permit. Under this interpretation

---

<sup>8</sup> January 17, 2012 letter from Gregory W. Sanders of Nossaman to Dan Carl, District Manager of the Central Coast District of the Coastal Commission, at page 2.

of the definition of development, every time a homeowner turned on a water tap at his or her residence, it would be development requiring a CDP. Section 30106 should not be interpreted so broadly as to lead to this absurd result.

Moreover, even if one assumes that this is “development”, the Applicants cannot undertake this development – changing the intensity of use of water – until the infrastructure needed to supply the Property with water has been constructed. Thus, in order to prevail on their vested rights claim, the Applicants must show that they had all governmental approvals necessary to actually use water, which would be the point at which the intensity of use of water was changed, at the Property on February 1, 1973. They have not met this burden.

The Applicants have neither provided evidence of grading, building or other permits issued by the County that would have allowed construction of infrastructure needed to provide water to the Property as of February 1, 1973, nor have they provided evidence that no such permits were required at that time. Instead, in response to a letter from Commission staff requesting evidence of such prior approvals (March Letter), the Applicants claim that they need not provide such evidence because they are not seeking a vested right to this infrastructure or to “construct” anything at all.<sup>9</sup> As demonstrated above, however, without the infrastructure needed to transport water to the Property, the Applicants cannot undertake the “development” for which they claim a vested right. They therefore could not have undertaken this development on February 1, 1973 (because no infrastructure was in place then), nor have they given the Commission any evidence that they had the right to construct the infrastructure necessary for them to undertake this development on February 1, 1973. They therefore have not met the first test for establishing a vested right because they had not received all governmental approvals necessary to undertake the development subject to the vested rights claim, and their claim is hereby denied.

*Substantial Work and Substantial Liabilities*

In addition, even if the Applicants could show evidence of all governmental approvals, which they cannot, the Applicants have not demonstrated that they performed substantial work or incurred substantial liabilities in good faith reliance on such (non-existent) governmental approvals. In a footnote on page 2 of the March Letter, the Applicants claim that their predecessors in interest’s payment of special property taxes to contribute towards funding construction of the Lake Lopez Reservoir and the actual construction of this reservoir, demonstrates that they undertook substantial construction and incurred substantial liabilities entitling them to a vested right to receive CSA 12 water at the Property. The Applicants are not, however, seeking a vested right to construction of the Lake Lopez Reservoir. They also have not provided any evidence to substantiate this claim, but more fundamentally, the work and liabilities they rely on to support their claim are not even for the development for which they seek a vested right.

Even if such work and liabilities were related to their vested rights claim, neither the Applicants nor their predecessors in interest performed any work, much less substantial work, to construct development that would allow water to be delivered to the Property. The Lake Lopez Reservoir

---

<sup>9</sup> March 12, 2012 letter from Gregory W. Sanders of Nossaman to Dan Carl, District Manager of the Central Coast District of the Coastal Commission, at page 3.

was a County project. The Applicants have not cited a single California case, nor is the Commission aware of one, in which the “performance of substantial work” portion of the test for a vested right for private development was met by construction undertaken by a public entity, much less construction of a large infrastructure project benefitting the public generally, such as the Lake Lopez Reservoir.

Finally, the Applicants have not shown that contributing funds through special property taxes for construction of a large public infrastructure project can constitute evidence of substantial liabilities incurred for the purpose of establishing a private vested right. The Applicants have also not established the amount of money expended by the prior owners of the Property as part of their contribution towards funding the reservoir, so the Commission cannot evaluate whether such expenditures by the prior owners constitute “substantial liabilities” under vested rights law. Thus, even if the Applicants had met the requirements of all necessary governmental approvals and substantial work performed, which they have not, the Applicants have not met their burden of proof showing that they incurred substantial liabilities in good faith reliance on a governmental permit. For this additional reason their claim of a vested right is denied.

#### ***Avco* Applies to the Applicants’ Claim**

The Applicants argue that because they are not seeking a vested right to construct anything physical, the typical vested rights analysis laid out in *Avco* does not apply to this case (March Letter at pages 2-3). First, as explained above, without physical development, the Applicants are unable to undertake the development that they claim is exempt from permitting requirements, so this vested rights claim does rely on physical development.

Second, there are in fact several cases analyzing Section 30608’s vested rights language in the context of non-physical development, and each of them applies the vested rights analysis laid out in *Avco*. For example, in *Billings* (103 Cal.App.3d at 735-36) the court held that applicants had not established a vested right to subdivide their property because they had not obtained all governmental approvals necessary to complete the subdivision. Similarly, in *South Central Coast Regional Commission v. Charles A. Pratt Construction Co., Inc.* ((1982) 128 Cal.App.3d 830, 845-46) the court held that a subdivider is entitled to a vested right under the Coastal Act only if he was entitled to final map approval under the Subdivision Map Act at the time the property became subject to Coastal Act requirements. Although these are both cases in which the development at issue, a subdivision, did not involve actually constructing anything, each court cited *Avco* for the proposition that a “vested right to complete a project arises only after the property owner has performed substantial work, incurred substantial liabilities, and has shown good faith reliance upon a governmental permit” (*Id.* at 841-42; *Billings*, 103 Cal.App.3d at 735). Thus, even if one assumes that the vested rights claim at issue here does not involve physical development, the Applicants must still establish that they obtained all necessary governmental approvals to complete the development and that they performed substantial work and incurred substantial liabilities in good faith reliance on those governmental approvals. As explained above, the Applicants have not established that they meet any of these requirements, much less all of them.

*No “Contractual” Vested Rights in Coastal Act Context*

The Applicants assert that their vested rights claim can be established solely on the basis of the 1966 Contract, without meeting the vested rights requirements laid out in *Avco*. The Applicants rely on *Monterey Sand Co. v. California Coastal Commission* ((1987) 191 Cal.App.3d 169) to support this argument. The court in *Monterey Sand* did not hold, however, that a vested rights claim could be established solely on the basis of a contractual right, in the absence of any governmental permits. In that case, *Monterey Sand* had obtained all state and local permits necessary for its ongoing sand dredging activities, including a lease with the State Lands Commission (SLC) (*Id.* at 173). At the time *Monterey Sand* entered into the lease with the SLC, the SLC had not warned it that a federal permit was also necessary for its sand dredging activities (*Id.*). The court therefore found that “[i]n these circumstances, we have little difficulty in concluding that the State’s acquiescence in *Monterey Sand*’s continued extraction activities with knowledge of the possible federal permit requirement estops the State from later relying on the lack of such a permit to assert Coastal Act permit jurisdiction over *Monterey Sand*” (*Id.* at 178). Thus, the lack of a single federal permit was excused in that case because of the SLC’s own failure to identify the need for such permit when it leased its property to *Monterey Sand* to dredge sand. The court emphasized multiple times the unique facts presented in *Monterey Sand*, and these facts bear no resemblance to the facts presented here. The Applicants have not presented evidence that they had any permits needed to provide water to the Property, much less that the lack of necessary permits should be excused due to prior actions or representations made by an entity representing the State of California.

Moreover, the court in *Monterey Sand* recognized that the basis for *Monterey Sand*’s vested rights claim was that the activity that it claimed was exempt was ongoing at the time *Monterey Sand* became subject to CDP requirements (*Id.* at 176). It recognized that an activity that was already underway when CDPs began to be required for development was exempt from permitting requirements, as long as the activity was “within the scope of the pre-existing authorization for use of the coastal resource in question” (*Id.* (citing *Avco*, 17 Cal.3d at 798-99)). Unlike *Monterey Sand*, the development for which the Applicants are claiming a vested right had not commenced, nor was it ongoing, on February 1, 1973. The analysis presented in *Monterey Sand* is therefore distinguishable from the facts presented here for this additional reason.

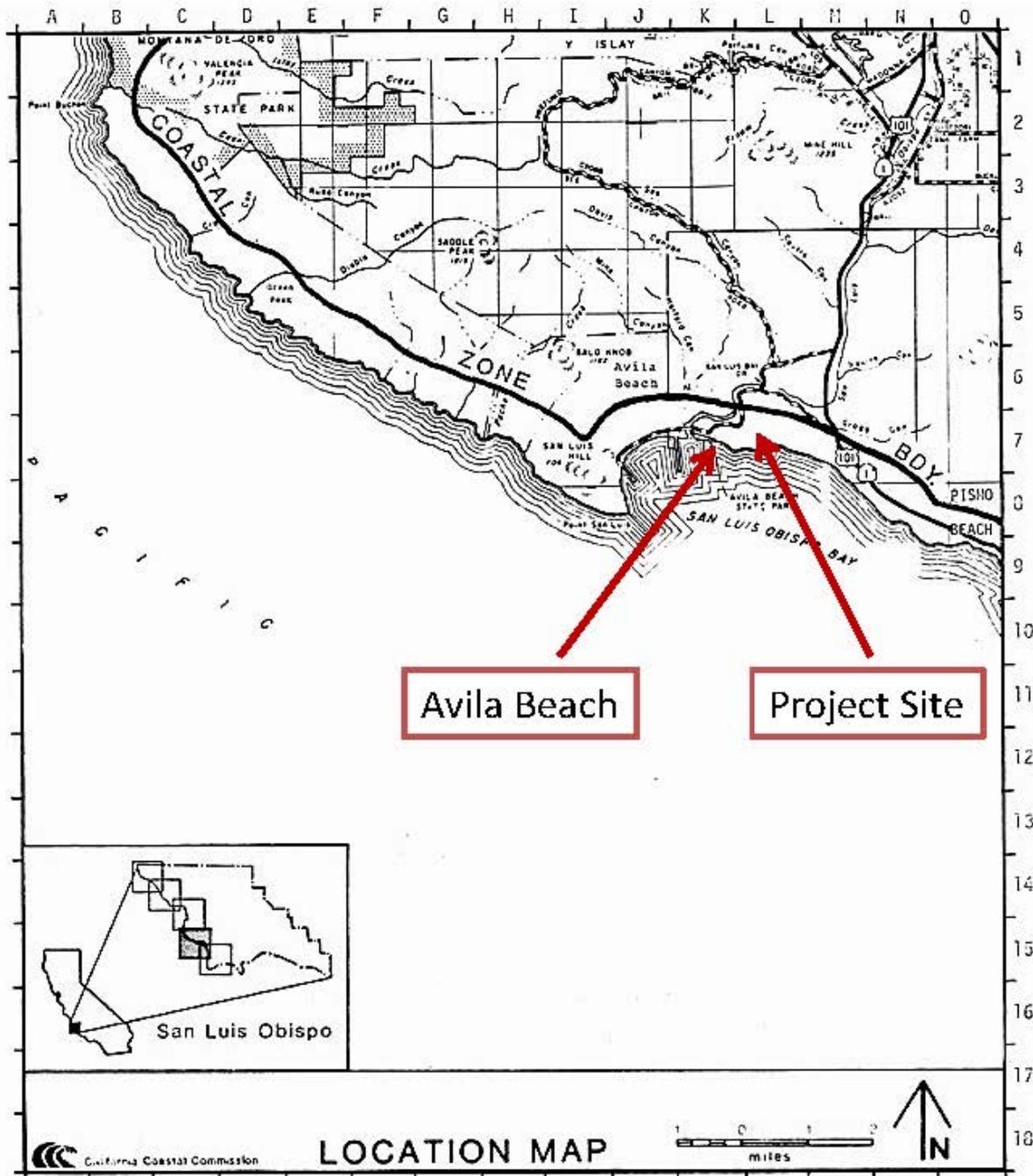
Finally, the Applicants rely on a California land use treatise (Longtin, California’s Land Use (2d ed. 1994 & 2011 supp.) § 1.92[1]) in support of their claim that one could potentially establish a vested right based on a contract. Of the eight cases cited in the relevant section in Longtin’s, however, only three of them actually analyze a vested rights claim at all. Of those three, one is *Monterey Sand*, discussed in detail above. The other two are *Davidson v. County of San Diego* (1996) 49 Cal.App.4<sup>th</sup> 639 and *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4<sup>th</sup> 534. In each of these cases, the court’s analysis of the vested rights issue is separate from its analysis of contractual rights. And in each case, the court relied on the analysis laid out in *Avco* when analyzing the vested rights claims made in those cases (*Davidson*, 49 Cal.App.4<sup>th</sup> at 646-48; *Hermosa Beach*, 86 Cal.App.4<sup>th</sup> at 552). In *Davidson*, the court found a vested right based on a specific ordinance explicitly creating vested rights (*Davidson*, 49 Cal.App.4<sup>th</sup> at 646-48). In *Hermosa Beach*, the court rejected the vested rights claim because the applicant had not obtained a CDP (or other permits) for the development for which it claimed a

vested right nor had it incurred substantial liabilities (*Hermosa Beach Stop Oil Coalition*, 86 Cal.App.4<sup>th</sup> at 552).

In addition, to the extent that “contractual” vested rights exist at all, they are based on a court requiring a local government to perform under a contract that it has entered into with a developer. The Applicants have not shown, nor has Commission staff found, a case in which a “contractual” vested right bound a governmental entity that was not a party to the contract on which the right was based. The closest case of which the Commission is aware is *Monterey Sand*, as the lease in that case was between Monterey Sand and the State Lands Commission, not the Commission. But the court in that case treated the State Lands Commission and Commission essentially as the same entity – focusing on the State attempting to use Monterey Sand’s failure to obtain a federal permit as the basis for denying a vested rights claim, when it was the State itself that failed to warn Monterey Sand of this requirement (*Monterey Sand*, 191 Cal.App.3d at 178). In any case, *Monterey Sand* is distinguishable from the present case on numerous grounds, as described above. Therefore, the Commission finds that the Applicants have not met their burden of establishing a “contractual” vested right.

## **F. CONCLUSION**

The Applicants have failed to meet their burden of proof to establish a vested right to domestic water service from CSA 12 under Coastal Act Section 30608. The Applicants have presented no evidence of governmental approvals, much less evidence that they or their predecessors in interest performed substantial work or incurred substantial liabilities while undertaking the development for which they claim a vested right. Although the Applicants argue that they need not present such evidence to establish a vested right under Section 30608, they cite no persuasive authority to support this assertion. The Applicants’ only effort to establish the evidence required to substantiate a vested rights claim is their assertion that their predecessors-in-interest’s payment of an unspecified amount of money in special property taxes to help fund the Lake Lopez Reservoir, which was actually a County project, establishes the necessary evidence to support their vested rights claim. Setting aside the fact that the reservoir was a public infrastructure project and that there is no evidence in the record of the amount of money contributed by the Applicants’ predecessors in interest, at best this evidence *might* establish a vested right to construct the Lake Lopez Reservoir. It is entirely irrelevant to the Applicants’ claim of a vested right to receive CSA 12 water at the Property. For all of the foregoing reasons, the Applicants’ vested rights claim is denied.



Avila  
Beach

Project parcel

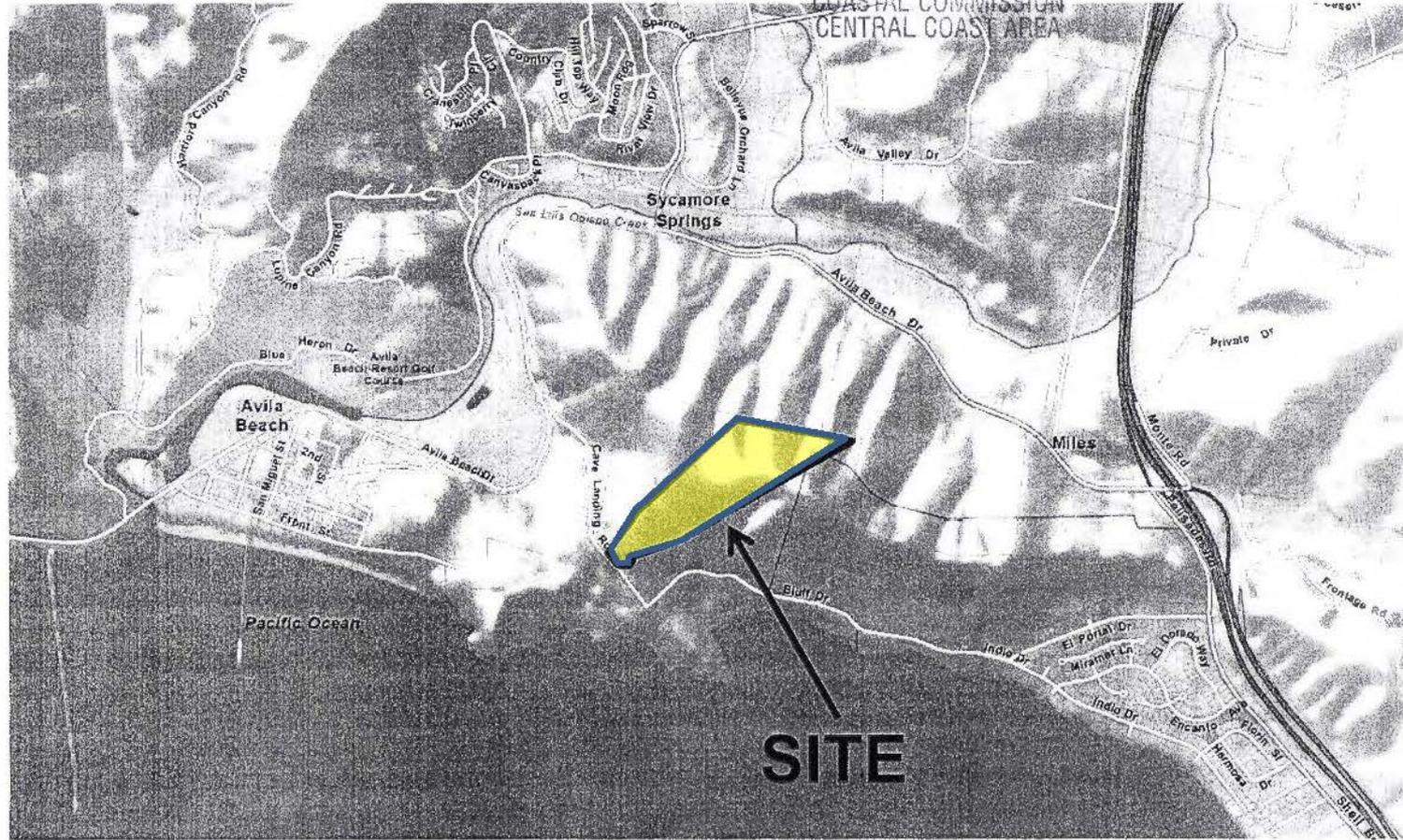
San Luis Obispo County  
APN 076-231-63

Proposition 20 Permit Area  
Map 9 - SLO  
Pismo Beach

Pismo Beach

APR 25 2012

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA



3-39

**SITE**

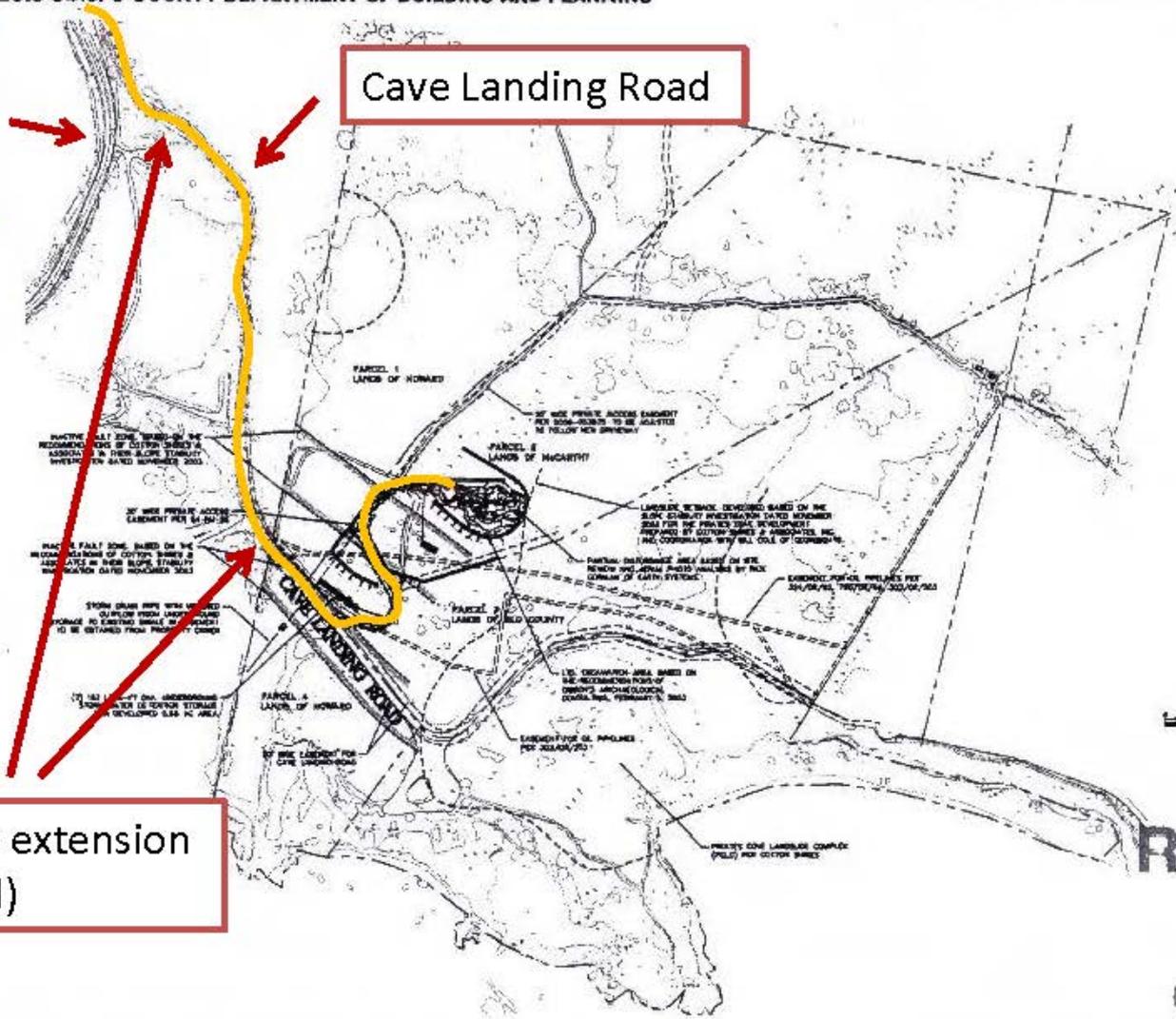
**PROJECT**  
 Conditional Use Permit  
 DRC2009-00095 / McCarthy



**EXHIBIT**  
 Vicinity Map

Avila Beach Drive

Cave Landing Road



water line extension (proposed)



3-52

RECEIVED

APR 25 2012

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

PROJECT  
 Conditional Use Permit  
 DRC2009-00095 / McCarthy



EXHIBIT  
 Site Plan/Grading and Drainage

Exhibit 1



Claim Number: \_\_\_\_\_

Date Submitted \_\_\_\_\_

Date Filed \_\_\_\_\_

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

Development Plan/Coastal Development Permit - July 28, 2011 (includes water service from County Service Area No. 12).

6. List any governmental approvals which have not yet been obtained and the status of the application or anticipated date of approval.

None

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

See conditions of approval appended to San Luis Obispo County Planning Commission Resolution No. 2011-019 (Resolution Relative To The Granting Of A Development Plan/Coastal Development Permit) attached hereto that may be applicable to water service from County Service Area No. 12.



8. Specify, on additional pages, the nature and extent of work in progress or completed, including (a) date of each portion commenced (i.e., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on February 1, 1973 and/or January 1, 1977 (e) status of each portion of development on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals).

See attached letter to Dan Carl, District Manager, Central Coast District, California Coastal Commission  
dated January 17, 2012; water service line from water main in Avila Drive to the subject property to be  
installed in Cave Landing Road.

9. Describe those portions of development remaining to be constructed.

Water service line from water main in Avila Drive to the subject property to be installed in Cave Landing  
Road.

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

None

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses.

Approximately \$150,000.00

12. Is the development planned as a series of phases or segments? If so, explain.

No



13. When is it anticipated that the total development would be completed?

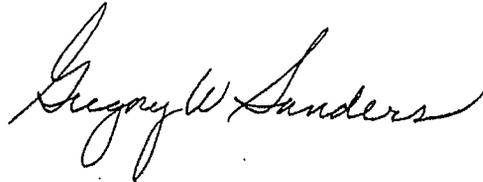
Within twenty-four (24) months following resolution by California Coastal Commission of pending  
appeal.

14. Authorization of Agent.

I hereby authorize \_\_\_\_\_ to act as my representative and bind me in all matters concerning this application.

\_\_\_\_\_  
Signature of Claimant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission, of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending, or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.



\_\_\_\_\_  
Signature of Claimant(s) or Agent



Via FedEx

January 17, 2012

Dan Carl, District Manager  
Central Coast District  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Re: Coastal Commission Appeal No. A-3-SLO-11-061 (Rob and Judi McCarthy Single Family Residence) – Entitlement To County Service Area No. 12 Water Service

Dear Mr. Carl:

We continue to represent Rob and Judi McCarthy, the applicants for a Coastal Development Permit to construct a single family residence on a parcel of property within the Pirates Cove property (sometimes identified as the "Ontario Ridge" property in County of San Luis Obispo planning documents) situated between the eastern boundary of the Avila Beach Community Services District and the western boundary of the City of Pismo Beach (the "Property"). The purpose of this letter is to demonstrate the legal and factual basis on which the McCarthys are presently entitled to County Service Area No. 12 ("CSA 12") water service.

**1. Background**

The Property has been included within the boundaries of CSA12 since its formation in 1966. CSA 12 was created by the San Luis Obispo County Board of Supervisors to act as the contracting agency with the San Luis Obispo Flood Control and Water Conservation District ("District") Zone 3 for the acquisition and distribution of Lake Lopez Reservoir water to the Avila Beach area. CSA 12 is entitled to an allotment of water from the District's Zone 3, which it sells to public agencies and private property owners whose lands are located within its boundaries.

CSA 12 and the District entered into a water supply agreement on November 21, 1966. The agreement allocates to CSA 12 an entitlement of 337 acre feet of water annually (to the extent such water is available for the District to deliver to CSA 12. The agreement provides that the District and CSA 12 contracted for "a water supply to be for the use and benefit of the lands and inhabitants served by [CSA 12] and for which [CSA 12 will make payment to the District upon the terms and conditions [in the agreement]."

 (Emphasis added.)

Voters within the District's Zone 3 approved a special property tax to pay for the original cost of construction of the Lake Lopez Reservoir and related infrastructure. Subsequent special taxes were approved to pay for the Lake Lopez Reservoir dam seismic remediation project. As such, the landowners within CSA 12, including the McCarthys and their predecessors in interest in the Property have paid their proportionate share of the cost of the Lake Lopez Reservoir infrastructure.

**2. The McCarthys Have A Vested Right As Third Party Beneficiaries To Water Service From CSA 12**

Under Civil Code section 1229, "[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it. Beneficiary status is established at the time of contracting. (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4<sup>th</sup> 1412, 1441.) A contract made for the benefit of a third party does not need to explicitly identify the third party by name. (*Garratt v. Baker* (1936) 5 Cal.2d 745, 748.) Similarly, a party may establish third party beneficiary status without showing that the contract was intended to benefit the party as an individual. The third party beneficiary must merely demonstrate that the party is a member of a class that the other parties to the contract intended to benefit. (*Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4<sup>th</sup> 879, 891.) To support a third party right to enforce a contract, it must appear from the direct terms of the contract that it was made for the benefit of the third party: (*Strauss v. Summerhays* (1984) 157 Cal.App.3d 806, 816.)

In the case of the Property, contract between the District and CSA 12 expressly states that the water supplied to CSA 12 is for the benefit of the property and inhabitants of CSA 12, all as discussed above. As the owner of the Property, which has been within the boundaries of CSA 12 since its inception, the McCarthys are third party beneficiaries to the contract. McCarthy's third party beneficiary rights vested when his predecessors in interest learned of the right to water service (*Riley v. Riley* (1953) 118 Cal.App.2d 11, 15.) or acted in reliance on the terms of the 1966 contract (*Silveyra v. Harper* (1947) Cal.App.2d 761, 766-67). The McCarthys' predecessors paid special taxes in order to avail the Property of water in reliance on the 1966 contract. Thus, McCarthys have a vested right to water service from CSA 12 in accordance with the 1966 contract.

**3. The McCarthys' Vested Right Is Sufficient To Constitute A Vested Right In A Development Under Public Resources Code Section 30608**

Public Resources Code section 30608 provides that "[n]o person who has obtained a vested right in a development prior to [January 1, 1977] . . . shall be required to secure approval for the development [by obtaining a coastal development permit] pursuant to this division." The Coastal Act at Public Resources Code section 30106 defines "development" very broadly to include a "[c]hange in the intensity of use of water, or of access thereto . . ." (Emphasis added.) Further, the courts have consistently interpreted the definition of "development" very broadly, noting that such an interpretation is consistent with the legislative policy of the Coastal Act (*Stanson v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, 47.) In the case of the McCarthys' property, receipt of water from CSA 12 must be considered "development" for purposes of the Coastal Act because it involves a "change in the intensity of use of water, or of access thereto," as specified in Public Resources Code section 30106. Specifically, the McCarthys have a right to CSA 12 water service as demonstrated above; exercising that right will change the intensity of, and access to, water for the Property and in the CSA 12 service territory.

In addition to the foregoing, the McCarthys do not need to rely on the land use vested rights doctrine established by the California Supreme Court in *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785 case. As demonstrated above, the McCarthys vested right to water service from CSA 12 and a Coastal Development Permit exemption under Public Resources Code section 30608, which requires a “vested right in a development,” is based on their status as contractual third party beneficiaries, not under the land use vested rights doctrine.

**4. Relocation Of The Urban Services Line Is Not Required For CSA 12 Water Service To The Property**

Although we have demonstrated above that no Coastal Development Permit is required for the provision of water service to the Property by CSA 12, we also wish to address the provision of water service outside the delineated Local Coastal Program (“LCP”) Avila Beach Urban Services Line (“USL”) as the above referenced appeal raises the issue. In fact, the appeal questions whether the provision of water service by any purveyor is appropriate for the Property.

As discussed above, the Property is located within the boundaries of CSA 12 and has been since its inception. The San Luis Bay Area Plan (“Area Plan”), a part of the certified Local Coastal Program for the area in which the Property is located, in Chapter 3 (Public Facilities and Services) identifies eight special districts in the planning area that provide various services to the cities and unincorporated areas covered by the plan. These special districts are identified in Table C (Special Districts San Luis Bay Planning Area) of the Area Plan. Table C is reprinted below:

TABLE C SPECIAL DISTRICTS SAN LUIS BAY PLANNING AREA		
SPECIAL DISTRICT	SERVICE AREA	SERVICES PRESENTLY PROVIDED
<i>County Service Area No. 12</i>	<i>Port San Luis Harbor west of Avila Beach area east Avila townsite including Ontario Ridge, Avila Valley, and Squire Canyon area</i>	<i>Acquisition and distribution of Lopez Reservoir water</i>
Oceano Community Services District	Oceano	Acquisition and distribution of groundwater and Lopez water, street lighting, collection and transporting of sewage, fire protection
Avila Lighting District	Avila Beach	Street lighting
South SLO County Sanitation District	Arroyo Grande, Oceano Halcyon, Grover City	Sewage treatment and disposal

Continued on next page.

SPECIAL DISTRICT	SERVICE AREA	SERVICES PRESENTLY PROVIDED
Avila Beach County Water District	Avila Beach	Fire protection, water and sewer service
Port San Luis Harbor	Entire South County from Cuesta Grade to Santa Maria River	Development, maintenance and operations of harbor piers and facilities
Arroyo Grande Public Cemetery District	Arroyo Grande and outlying areas	Full cemetery services
Coastal San Luis Resource Conservation District	Extends from southern Arroyo Grande through Pismo Beach, San Luis Obispo, Morro Bay and Cayucos to join the Las Tablas Resource Conservation District	Prevention of soil erosion, agriculture education and water conservation

(Emphasis added.) (San Luis Bay Area Plan, p. 3-2, Rev. Aug., 2009)

Table C states in very clear terms that the Property (in Ontario Ridge) is located within the service area of CSA 12 and that water service from that entity is among the "Services Presently Provided" (at the time the Area Plan was adopted). Indeed, as discussed above, the Property has been located within the Sphere of Service of CSA 12 long before the LCP was adopted and certified. Table C makes it clear that water service to the Property was acknowledged to have been available **prior to the adoption and certification of the LCP**. In any event, the LCP recognizes that the Property is located within a USL by acknowledging the equivalence of the CSA sphere of service to a USL:

**Because LAFCO definitions of "sphere of service" and "sphere of influence" correspond to the LUE definitions of urban service line and urban reserve line, respectively, such coordination is necessary to support orderly urban expansion.**  
(Emphasis added.)

(Coastal Zone Framework For Planning, p. 3-13, Rev. Apr., 2011.) Inasmuch as the Property is located within the sphere of service of CSA 12, by the express terms of the LCP it is within a USL.

In addition to the foregoing, provision of water service to the Property by CSA 12 is consistent with the requirements of Public Works Policy 1 of the LCP which requires that "New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development." Because the sphere of service is equivalent to the USL, and because the LCP acknowledges that water service to the Property is provided by CSA 12, and further, because CSA 12 has a sufficient allotment of water to serve the Property, provision of such service complies with both the letter and spirit of the LCP.

Finally, the Avila Beach USL is irrelevant to water service for the Property. Water service to the Property will not be provided by the Avila Beach Community Services District. Though it should be obvious, it bears emphasizing that no water service infrastructure will be extended from Avila Beach to the Property. The LCP provides further support for the conclusion that the Avila Beach USL is irrelevant to water service by CSA 12. The Area Plan states, at 3-8:

As Avila grows, the community and LAFCO should consider consolidating services into a community services district, including services now provided by CSA No. 12, Avila Beach County Water District and the Avila Beach Lighting District.

Therefore, the LCP acknowledges that CSA 12 is a separate entity that now provides water service.

In view of the above, no LCP amendment to relocate the USL to encompass the Property is necessary in order for water service to be provided by CSA 12.

Finally, we would like to emphasize that, to our knowledge, no adverse precedent would be set by a Coastal Commission decision on the above-referenced appeal affirming the San Luis Obispo County Planning Commission's decision to permit water service to the Property by CSA 12. We believe the set of facts and circumstances regarding the Property and CSA 12 are unique. Further, as determined by the Planning Commission, water service by CSA 12 is an environmentally superior alternative than water service from the existing on-site well.

We have enclosed herewith the required Coastal Commission Claim of Vested Rights form.

We would be pleased to discuss this matter with you if you so desire. In the meantime, we are prepared to respond to any questions you may have regarding the subject matter of this letter.

Sincerely,



Gregory W. Sanders  
of Nossaman LLP

GWS/cjm



ATTORNEYS AT LAW

18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

Gregory W. Sanders  
D 949.477.7669  
gsanders@nossaman.com

Refer To File #: 400494-0001

**RECEIVED**

MAR 13 2012

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Via FedEx

March 12, 2012

Dan Carl, District Manager  
Central Coast District  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

**RECEIVED**

APR 20 2012

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Re: **Rob and Judi McCarthy Single Family Residence  
Vested Right To County Service Area No. 12 Water Service**

Dear Mr. Carl:

This letter responds to the California Coastal Commission's ("Commission") letter dated February 17, 2012 requesting additional information from Rob and Judi McCarthy regarding their claim of a vested right to receive water service from County Service Area No. 12 ("CSA 12"). For reference, a copy of the Commission's letter is attached hereto as Exhibit 1. We continue to represent the McCarthys, the owners of the Pirates Cove property (sometimes identified as the "Ontario Ridge" property in County of San Luis Obispo planning documents), situated between the eastern boundary of the Avila Beach Community Services District and the western boundary of the City of Pismo Beach (the "Property"). This letter is intended to address the Commission's request for additional information, to demonstrate that *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal. 3d 785 ("*Avco*") is inapplicable to the McCarthys' situation, and to request that the Commission validate the McCarthys' claim of a vested right to receive water service from CSA 12.

**A. Avco is Inapplicable to the McCarthys' Vested Rights Claim**

The California Coastal Zone Conservation Act was enacted on November 7, 1972 as a temporary measure that required a person desiring to develop property within the coastal zone to obtain a permit from one of six regional coastal commissions. (Former Pub. Resources Code, § 27000 *et seq.* ("1972 Act").) Section 27404 of the 1972 Act, however, exempted a developer from this requirement if the developer had obtained a vested right to build on the property by securing a building permit prior to enactment of the Act. Specifically, section 27404 provided that, if "any city or county has issued a building permit, no person who has obtained a vested right thereunder [prior to enactment of the 1972 Act] shall be required to secure a permit from the regional commission."

Section 27404 of the 1972 Act was amended in 1976 with the enactment of the California Coastal Act ("Coastal Act") to include broader statutory exemption language. (Pub. Resources Code, § 30000 *et seq.*) Specifically, the provision states that "[n]o person who has obtained a vested right in a development prior to [January 1, 1977] . . . shall be required to secure approval for the development [by obtaining a coastal development permit] pursuant to this division." (Pub. Resources Code, § 30608.) Section 30608 conspicuously omits the building permit requirement contained in section 27404 and, thus, clearly indicates that the Legislature did not intend to preclude a developer from obtaining a vested right on the grounds that the developer did not acquire a building permit.

The narrower language of the 1972 Act, and not the broader provision contained in the Coastal Act, was at issue in the California Supreme Court's decision in *Avco*. *Avco* owned approximately 8,000 acres of land in Orange County, a small portion of which was located in the coastal zone. (*Avco, supra*, 17 Cal.3d at p. 788.) Prior to February 1, 1973 (the effective date of the 1972 Act), *Avco* had obtained zoning and tentative and final subdivision map approvals, and had nearly completed construction of storm drains and utility improvements on the property, but had not received a building permit for construction. (*Id.* at p. 789.) Based on the fact that *Avco* had not acquired a building permit, and that section 27404 specifically required such a permit, the Court held that *Avco* did not have a vested right to proceed with construction. (*Id.* at p. 793.)

The holding in *Avco* was based on the language in the 1972 Act that required a building permit to establish a vested right. The *Avco* decision, however, did not address the broader language contained in section 30608 of the Coastal Act, which does not require a building permit.<sup>1</sup> Since it is this broader standard that governs the McCarthys' claim of a vested right to receive water service from CSA 12, *Avco* does not apply to the McCarthys' claim of a vested right.

**B. The McCarthys' Vested Rights Claim Does Not Fall Within the Scope of *Avco***

The California Supreme Court's holding in *Avco* stands for the proposition that, when a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, the developer has acquired a vested right to *complete construction of the project in accordance with the terms of the permit*. (*Avco, supra*, 17 Cal.3d at p. 791.) That is, the

---

<sup>1</sup> Courts have subsequently addressed the significance of *Avco* in light of the fact that section 30608 contains broader language than its predecessor. In general, courts have determined that a building permit is not necessary to establish a vested right, but that some type of governmental approval is required. (See *Tosh v. California Coastal Com.* (1979) 99 Cal.App.3d 388, 393.) Assuming that this broader interpretation of *Avco* applies to the McCarthys' claim of a vested right (which it does not for the reasons set forth herein), the 1966 contract between CSA 12 and the San Luis Obispo Flood Control and Water Conservation District, as described in the McCarthys' January 17, 2012 letter (attached hereto as Exhibit 2), constitutes such a governmental approval. Courts typically also require an individual to perform substantial work and incur substantial liabilities in good faith reliance upon the approvals. (*Ibid.*) As respects these requirements, the McCarthys' predecessors in interest paid special property taxes to fund the construction of the Lake Lopez Reservoir and the subsequent dam seismic remediation project in reliance on the 1966 contract. These taxes and related infrastructure projects demonstrate that the McCarthys and their predecessors in interest performed substantial work and incurred substantial liabilities in good faith reliance upon a governmental approval. Thus, the McCarthys have satisfied the vested rights requirements under the Coastal Act, even if *Avco* applies.

issue in *Avco* was whether the developer had obtained a vested right to *construct or build* a physical structure on his property. (*Id.* at p. 792.) Case law interpreting *Avco* similarly focuses on whether a developer can establish a *vested right to build*. (See, e.g., *McCarthy v. California Tahoe Regional Planning Com.* (1982) 129 Cal.App.3d 222 [vested right to complete demolition and construct a new structure]; *Consaul v. City of San Diego* (1992) 6 Cal.App.4th 1781 [vested right to complete construction of a development project]; *Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687 [vested right to develop an apartment building project].) Even when courts have considered other types of vested rights, the issues addressed by the courts were tangible or “brick and mortar” in nature. (See, e.g., *Billings v. California Coastal Com.* (1980) 103 Cal.App.3d 729 [vested right to subdivide]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa* (2001) 86 Cal.App.4th 534 [vested right to drill for oil].) In these types of cases, it makes sense for a developer to be required to satisfy the *Avco* factors, namely, governmental approvals, good faith reliance on such approvals, and performance of substantial work.

Conversely, as acknowledged by the Commission, the McCarthys are claiming a vested right “to have water provided by CSA 12.” This vested right is not the type of “brick and mortar” right typically at issue under *Avco*. But, in its February 17, 2012 letter, the Commission attempts to frame the McCarthys’ claim as one to “construct the infrastructure necessary to transport water from CSA 12 to the Property.” That is, the Commission appears to portray the McCarthys’ claim as a claim to “construct” water infrastructure to make it fit the typical *Avco* mold. Yet the McCarthys do not seek a vested right to “construct” anything. Rather, they merely seek a determination from the Commission that they have a vested right as a third party beneficiary to receive water service from CSA 12. As such, the McCarthys’ vested rights claim is outside the scope of *Avco*. Thus, the additional information requested by the Commission under *Avco* inaccurately reflects the McCarthys’ claim, and is not required.

### **C. The McCarthys Have a Contractually Vested Right to Water Service From CSA 12**

It is undisputed that *Avco* applies to the traditional land use vested rights analysis. In certain cases, however, a landowner or developer may establish a vested right based on a contract with a governmental agency, notwithstanding the fact that there has been no issuance of a governmental permit, or good faith substantial expenditures in reliance thereon. (Longtin, *California’s Land Use* (2d ed. 1994 & 2011 supp.) § 1.92[1].) That is, a vested right may be established contractually, outside the scope of the typical *Avco* analysis. For example, in *Monterey Sand Co. v. California Coastal Commission* (1987) 191 Cal.App.3d 169, the issue before the court was whether Monterey Sand Co. had acquired a vested right to continue its sand extracting operations without a coastal development permit by virtue of a 1968 mineral lease it had acquired before enactment of the Coastal Act. (*Id.* at p. 176.) The company acknowledged that it had not obtained the requisite federal permits for its operations until several years after the effective date of the Coastal Act. (*Ibid.*) In holding that Monterey Sand Co. had obtained a vested right, the court found that, given the 1968 mineral lease, the Commission was estopped from requiring the Monterey Sand Co. to obtain a coastal development permit for its sand extraction activities. (*Id.* at p. 178-9.) Accordingly, the court ruled that the company had obtained a vested right, exempt from permit requirements, to perform its sand extraction operations pursuant to the mineral lease. (*Ibid.*; see also *M.J. Brock & Sons, Inc. v. City of Davis* (1975) 401 F.Supp. 354, 361 [holding that a public entity should not be allowed to avoid its responsibilities under a land use contract].)

As described in our letter to you of January 17, 2012 (see Exhibit 2), the McCarthys’ vested right to water service from CSA 12 is based on their status as third party beneficiaries to the 1966 contract between CSA 12 and the San Luis Obispo Flood Control and Water Conservation District (“District”).

Civil Code section 1229 provides that “[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.” Beneficiary status is established at the time of contracting. (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1441.) To support a third party right to enforce a contract, it must appear from the direct terms of the contract that it was made for the benefit of the third party. (*Strauss v. Summerhays* (1984) 157 Cal.App.3d 806, 816.) As respects the Property, the 1966 contract between the District and CSA 12 expressly states that the water supply at issue in the contract is to “be for the use and benefit of the lands and inhabitants served by [CSA 12].” As the owner of the Property, which has been within the boundaries of CSA 12 since its inception, the McCarthys are third party beneficiaries to the contract. The McCarthys’ third party beneficiary rights vested when their predecessors in interest learned of the right to water service (*Riley v. Riley* (1953) 118 Cal.App.2d 11, 15) or acted in reliance on the terms of the 1966 contract (*Silveyra v. Harper* (1947) 82 Cal.App.2d 761, 766-67). The McCarthys’ predecessors paid special taxes in order to avail the Property of water in reliance on the 1966 contract; thus, the McCarthys have a vested right to water service from CSA 12, as established by the 1966 contract. This contractually based vested right is outside the scope of the traditional land use vested rights doctrine governed by *Avco*, and does not require the submission of any additional information in order to be validated by the Commission.<sup>2</sup> (See *Monterey Sand Co.*, *supra*, 191 Cal.App.3d at 178-179).

#### **D. Conclusion**

Finally, we would like to emphasize that, to our knowledge, no adverse precedent would be set by a Commission decision validating the McCarthys’ vested rights claim to water service from CSA 12. We believe the facts and circumstances regarding the Property and CSA 12 are unique. As the Commission is aware, most vested rights claims will be subject to *Avco*. The McCarthys’ situation, by contrast, will not disrupt the Commission’s long-standing analytical framework regarding such claims. Rather, the McCarthys’ claim represents a unique, contractually-based vested right that enables the Commission to validate the claim without the submission of additional information regarding the *Avco* factors. Accordingly, the McCarthys’ respectfully request that the Commission validate the McCarthys’ claim of a vested right to have water provided by CSA 12. Please refer to the Coastal Commission Claim of Vested Rights form submitted with the McCarthys’ January 17, 2012 letter, attached hereto as Exhibit 2, for additional details regarding the McCarthys’ vested rights claim.

---

<sup>2</sup> The McCarthys’ vested right is also sufficient to constitute “a vested right in a development” under Public Resources Code section 30608. Specifically, receipt of water from CSA 12 must be considered “development” for purposes of the Coastal Act because it involves a “change in the intensity of use of water, or of access thereto,” as set forth in Public Resources Code section 30106.

Dan Carl, District Manager

March 12, 2012

Page 5

We would be pleased to discuss this matter with you further at your convenience. In the meantime, we are prepared to respond to any questions you may have regarding the subject matter of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sanders". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Gregory W. Sanders  
of Nossaman LLP

GWS/AJR