

## CALIFORNIA COASTAL COMMISSION

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



# Th13d

**Prepared July 6, 2020 for July 9, 2020 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Susan Craig, Central Coast District Manager  
Brian O'Neill, Coastal Planner

**Subject: Additional hearing materials for Th13d CDP Application Number A-3-SLO-19-0180 (Shear Development)**

This package includes additional materials related to the above-referenced hearing item as follows:

Correspondence received since the staff report was distributed.

July 3, 2020

**VIA EMAIL**

**ITEM: Th13d**

Chairperson Padilla and Honorable Commissioners  
California Coastal Commission  
Emailed to: CentralCoast@coastal.ca.gov and Brian.O'Neill@coastal.ca.gov

Re: De Novo Hearing for A-3-SLO-19-0180 (Shear Development Co., LLC in Los Osos, San Luis Obispo County)

Dear Chairperson Padilla and Honorable Commissioners:

We represent the applicant, Shear Development Co., LLC. We have reviewed the June 19, 2020 staff report for the *de novo* hearing on July 9, 2020. The report contains no new relevant evidence or information. The Commission is strongly urged to either (1) dismiss the appeal as mistakenly granted (because no legal grounds ever justified an appeal from San Luis Obispo County's decision approving the CDP), or (2) grant the CDP, as granted by the County.<sup>1</sup>

The purpose of this letter is to address, for the record, staff's suggestion that the sewer laterals to Lots 1, 3, 5<sup>2</sup> and 7 might be illegal. At page 13, staff speculates: "If sewer laterals were installed at any time subsequent to the approval [of the first four houses in Phase 1], . . . then such sewer laterals were installed without benefit of a CDP and constitute a violation." Staff's speculation is demonstrably false.

Attached to this letter are the following exhibits evidencing the sewer laterals' legality. Except for Exhibit A, all exhibits constitute matters of public record:

---

<sup>1</sup> We restate all of our comments made to date regarding the project's non-appealability, as well as the project's entitlement to a CDP. We will not repeat those arguments and evidence here.

<sup>2</sup> Lot 5 is not the subject of the applicant's permit application and is not being proposed for residential construction at this time.



- Exhibit A: Community History and Development Timeline for Tract 2161 (prepared by Carol Florence, AICP, and Emily Ewer, AICP in June 2020<sup>3</sup>)
- Exhibit B: Coastal Development Permit, Conditions of Approval for Subdivision, County of San Luis Obispo, 8 February 1996
- Exhibit C: Petition, Ballot, and Annexation Agreement Between the Los Osos Community Service District and TTS/MCD Joint Venture #1 To Annex Real Property to Wastewater Assessment District No. 1.; County of San Luis Obispo Clerk/Recorder Document Number: 2004005107, 22 January 2004
- Exhibit D: Three sets of Public Improvement & Grading Plans for Tract 2161, as approved by County of San Luis Obispo Public Works Department, which all evidence authorization of the sewer laterals to all 8 lots in the subdivision:
- Original set of plans for 7 lots in the subdivision (20 August 1998)
  - Revised set of plans adding 8th lot to subdivision, following Cuesta by the Sea merger (5 January 2004)
  - As-built plan drawings (6 April 2005)
- Exhibit E: Substantial Issue Determination/ De Novo Findings, California Coastal Commission, 14 October 2004
- Exhibit F: Coastal Development Permit Revised Findings, California Coastal Commission, 18 November 2004

Together, these documents establish, without any doubt, that all the underground utilities associated with Lots 1, 3, 5 and 7—including the sewer laterals—are lawful.

---

<sup>3</sup> Both Mss. Florence and Ewer are certified by and members of the American Institute of Certified Planners (“AICP”). AICP certification and membership are reserved to those planners with a mastery of the principles, skills, knowledge, experience, and ethics deemed essential for a professional planner. Exhibit A is the result of an extensive review of the planning and permitting history of Tract 2161 undertaken by Mss. Florence and Ewer.

All underground utilities were definitively authorized and installed prior to the Commission’s October 14, 2004,<sup>4</sup> approval of a CDP for residential construction on Lots 2, 4, 6, and 8. In 2004, the Commission itself confirmed that fact. In its revised findings for that CDP, the Commission concluded that all eight lots had been “substantially developed,”<sup>5</sup> including with “underground utilities,” pursuant to the requirements of both the 1996 CDP for Tract 2161 and the recorded Tract 2161 Map.<sup>6</sup> (Exhibit F, pp. 7-8). While the Commission initially raised a procedural concern that the 1996 CDP for Tract 2161 might have expired, the Commission ultimately accepted its validity, given the permitting history’s complexity and the applicant’s reliance interests. (*Id.*) Thus, the Commission ratified Tract 2161’s CDP and Map—and, with them, the legal conditions imposed on the applicant to build all subdivision improvements, including sewer laterals, which the applicant completed by 2004. There can be no question that the Commission knew about, and expressly ratified the legality of, the underground utilities, including sewer laterals to Lots 1, 3, 5 and 7.<sup>7</sup>

---

<sup>4</sup> As the Commission correctly found in its “substantial issue” findings for the 2004 CDP (Exhibit E, p. 8), “the pre-construction meeting between the County and the applicant took place February 2003”—over one year earlier. As the Commission knows, a pre-construction meeting occurs right before construction begins at the site (in this case, construction of the subdivision improvements, including the sewer laterals).

<sup>5</sup> The Commission’s finding, in its entirety, was: “The site has since been substantially developed (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed).” (Exhibit F p. 7). The Commission knew and ratified these improvements **sixteen years ago**. (*Id.*) So it is perplexing that staff would irresponsibly assert in its June 19, 2020 report that “the Commission did not approve the installation of any sewer laterals or sidewalks or any other development onto the subject lots as the Applicant asserts.”

<sup>6</sup> The County approved a CDP for Tract 2161 on February 8, 1996. The CDP’s conditions for that subdivision are attached as Exhibit B. They clearly mandate a public improvement plan (see Exhibit D) that includes sewer and public-utility infrastructure, including sewer laterals. (Exhibit B at 5-6). The Tract 2161 Map was recorded on February 2, 2004. Both the CDP and Map for Tract 2161 were discussed and accepted by the Commission in its 2004 CDP findings for Phase 1 (wherein it approved construction on Lots 2, 4, 6, and 8).

<sup>7</sup> Given the overwhelming evidence in the record, there is no legal basis for bringing an enforcement action against the applicant or otherwise challenging the applicant’s installation of subdivision improvements, including the sewer laterals. Even if such a challenge had legal merit, any remedy (e.g., removal of the infrastructure) would be barred by the equitable doctrines of laches and equitable estoppel. *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68; (*Transwestern Pipeline Co. v. Monsanto Co.* (1996) 46 Cal.App.4th 502, 520; *City of Long Beach v. Mansell*, (1970) 3 Cal.3d 462, 493; *Feduniak v. Cal. Coastal Comm’n* (2007) 148

Finally, staff has pointed to the “scenic easement” condition, imposed as Special Condition 2(a) of the 2004 CDP. According to staff, that easement allegedly prohibited the applicant’s construction of sewer laterals to Lots 1, 3, 5, and 7. But staff mischaracterizes the easement condition.

As the Commission’s revised findings for the 2004 CDP make clear, the Commission adopted the same “County required scenic easement (County Condition 3a)” that the *County* had imposed on Lots 1, 3, 5, and 7 when it approved residential construction on all eight lots. (Exhibit F, p. 5). As the Commission’s revised findings establish, “[t]he County placed a scenic easement on lots 1, 3, 5 and 7 *to assure that these residences could not be developed until* after sewer completion (*County Condition 3a*).” (*Id.* at 4 (emphasis added)). In other words, the easement condition precluded only *above-ground* residential construction, not underground utilities to Lots 1, 3, 5 and 7. And the condition is to expire upon residential construction upon any of those lots.<sup>8</sup>

Very truly yours,



Paul J. Beard II  
Counsel for Shear Development Co., LLC

---

Cal.App.4th 1346, 1381). Challenging improvements made 17 years ago, and after the Commission’s formal ratification of that “substantial[] develop[ment]” 16 years ago, would be quintessentially inequitable to the applicant.

<sup>8</sup> In its 2004 CDP decision, the Commission incorporated the County’s conditions, including Condition No 20: “Prior to issuance of construction permits for development on any Phase 2 lot (lots 1, 3, 5 and 7), the existing scenic preservation easement shall be removed.” (Exhibit F (CCC Exhibit D—County’s Conditions of Approval)). The easement condition is temporary.



**COMMUNITY HISTORY &  
DEVELOPMENT TIMELINE FOR TRACT 2161**  
Highland Drive and Mar Vista Drive, Los Osos, CA  
June 2020  
By: Carol Florence, AICP, and Emily Ewer, AICP

**I. HISTORY & EVENTS**

Date	Event
1994 August 7	Lot Line Adjustment (COAL 94-097) approved by the Subdivision Review Board. The LLA adjusted nearby property and reduced 10 legal lots into 4. The change in development potential was transferred to Tract 2161.
1994 January 22	Subdivision application is submitted to County (S940024T) Tract Map 2161
1996 February 8	County approves Tract 2161 (a 7-lot subdivision using parcels retired by COAL94-097).
Circa 1997	Tract 2161 Public Improvement and Grading Plans are submitted to County for review.
1998	Los Osos Community Service District is formed
1998 May 7	COAL 94-097 is recorded, finalizing the lot merger of Cuesta by the Sea
1998 August 20	Tract 2161 Public Improvement and Grading Plans are <b>approved</b> by County. Plans reflect a 7 lot development and the scope of work includes sewer main and laterals.
2002	Pursuant to approved Public Improvement and Grading plans, initial site grubbing and tree removal work begins
2003 February 3	County holds pre-construction meeting for Public Improvements for work within public right of way (this would include underground utilities).
2003 June 30*	Minor Use Permit application for Single Family Dwelling Units is submitted to County. (D020349P)
2003 November 18	An additional lot merger (of two lots) at Cuesta by the Sea properties is recorded as a means to obtain 8 lots for Tract 2161. Voluntary lot merger: S030154V.
2004 January 5	Approved Tract 2161 Public Improvement and Grading Plans are revised to reflect an 8-lot development. Plans continue to include a sewer main and laterals.
2004 January 22	Petition, Ballot and Annexation Agreement (to the Los Osos Community Service District wastewater assessment district no. 1) is recorded. Agreement includes mandate to "[c]onstruct sewer laterals to the eight (8) individual lots."
2004 February 2	Tract Map 2161 is recorded, and scenic preservation easement is concurrently recorded.
2004 February 6	Minor Use Permit (D020349P) for Single Family Dwelling Units for Lots 2, 4, 6, 8; with Phase 2 development of Lots 1, 3, 5, 7 is approved by County
2004 March 9	Coastal Commission Appeal of Minor Use Permit is filed.
2004 September 24 2004 October 14 2004 November 18	Coastal Commission Appeal Hearing(s) for Development of Tract 2161 Coastal Development Permit (A-3-SLO-04-019). Prior to de novo hearing, project description is modified by applicant to delete Phase 2. With this modification, Coastal Commission confirms approval of project.

OASIS ASSOCIATES, INC.

June 2020

Timeline for Tract 2161

Page 2 of 2

Date	Event
2005 April 6	Tract 2161 Public Improvement and Grading Plans As-Built record plans are accepted by the County.
2006 August 25	Los Osos Community Services District (LOCSD) files for Chapter 9 bankruptcy.
2010 September 7:	Los Osos Wastewater Project Coastal Development Permit is issued (CDP A-3-SLO-09-055/069)
2016	Tract Lots 2, 4, 6, 8 are connected to the Los Osos Community Sewer (part of lateral connection phase I) and septic systems are abandoned.

2-1

## Staff Report

San Luis Obispo County Department of Planning and Building

DATE: FEBRUARY 8, 1996  
TO: PLANNING COMMISSION  
FROM: JAY JOHNSON, ASSOCIATE PLANNER  
MARK HUTCHINSON, ENVIRONMENTAL SPECIALIST  
SUBJECT: VESTING TENTATIVE MAP AND COASTAL DEVELOPMENT PERMIT  
(TRACT 2161) IN LOS OSOS FOR CLAIRE GOEDINGHAUS/JEFF  
EDWARDS

ATTACHMENTS 1. Findings  
2. Conditions of Approval  
3. Graphics  
4. Negative Declaration

### SUMMARY

The applicant is proposing a subdivision of a 4.35 acre site into eight lots ranging from 21,442 to 30,676 square feet each. Access to the site is from Mar Vista and Highland Drives. Water would be provided by California Cities Water Company. Wastewater would be handled by a future community sewer or with on-site septic systems (if an exemption is granted from the Regional Water Quality Control Board). Supervisorial District No.: 2

### RECOMMENDATIONS

Approve the Negative Declaration and the tentative map as described in this report, based on the findings found in Exhibit A, and the conditions found in Exhibit B.

### PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

Location: At the west end of Highland and Mar Vista Drives, south of Los Osos Valley Road in the community of Los Osos, in the San Luis Bay planning area. Assessor Parcel Number: 74-025-08.

General Plan: Residential Single Family/Local Coastal Program/Non-open space

Planning Area Stds: Communitywide: 2. Interim Service Capacity Allocation.

Existing Uses and Improvements: Undeveloped

g:\jay\goeding.j

County Government Center, San Luis Obispo, CA 93408 - (805) 781-5600



Surrounding Land Uses (category):

North: Undeveloped (Residential Single Family)  
East: Single family residences (Residential Single Family)  
South: Suburban residences (Residential Single Family)  
West: Single family residences and approved tentative tract - Tract 1638  
(Residential Single Family)

Site Area: 4.35 acres  
Topography: Moderately sloping to the north  
Vegetation: Oaks, eucalyptus, chaparral, forbs and grasses  
Water and Sewer: Community water; on-site septic system or community sewer  
Fire Protection: South Bay Fire Department

ENVIRONMENTAL DETERMINATION

A Negative Declaration was issued on September 29, 1995. After completing an initial study and reviewing all comments received, the Environmental Division has determined that a Negative Declaration is appropriate under the provisions of CEQA. Special environmental consideration was given to wastewater and water supply.

DISCUSSION

Planning Area Standards

The Estero Area Plan contains an allocation priority for water use in Los Osos. This project falls under priority "d" - additional land divisions within substantially subdivided areas. According to this standard, the water demand for the higher priorities "a-c" must be met. The county Board of Supervisor's has established with recently approved subdivisions in Los Osos that the water demand for priorities "a-c" have been met, provided the applicant can demonstrate that an adequate reduction in water demand elsewhere on-site or within the community can be achieved.

The applicant has agreed as part of this project description to voluntarily record, before or simultaneously with this tract, an approved lot line adjustment (COAL 94-097). COAL 94-097 was approved by the Subdivision Review Board on August 7, 1995. The approved adjustment will reduce the number of lots in a Cuesta-by-the-Sea neighborhood from 10 to four. Please refer to the Land Use Category map. It should be noted that four of the six lots to be retired are within a wetland. By adding the six lots that are to be retired and the parent parcel of this tract the number of allowable new lots is seven. The tentative map proposes eight lots. The discrepancy between seven and eight lots can be handled with the final map (or certificates of compliance for the lot line adjustment) by showing only seven lots with this tract or by recording only three lots with the lot line adjustment. The total number of lots with both projects should not exceed 11. Condition number 14 addresses this issue.

3 2-3

Ordinance Compliance

Section 23.04.028 of the Coastal Zone Land Use Ordinance establishes minimum parcel size tests for the Residential Single Family land use category. The project evaluated against the two tests is as follows:

1. Access test: Access from a local street = 6,000 square foot lot.
2. Slope test: Average slope of the parcels are 15% or less = 6,000 square foot lot.
3. Sewer test: Community sewer = 6,000 square foot lot. Septic tanks with 0-5 minutes per inch leaching capabilities = 20,000 square foot lot.

The parcels as proposed, meet all requirements as specified in the Coastal Zone Land Use Ordinance.

The proposed subdivision is consistent with the design standards of Section 21.03.010 of the Real Property Division Ordinance. Street trees are required at a ratio of one tree per 25 feet of frontage by Section 21.03.010c(7). The street trees may be grouped.

Section 21.09.010 requires this subdivision to contribute fees in lieu of land dedication for park and recreation purposes. The amount of the fee is established by Section 21.09.018.

Street Improvements

The recommended street improvements and right-of-ways are consistent with the Circulation Element. The tentative map shows an offer of dedication for the future extension of Highland Drive. This right-of-way offer overlaps a 10 foot wide pedestrian and equestrian easement. Should Highland Drive not be extended, then the pedestrian and equestrian easement would remain.

EXHIBIT A  
FINDINGS - Tract 2161

Environmental Determination

- A. On the basis of the Initial Study and all the comments received, there is no substantial evidence that the project will have a significant effect on the environment.

Tentative Map

- B. The proposed map is consistent with applicable county general and specific plans because COAL 94-097 is to be recorded prior to or with Tract 2161 and the combined number of lots will not exceed 11.
- C. The design and improvement of the proposed subdivision are consistent with the applicable county general and specific plans.
- D. The site is physically suitable for the type of development proposed.
- E. The site is physically suitable for the proposed density of the development proposed.



**EXHIBIT A**  
**FINDINGS - Tract 2161**

**Environmental Determination**

- A. On the basis of the Initial Study and all the comments received, there is no substantial evidence that the project will have a significant effect on the environment.

**Tentative Map**

- B. The proposed map is consistent with applicable county general and specific plans because COAL 94-097 is to be recorded prior to or with Tract 2161 and the combined number of lots will not exceed 11.
- C. The design and improvement of the proposed subdivision are consistent with the applicable county general and specific plans.
- D. The site is physically suitable for the type of development proposed.
- E. The site is physically suitable for the proposed density of the development proposed.
- F. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- G. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision; or that substantially equivalent alternate easements are provided.
- H. The proposed subdivision complies with Section 66474.6 of the State Subdivision Map Act, as to methods of handling and discharge of waste.
- I. The proposed subdivision be found consistent with the county zoning and subdivision ordinance.

**EXHIBIT B**  
**CONDITIONS OF APPROVAL - Tract 2161**

**Wastewater**

1. Prior to recordation of the final map, the applicant shall:
  - a. provide a "will serve" letter from a community-wide sewer provider. Such letter shall contain a commitment to provide sewer service to the project at the time of final map approval, or
  - b. provide a valid exception/exemption from the RWQCB moratorium.

**Access and Improvements**

2. On-site streets constructed to an A-2 (urban) section within a fifty foot dedicated right-of-way.
  - a. Offer for dedication of a 16 foot easement for bicycle, pedestrian and equestrian easement along line between lots 4 and 5 of the tentative map.
3. All grading shall be done in accordance with Chapter 70 of the Uniform Building Code. All lot lines shall be considered as Site Area Boundaries with slopes set back accordingly.

**Drainage**

4. Drainage must be detained or retained a drainage basin on the property. The design of the basin to be approved by the County Engineer, in accordance with county standards.
5. The drainage basin along with rights of ingress and egress be offered for dedication to the public by certificate on the map with an additional easement reserved in favor of the owners and assigns.

**Utilities**

6. Electric and telephone lines be installed.
7. Cable T.V. conduits be installed in the street.
8. Gas lines are to be installed.

**Plans**

9. Improvement plans be prepared in accordance with San Luis Obispo County Improvement Standards and Specifications by a Registered Civil Engineer and submitted to the County Engineer, County Health Department and Environmental Coordinator's Office for approval. The plan to include:
  - a. Street plan and profile;
  - b. Drainage ditches, culverts, and other structures (if drainage calculations require);
  - c. Water plan (County Health);
  - d. Sewer plan, if required (County Health);
  - e. Grading and erosion control plan for subdivision related improvements;
  - f. Public utility; and,
  - g. Street tree and landscape plan to be approved jointly with the Planning Director.
10. The applicant shall enter into an agreement with the county for inspection of said



improvements.

11. The engineer, upon completion of the improvements, must certify to the County Engineer that the improvements are made in accordance with Subdivision Review Board requirements and the approved plans.

Parks and Recreation Fees

12. Prior to recordation of the final map, the applicant shall pay in lieu fees for park and recreational purposes pursuant to Section 21.09.

Fire Safety

13. Prior to recordation of the final map, the applicant shall obtain a fire safety clearance letter from the South Bay Fire Department establishing fire safety requirements.

Miscellaneous

Recorded  
5/17/98

14. Prior to recordation (or at the time of recordation) of the final map, the applicant shall record COAL 94-097. The total number of lots to be recorded between Tract 2161 and COAL 94-097 cannot exceed 11.
15. All lots to have a minimum of 20,000 square foot net area.
16. This subdivision is also subject to the standard conditions of approval for all subdivisions utilizing community water and community sewer or individual septic systems (as applicable), copies of which is attached hereto and incorporated by reference herein as though set forth in full.
17. The subdivision approval of this tentative map will expire in two years (24 months) from the date of this approval, unless the final map is recorded first. The tentative map may be granted extensions of time. The applicant must submit a written request for the extensions with the appropriate fees to the Planning Department prior to the expiration date.



# California Regional Water Quality Control Board Central Coast Region



Winston H. Hickey  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.cwrqcb.ca.gov/cwrqcb/>  
475 Highway Street, Suite 200, San Luis Obispo, California 93401-5411  
Phone: (805) 548-7147 • FAX: (805) 541-0197

Gray Davis  
Governor

February 5, 2003

Jeff Edwards  
P. O. Box 6070  
Los Osos, CA 93412

Post-Net Fax Note	7571	Date: 1/17/03	Page: 1 of 1
To: J. Edwards		From: W. Hickey	
City/State: CA		City/State: CA	
Phone #		Phone #	
Fax #		Fax #	

Dear Mr. Edwards:

## COVERAGE UNDER GENERAL ORDER NO. 09-12, WASTE DISCHARGE REQUIREMENTS FOR RESIDENTIAL ON-SITE WASTEWATER SYSTEMS WITHIN THE BAYVIEW HEIGHTS AND MARTIN TRACT AREAS OF LOS OSOS, SAN LUIS OBISPO COUNTY

We have received your December 10, 2002 submittal, indicating plans for development of four residential lots within an eight-lot subdivision (Tract No. 2161) on Highland and Mar Vista Drives. The proposed project includes four on-site disposal systems authorized under General Waste Discharge Requirements Order No. 09-12 and four lots which will remain undeveloped until such time as the entire subdivision can be connected to the community sewer. Your submittal completes documentation necessary for coverage under Order No. 09-12, demonstrating that the proposed project is consistent with criteria specified in the Water Quality Control Plan, Central Coast Region (Basin Plan) for siting and design of on-site wastewater systems. The wastewater systems must be installed as described in your submittal. Also, all eight lots within the subdivision must be connected to the community sewer system prior to development of the remaining four vacant lots.

This letter, along with our July 11, 2001 letter (attached) documents exemption to the Basin Plan prohibition of waste discharges within the Los Osos area (Resolution 83-13) and coverage under General Order No. 09-12 provided ongoing compliance with the requirements of the Order are demonstrated. Please note there are monitoring and reporting requirements associated with this Order as well as payment of annual fees for each on-site discharge regulated.

If you have questions, please call Serret Marks at 549-3695 or Gerhard Hubner at 542-4647.

Sincerely,

f Roger W. Briggs  
Executive Officer

C:\wrc\ca\wqcb\cwrqcb\09-12\pmb\hplaw.appr\122

- c: Pat Beck, Planning & Building, Co. Govt. Center, San Luis Obispo, CA 93408 (with attachment)
- Bruce Buel, Los Osos CSD, P. O. Box 6064, Los Osos, CA 93412 (with attachment)

California Environmental Protection Agency



Recycled Paper



**J H EDWARDS CO**  
A REAL PROPERTY CONCERN  
P.O. Box 6070 • Los Osos, CA 93412

1995 APR 6 PM 4 45

April 5, 1995

San Luis Obispo County  
Planning and Building Department  
County Government Center  
San Luis Obispo, CA 93408

Attention: Alex Hinds, Director

Re: Tract 2161 and COAL 94-097

Dear Mr. Hinds:

I have been working with Jay Johnson and Mark Hutchinson of your department in connection with the above referenced applications. As you may know, while the applications are separate they have been submitted concurrently and it is proposed that the recordation of the tract map may be conditioned upon the prior recording of the lot line adjustment.

By way of history, the real property subject of the lot line adjustment is presently comprised of ten existing lots of record. The land associated with the tract map is undivided. In consultation with the property owner, Claire Goedinghaus, it was determined the best planning and land use result for each property and the surrounding neighborhoods may be to decrease the density at one location and in effect move or transfer that density to the other parcel.

A related issue is how the Interim Service Capacity Allocation (ISCA) could be addressed in the context of the tract map request. Since general plan consistency, of which ISCA is a part, must be found prior to a project's approval, the present proposal appears to afford your department a basis for the consistency finding. The voluntary merger of the ten lots into four would have the result of the "freeing up" six parcels in the context of ISCA. Given ISCA effect projects throughout the South Bay and both proposals are in the same area, the inventory of residential building lots following the approval and recordation of the respective maps would remain unchanged.

Staff has suggested general plan amendments, variances and other equally unworkable vehicles to facilitate the approval of the subject proposals. What has been presented is a common sense, voluntary and practical approach with a sound planning foundation. In a world of increasing complexity, I submit simplicity should be embraced at every opportunity.

TELEPHONE (805) 528-1567 • F., X (805) 528-4473

Cat E. 21084, 15305 class 5

San Luis Obispo County  
Planning and Building Department  
County Government Center  
San Luis Obispo, CA 93408

April 5, 1995  
Page 2

Subject: Tract 2161 and COAL 94-097

An alternative for the property owner is to wait for the sewer issue to be resolved. In that event, it is possible if not likely that both properties could be "maxed out" with density in a manner that may not be the best result. The approval of the tract map is not only good planning, but also good precedent. The concept associated with the proposals may offer the opportunity to "retire" small lots and others that may not be ideal for development. Your department's support and favorable recommendation concerning the subject request would be appreciated.

In closing, it was suggested that a meeting to discuss the issues in more detail would be productive. I would be pleased to have such an opportunity. Please have Jay or Mark advise me as to when would be convenient for you.

Sincerely,



Jeffrey H. Edwards

cc: Claire Goedinghaus  
Jay Johnson  
Mark Hutchinson

---

TELEPHONE (805) 528-1567 • FAX (805) 528-4473



A-5-3

**EXHIBIT A**

**FINDINGS - COAL 94-097  
CLAIRE GOEDINGHAUS/JEFF EDWARDS**

- A. As conditioned, the proposed parcels, with respect to parcel design and wetland setbacks and other zoning and building ordinances are acceptable.

**EXHIBIT B**

**CONDITIONS OF APPROVAL - COAL 94-097  
CLAIRE GOEDINGHAUS/JEFF EDWARDS**

1. Prior to filing of a map or recordation of a certificate of compliance effectuating the adjustment, the map or certificate shall provide a minimum 30 foot setback between the adjusted property line and the existing structures on Parcel 1, or the structures shall be relocated to allow for the 30 foot side setback required by the county Land Use Ordinance.
2. If a map is filed, it shall show:
  - a. All public utility easements.
  - b. All approved street names.
3. Any private easements described in the title report must be shown on the map, with recording data.
4. When the map is submitted for checking, or when the certificate of compliance is filed for review, provide a preliminary title report to the County Engineer or the Planning Director for review.
5. 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 adjustment. Recordation of a map is at the option of the applicant. However, if a map is not filed, recordation of a certificate of compliance is mandatory.
6. 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.
7. 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 involved quitclaim their interest in one another 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.

A-5-4

8. After approval by the Subdivision Review Board, compliance with the preceding conditions will bring the proposed adjustment into conformance 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 appropriate fees to the Planning Department prior to the expiration date.

Staff report prepared by Jay Johnson,  
Development Review Section and reviewed  
by Michael Draz, Supervising Planner





THIS MAP MAY BE USED FOR ANY PURPOSE, BUT NOT FOR THE PURPOSE OF A COURT OF RECORD. THE MAP IS NOT TO BE USED FOR THE PURPOSE OF A COURT OF RECORD. THE MAP IS NOT TO BE USED FOR THE PURPOSE OF A COURT OF RECORD.

CUESTA BY THE SEA  
SAN LUIS OBISPO  
CALIFORNIA

NOTE - ASSESSOR'S BLOCK & LOT  
NUMBERS SHOWN IN CIRCLES

THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY.

DOC#: **2004005107**



Titles: 1 Pages: **16**

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

**To be recorded prior to final map**

RECORDING REQUEST BY AND  
WHEN RECORDED RETURN TO:  
LOS OSOS COMMUNITY SERVICES DISTRICT  
P.O. BOX 6064  
Los Osos, CA 93412

APN # 074 025 008\*

Exhibit "A" - Legal Description of Annexation  
Exhibit "B" - Assessment Calculation  
Exhibit "C" - Depiction and Legal Description of Sewer Main Easement

**PETITION, BALLOT AND ANNEXATION AGREEMENT  
BETWEEN THE LOS OSOS COMMUNITY SERVICES DISTRICT  
AND TTS/MCD JOINT VENTURE #1 TO ANNEX REAL PROPERTY TO  
WASTEWATER ASSESSMENT DISTRICT NO. 1**

THIS PETITION, BALLOT AND ANNEXATION AGREEMENT  
("Agreement" or "Petition"), is made this 17<sup>th</sup> day of November, 2003 by and  
between the Los Osos Community Services District, (herein referred to as  
District), and TTS/MCD Joint Venture #1, composed of T.S., LLC, also known  
as T.T.S., LLC, a California Limited Liability Co. and Steven Molnar dba MCD  
Construction & Development Co., (hereinafter collectively referred to as  
("Applicant(s)" or "Owner(s)"), with reference to the following recitals.

**RECITALS**

A. Applicant is the owner of certain real property (herein the  
"Property") that is located within the District otherwise known as APN # 074 025  
008. The subject Property is approximately 4.35 acres in area. The Property is  
more particularly described in Exhibit "A" attached hereto and incorporated  
herein by reference.

B. Pursuant to Regional Water Quality Control Board ("RWQCB")  
Order No. 00-131 District is currently in the design phase to construct a  
Wastewater Treatment Project ("WTP") to provide wastewater treatment to the  
Prohibition Zone as established by State Water Resource Control Board  
("SWRCB") Order No. 84-13.

C. The WTP components include but are not limited to a collection system, treatment facilities and disposal system. The WTP is more particularly described in the Wastewater Facilities Project Final Report dated March 7, 2001.

D. The Property is located within the Prohibition Zone established by the SWRCB Order No. 84-13.

E. The District has established Wastewater Assessment District No. 1 ("Assessment District No. 1") to partially finance the design and construction of the WTP.

F. The Property is located outside the boundary of Assessment District No. 1 and is not within the collection area of the WTP.

G. Applicant desires to annex the Property into the Assessment District No. 1 for the purposes of providing the Property with wastewater treatment. The annexation process is referred to herein as the "Annexation".

H. The District has adopted an Addendum to the WTP Final Environmental Impact Report that addresses the possible Annexation of the Property to Assessment District No. 1.

I. Applicant acknowledges responsibility for the payment of all District costs to process the annexation of the Property to Assessment District No. 1.

NOW, THEREFORE, by this Petition, the undersigned Owner requests the District Board of Directors to annex the Property into Wastewater Assessment District No. 1 for the purpose, and otherwise subject to the terms and conditions set for herein.

1. Owner and Annexation Description:

A. TTS/MCD Joint Venture #1, composed of T.S., LLC, also known as T.T.S., LLC, a California Limited Liability Co. and Steven Molnar dba MCD Construction & Development Co. is the sole owner(s) of the Property to be annexed to Assessment District No. 1.

B. The Property to be annexed to Assessment District No. 1 is described in Recital A, above and is to be developed into a maximum of eight (8) single family residential units.

2. Payment of Costs

A. Applicant agrees to pay the District all incurred costs, both direct and indirect, associated with the processing of the Annexation. These costs include, but are not limited to, District staff time, planning, engineering, legal services, and retaining professional consultants for the preparation and processing of CEQA compliance.

B. District acknowledges receipt of the sum of five thousand dollars (\$5,000) for District services more particularly described in subparagraph A, above.

C. Upon completion of the Annexation, any funds so deposited by Applicant in excess of the District's costs shall be refunded to the Applicant. Conversely, any costs incurred by the District over and above the amount requested by Applicant shall be paid by Applicant upon demand.

3. Assessment District Participation:

A. Applicant shall on or before December 31, 2003 make a lump sum payment to District in the amount of twenty-three thousand sixty dollars and fifty-three cents (\$23,060.53) representing the Property's proportional benefit of WTP costs financed by Assessment District No. 1. The Assessment calculation is attached hereto as Exhibit "B".

B. Applicant agrees that the formula used to calculate the Assessment accurately reflects the proportionate special benefit received by the Property and each parcel to be developed therein, and therefore is an appropriate way of apportioning assessment costs.

C. District shall deposit the payment of monies referenced in Subparagraph A into the Improvement Fund (as established by District Resolution) for the purposes of paying the costs of issuance of the Bonds and paying or reimbursing the costs of acquiring and constructing the WTP.

4. Customer of the District:

Applicant and its successors and interests shall participate in the District's WTP as a "Customer of the District" and shall be subject to District Rules, Regulations and Ordinances, as amended from time to time, related to wastewater discharge and payment of fees and costs, including those fees and costs for the repayment of State Revolving Fund Loan to finance the

construction of the WTP.

5. Obligation of Applicant to Construct Improvements:

Applicant agrees, pursuant to District's specifications , to construct, at its sole cost, the following improvements :

A. Wastewater trunk sewer line as depicted in the Public Improvement Plans for development referenced in Section 1 B above. .

B. Construct sewer laterals to the eight (8) individual lots referenced in Section 1 B above.

6. Obligation of Applicant to Dedicate Easements:

Applicant, at no cost to District, agrees to grant to District, in a form attached hereto as Exhibit "C" a permanent and associated construction easement.

7. Obligations of District

Both Applicant and the District understand and agree that processing this Annexation by the District will require discretionary approvals, including approval of this Agreement and the associated Easements. Therefore, there are no promises or guarantees that the Annexation will be successfully approved by the District.

In the event this Agreement and/or the Annexation is not approved, then the District will return the unused deposits to Applicant as provided in Sections 2 and 3 above.

8. Conditions Precedent to District's Final Approval of Annexation of the Property to Assessment District No. 1

The following are conditions precedent to the District's Resolution approving annexation to the District:

1. The Annexation's compliance with CEQA.
2. A fully executed Easement as referenced in Section 6 above.
3. Deposit of Assessment District charges as referenced in Section 3, above.
4. Payment of District costs as referenced in Section 2 above.

9. Sewer Service

A. The District shall not provide sewer service to the Property described in Exhibit "A" until:

1. The District has accepted the Wastewater Treatment Plant and its associated facilities; and
2. Applicant has made the initial payment for the State Revolving Fund Loan.
3. Applicant has complied with all terms, conditions, rules and regulations of agencies that have jurisdiction over the Property and the delivery of sewer service. The District reserves the right to demand evidence of compliance as a condition to providing service.

B. Upon District's acceptance of the Wastewater Treatment Plant Project and associated facilities all such service shall be supplied in accordance with the District's rates, ordinances, rules and regulations, as the same may be amended from time to time. This Agreement does not confer on Applicant a priority over any other District resident, property, and/or property owner within the Prohibition Zone to sewer service from the District.

10. Petition and Ballot in Favor of Annexation to Assessment District

A. The undersigned Owner, as sole Owner(s) of the Property to be annexed to Wastewater Assessment District No. 1, hereby waives the resolution, report, notices of hearing, right of majority protest, and any other formalities in annexing the Property to Wastewater Assessment District No. 1.

B. The undersigned Owner executes this Petition and Agreement as both the Owner's Petition for annexation of the Property to the Wastewater Assessment District No. 1, and as the Owner's Ballot in favor of the assessment to be charged or levied against the Property as specified in Section 3, above. In addition, the undersigned Owner hereby authorizes the District Secretary to file this Agreement as Owner's Ballot in favor of annexation to Wastewater Assessment District No. 1.

C. The hearing on the undersigned Owner's Petition/Ballot will be set concurrently with the District's final approval for the annexation of the Property as set forth in Section 8, above and will be at least forty-five (45) days from the date the District adopts a Resolution approving this Petition and Agreement. The undersigned Owner may revoke this Petition/Ballot up to and including the

time of the public hearing set by the District for approval of the annexation of the Property as specified in Section 8, above. A revocation of any portion of this Petition/Ballot shall be considered a revocation of the entire Petition and Ballot.

D. In the event this Petition/Ballot is revoked by Owner the District shall have no further obligation pursuant to this Agreement and the unused portion of the deposit as referenced in Section 2C, above shall be returned to the Owner.

#### 11. Indemnification and Hold Harmless

To the extent allowable by law, Applicant agree to hold District harmless from costs and expenses, including attorneys' fees, incurred by District or held to be the liability of District in connection with District's defense of its actions in any proceeding brought in any State or Federal court challenging the District's actions with respect to the Annexation. Applicant understands and acknowledges that District is under no obligation to defend any legal actions challenging the District's actions with respect to The Annexation.

The Applicant recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Applicant, its officers, employees, independent contractors or agents. The Applicant shall protect, indemnify and hold the District harmless from any and all claims, causes of actions, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Applicant, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Improvements referenced in Section 5 above and the payment of prevailing wages to the extent required in constructing the Improvements. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Applicant which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by the District, its directors, officers, employees or agents.



12. Term of Agreement and Termination

This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as otherwise provided in Section 8 of this Agreement.

Further, Applicant may terminate this Agreement with fifteen (15) days written notice to District. Termination shall not relieve Applicant of its responsibility for payment of District costs as provided in Section 2 of this Agreement.

13. 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 Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

14. Entire Agreement

This Petition and Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Applicant and the District.

15. Notices

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:



LOS OSOS COMMUNITY SERVICES DISTRICT

Bruce Buel, General Manager  
Los Osos Community Services District  
P.O. Box 6064  
Los Osos, CA 93412

✓ Jeff Edwards  
J.H. Edwards Company  
P.O. Box 6070  
Los Osos, CA 93412

16. Headings

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, not shall they enter into the interpretation of this Agreement.

17. Cooperation

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

18. Interpretation of this Agreement

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

19. Venue

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for

any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

20. Successors and Assigns

The District and Owner agree that the promises, covenants and conditions contained in this Petition and Agreement shall run with the land and shall be binding upon the Owner, his/her heirs, successors, executors, administrators and assigns, including successor individual lot owners, and shall inure to the benefit of District and its successors and assigns.

21. Agreement/Petition to be Recorded

Owner and District intend and consent to the recordation of this Petition/Agreement in the office of the County Recorder of the County of San Luis Obispo.

22. Recitals

The recitals A through H of this Agreement are incorporated herein by this reference and made a part hereof.

23. Representations and Warranties

A. The undersigned represent and warrant as follows:

1. TTS/MCD Joint Venture #1, is legally existing under the laws of the State of California;
2. T.S., LLC, also known as T.T.S., LLC, a California Limited Liability Co. is legally existing under the laws of the State of California;and
3. Steven Molnar dba MCD Construction & Development Co is legally existing under the laws of the State of California.

B. That the undersigned are duly qualified to execute this Agreement and Petition and that this Agreement and Petition will constitute a legal, valid and binding obligation of the entities referenced in subparagraph 1, above and is enforceable in accordance with its terms.

C. The execution and delivery of this Agreement and Petition is within the Owner(s) powers and authority without the joinder or consent of any other party and has been duly authorized by all requisite actions and is not in

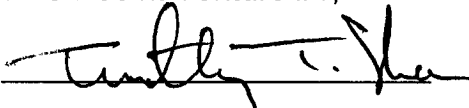
contravention of any contracts, charters, by-laws or other organizational documents.

D. The undersigned jointly and severally agree to defend, indemnify and hold District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A, B, and C, above.

In Witness Whereof, District and Owner(s) have executed this Agreement the day and year first above written.

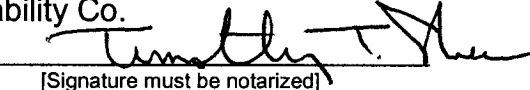
**OWNERS:**

TTS/MCD Joint Venture #1,

By: 

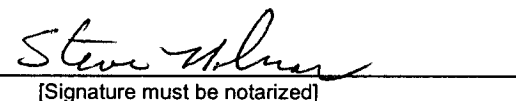
Title: Manager  
[Signature must be notarized]

T.S., LLC, also known as T.T.S., LLC, a California Limited Liability Co.

By:   
[Signature must be notarized]

Title: Manager

Steven Molnar dba MCD Construction & Development Co.

By:   
[Signature must be notarized]

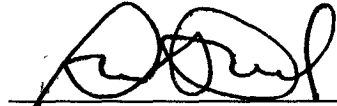
Title: MANAGER

[Signatures continued on Page 11]

DISTRICT:

By: Rosemary Bowker  
Rosemary Bowker, President of  
the District Board of Directors,

Attest:

A handwritten signature in black ink, appearing to read 'Bruce Buel', written over a horizontal line.

Bruce Buel, General Manager  
And Secretary to the Board

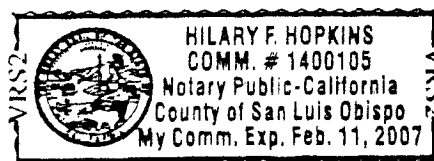
## NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA            }ss  
COUNTY OF SAN LUIS OBISPO    }

On November 17, 2003, before me, **Hilary F. Hopkins**, a Notary Public in and for said State, personally appeared \*\*Timothy T. Shea and Steven Molnar\*\*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Hilary F. Hopkins



(This area for official notarial seal)

### OPTIONAL:

#### DESCRIPTION OF ATTACHED DOCUMENT

\*\*Petition, Ballot and Annexation Agreement

Between the Los Osos Community Services

District and TTS/MCD Joint Venture...\*\*

# Exhibit "A"

## LEGAL DESCRIPTION

File no: 384.036

September 15, 2003

---

That portion of the Southwest 1/4 of the Southeast 1/4 of Section 13, Township 30 South, Range 10 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, according to the official plat of said land approved by the Surveyor General March 16, 1871, described as follows:

Commencing at the Southeast corner of the Southwest 1/4 of said Section 13;  
thence South 88 deg. 58' 30" East along the Southerly line of said Section 13, 181.66 feet to a point, said point being the Southwest corner of the land conveyed to Earl R. McQuown, a married man, in deed recorded July 23, 1965 in Book 1359, Page 498 of Official Records, said point being the True Point of Beginning; thence North 1 deg. 01' 30" East along the Westerly line of the land conveyed to McQuown, 577.29 feet to a point, said point being the Southwest corner of the property conveyed to Margaret J. McQuown in Deed recorded July 23, 1965 in Book 1359, Page 500 of Official Records; thence South 88 deg. 58' 30" East along the Southerly line of the property so conveyed to Margaret J. McQuown, 346.85 feet, to the Westerly line of Redfield Woods as shown on the map recorded in Book 3, Page 51 of Maps, in the office of the County Recorder, records of San Luis Obispo County, California; thence South 4 deg. 42' 30" West along the Westerly line of said Redfield Woods, 578.48 feet to a point in the South line of said Section 13; thence North 88 deg. 58' 30" West along the South line of said Section, 310.00 feet to the Point of Beginning.

**From:** Rob Miller [RobM@jlwa.com]  
**Sent:** Friday, December 27, 2002 10:51 AM  
**To:** Bruce Buel  
**Subject:** Tract 2161 (Goedinghaus Annexation) assessment calculations

The following table displays the assessment calculations for the above-referenced annexation proposal. The gross area of the property is less than 5 acres, therefore the assessment includes the collector componet. Please let me know if you have any questions.

Benefit Unit Values by Componet

Component Type	Bonded Amount	Benefit Units	Tract 2161	
			Assessment	Cash Payment
Lateral	\$491.01	0.00	\$0.00	\$0.00
Collector	\$1,274.09	8.00	\$10,192.72	\$8,645.87
Trunk	\$385.47	8.00	\$3,083.76	\$2,615.77
Treatment and Disposal	\$1,422.84	8.00	\$11,382.72	\$9,655.28
Common Facility	\$315.89	8.00	\$2,527.12	\$2,143.60
<b>Total Unit Cost</b>	<b>\$3,889.30</b>		<b>\$27,186.32</b>	<b>\$23,060.52</b>

# Exhibit "C"

## LEGAL DESCRIPTION

File no: 384.036

September 16, 2003

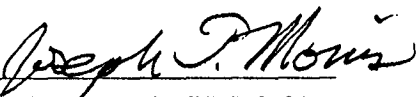
An easement over a portion of the southwest quarter of the southeast quarter of Section 13, Township 30 South, Range 10 East, Mount Diablo Meridian, in the County of San Luis Obispo, State of California, as described in that Quitclaim Deed recorded December 1, 1997 in Document No. 1997-067662 of Official Records in the Office of the County Recorder of said County, said portion more particularly described as follows:

The easterly 30 feet of the land described in said Quitclaim Deed.

Excepting therefrom that portion of said land lying southerly of the line more particularly described as follows:  
A line lying 25 feet southerly and parallel with the westerly projection of the centerline of Mar Vista Drive, formerly known as Second Street, as shown on the map filed in Book 3 at page 51 of Maps, in the Office of the County Recorder of said County.

The above-described parcel is graphically shown on the attached Exhibit "C-Sketch" and made a part hereof.

END DESCRIPTION

  
Joseph T. Morris, PLS 6192





# EXHIBIT "C-Sketch"

12/PM/28  
Parcel 3  
Parcel Map CO 73-103

30.00' wide  
Proposed Easement  
4,940± Sq. Ft.

Doc. No.  
1997-067662

41  
87MB/3  
42  
Tract 417  
43

Parcel C

NE1/4  
Sec. 24

14  
12

Block 12

Mar Vista Drive  
(Formerly Second Street)  
3/MB/51

10.00'  
Public  
Drainage  
Easement per  
1288/OR/94

14  
15  
28  
Block 15  
Redford  
3/MB/51

Highland Drive  
(Formerly First Street)  
3/MB/51

15  
Block 18

JL  
WA

John L. Wallace & Associates  
Civil Engineering · Surveying · Planning  
4115 So. Broad St B5 San Luis Obispo, Ca  
(805)544-4011 FAX 544-4294

FILE : 384.36  
DRAWING : Easement Exhibit1.dwg  
SCALE : 1"=80'  
DATE : 9/16/03

END OF DOCUMENT

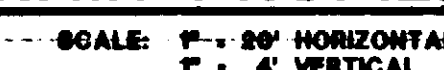


GENERAL NOTES SHEET INDEX VICINITY MAP SHEET KEY

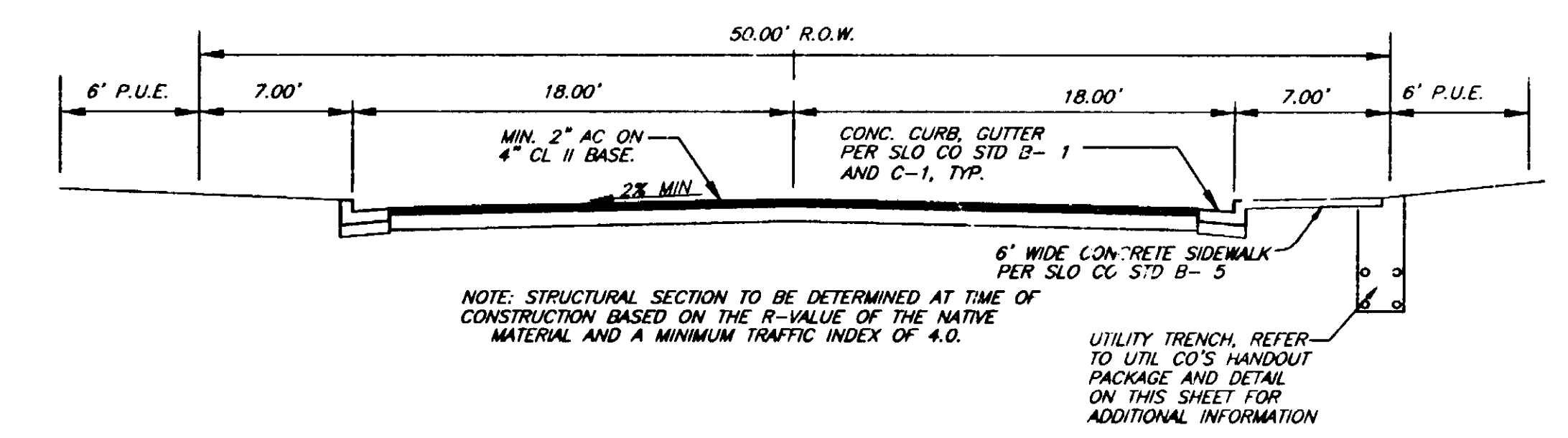
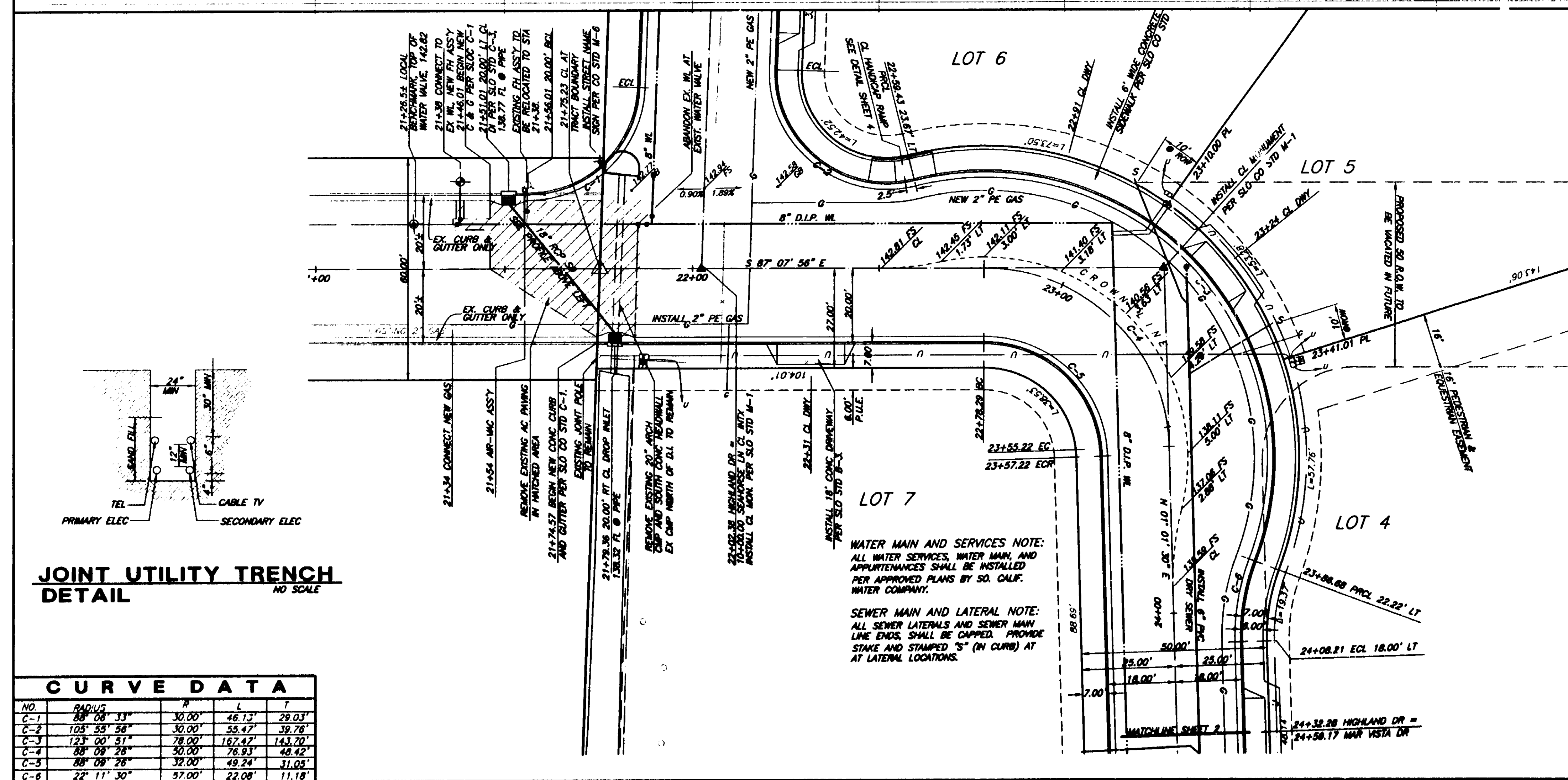
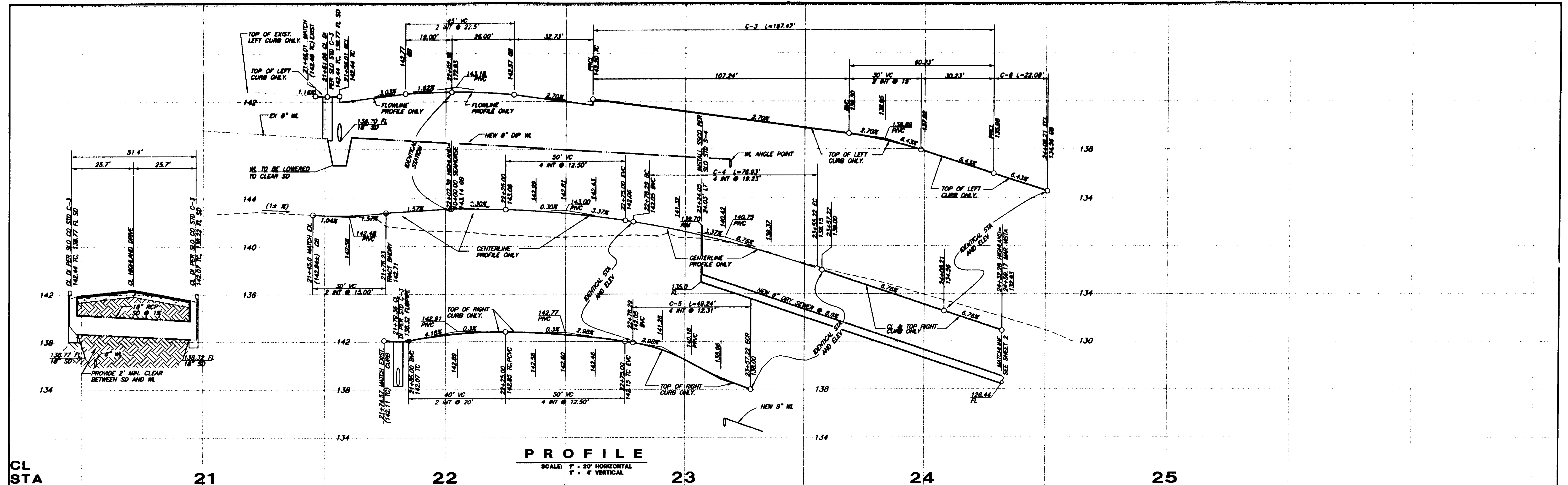
## SHEET KEY

EDA JOB No.: 20-1615-000 EDIT DATE: 05/27/94  
DWG NAME: 201615\1615TS01.DWG PLOT DATE: 05/27/94





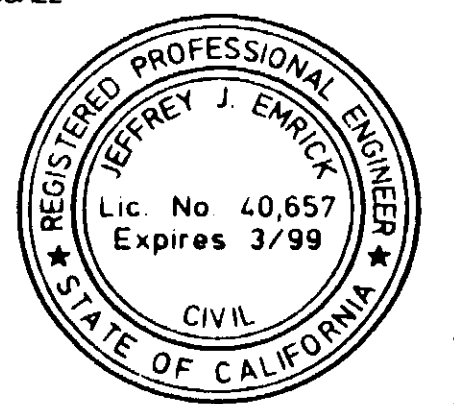
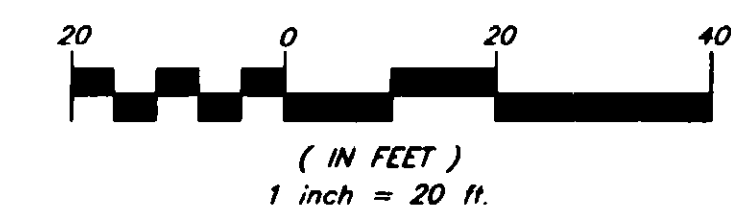




TYPICAL STREET SECTION

NO SCALE

GRAPHIC SCALE

JOINT UTILITY TRENCH  
DETAIL

NO SCALE

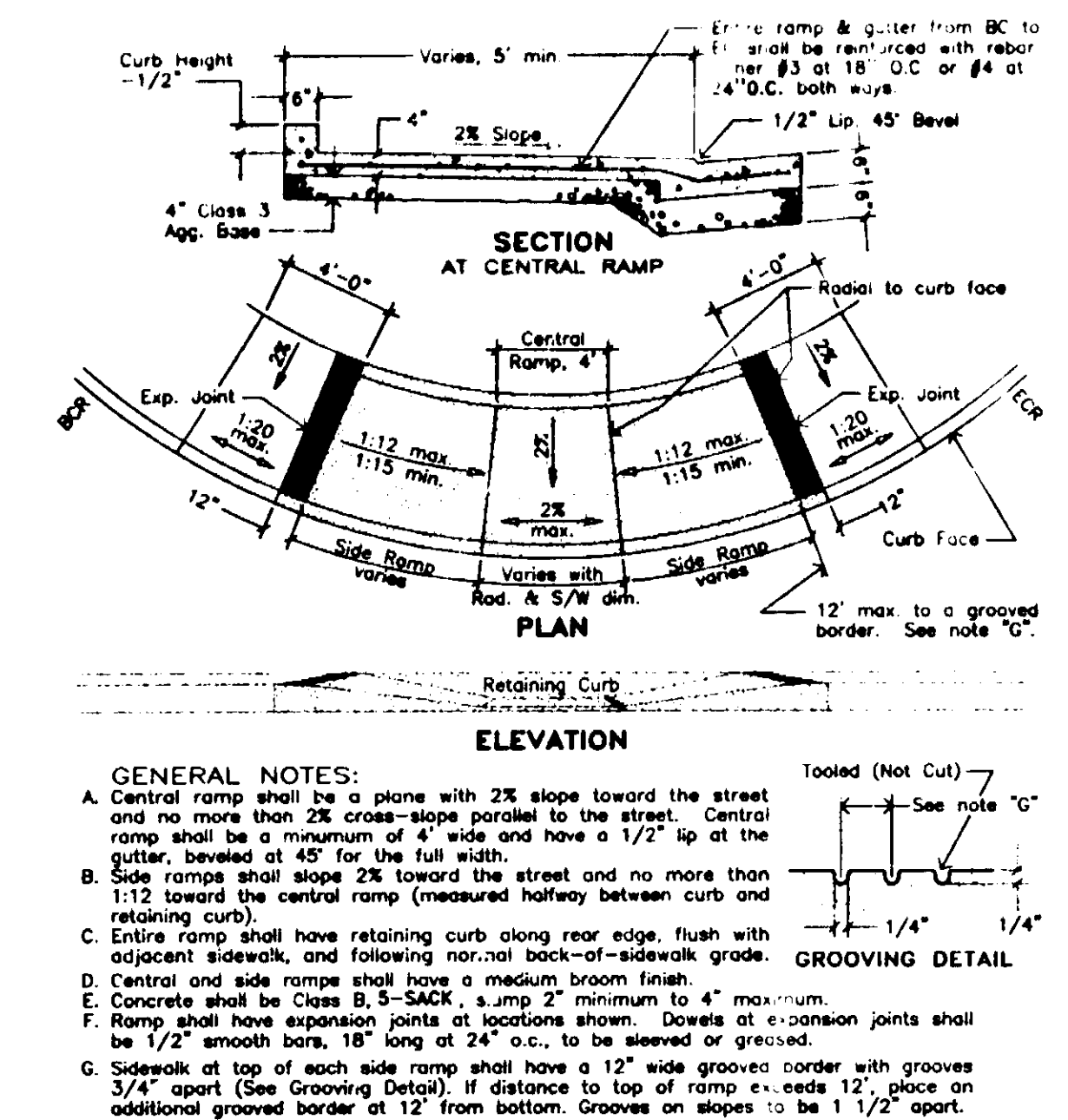
CURVE DATA				
NO.	RADIUS	P	L	T
C-1	88' 08" 33"	30.00'	46.73'	29.03'
C-2	103' 53" 50"	30.00'	56.17'	39.76'
C-3	123' 00" 51"	78.00'	182.42'	143.20'
C-4	88' 08" 28"	30.00'	76.93'	48.42'
C-5	88' 08" 26"	32.00'	49.24'	31.02'
C-6	22' 17" 30"	97.00'	22.08'	11.18'

REVISIONS		
DATE	DESCRIPTION	APPROVED

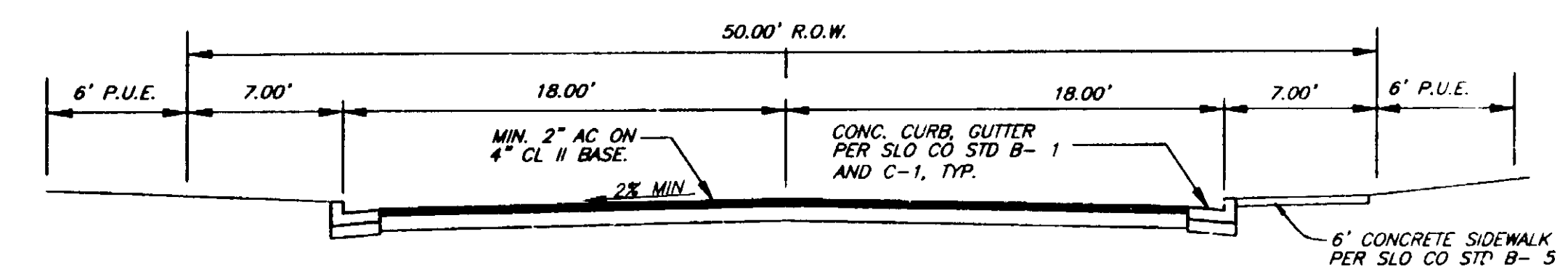
  

PUBLIC IMPROVEMENT PLANS FOR TRACT 2161 HIGHLAND DRIVE - STA 21+75 TO 24+32 COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
DESIGNER MH	COUNTY ENGINEER RCE 10,848	DATE 	APPROVED 
SURVEY LWS	OFFICE ENGINEER RCE 80,788	DATE 	APPROVED 
STAFF ENGINEER PTM	DEPUTY COUNTY ENGINEER CALIFORNIA COORDINATOR N 670	DATE 	APPROVED 
<b>EDA</b> ENGINEERING DEVELOPMENT ASSOCIATES 1650 IMPERIAL STREET, SAN LUIS OBISPO, CA. 93401 PHONE: (805) 546-9555 FAX: (805) 546-9754		SHEET <b>3</b> OF <b>7</b>	DATE 03/11/98 PLOT DATE 03/04/98

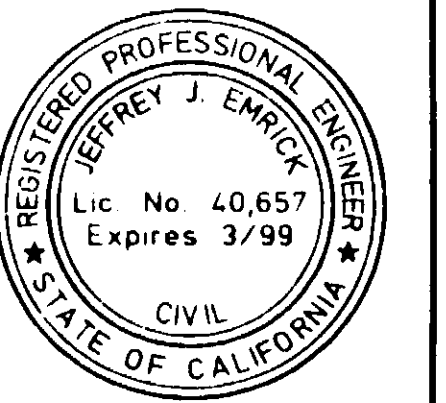





NO SCALE



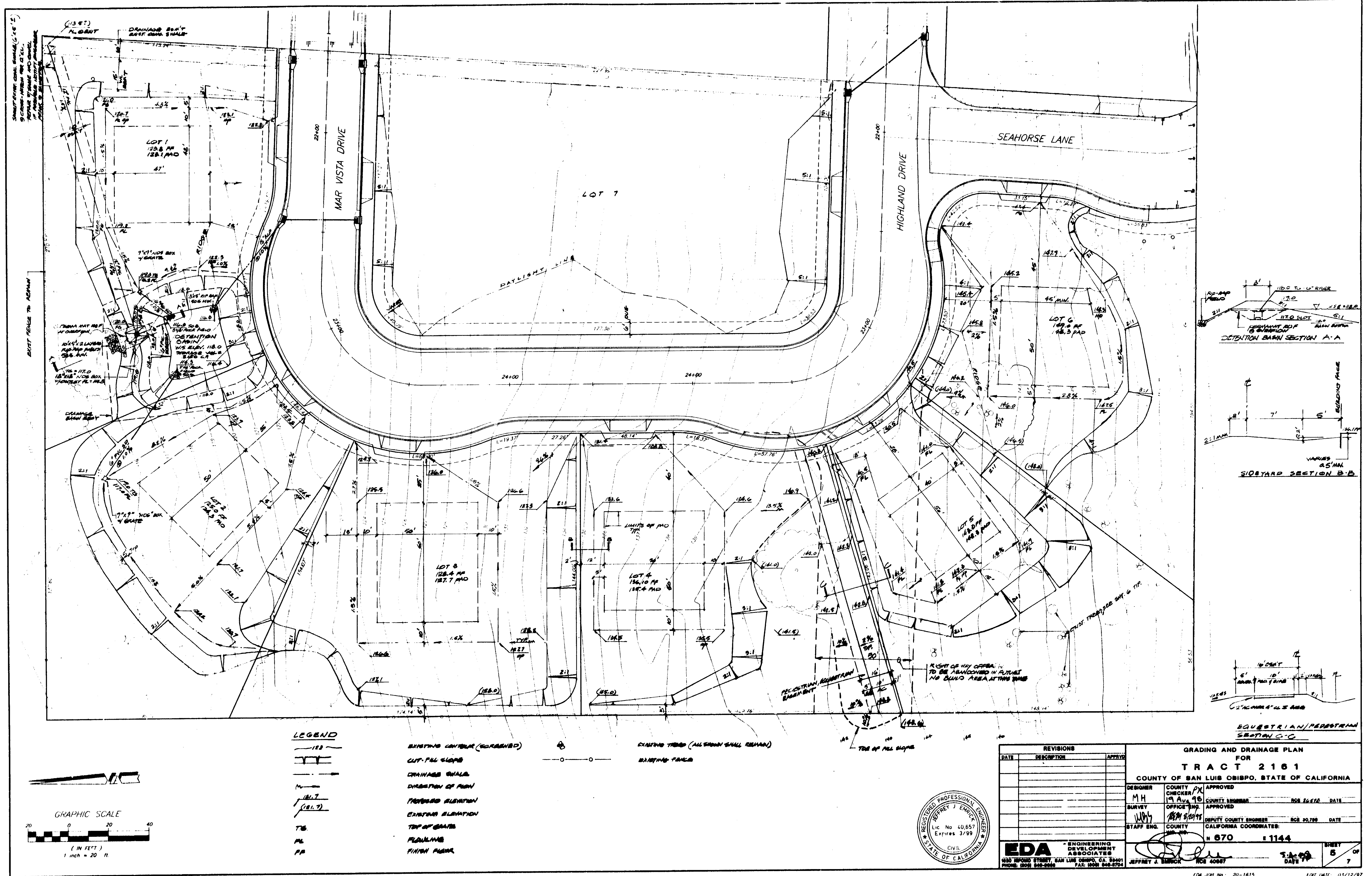
NO SCALE



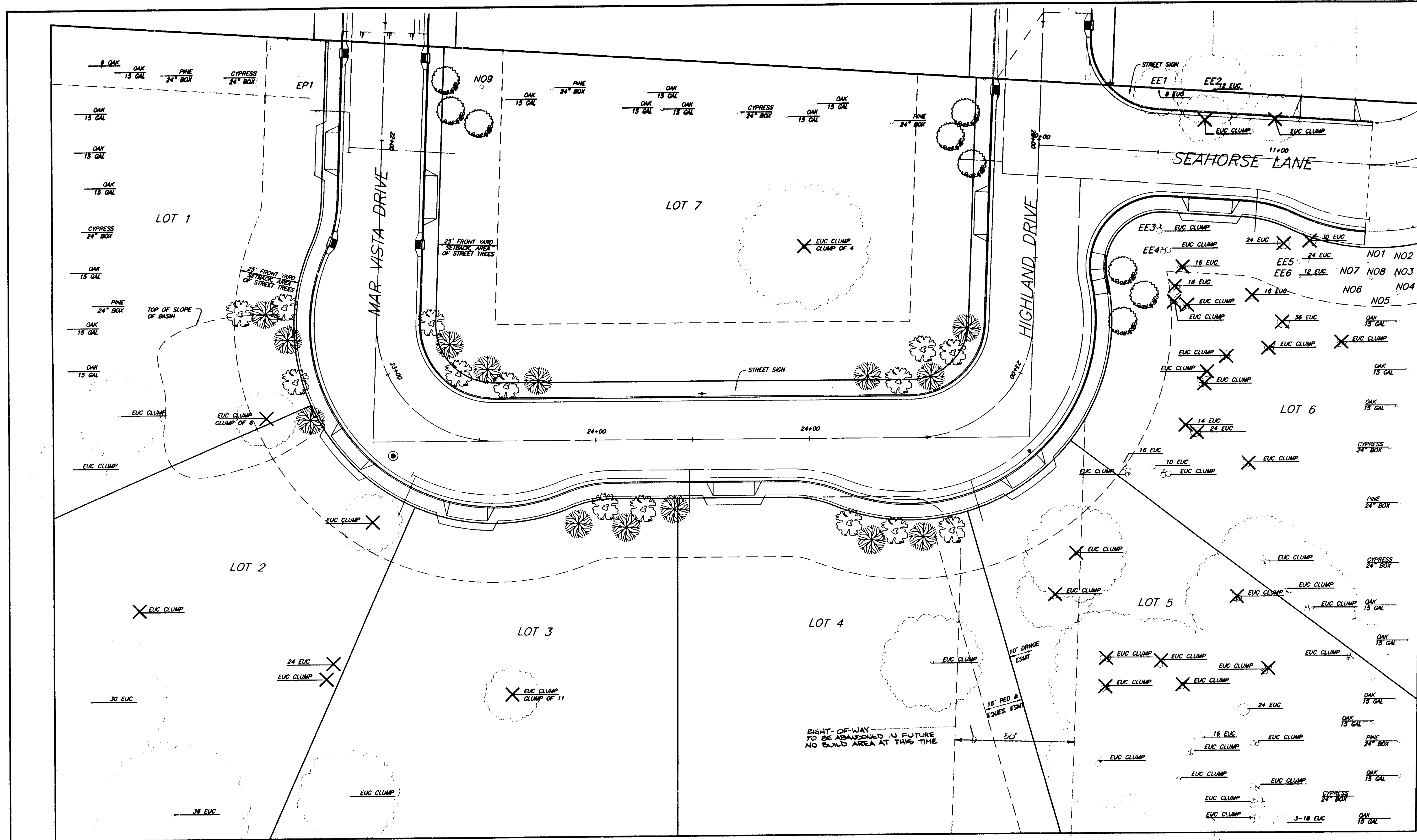
REVISIONS			PUBLIC IMPROVEMENT PLANS FOR			
DATE	DESCRIPTION	APPROVED	T R A C T    2 1 8 1			
			SEAHORSE LANE - STA 10+00 TO 11+60			
			COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
DESIGNER		COUNTY CHECKER	APPROVED			
M.H.		19 AUG 98				
SURVEY		OFFICE ENG.	COUNTY ENGINEER _____ RCE 28,559    DATE _____			
M.H.		1/24/98	APPROVED			
STAFF ENG.		COUNTY NO. NO.	DEPUTY COUNTY ENGINEER _____ RCE 30,796    DATE _____			
		PWD-436	CALIFORNIA COORDINATES:			
			N 670    E 1144			
					SHEET	
EDA			ENGINEERING DEVELOPMENT ASSOCIATES		4	
1850 HEDGECOCK STREET, SAN LUIS OBISPO, CA 94601			JEFFERY J. EMRICK    RCE 40657		OF	
PHONE: (805) 548-4400    FAX: (805) 548-4401			DATE 5.4.98		7	

EDA JOB No.: 20-1615      EDIT DATE: 03/11/98  
DWG NAME: OPROJECT\201615\1615PP04.DWG      PLOT DATE: 05/04/98









STREET TREE LEGEND - AREA WITHIN 25' FRONT YARD SETBACK

SIZE	BOTANICAL NAME	COUNTRY TYPE	STATUS	QUANTITY
18"	PHUS	PINE	EP	1
18"	EUCALYPTUS		EE	8

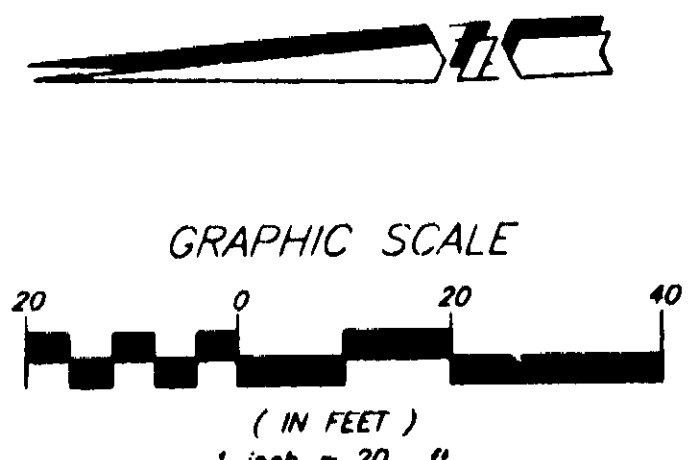
SIZE	BOTANICAL NAME	COUNTRY TYPE	STATUS	QUANTITY
18"	QUERCUS AGROFOLIA	COAST LINE OAK	NO	1

SIZE	BOTANICAL NAME	COUNTRY TYPE	STATUS	QUANTITY
15"	QUERCUS AGROFOLIA	COAST LINE OAK		8
15"	LIQUIDAMBAR STYRACIFLORA	SWEET GUM		14
15"	ACER PALMUTUM	JAPANESE MAPLE		14

STREET TREE CALCULATION:  
 TOTAL STREET TREES (IN FEET) = 8 OF STREET TREES REQUIRED  
 150' / 25' = 6.0 TREES REQUIRED  
 6.0 TREES REQUIRED  
 6.0 TREES PROPOSED

TREE LEGEND

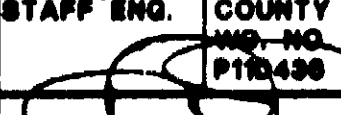

- EXISTING TREE OR CLUMP TO REMAIN
  - ✕ EXISTING TREE OR CLUMP TO BE REMOVED
- EXISTING TREES TO BE REMOVED - 32  
 NUMBER OF TREES NOT DEFINED FOR SOME CLUMPS



REVISIONS			STREET TREE AND TREE REMOVAL PLAN FOR TRACT 2161			
DATE	DESCRIPTION	APPROVED	COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
			DESIGNER	COUNTY CHECKER	APPROVED	
			MH	13 AUG 98	COUNTY ENGINEER	RCE 10,500 DATE
			SURVEY	OFFICE ENG.	APPROVED	
				11/11/98	DEPUTY COUNTY ENGINEER	RCE 80,700 DATE
			STAFF ENG.	COUNTY	CALIFORNIA COORDINATES:	
				WFO: 1770408	N 670 E 1144	
EDA ENGINEERING DEVELOPMENT ASSOCIATES			JEFFREY J. EMORY RCE 40007			
1830 TAPSCOTT STREET, SAN LUIS OBISPO, CA 93401			DATE 5.4.98 SHEET 6 OF 7			
PHONE: (805) 545-0500 FAX: (805) 545-8704			EDIT DATE: 07/07/97 PLOT DATE: 03/04/97			





- | REVISIONS   |             |                  | PUBLIC IMPROVEMENT PLANS FOR                   |  |                         |  |
|---|-------------|------------------|--|--|-------------------------|--|
| DATE  | DESCRIPTION | APPROVE          | TRACT 2161                                     |  |                         |  |
|   |             |                  | DETAIL SHEET                                   |  |                         |  |
|   |             |                  | COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA |  |                         |  |
|   | DESIGNER    | COUNTY CHECKER   | APPROVED                                       |  |                         |  |
|   | MH          | 19 MAR 90        | COUNTY ENGINEER RCE 25,900 DATE                |  |                         |  |
|   | SURVEY      | OFFICE ENG.      | APPROVED                                       |  |                         |  |
|   | 1467        | 15 MAR 90        | DEPUTY COUNTY ENGINEER RCE 30,799 DATE         |  |                         |  |
|   | STAFF ENG.  | COUNTY NO. - NO. | CALIFORNIA COORDINATES:                        |  |                         |  |
|   |             | PTR 4398         | N 670 E 1144                                   |  |                         |  |
|    |             |                  |  |  |                         |  |
|    |             |                  |  |  |                         |  |
| <b>EDA</b> ENGINEERING DEVELOPMENT ASSOCIATES<br>1520 MONROE STREET, SAN LUIS OBISPO, CA 93401<br>PHONE: (805) 488-2800 FAX: (805) 488-2750 |             |                  | JEFFREY J. EMRICK RCE 40687                    |  | S.A. 002<br>DATE 7 OF 1 |  |



GENERAL NOTES SHEET INDEX VICINITY MAP SHEET KEY

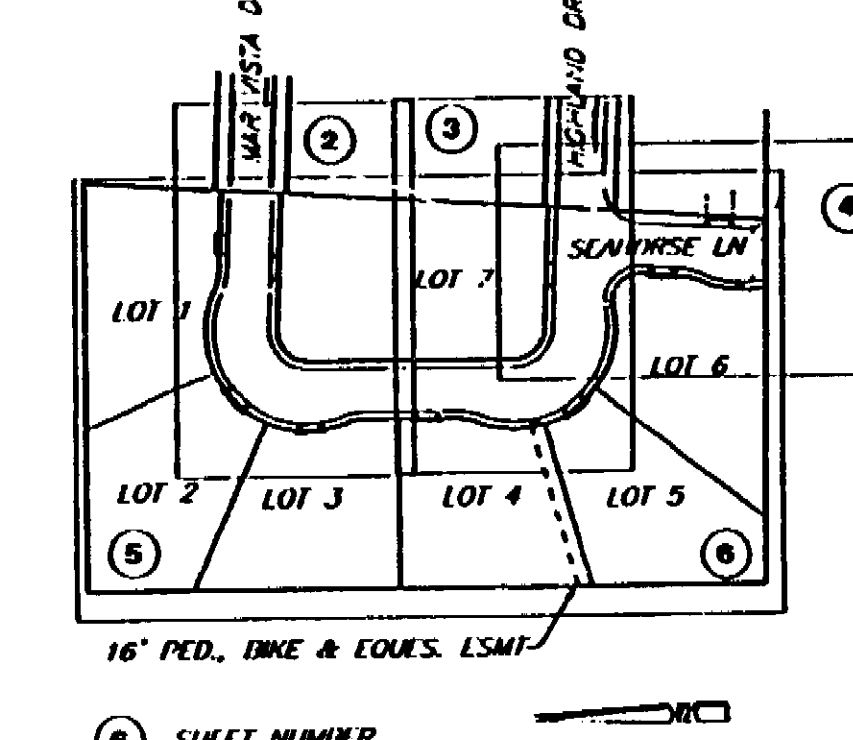
SHEET No. SHEET TITLE

\_\_\_\_\_

\_\_\_\_\_

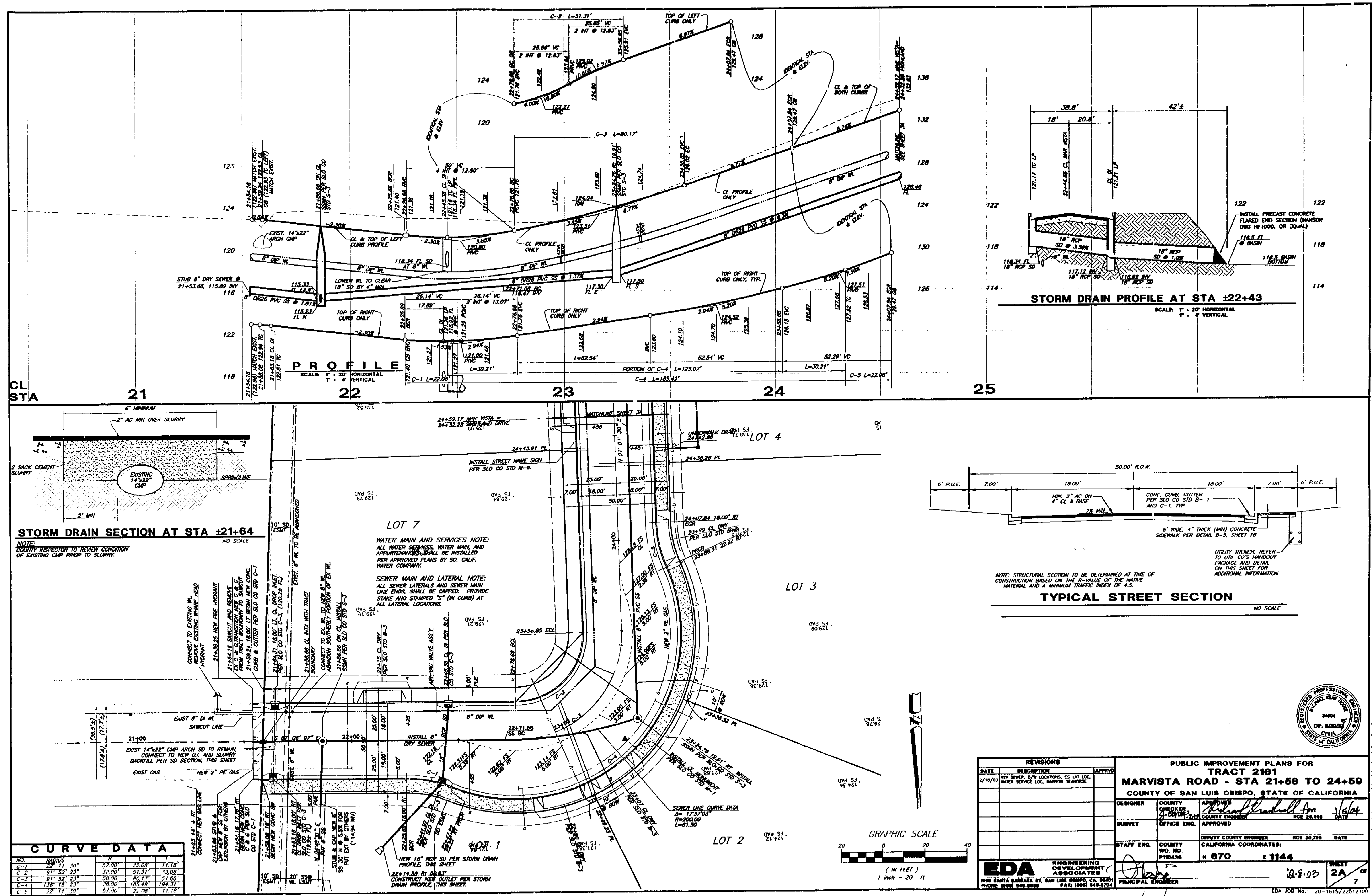
\_\_\_\_\_

\_\_\_\_\_

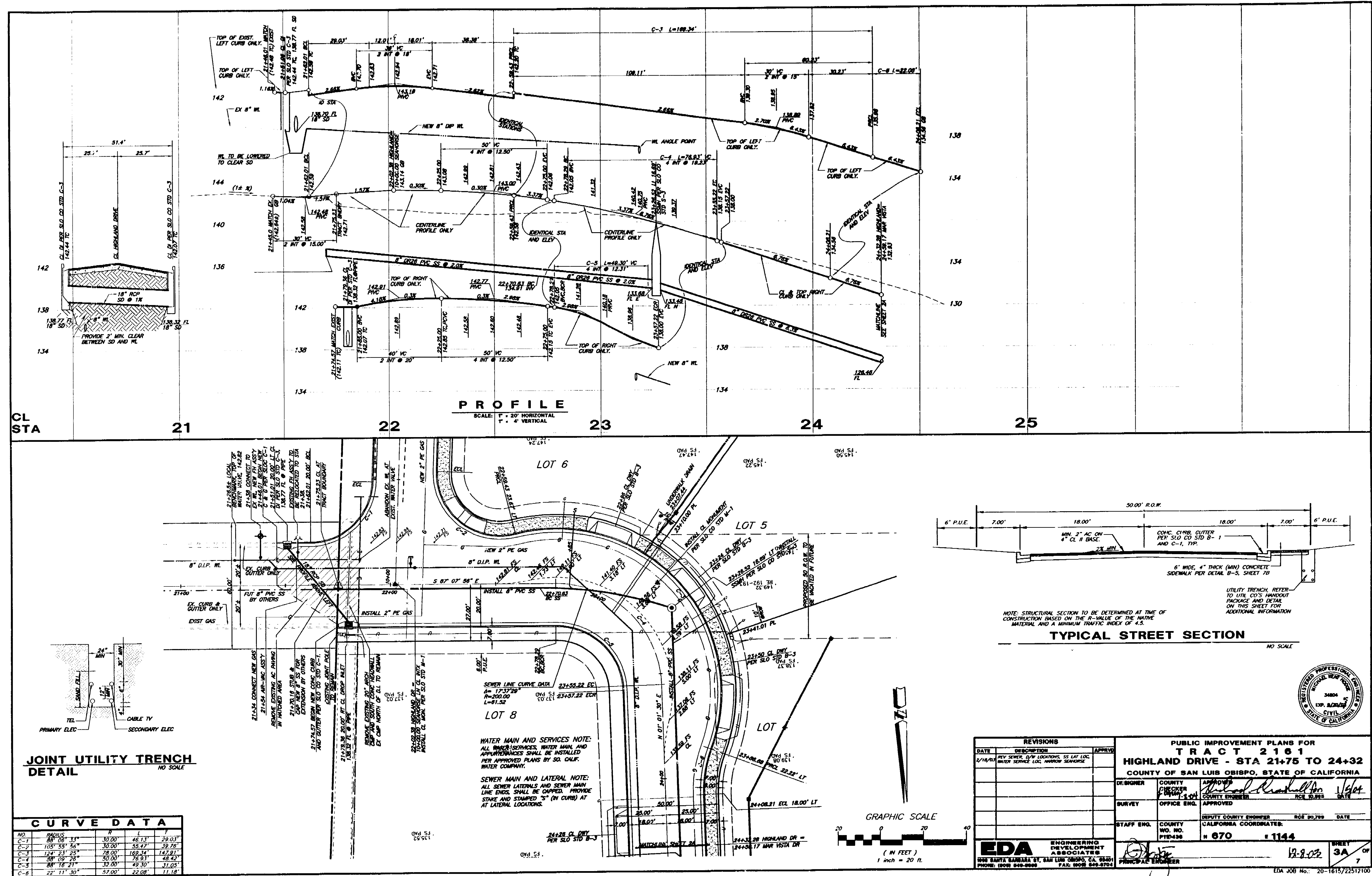
[illegible]

(IMA JOF) No.: 20-1615-000      FBI DATE: 05/27/97  
 DWG NAME: 201615/16151S01.DWG      PLOT DATE: 05/27/97  
 2-2512-97

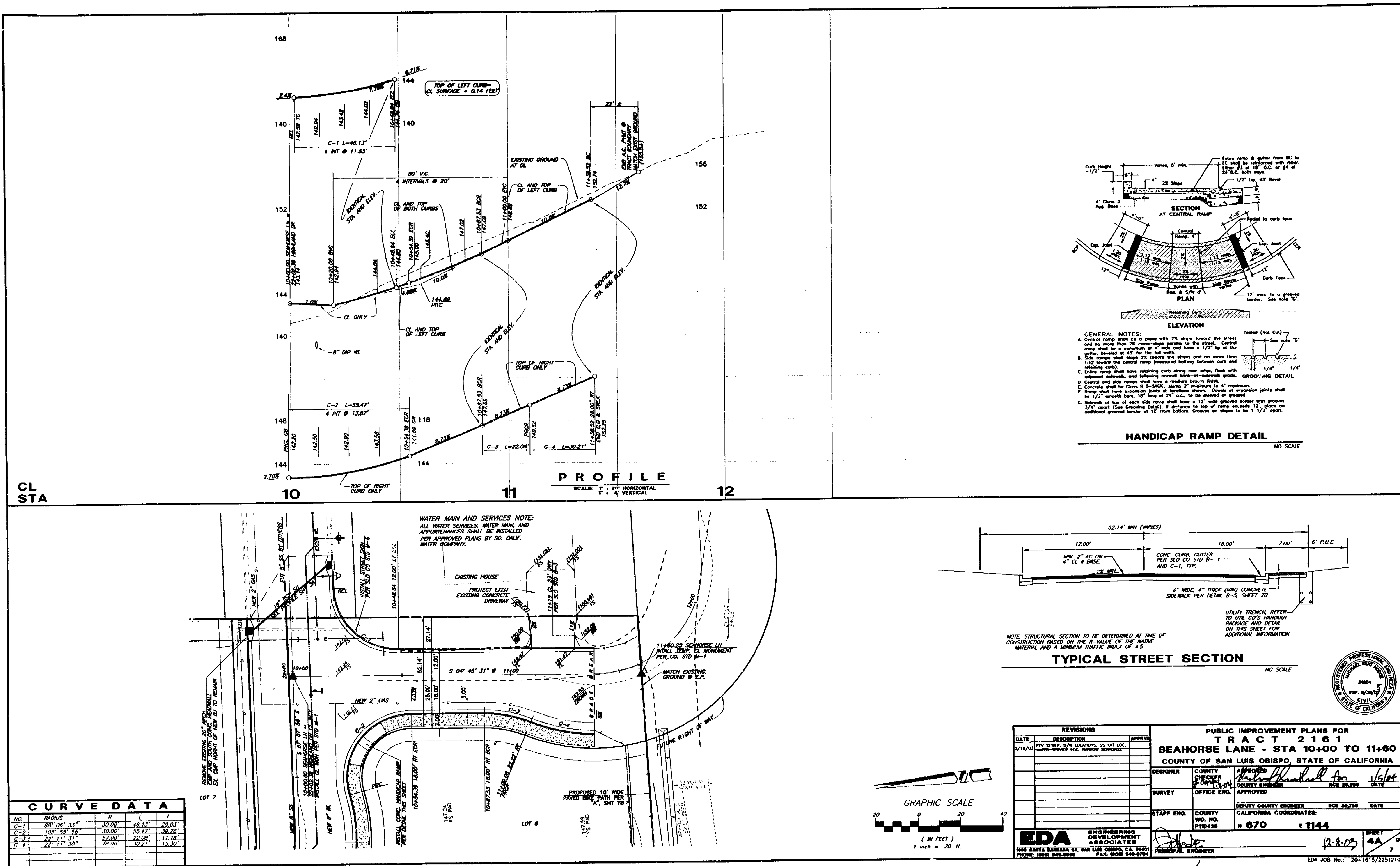




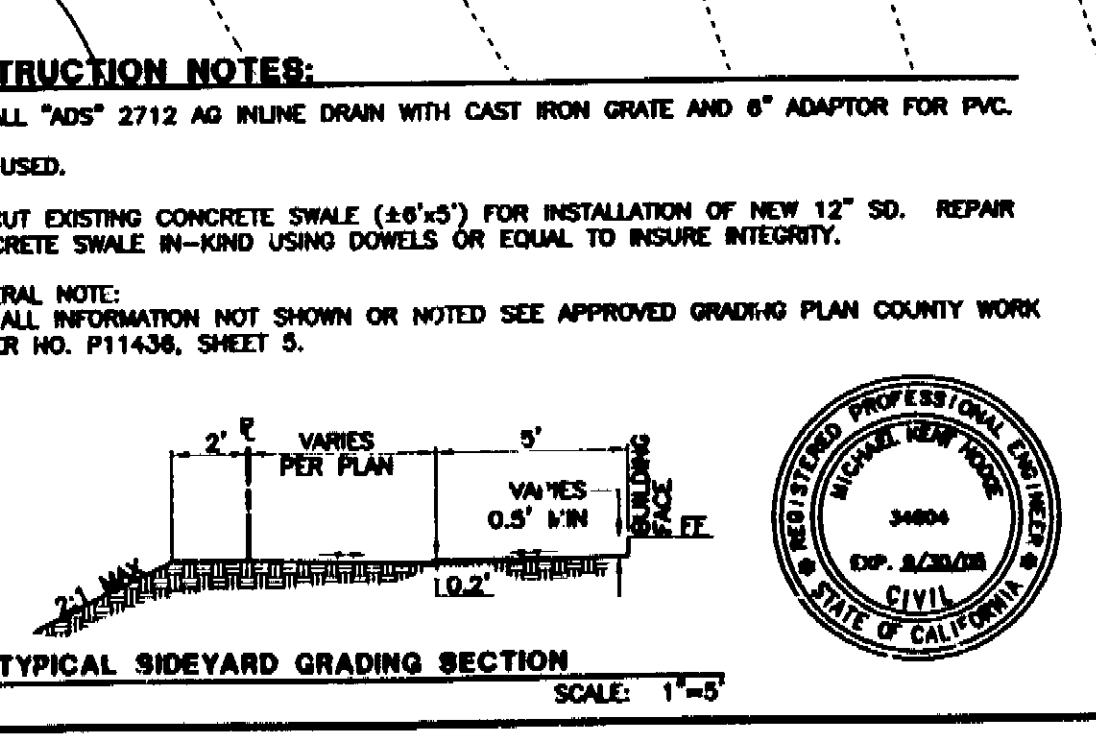
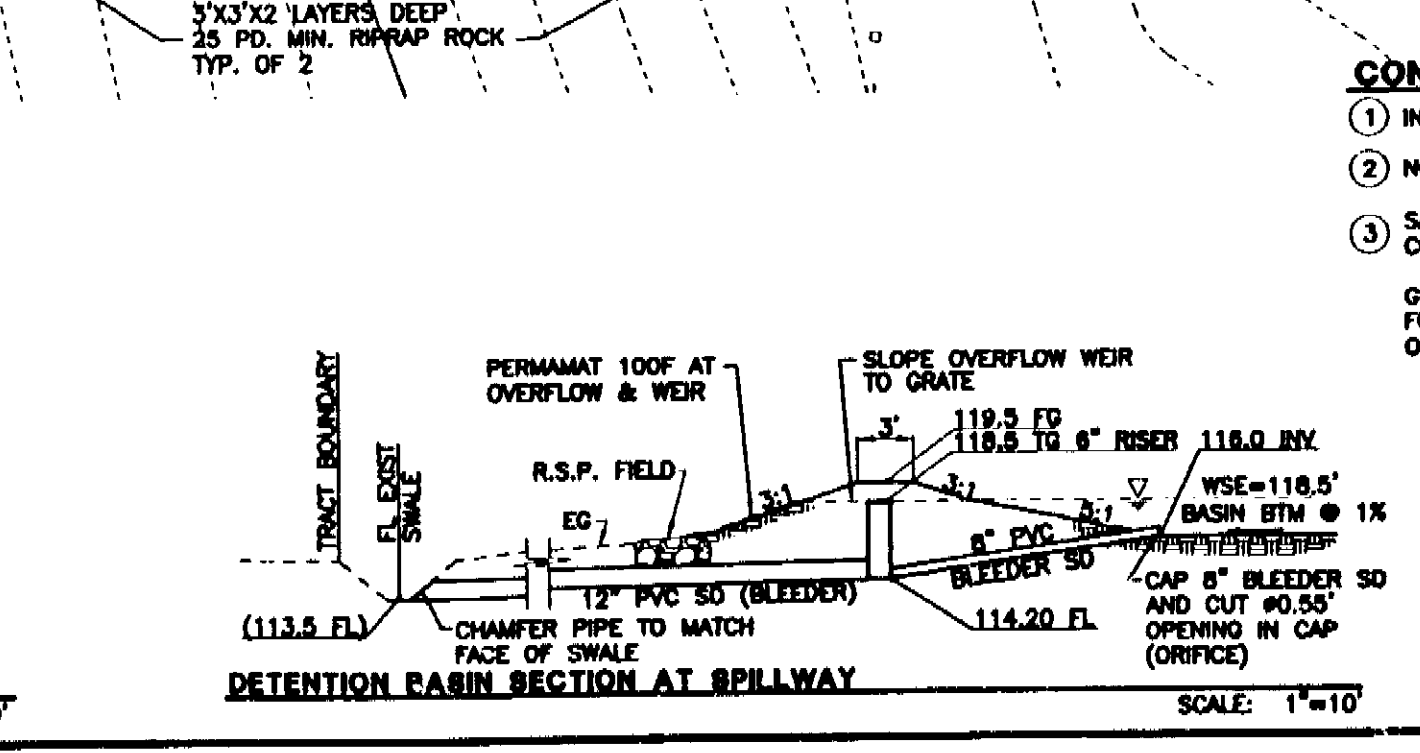
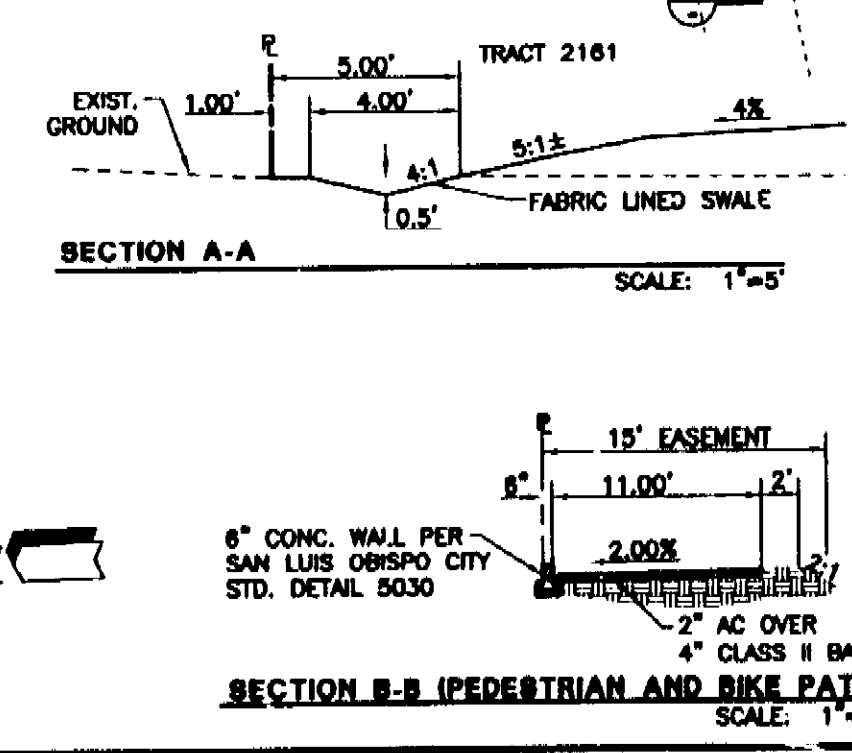
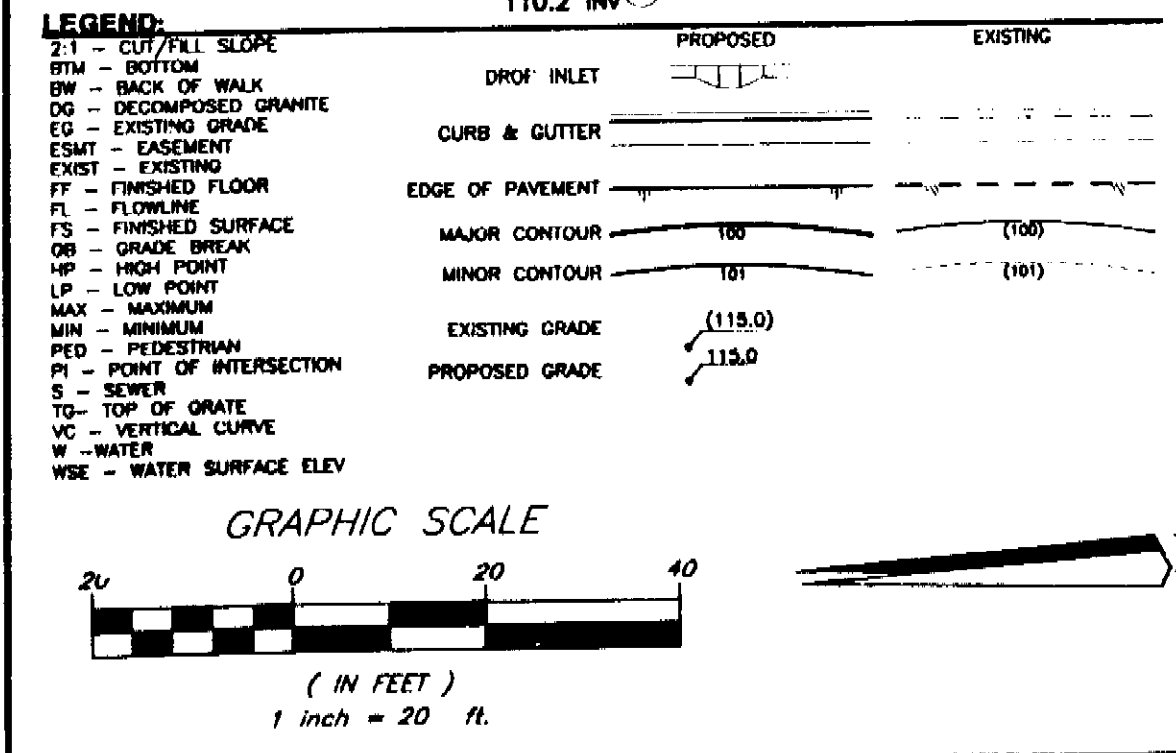
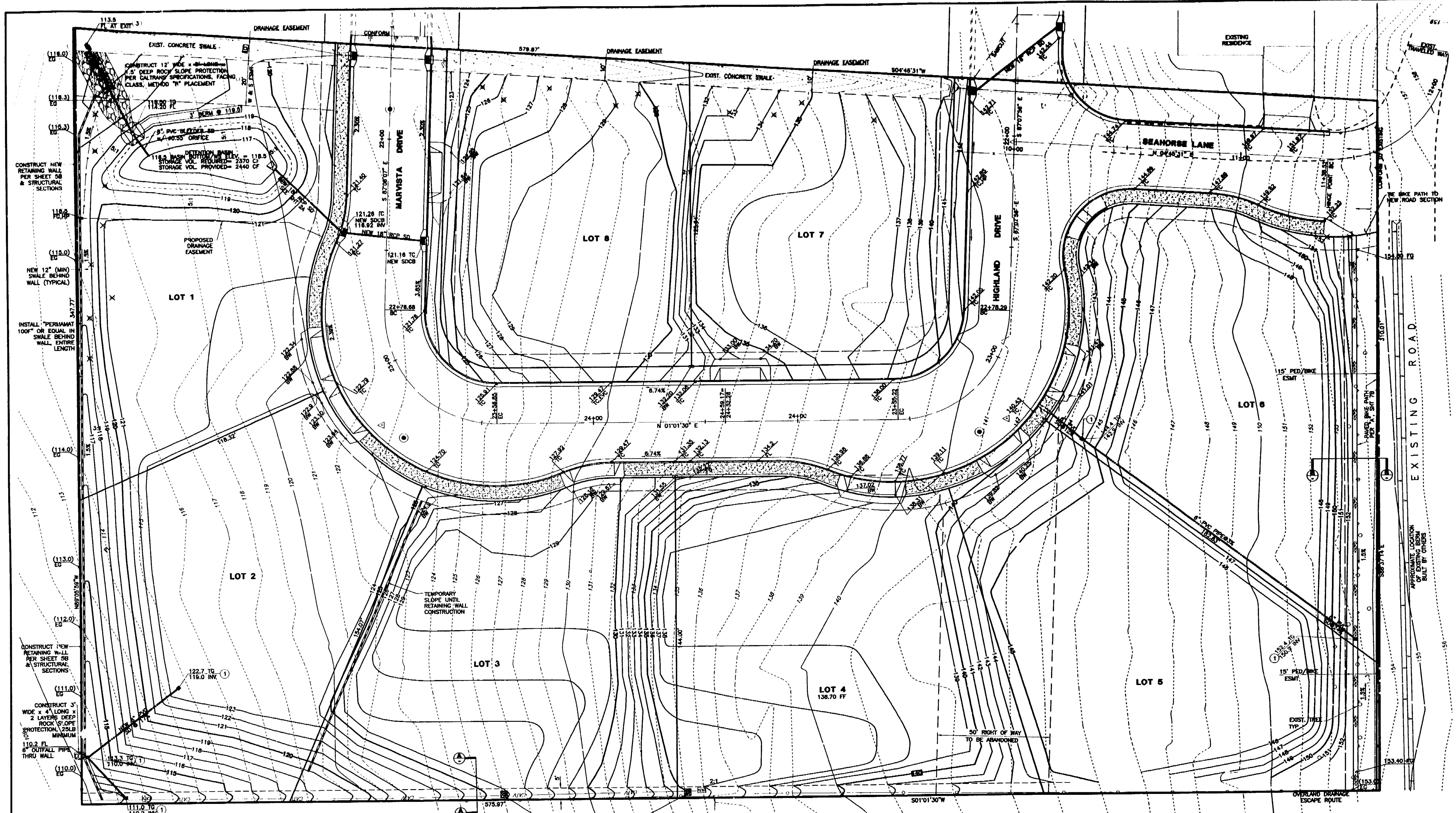












**CONSTRUCTION NOTES:**

- INSTALL "ADS" 2712 AG INLINE DRAIN WITH CAST IRON GRATE AND 6" ADAPTOR FOR PVC.
- NOT USED.
- SAWCUT EXISTING CONCRETE SWALE (8"±) FOR INSTALLATION OF NEW 12" SD. REPAIR CONCRETE SWALE IN-KIND USING DOWELS OR EQUAL TO INSURE INTEGRITY.

GENERAL NOTE:  
FOR ALL INFORMATION NOT SHOWN OR NOTED SEE APPROVED GRADING PLAN COUNTY WORK ORDER NO. P11436, SHEET 5.

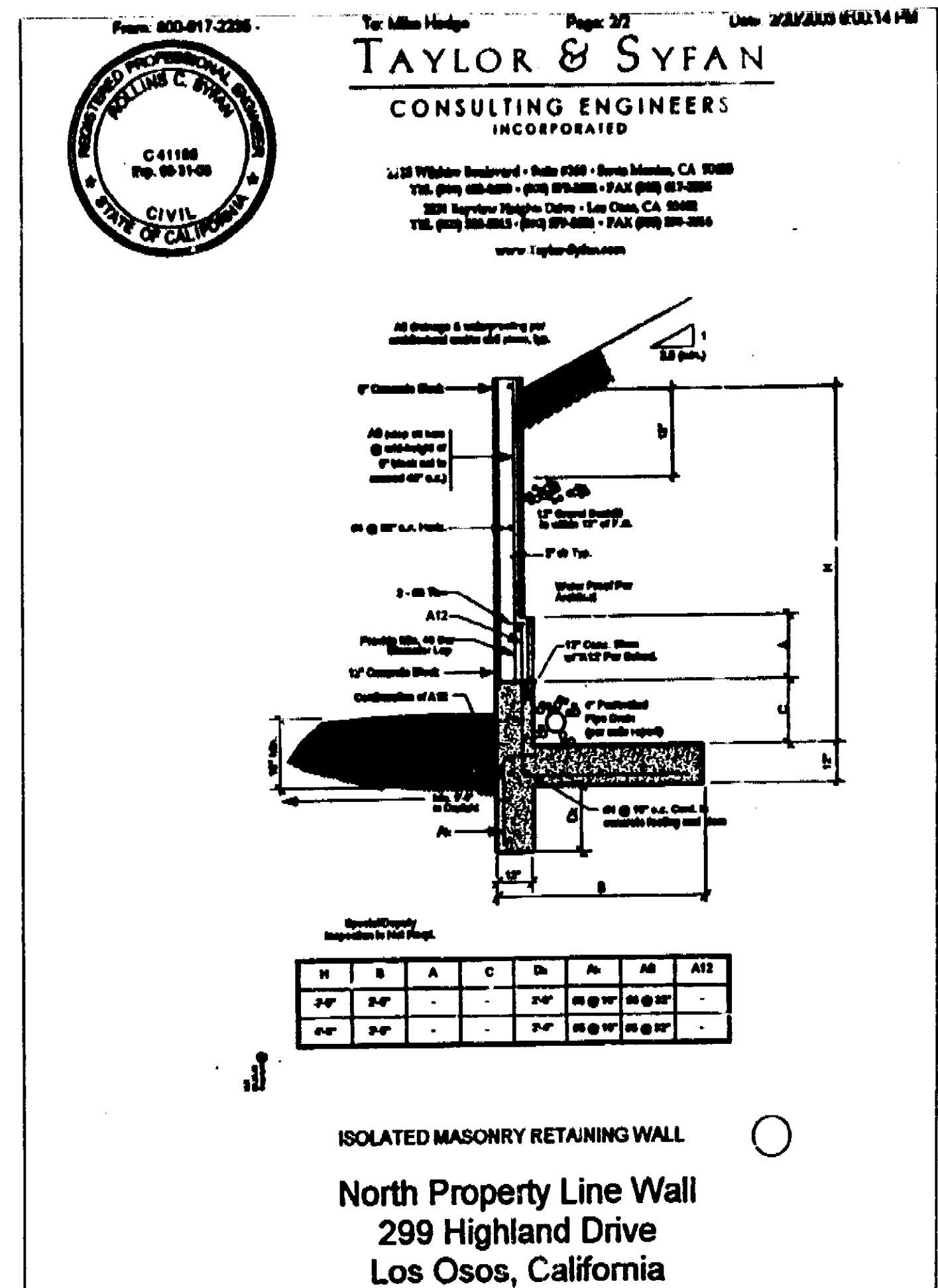
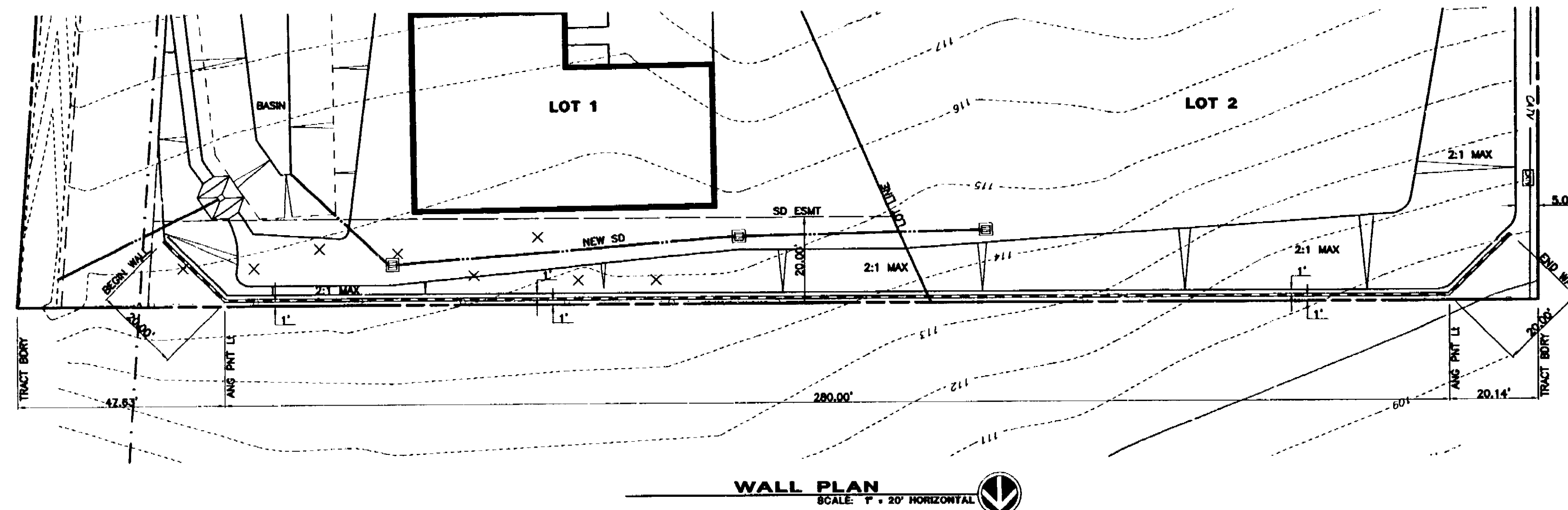
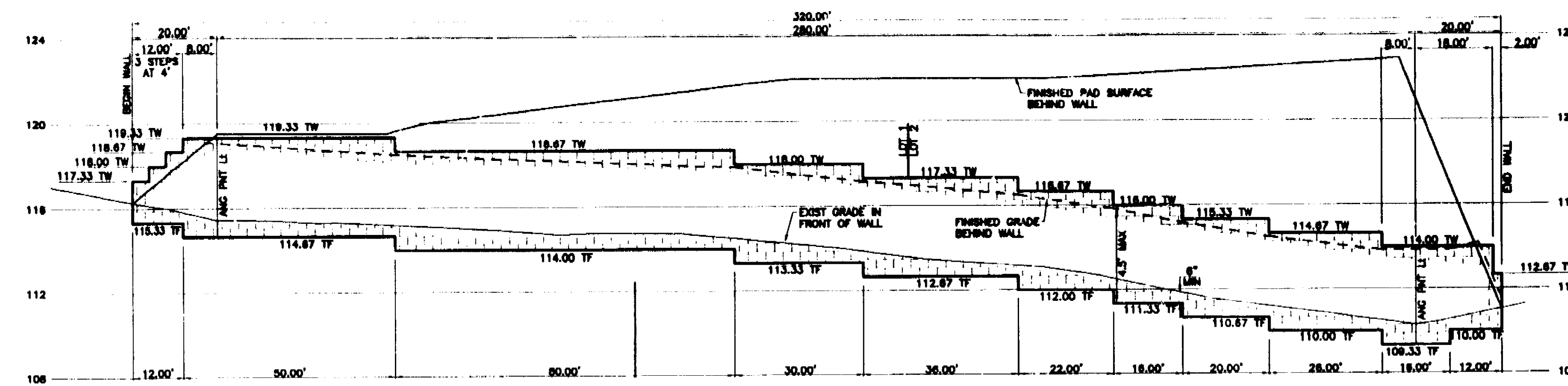
REVISIONS		
DATE	DESCRIPTION	APPROVED

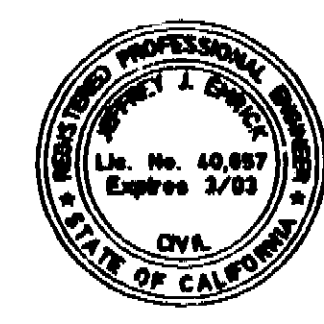
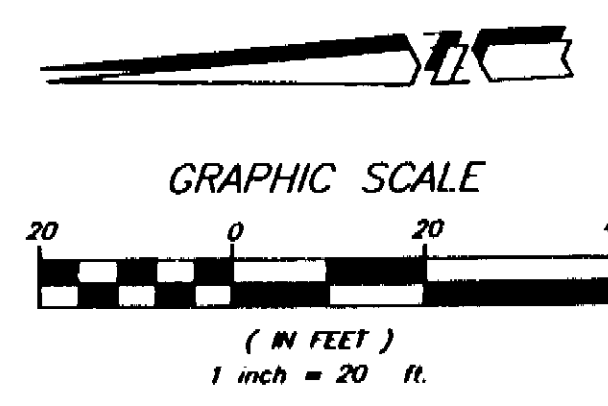
GRADING AND DRAINAGE PLAN FOR TRACT 2161 COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
DESIGNER	COUNTY ENGINEER	APPROVED	DATE
SURVEY	OFFICE ENG.	APPROVED	DATE
STAFF ENG.	COUNTY ENGINEER	APPROVED	DATE
PRINCIPAL ENGINEER	COUNTY ENGINEER	APPROVED	DATE
COUNTY NO. PID436		CALIFORNIA COORDINATES: 670 1144	
SHEET 5A		7	

EDA JOB No.: 20-1615/22512100





H	B	A	C	D <sub>h</sub>	A <sub>h</sub>	A <sub>h</sub>	A12
2-5	2-5	-	-	2-5	66-77	66-77	-
2-5	2-5	-	-	2-5	66-77	66-77	-



REVISONS			GRADING AND DRAINAGE PLAN FOR		
DATE	DESCRIPTION	APPROV	TRACT 2101		
2/18/03	ADDED WLL PROFILE SHEET		COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA		
			DESIGNER	COUNTY CHECKER	APPROVED
				<i>Michael Kunkel for</i>	<i>1/16/04</i>
				COUNTY ENGINEER	RCE 50,799 DATE
			SURVEY	OFFICE ENG.	APPROVED
					DEPUTY COUNTY ENGINEER RCE 50,799 DATE
			STAFF ENG.	COUNTY W.O. NO.	CALIFORNIA COORDINATES:
				<b>N 670</b>	<b>E 1146</b>
					N 67E 03
					DATE
					7 OF







- GENERAL NOTES:
  1. (DECOMPOSED GRANITE) (DG) SHALL BE 1/4 IN MAXIMUM GRAIN SIZE WITH ENOUGH FINES TO PRODUCE A COMPACT WALKING SURFACE. DG SHALL BE A YELLOW-BROWN COLOR.
  2. PRIOR TO WORK, THE CONTRACTOR SHALL SUPPLY A ONE QUART SAMPLE OF DG AND STABILIZER TO THE COUNTY FOR APPROVAL.
  3. CONTRACTOR SHALL STAKE AND LAYOUT ALL DG PAVING AREAS FOR INSPECTION AND APPROVAL OF THE COUNTY.
  4. THE CONTRACTOR SHALL PROVIDE SUFFICIENT NOTICE TO THE ENGINEER AND THE COUNTY (H/S/E/R) INTENT TO BEGIN MIXING TO ALLOW INSPECTION OF THE MIXING AND BATCHING OPERATION.
  5. MIX: PORTLAND CEMENT SHALL BE TYPE I MODIFIED ADDED TO THE DG AT THE RATIO OF 5% BY WEIGHT OF THE DRY DG. THE QUANTITY OF WATER ADDED TO THE MIXTURE SHALL BE ADJUSTED TO THE ABSOLUTE MINIMUM REQUIRED TO OBTAIN UNIFORM MIXING. THE MATERIALS SHALL BE MIXED IN A DRUM TYPE MIXER ON THE JOB OR AT THE CENTRAL MIXING PLANT.

NOT MORE THAN 1-1/2 HOURS SHALL ELAPSE BETWEEN THE TIME WATER IS ADDED TO THE DECOMPOSED GRANITE AND CEMENT AND THE TIME OF COMPLETION OF RAKING.

IMMEDIATELY PRIOR TO PLACING THE DO MIXTURE, THE SUBGRADE SHALL BE MOISTENED. THE MIXTURE SHALL BE DEPOSITED IN SUCH A MANNER AS TO MINIMIZE THE NECESSITY FOR SPOTTING, PICKING UP OR OTHERWISE SHIFTING THE MIXTURE. THE MIXTURE SHALL BE LEVELED BY RAKING AND COMPACTED BY USE OF A LIGHT ROLLER. THE MIXTURE SHALL NOT BE SCREEDED OFF OR FINISHED BY FLOATING. NO STEEL TOOLING OF EDGES SHALL BE DONE.

THE FINISHED SURFACE OF THE WALKWAY SHALL BE KEPT MOIST FOR FIVE DAYS. BROOM WITH A STEEL BRIST BROOM WITHIN 24 HOURS AFTER PLACEMENT TO REMOVE CEMENT MORTAR FILM ON THE EXPOSED SURFACE AND TO FILL CRACKS. BROOM THE SURFACE DAILY FOR FOUR ADDITIONAL DAYS, FILLING CRACKS EACH TIME.

6A. ALTERNATE MIX: A BINDER MAY BE USED IN LIEU OF PORTLAND CEMENT. THE BINDER SHALL BE COLORLESS, ODORLESS, AND A NON-TOXIC ORGANIC BINDER SUCH AS "STABILIZER" OR APPROVED EQUAL. THE BINDER SHALL BE BLENDED AT A RATE OF 10 POUNDS PER TON OF CRUSHED DG.

INITIAL GRADING AND LEVELING WILL LEAVE A SOMEWHAT INCONSISTENT SURFACE WHICH CAN THEN BE LEVELED WITH A SCREENED OR ASPHALT RAKE. THE SURFACE COURSE SHALL BE WATERED SO THAT MOISTURE PERMEATES THE FULL DEPTH. THE SURFACE SHALL BE COMPACTED USING A DOUBLE-DRUM ROLLER OR SIMILAR EQUIPMENT TO GIVE A FINAL DEPTH OF 3-1/2 INCHES, WITH AN ABSOLUTE MINIMUM AT ANY POINT OF 2 INCHES. MANUFACTURERS RECOMMENDATIONS MAY BE SUBSTITUTED FOR THESE PROCEDURES.

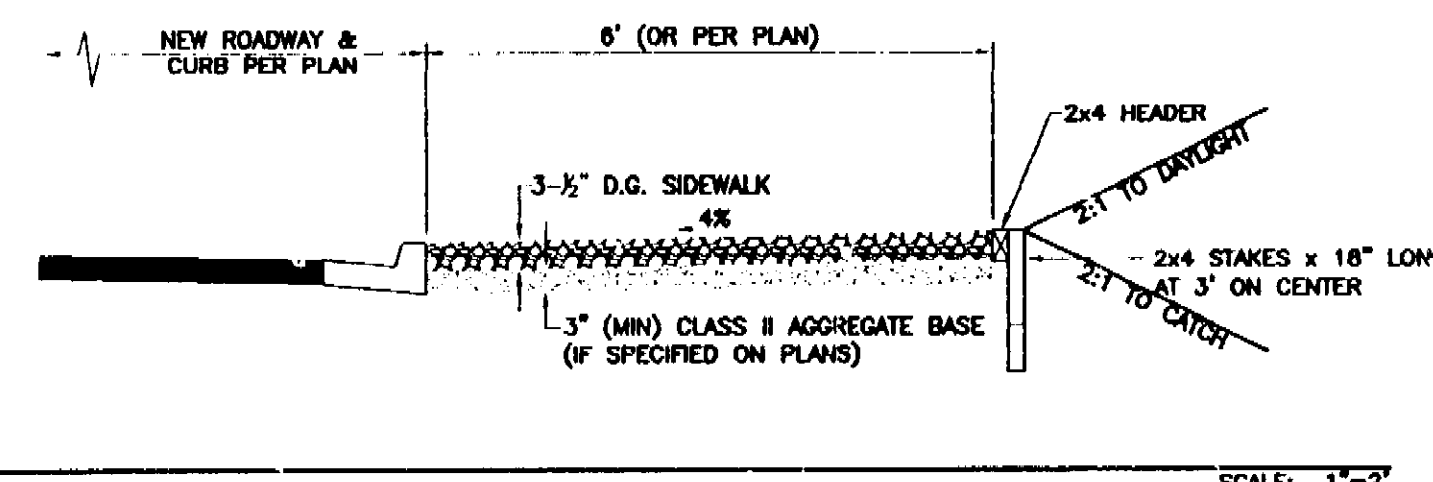
7. THE CONTRACTOR SHALL FURNISH AND INSTALL HEADERS AND HEADER STAKES FOR THE WALKWAYS AS SHOWN ON THE PLANS. HEADER BOARDS AND STAKES SHALL BE FOUNDATION GRADE REDWOOD CONFORMING TO THE REQUIREMENTS OF THE UBC STANDARD No 25-7, OR SHALL BE DOUGLAS FIR TREATED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UBC STANDARD No 25-12. NAILS SHALL BE HOT DIP GALVANIZED STEEL COMMON NAILS. PRE-DRILL HEADER BOARDS AND STAKES TO AVOID SPLITTING AS REQUIRED.

HEADER BOARDS SHALL BE INSTALLED STRAIGHT AND TRUE ALIGNMENT ALONG TANGENTS. WHERE THE HEADER BOARD IS ON CURVE, MAKE ALL CURVES SMOOTH AND AVOID NON-TANGENT END OF CURVES. USE OF MULTIPLE "BENDER" BOARDS WILL BE CONSIDERED BY THE INSPECTOR FOR SHARP CURVES.


IF NO HEADER BOARDS ARE CALLED FOR ON THE PLANS, THE CONTRACTOR SHALL PROVIDE EDGES THAT ARE EVEN AND UNIFORM IN APPEARANCE. EDGES ARE TO BE TAMPED, RAKED, OR FORMED IN ORDER TO ACHIEVE THIS.

9. IF BASE IS CALLED FOR ON THE PLANS, THE CONTRACTOR SHALL FURNISH, INSTALL, AND COMPACT TO 90% A MINIMUM OF 3 INCHES OF CLASS II AGGREGATE BASE.

**A DECOMPOSED GRANITE SIDEWALK DETAIL**



**LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD CONSTRUCTION NOTES**

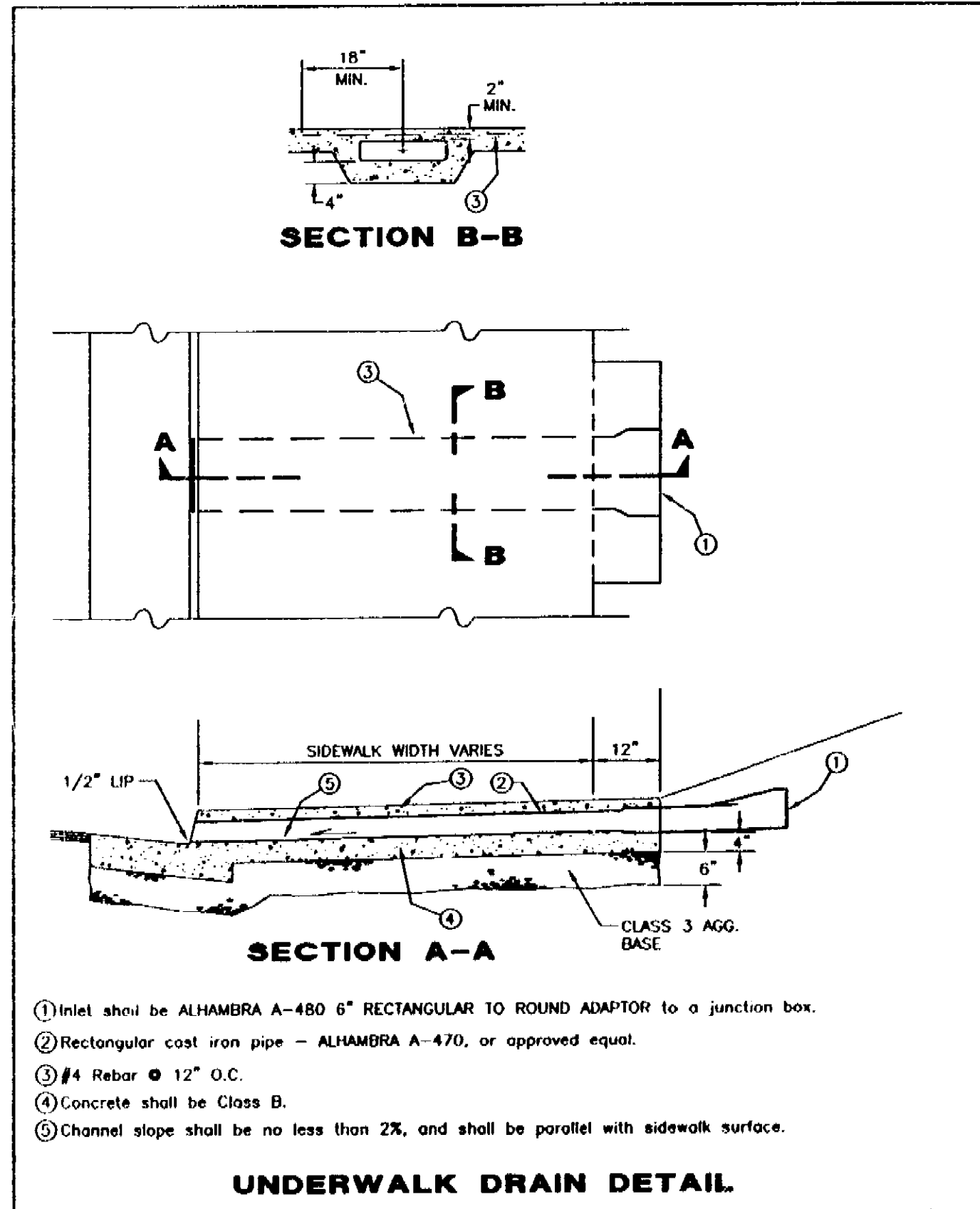
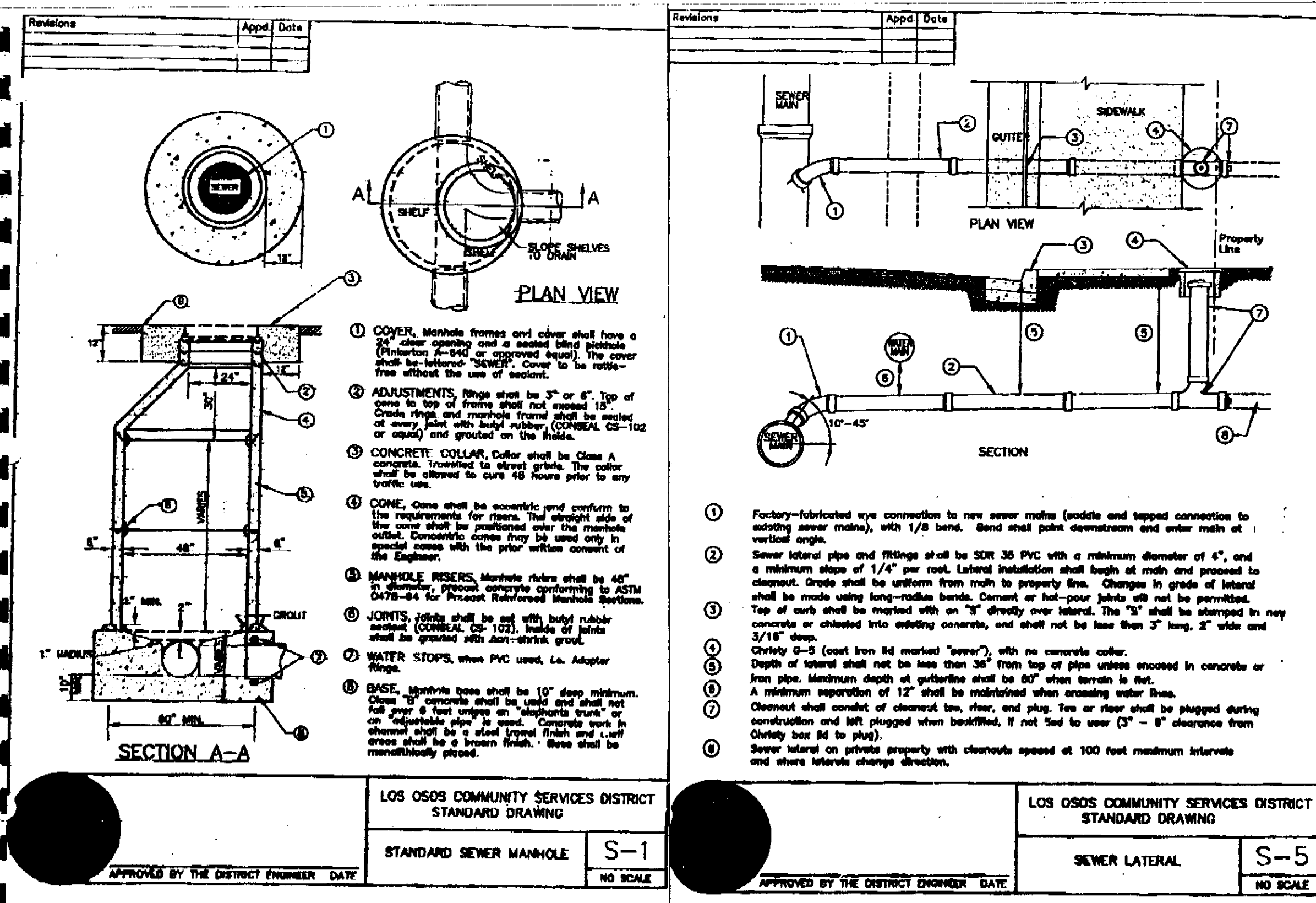
- 1. Approval Plan** - No construction shall be started without approval by the Las Ocas Community Services District (LOCSAD). The LOCSAD Inspector shall be notified at least 48 hours prior to starting of construction. All work shall be done without approval of plan and prior to notification to the LOCSAD Inspector will be refused and the Contractor's under Owner's risk.
- The Contractor shall have copies of the approved plans for this project on the site at all times and shall be familiar with applicable standards and specifications.
- 2. Standard Specifications** - All construction work and installations shall conform to the LOCSAD Standard Plans and Specifications, and all work shall be subject to the approval of the LOCSAD Engineer.
- 3. Inspection Agreement** - A written inspection agreement is required prior to the start of construction:
- 4. Inspections** - The LOCSAD Inspector, acting on behalf of the LOCSAD Registrar, may require reviews to the approved Plans and Specifications to solve numerous problems which may arise in the field.
- 5. Encroachment Permit** - No work within a County or Caltrans right-of-way shall be performed without an encroachment permit.
- 6. Daily Notification** - Prior to beginning any workweek, the Contractor shall be responsible for contacting all agencies involved and shall locate all facilities prior to excavation in any way. The Contractor shall notify the "Service Alert" (USA), no later than 1-800-663-3444 at least 48 hours prior to the start of construction.
- 7. Easement Rights** - The location and elevations of existing utilities where shown on the plans are based on available records, and are approximate only. The Contractor agrees that he/she assumes full and complete responsibility for locating or having located all underground utilities and other facilities and for protecting the same during the course of construction of the project. Any deviations from the plan location of any existing facilities shall be immediately brought to the attention of the LOCSAD Engineer.
- 8. Safety** - Neither the Las Ocas Community Services District nor the Registrar of Records will be responsible for the contractor's safety management system. The Contractor agrees that he/she shall assume full and complete safety, and maintain all safety devices, and shall be solely responsible for contracting to all Local, State, and Federal, Safety and Health Standards, Laws, and Regulations. 
- 9. Indemnification** - The Applicant agrees that in accordance with commonly accepted construction practices, Applicants shall assume sole and complete responsibility for the condition of the job during the course of the project, including the safety of persons and property. That the Applicant shall apply continuously and to the project, including the safety of persons and property, that the Applicant shall indemnify, defend, and hold the District harmless, and shall pay reasonable attorneys' fees, costs, expenses (including this project; except those claims, damages, losses arising out of the performance or attempted performance of its work on liabilities resulting from the negligence or willful misconduct of the District.


LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD DRAWING

STANDARD CONSTRUCTION NOTES	N-1
	NO. SCALE

LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD DRAWING

STANDARD CONSTRUCTION NOTES	N-2
	NO SCALE

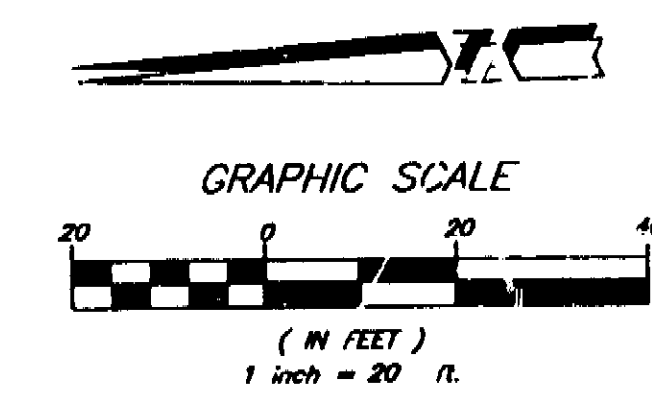
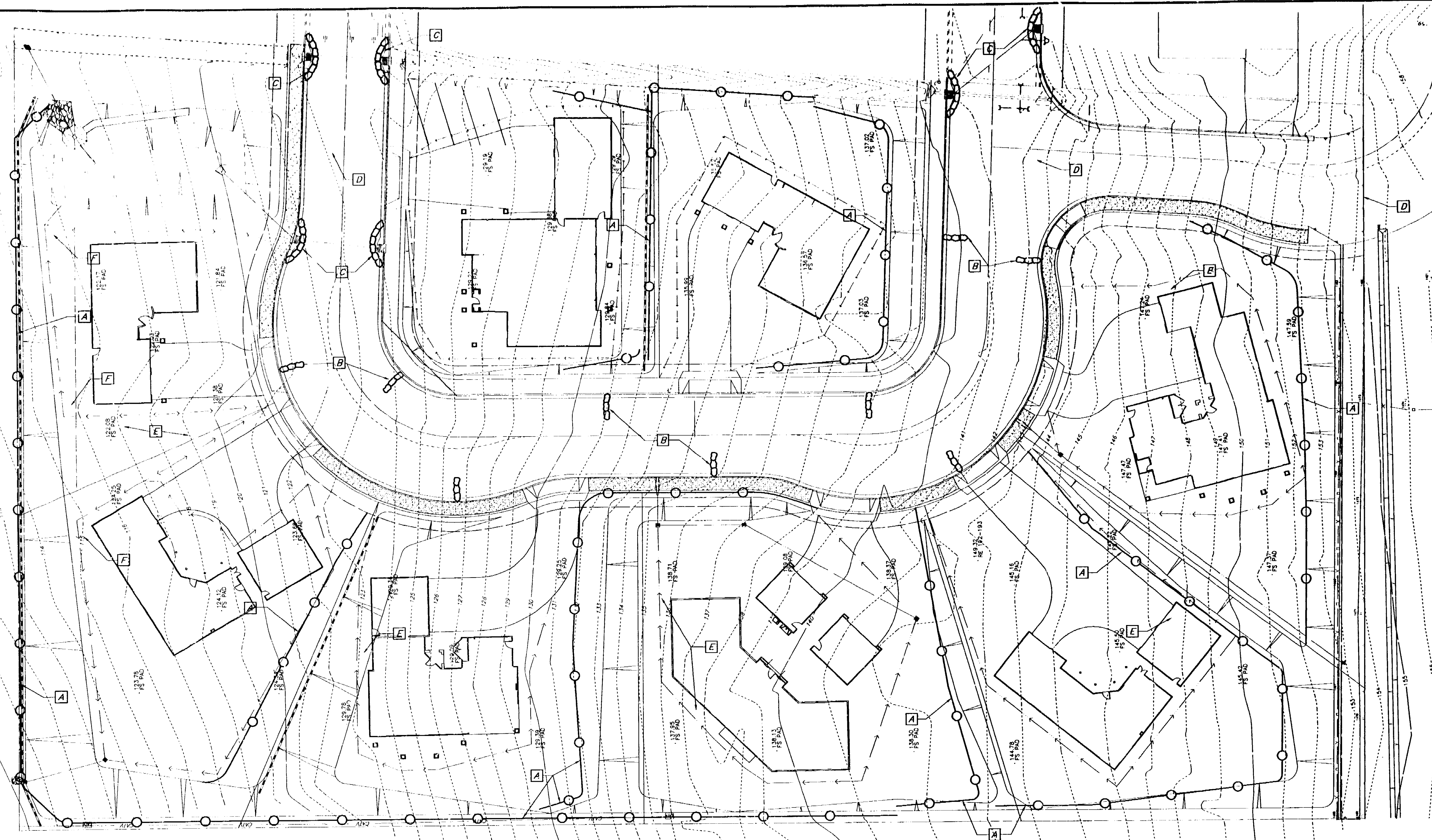


REVISIONS DATE DESCRIPTION APPROVED 4/7/03 ADD DETAIL SHEET 7A		PUBLIC IMPROVEMENT PLANS FOR <b>TRACT 2161</b> <b>DETAIL SHEET</b> COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
		DESIGNER COUNTY ENGINEER OFFICE ENG.	COUNTY ENGINEER APPROVED DEPUTY COUNTY ENGINEER CALIFORNIA COORDINATOR:	RCE 25,000 RCE 50,750 N 070 E 1144	DATE 1/5/04
		SURVEY STAFF ENG.	COUNTY NO. 000 PTD-430		
 ENGINEERING DEVELOPMENT ASSOCIATES 2001 SANTA BARBARA ST. SAN LUIS OBISPO, CA 95060 PHONE (805) 545-3595 FAX (805) 545-3704		PRINCIPAL ENGINEER	12.8.03 7A	SHEET of	









**LEGEND**

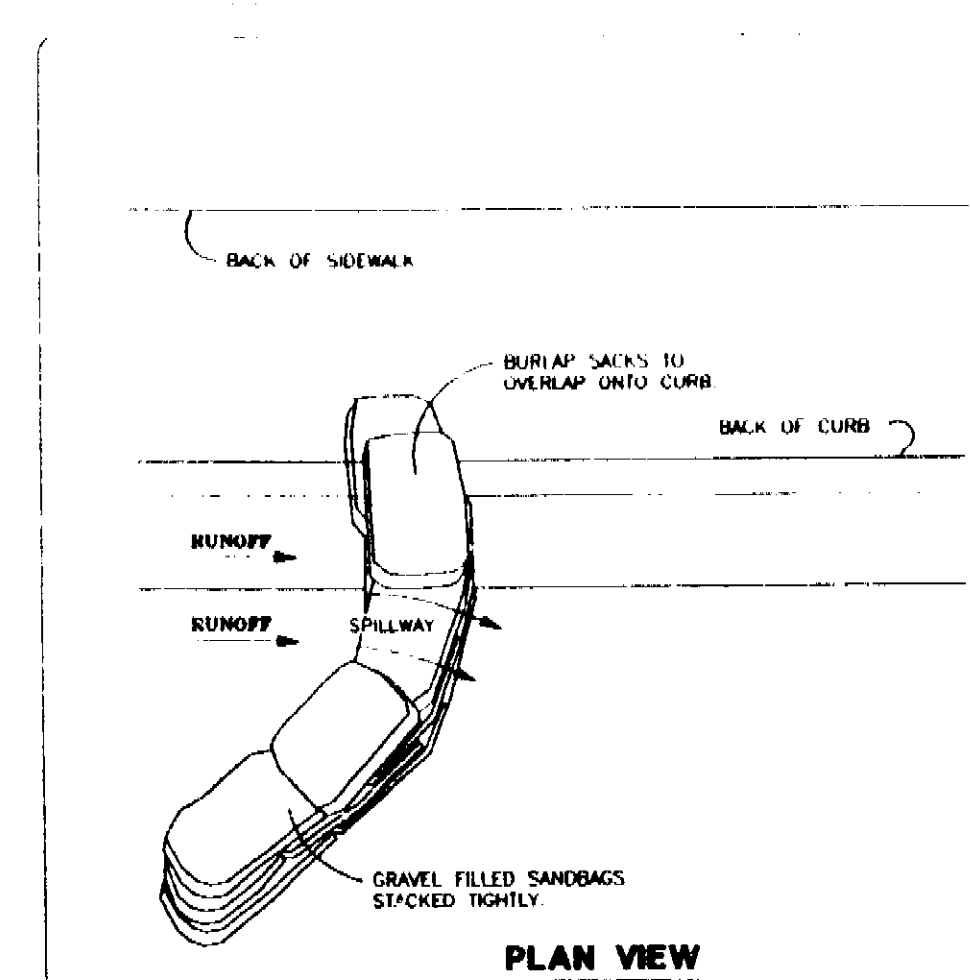
- A** CONSTRUCT STRAW WATTLES PER DETAIL SHEET EC-2.
- B** CONSTRUCT CURB AND GUTTER SEDIMENT BARRIER PER DETAIL SHEET EC-2.
- C** CONSTRUCT CURB INLET SEDIMENT BARRIER PER DETAIL SHEET EC-2.
- D** CONSTRUCT GRAVEL ENTRANCE/EXIT PER DETAIL SHEET EC-2.
- E** CONSTRUCT HAYBALE CHEVRON PER DETAIL SHEET EC-2.
- F** CONSTRUCT DROP INLET SEDIMENT BARRIER PER DETAIL SHEET EC-2.

REVISIONS		
DATE	DESCRIPTION	APPROVED
1/20/04	COMPLETE EROSION CONTROL PLAN AND DETAILS	



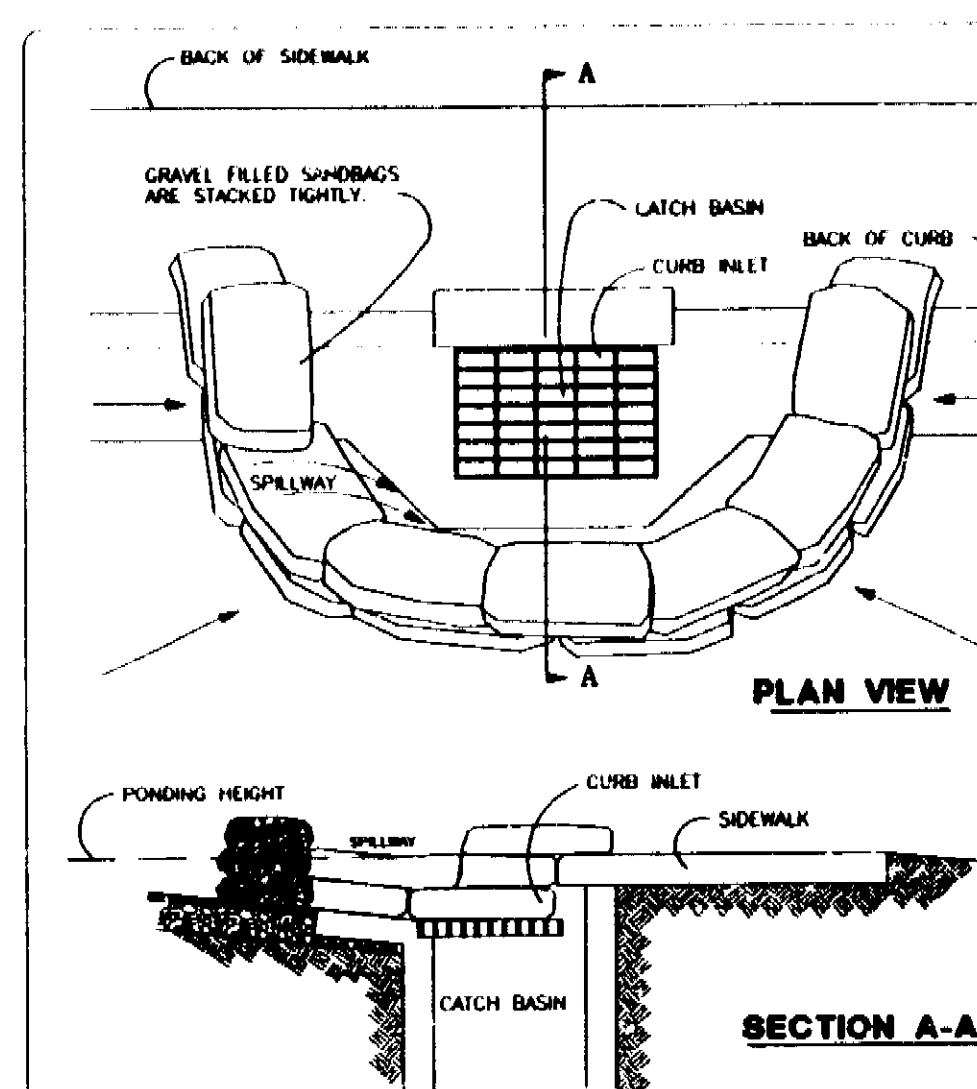
EROSION CONTROL CONTINGENCY PLAN			
FOR			
<b>TRACT 2161</b>			
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
DESIGNER	COUNTY ENGINEER	APPROVED	DATE
CHUCK	1/20/04	<i>[Signature]</i>	1/20/04
SURVEY	OFFICE ENG.	APPROVED	DATE
STAFF ENG.	COUNTY	DEPUTY COUNTY ENGINEER	DATE
PHD436	N 670	1144	
PRINCIPAL ENGINEER			SHEET
			EC-1





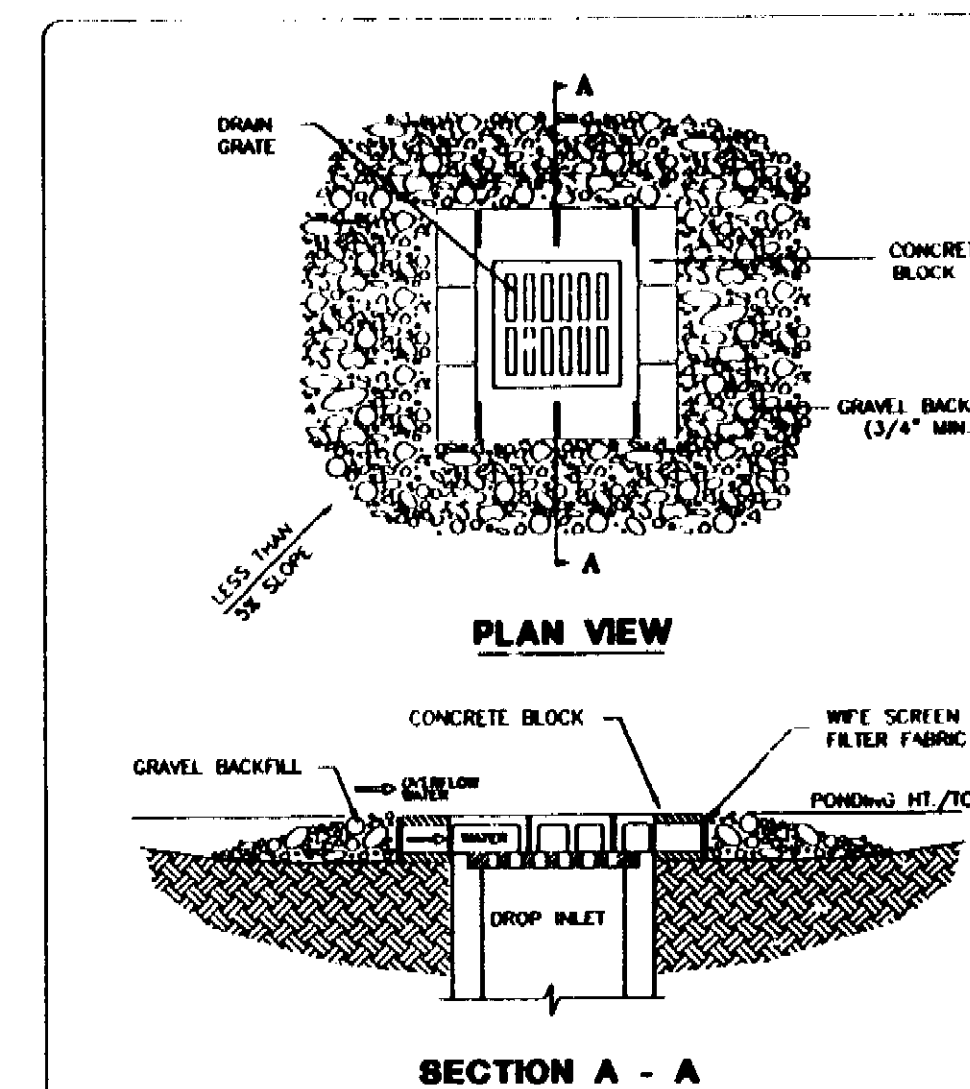
NOTES:  
1. PLACE CURB TYPE SEDIMENT BARRIERS ON GENTLY SLOPING STREET SEGMENTS WHERE WATER CAN POND AND ALLOW SEDIMENT TO SEPARATE FROM RUNOFF.  
2. SANDBAGS, OF EITHER BURLAP OR GEOTEXTILE FABRIC, ARE FILLED WITH GRAVEL, LAYERED AND PACKED TIGHTLY.  
3. LEAVE A ONE SANDBAG GAP IN THE TOP ROW TO PROVIDE A SPILLWAY FOR OVERFLOW.  
4. INSPECT BARRIERS AND REMOVE SEDIMENT AFTER EACH STORM EVENT. SEDIMENT AND GRAVEL MUST BE REMOVED FROM THE TRAVELED WAY IMMEDIATELY.

#### CURB AND GUTTER SEDIMENT BARRIER



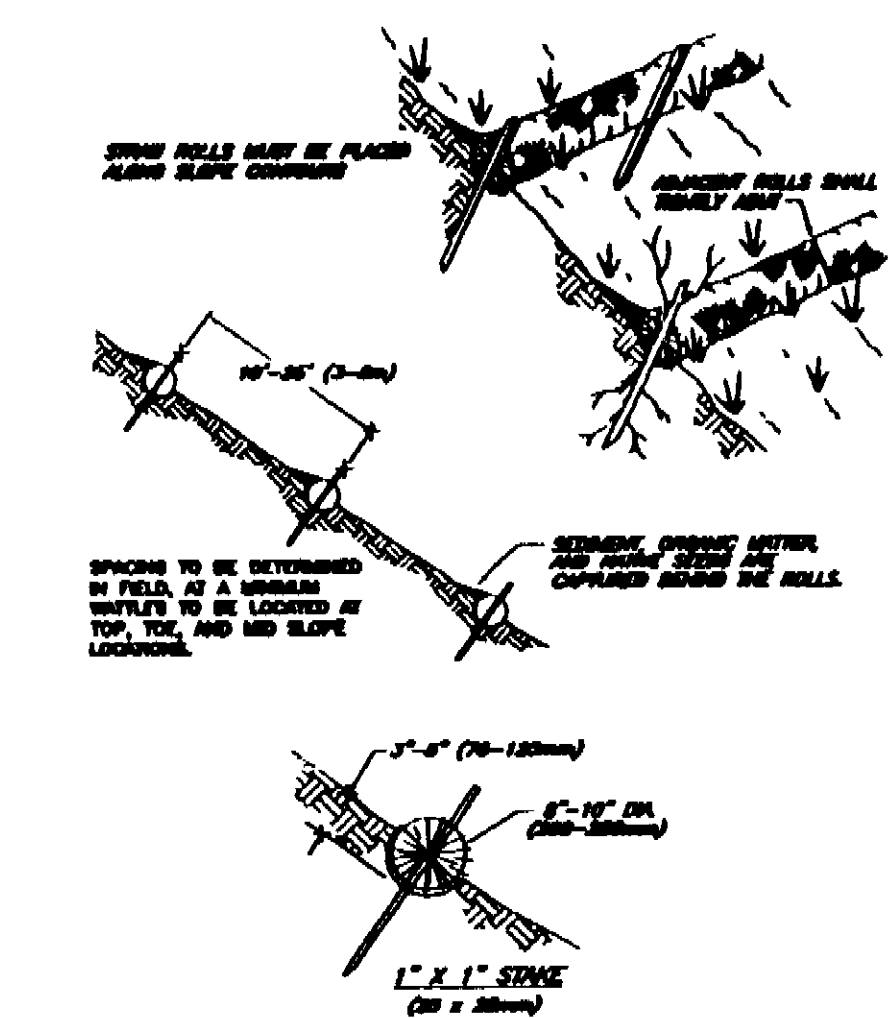
NOTES:  
1. PLACE CURB TYPE SEDIMENT BARRIERS ON GENTLY SLOPING STREET SEGMENTS WHERE WATER CAN POND AND ALLOW SEDIMENT TO SEPARATE FROM RUNOFF.  
2. SANDBAGS, OF EITHER BURLAP OR WOVEN GEOTEXTILE FABRIC, ARE FILLED WITH GRAVEL, LAYERED AND PACKED TIGHTLY.  
3. LEAVE ONE SANDBAG GAP IN THE TOP ROW TO PROVIDE A SPILLWAY FOR OVERFLOW.  
4. INSPECT BARRIERS AND REMOVE SEDIMENT AFTER EACH STORM EVENT. SEDIMENT AND GRAVEL MUST BE REMOVED FROM THE TRAVELED WAY IMMEDIATELY.

#### CURB INLET SEDIMENT BARRIER



NOTES:  
1. DROP INLET SEDIMENT BARRIERS ARE TO BE USED FOR SMALL NEARLY LEVEL DRAINAGE AREAS (LESS THAN 3%)  
2. EXCAVATE A BASIN OF SUFFICIENT SIZE ADJACENT TO THE DROP INLET.  
3. THE TOP OF THE STRUCTURE (PONDING HEIGHT) MUST BE WELL BELOW THE GROUND ELEVATION DOWNSTREAM TO PREVENT RUNOFF FROM BY-PASSING THE INLET. A TEMPORARY DYE MAY BE NECESSARY ON THE DOWNSLOPE SIDE OF THE STRUCTURE.

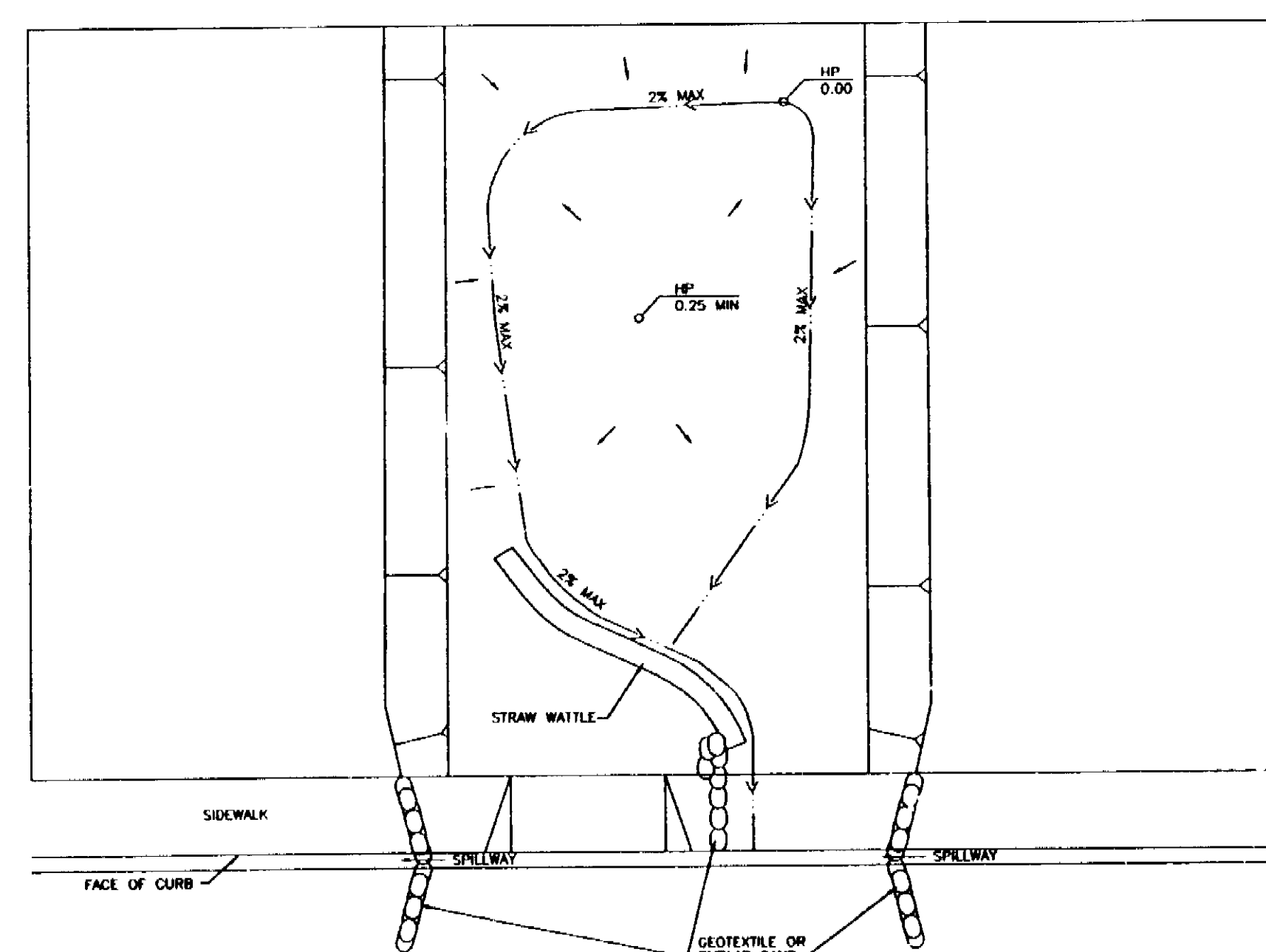
#### BLOCK AND GRAVEL DROP INLET SEDIMENT BARRIER



NOTE:  
1. STRAW ROLL INSTALLATION REQUIRES THE PLACEMENT AND SECURE BINDING OF THE ROLL IN A TRENCH, 3\"/>

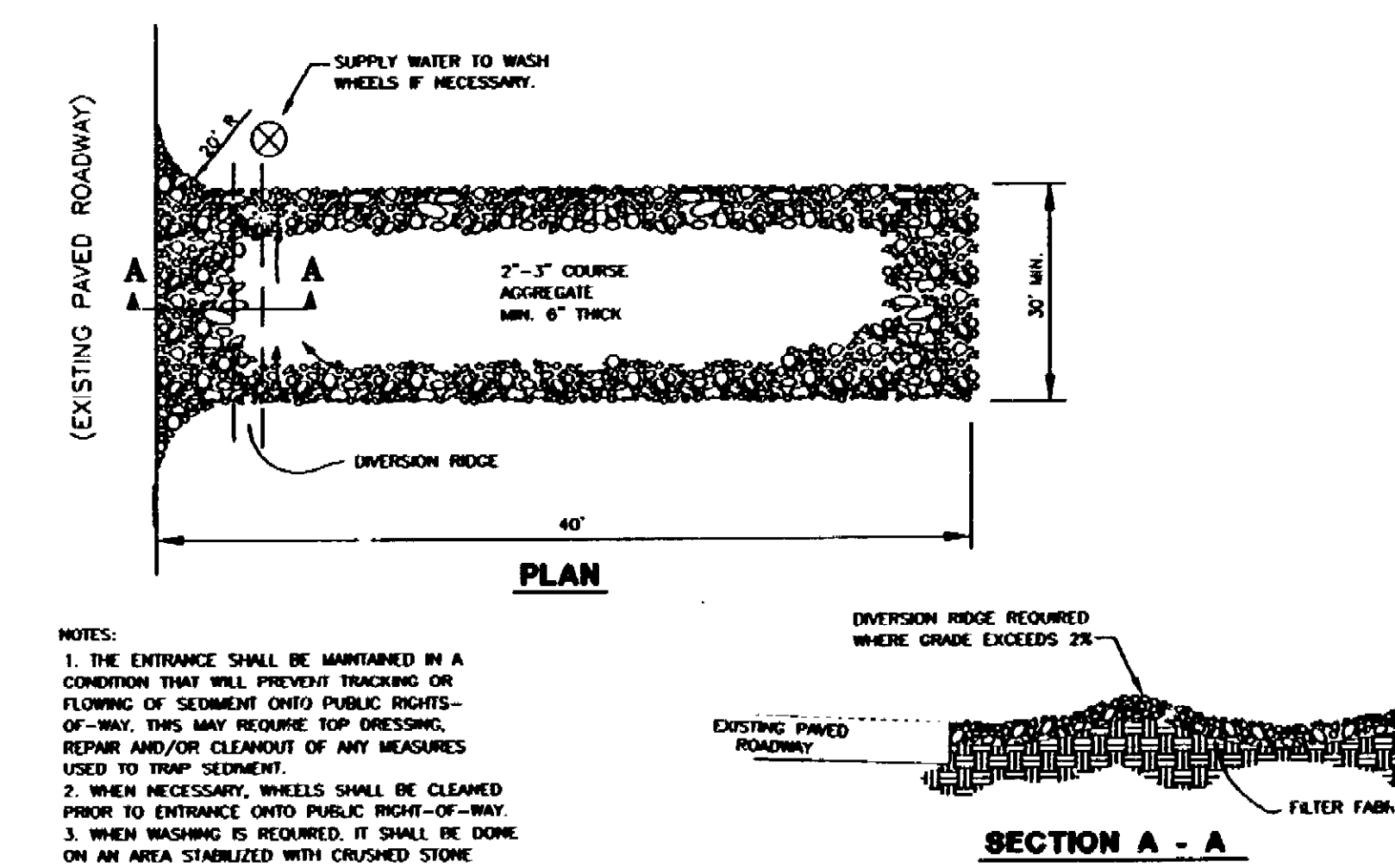
#### STRAW ROLL (WATTLE) DETAIL

SCALE: NTS



#### TYPICAL LOT DRAINAGE CONTROL PLAN

SCALE: NTS



NOTES:  
1. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. THIS MAY REQUIRE TOP DRESSING, REPAIR AND/OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT.  
2. WHEN NECESSARY, WHEELS SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.  
3. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINAGE INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN.

#### GRAVEL CONSTRUCTION ENTRANCE & EXIT DETAIL

SCALE: NTS



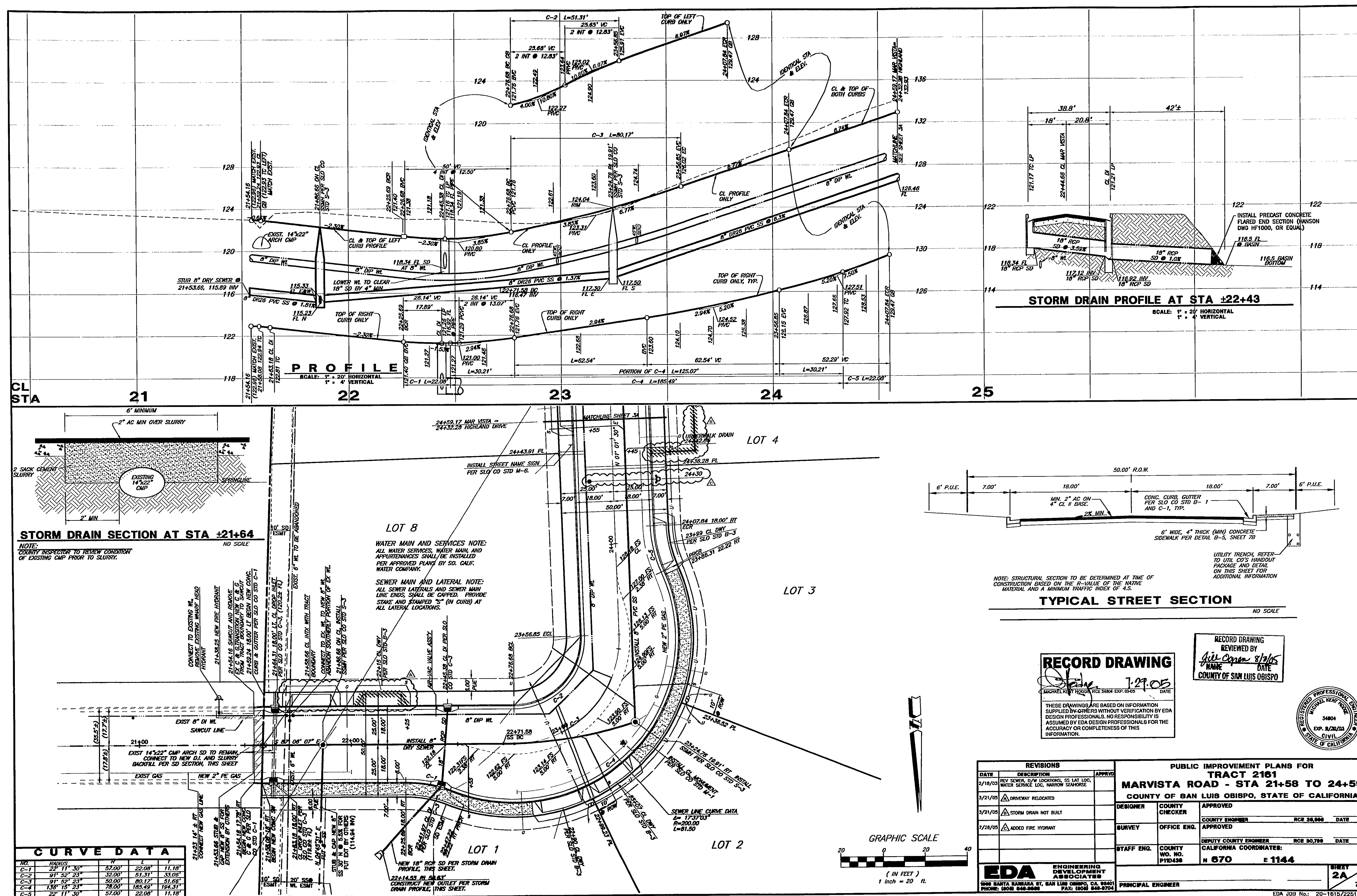
REVISIONS			EROSION CONTROL CONTINGENCY PLAN DETAILS			
DATE	DESCRIPTION	APPROVED	FOR			
4/28/03	COMPLETE EROSION CONTROL PLAN AND DETAILS		TRACT 2161			
			COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
			DESIGNER	COUNTY CHECKER	APPROVED	DATE
				8/24/03	Michael J. Smith	4/28/03
			SURVEY	COUNTY ENGINEER	OFFICE ENG.	DATE
					APPROVED	
			STAFF ENG.	COUNTY NO. PID438	DEPUTY COUNTY ENGINEER	DATE
				670	1144	
			PRINCIPAL ENGINEER			DATE
						DATE

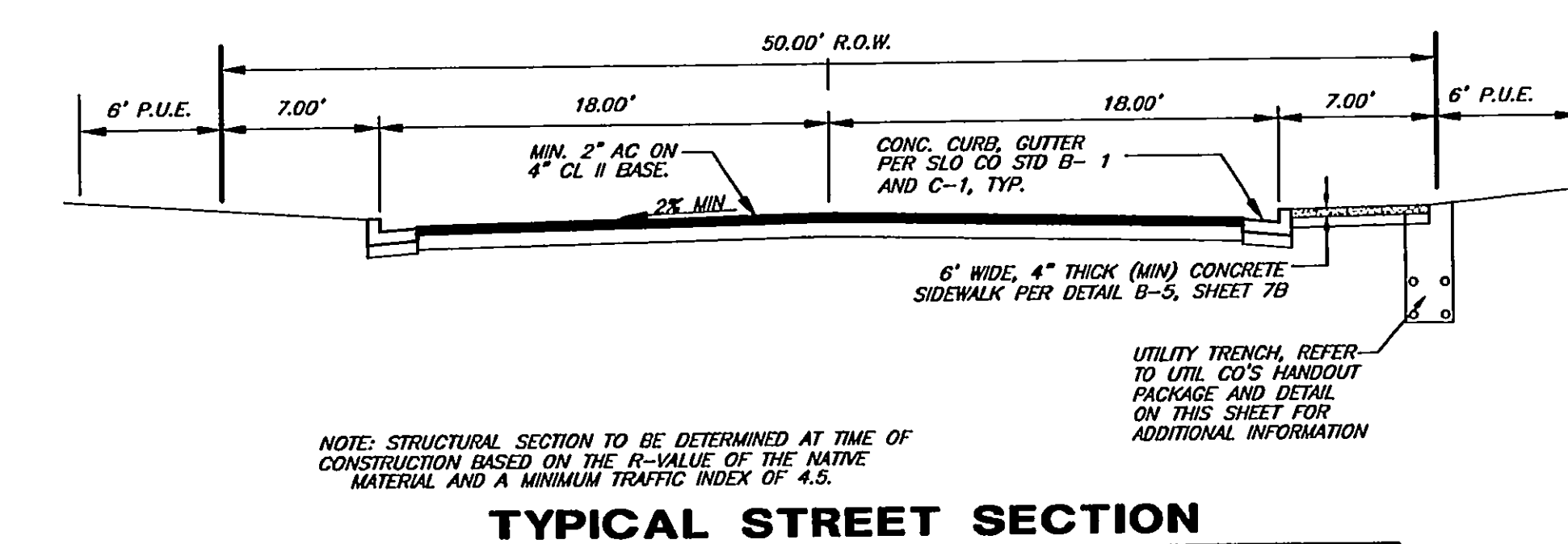
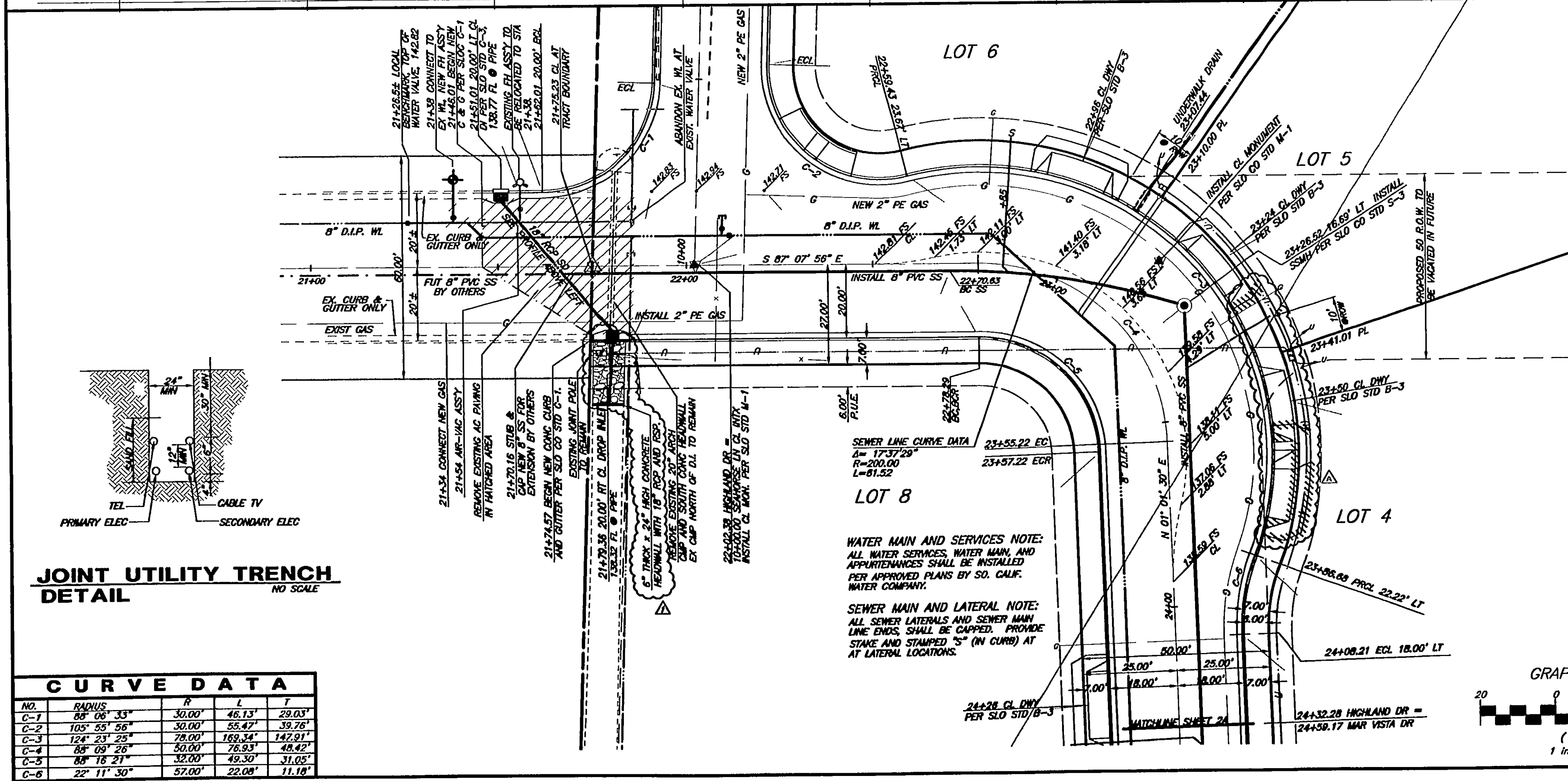
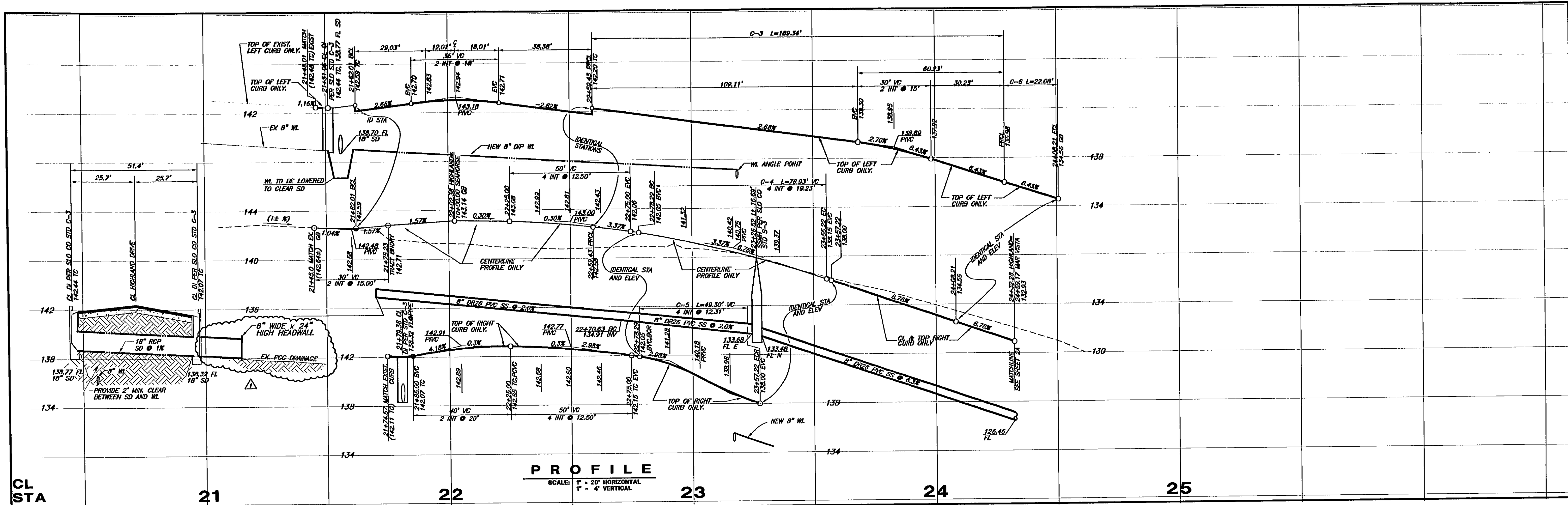
LDA JOB No.: 20-1615/22512100











**RECORD DRAWING**  
DATE: 7/29/05  
THESE DRAWINGS ARE BASED ON INFORMATION SUPPLIED BY OTHERS WITHOUT VERIFICATION BY EDA DESIGN PROFESSIONALS. NO RESPONSIBILITY IS ASSUMED BY EDA DESIGN PROFESSIONALS FOR THE ACCURACY OR COMPLETENESS OF THIS INFORMATION.

RECORD DRAWING  
REVIEWED BY  
NAME: *John Aguirre*  
DATE: 8/6/05  
COUNTY OF SAN LUIS OBISPO



DATE	DESCRIPTION	APPROVED
12/16/04	REV. SEWER, D/W LOCATIONS, SS LAT LOG, WATER SERVICE LOG, NARROW SEWERAGE	
3/21/05	RELOCATED DRIVEWAY	
7/29/05	AS-BUILT HEADWALL AND RCP STORMDRAIN	

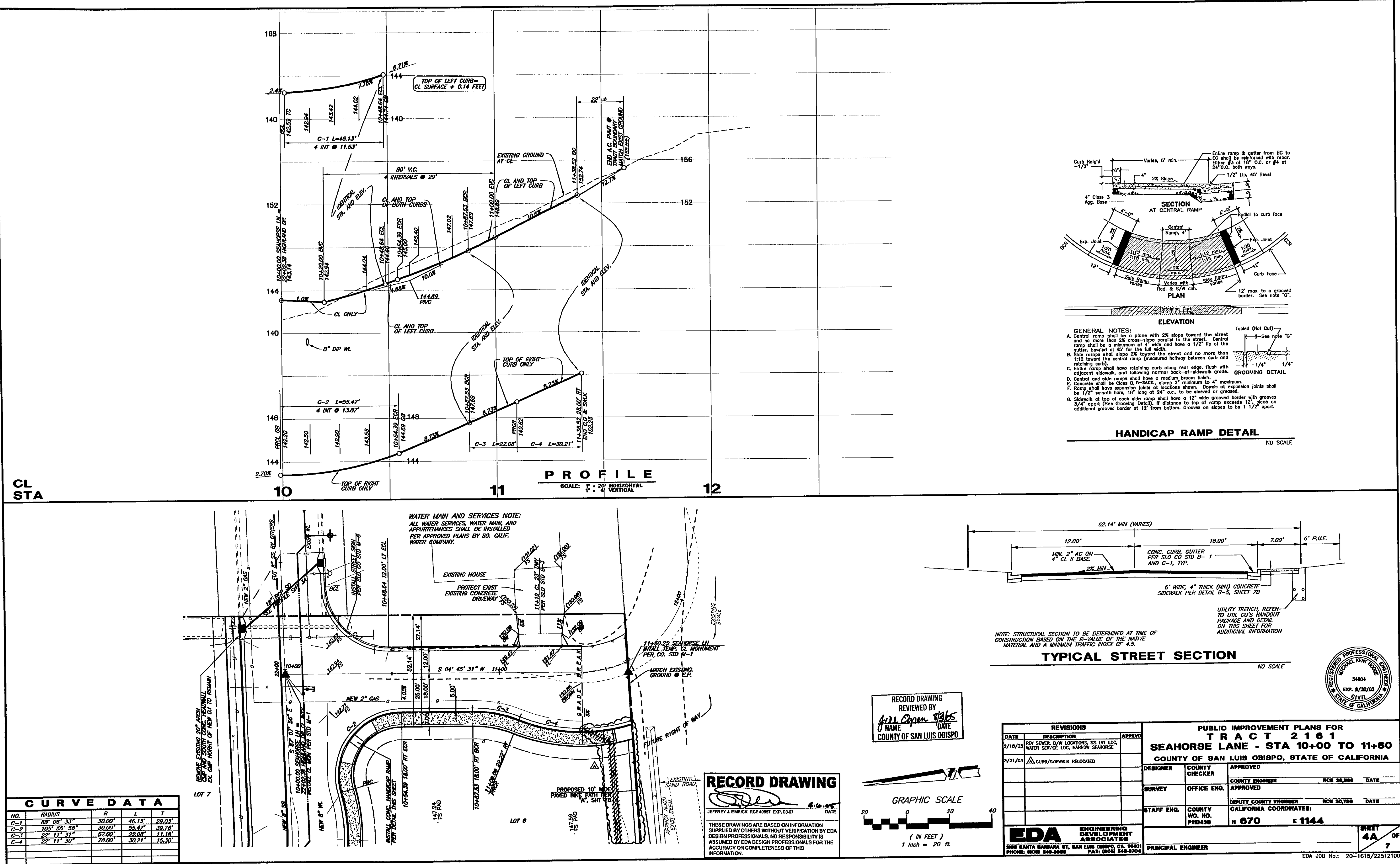
PUBLIC IMPROVEMENT PLANS FOR TRACT 2181			
HIGHLAND DRIVE - STA 21+75 TO 24+32			
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA			
DESIGNER	COUNTY CHECKER	COUNTY ENGINEER	DATE
SURVEY	OFFICE ENG.	APPROVED	
STAFF ENG.	COUNTY NO. P180436	DEPUTY COUNTY ENGINEER: RCE 30,796	DATE
		CALIFORNIA COORDINATE: N 670 E 1144	
		PRINCIPAL ENGINEER	

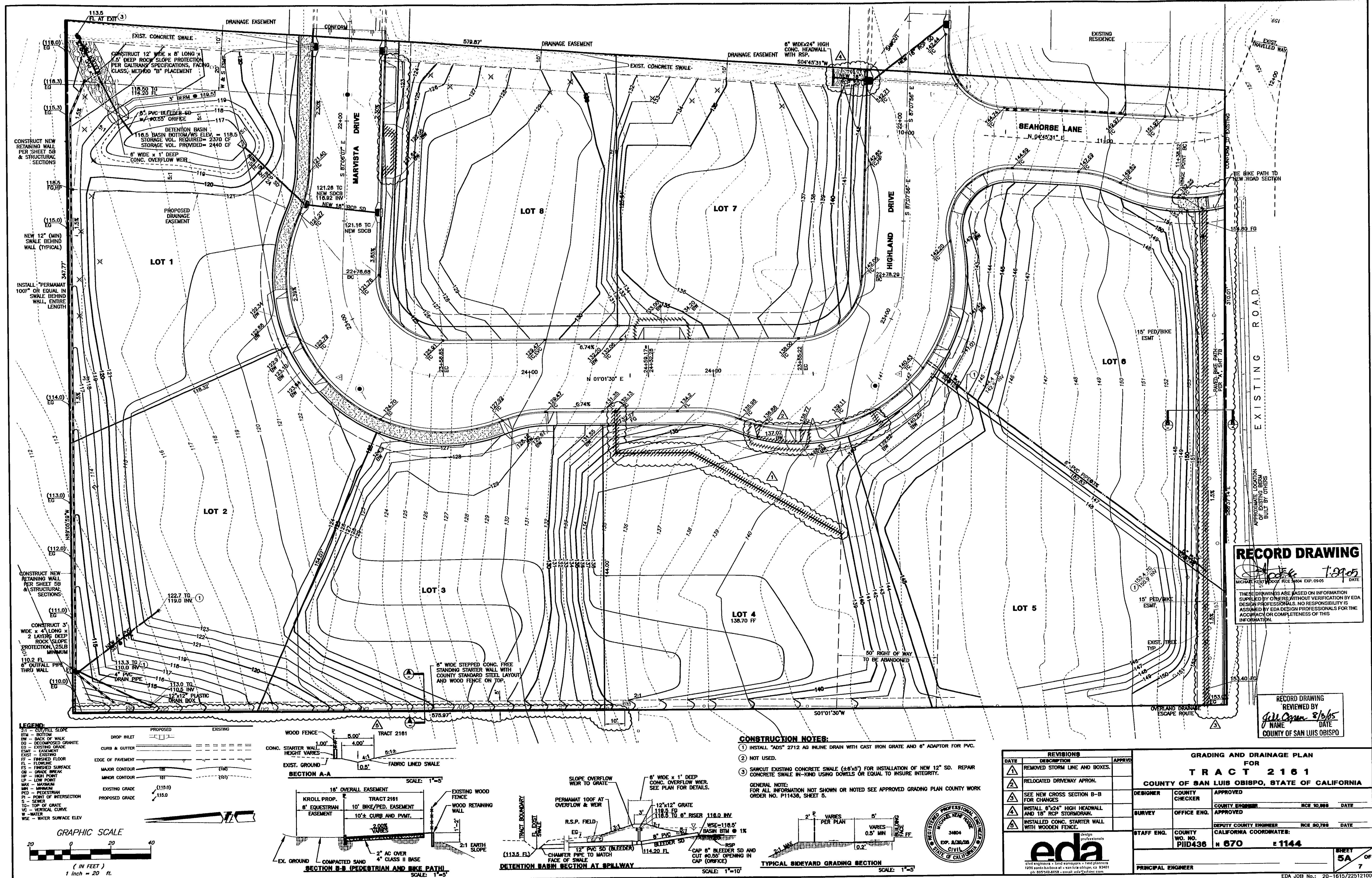
**EDA**  
ENGINEERING DEVELOPMENT ASSOCIATES  
3000 SANTA BARBARA ST., SAN LUIS OBISPO, CA 93401  
PHONE: (805) 848-3000 FAX: (805) 848-9704

EDA JOB No.: 20-1615/22512100

12/25/2010/AS-BUILT/105590436/04 7/27/05 03:19 PM 4001







REVISIONS			APPROVED		
DATE	DESCRIPTION		DESIGNER	COUNTY CHECKER	APPROVED
	REMOVED STORM LINE AND BOXES.				
	RELOCATED DRIVEWAY APRON.				
	SEE NEW CROSS SECTION B-B FOR CHANGES				
	INSTALL 8" 24" HIGH HEADWALL AND 18" RCP STORMWATER				
	INSTALL CONC. STARTER WALL WITH WOODEN FENCE.				

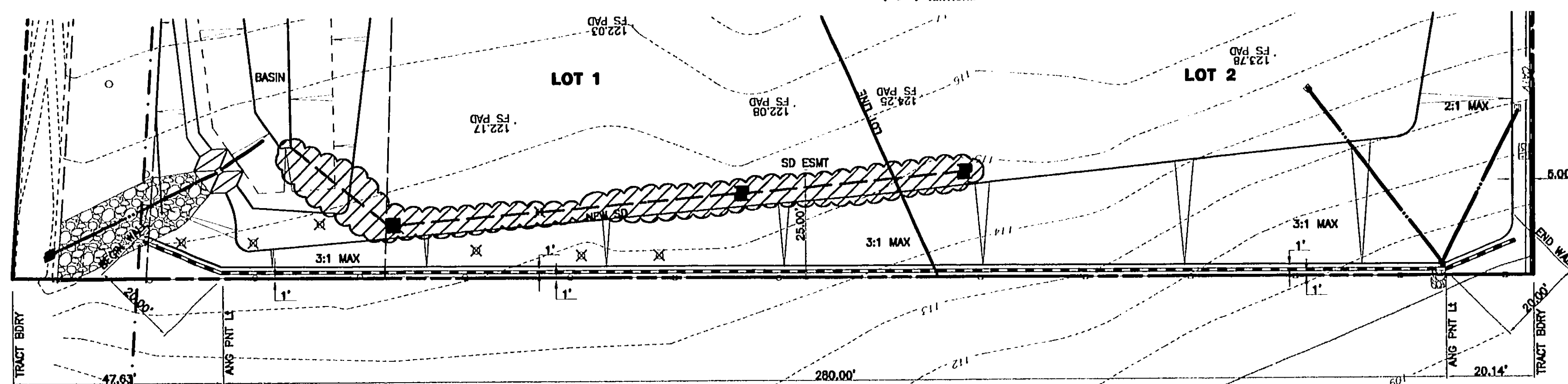
GRADING AND DRAINAGE PLAN FOR TRACT 2161					
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA					
DESIGNER	COUNTY CHECKER	COUNTY ENGINEER	DATE		
SURVEY	OFFICE ENG.	APPROVED	DATE		
STAFF ENG.	COUNTY NO. NO.	DEPUTY COUNTY ENGINEER	DATE		
	P11436	CALIFORNIA COORDINATES:			
PRINCIPAL ENGINEER	N 870	E 1144			

EDS JOB No.: 20-1615/22512100



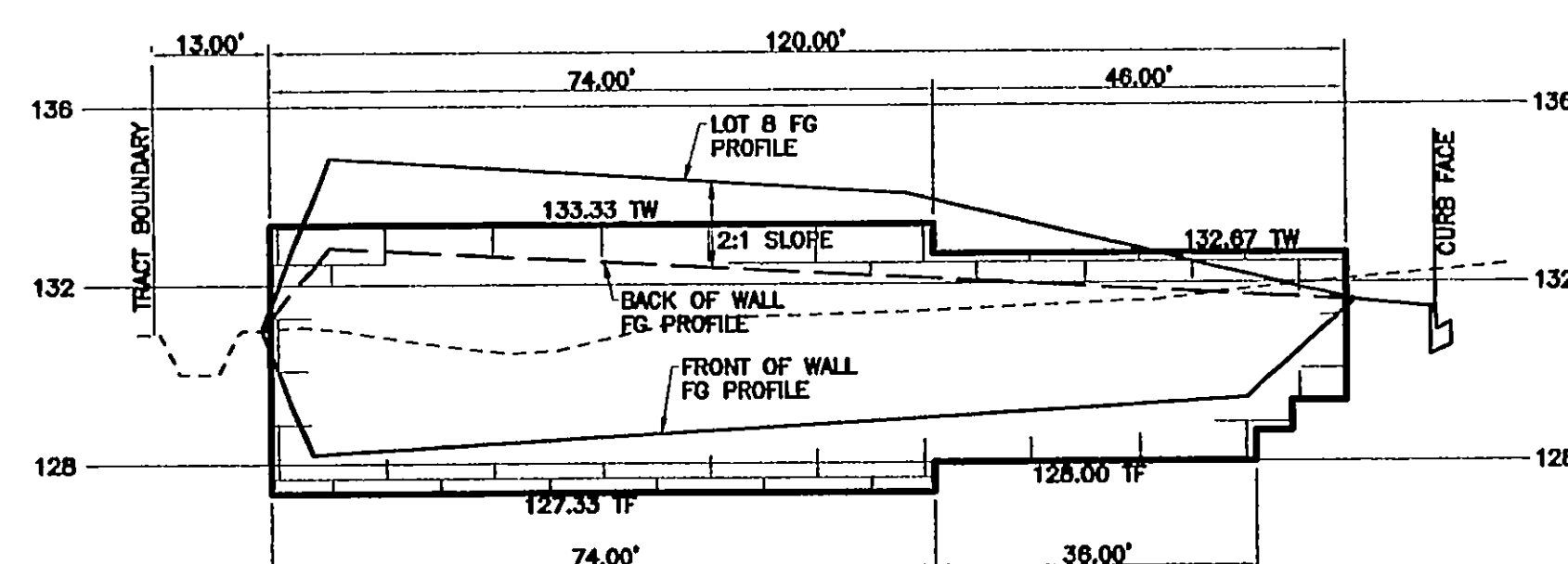
### WALL 1 PROFILE

**PROFILE**  
SCALE: 1" = 20' HORIZONTAL  
1" = 4' VERTICAL



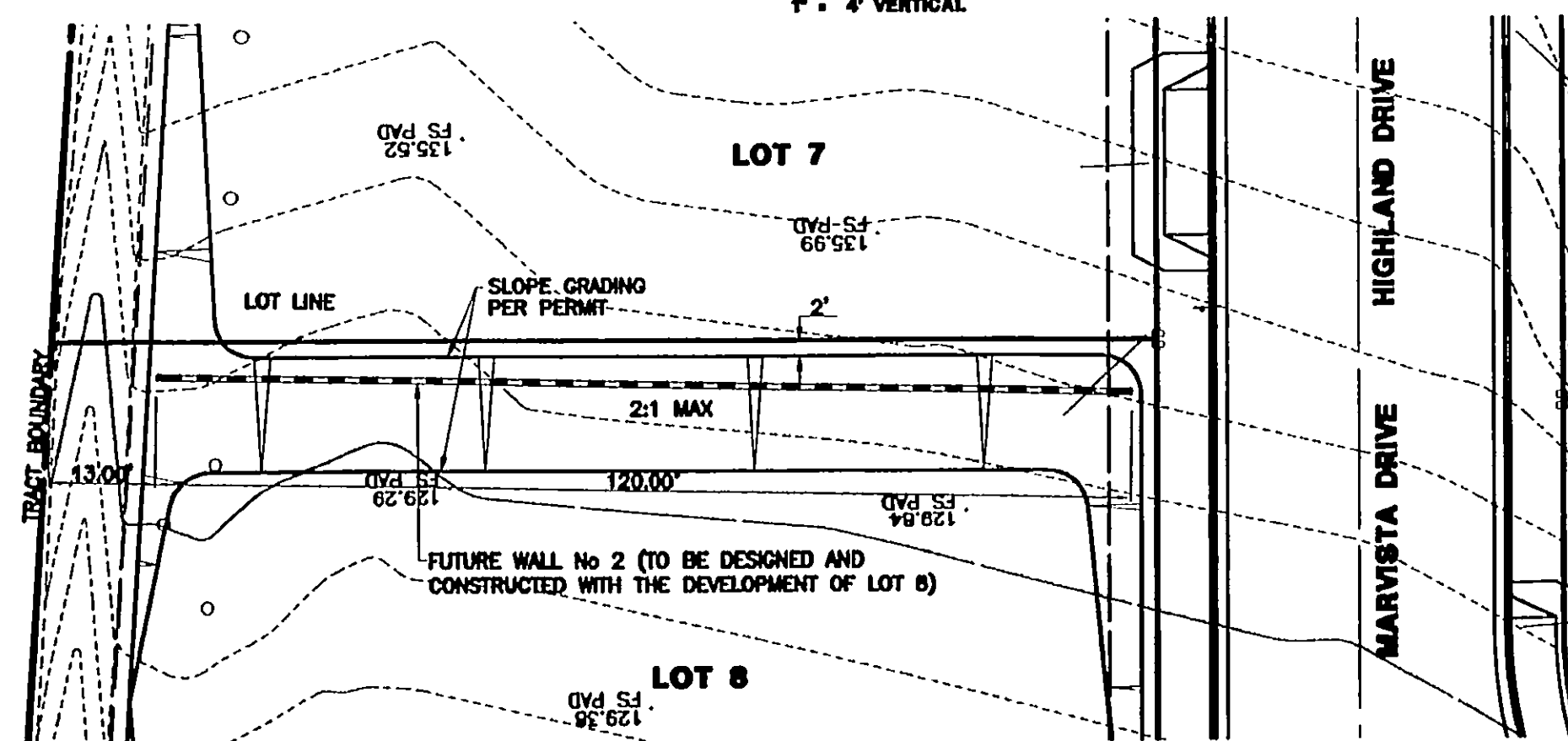
**WALL 1 PLAN**

**1 PLAN**  
SCALE: 1" = 20' HORIZONTAL



### WALL 2 PROFILE

**PROFILE**  
SCALE: T = 20' HORIZONTAL  
V = 4' VERTICAL




### WALL 2 PLAN

**2. PLAN**  
SCALE: 1" = 20' HORIZONTAL

**NOTE: WALL 2 SHOWN FOR REFERENCE ONLY  
WALL 2 SHALL BE DESIGNED AND BUILT  
WITH DEVELOPMENT OF LOT 8**

## RECORD DRAWING


7.19.09  
 MICHAEL KENT HODGES FILE #4804 EXP. 09-08 DATE \_\_\_\_\_

THESE DRAWINGS ARE BASED ON INFORMATION  
 SUPPLIED BY OTHERS WITHOUT VERIFICATION BY EDA  
 DESIGN PROFESSIONALS. NO RESPONSIBILITY IS  
 ASSUMED BY EDA DESIGN PROFESSIONALS FOR THE  
 ACCURACY OR COMPLETENESS OF THIS  
 INFORMATION.

**GENERAL WALL CONSTRUCTION NOTES:**

1. WALL NO 1 SHALL BE CONSTRUCTED AS PART OF THESE PLANS.
2. WALL NO 2 IS NOT A PART OF THESE PLANS AND IS SHOWN FOR REFERENCE ONLY (WALL NO 2 SHALL BE CONSTRUCTED AS PART OF THE DEVELOPMENT OF LOT 7).
3. REFER TO STRUCTURAL WALL HANDOUT PACKAGE PREPARED BY TAYLOR & SYFAN CONSULTING ENGINEERS FOR WALL NO 1. SPREADS, REINFORCEMENT, TYPICAL SECTIONS, AND OTHER RELATED CONSTRUCT NOTES. THE STRUCTURAL HANDOUT PACKAGE SHALL BE CONSIDERED A PART OF THESE PLANS.

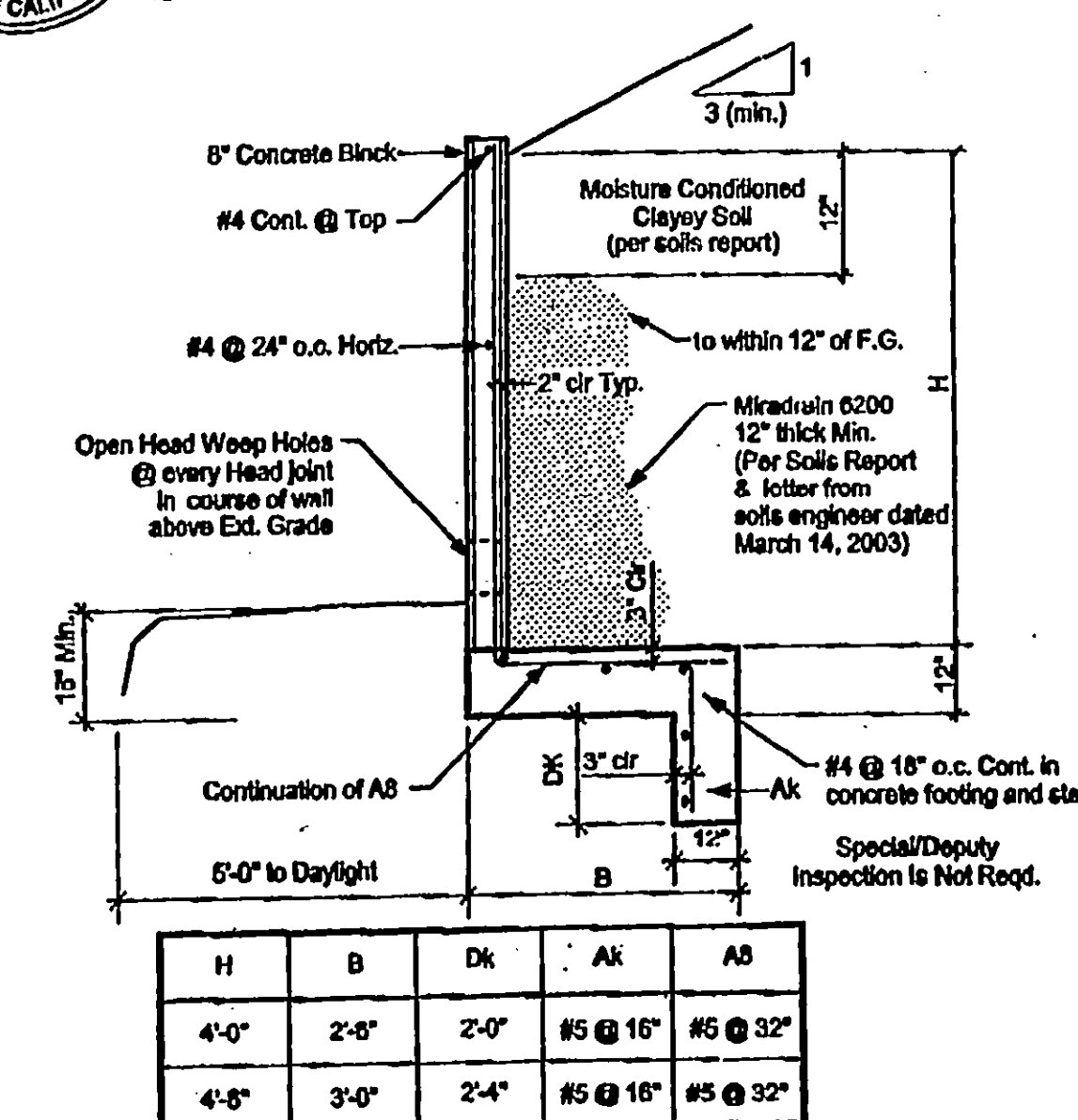


## TAYLOR &amp; SYFAN

**CONSULTING ENGINEERS  
INCORPORATED**

2118 Wilshire Boulevard • Suite 8360 • Santa Monica, CA 90403  
TEL (310) 452-2450 • (800) 574-5991 • FAX (310) 617-2225  
2231 Bayview Heights Drive • Los Angeles, CA 90040  
TEL (800) 528-2015 • (800) 579-3489 • FAX (800) 528-2016

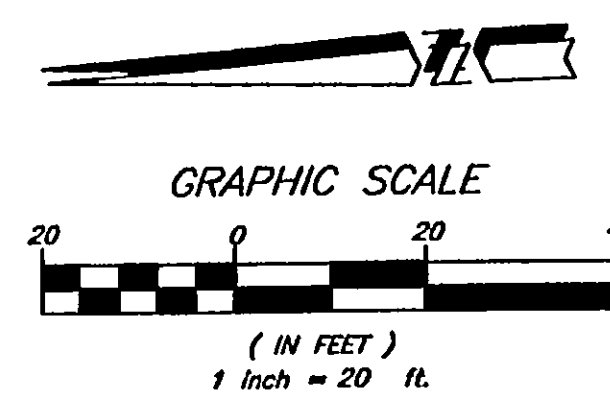
www.Taylor-Sydney.com




### ISOLATED MASONRY RETAINING WALL

North Property Line Well  
299 Highland Drive  
Los Osos, California

RECORD DRAWING  
REVIEWED BY  
*Jim Capen* 8/3/05  
NAME DATE  
COUNTY OF SAN LUIS OBISPO



<b>REVISIONS</b>		
<b>DATE</b>	<b>DESCRIPTION</b>	<b>APPROVED</b>
2/18/03	ADDED WALL PROFILE SHEET	



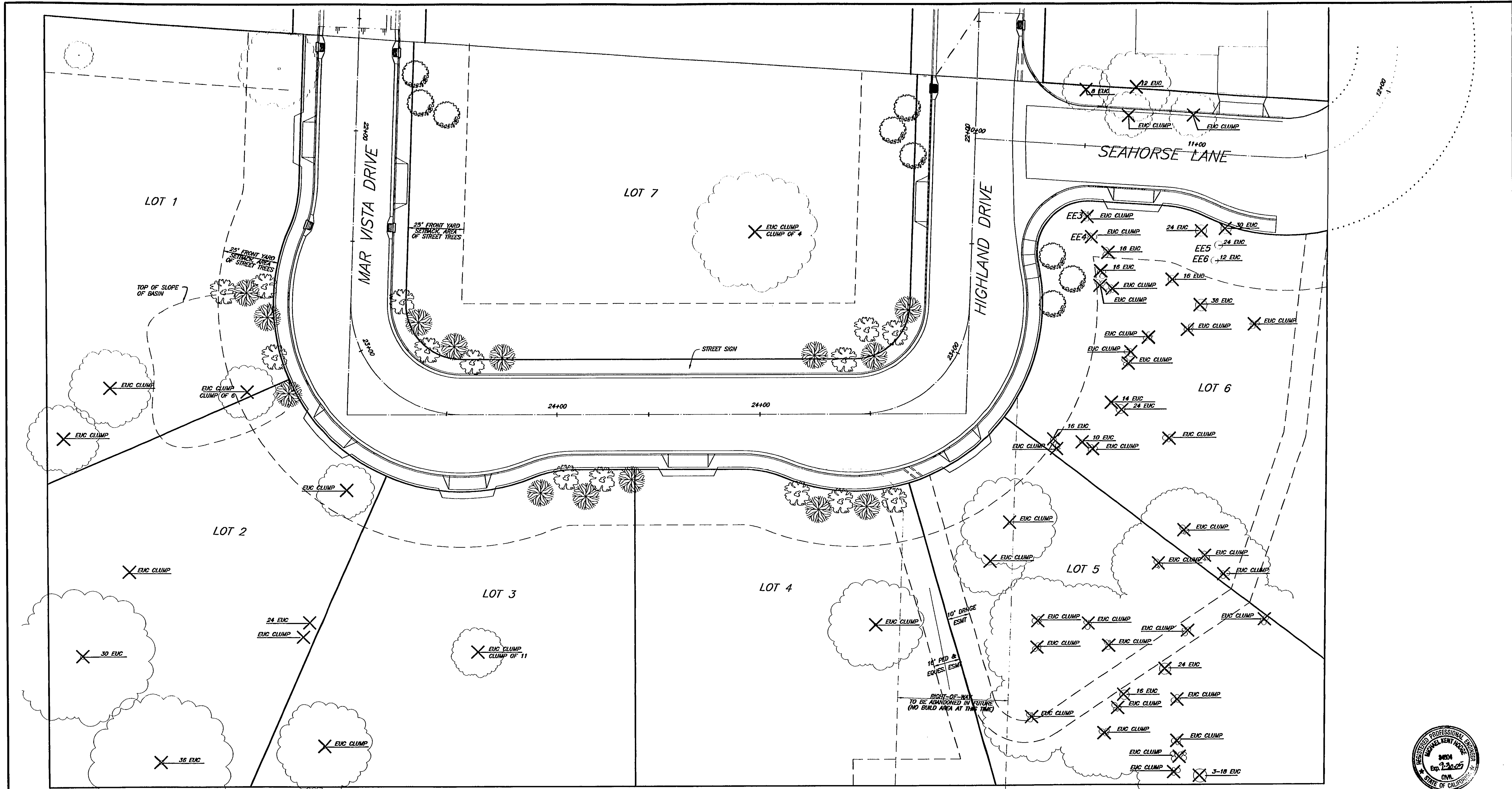
**eda** design professionals  
civil engineers • land surveyors • land planners  
1915 santa barbara st • san jose calif., ca 95101  
tel: 408-992-6650 • e-mail: info@edainc.com

<p align="center"><b>GRADING AND DRAINAGE PLAN</b> FOR <b>T R A C T   2 1 6 1</b> <b>COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA</b></p>			
<b>DESIGNER</b>	<b>COUNTY CHECKER</b>	<b>APPROVED</b>	
		<b>COUNTY ENGINEER</b>	<b>RCR 10,068      DATE</b>
<b>SURVEY</b>	<b>OFFICE ENG.</b>	<b>APPROVED</b>	
		<b>COUNTY ENGINEER</b>	<b>RCR 80,759      DATE</b>
<b>STAFF ENG.</b>	<b>COUNTY WO. NO. PIID436</b>	<b>CALIFORNIA COORDINATES:</b>	
	<b>N 670</b>	<b>= 1144</b>	
<b>PRINCIPAL ENGINEER</b>			<b>SHEET</b> <b>5B</b> <b>0</b> <b>7</b>

EDA JOB No.: 20-1615/22512100/CONDOCS/2512GP05B.DWG







**TREE LEGEND**

SYMBOL	COMMON NAME	STANDARD	STREET	CHURCH
10 OAL	QUERCUS AGROFOLIA	COAST LINE OAL	8	20
10 OAL	LIQUIDAMBAR STYRACIFLUA	SWEET OAL	14	
18 OAL	ACER PALMATUS	JAPANESE MAPLE	14	
18 OAL		CYPRESS		10
18 OAL		OTHER		14

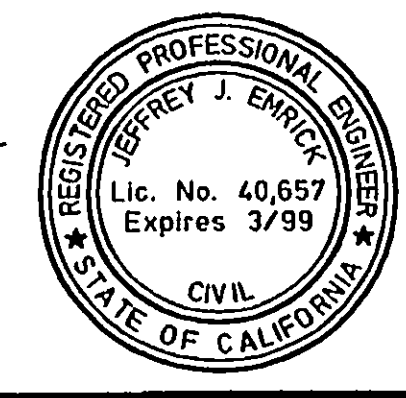
TOTAL TREES: 37 + 44 = 81 TREES

TREE CALCULATION:  
TOTAL STREET FRONTAGE (IN FEET) = 8 OF STREET TREES REQUIRED  
 $\frac{1.58 \times 100}{25} = 63.2$  TREES REQUIRED  
81 TREES PROPOSED

**TREE LEGEND**  
X EXISTING TREE OR CLUMP TO BE REMOVED

RECORD DRAWING  
REVIEWED BY  
*Jeffrey J. Emrick*  
DATE  
COUNTY OF SAN LUIS OBISPO

**RECORD DRAWING**  
JEFFREY J. EMRICK RCE 40657 EXP. 03/99  
DATE 12-05  
THESE DRAWINGS ARE BASED ON INFORMATION SUPPLIED BY OTHERS WITHOUT VERIFICATION BY EDA DESIGN PROFESSIONALS. NO RESPONSIBILITY IS ASSUMED BY EDA DESIGN PROFESSIONALS FOR THE ACCURACY OR COMPLETENESS OF THIS INFORMATION.



**REVISIONS**

DATE	DESCRIPTION	APPROVED

**REPLACES SHEET 6**

**STREET TREE AND TREE REMOVAL PLAN**  
FOR  
**TRACT 2161**  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

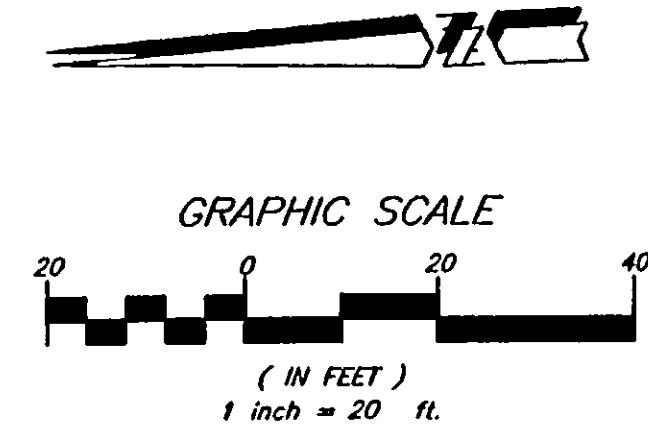
DESIGNER	COUNTY CHECKER	APPROVED
SURVEY	OFFICE ENG.	COUNTY ENGINEER
STAFF ENG.	COUNTY W.O. NO.	DEPUTY COUNTY ENGINEER
	P192439	RCE 30,758
		DATE
		DATE

CALIFORNIA COORDINATES:  
N 670 E 1144

EDDA ENGINEERING DEVELOPMENT ASSOCIATES  
1220 MONROE STREET, SAN LUIS OBISPO, CA 95401  
PHONE: (805) 548-5456 FAX: (805) 548-5704

JEFFREY J. EMRICK RCE 40657 EXP. 03/99  
DATE 12-05

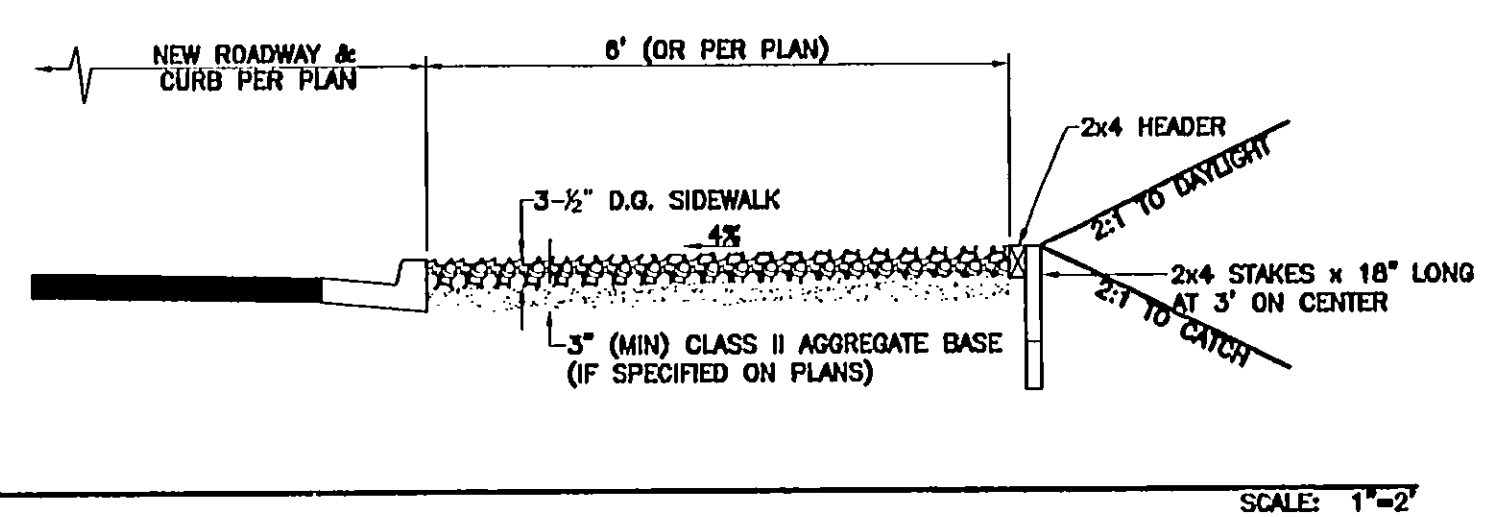
SHEET 6A OF 7



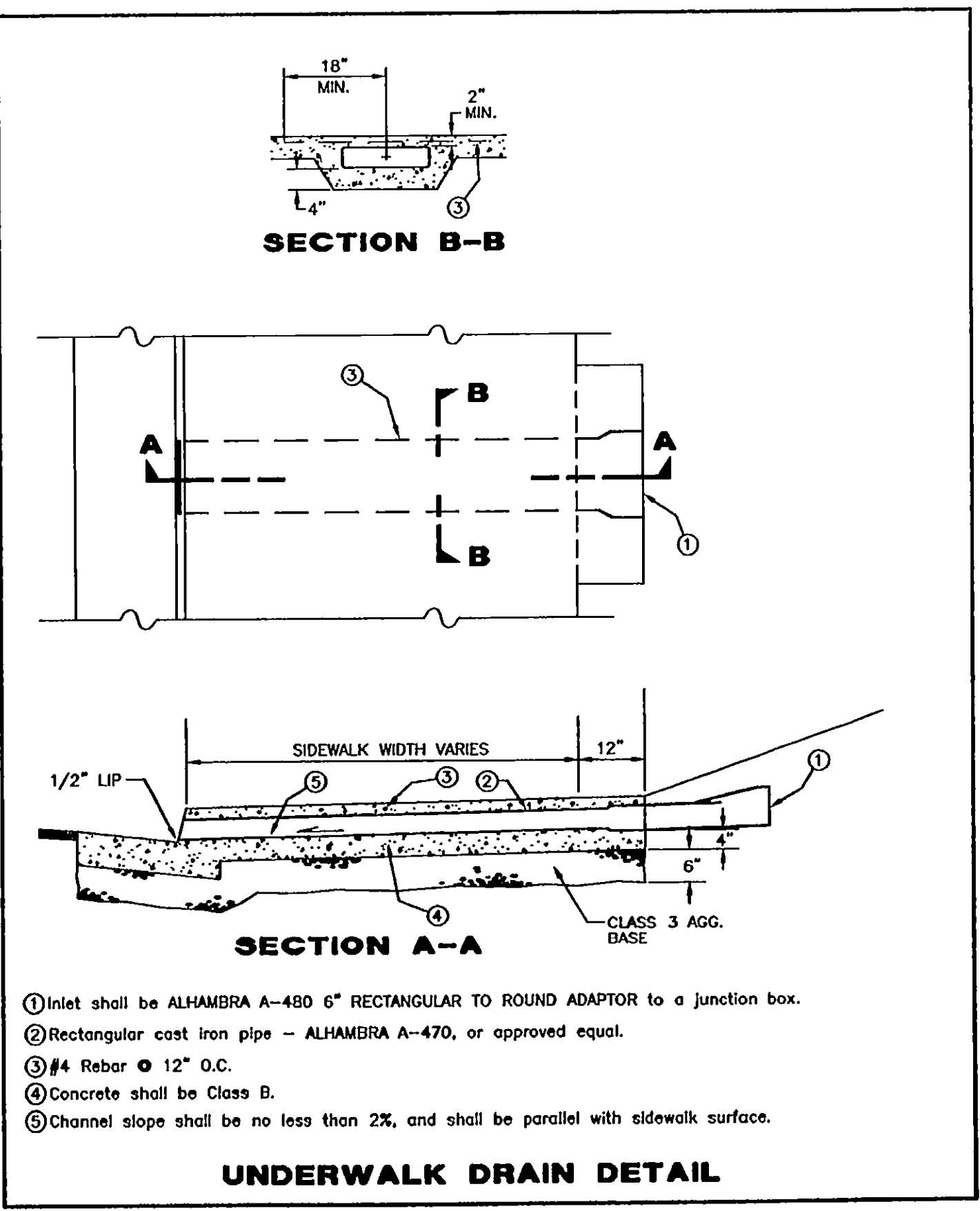
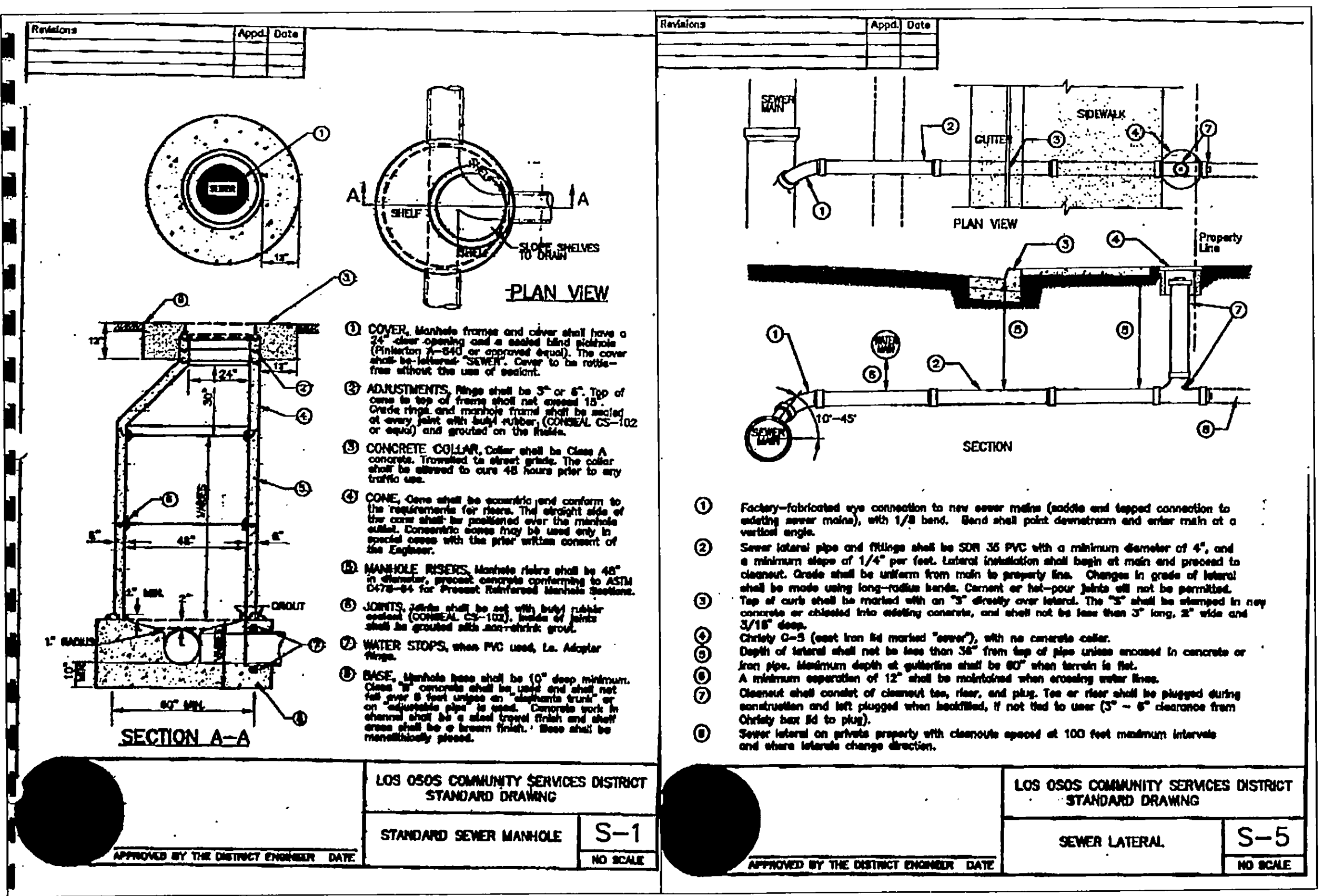


GENERAL NOTES:

1. DECOMPOSED GRANITE (DG) SHALL BE A 1/4 INCH MAXIMUM GRADATION WITH ENOUGH FINES TO PRODUCE A SMOOTH WALKING SURFACE. DG SHALL BE A YELLOW-BROWN COLOR.
2. PRIOR TO WORK, THE CONTRACTOR SHALL SUPPLY A ONE QUART SAMPLE OF DG AND STABILIZER TO THE COUNTY FOR APPROVAL.
3. CONTRACTOR SHALL STAKE AND LAYOUT ALL DG PAVING AREAS FOR INSPECTION AND APPROVAL OF THE COUNTY.
4. THE CONTRACTOR SHALL PROVIDE SUFFICIENT NOTICE TO THE ENGINEER AND THE COUNTY OF H(15/EN) INTENT TO BEGIN MIXING TO ALLOW INSPECTION OF THE MIXING AND BATCHING OPERATION.
5. MIN. PORTLAND CEMENT SHALL BE TYPE II MODIFIED ADDED TO THE DG AT THE RATIO OF 8% BY WEIGHT OF THE DRY DG. THE QUANTITY OF WATER ADDED TO THE MIXTURE SHALL BE ADJUSTED TO THE ABSOLUTE MINIMUM REQUIRED TO PERMIT UNIFORM MIXING. THE MATERIALS SHALL BE MIXED IN A DRUM TYPE MIXER ON THE JOB OR AT THE CENTRAL MIXING PLANT.
6. IMMEDIATELY PRIOR TO PLACING THE DG MIXTURE, THE SUBGRADE SHALL BE MOISTENED. THE MIXTURE SHALL BE DEPOSITED IN SUCH A MANNER AS TO MINIMIZE THE NECESSITY FOR SPOTTING, PICKING UP OR OTHERWISE SHIFTING THE MIXTURE. THE MIXTURE SHALL BE LEVELED BY RAKING AND COMPACTED BY USE OF A LIGHT ROLLER. THE MIXTURE SHALL NOT BE SOREDEED OFF OR FINISHED BY FLOATING. NO STEEL TOOLING OF EDGES SHALL BE DONE.
7. THE FINISHED SURFACE OF THE WALKWAY SHALL BE KEPT MOIST FOR FIVE DAYS. BROOM WITH A STEEL BRISTLE BROOM WITHIN 24 HOURS AFTER PLACEMENT TO REMOVE CEMENT MORTAR FILM ON THE EXPOSED SURFACE AND TO FILL CRACKS. BROOM THE SURFACE DAILY FOR FOUR ADDITIONAL DAYS, FILLING CRACKS EACH TIME.
8. ALTERNATE MIX: A BINDER MAY BE USED IN LIEU OF PORTLAND CEMENT. THE BINDER SHALL BE COLORLESS, ODORLESS, AND A NON-TOXIC ORGANIC BINDER SUCH AS "STABILIZER" OR APPROVED EQUAL. THE BINDER SHALL BE BLENDED AT A RATE OF 10 POUNDS PER TON OF CRUSHED DG.
9. INITIAL GRADING AND LEVELING WILL LEAVE A SOMEWHAT INCONSISTENT SURFACE WHICH CAN THEN BE LEVELED WITH A SMOOTHE OR ASPHALT RAKE. THE SURFACE COURSE SHALL BE WATERED SO THAT MOISTURE PERMEATES THE FULL DEPTH. THE SURFACE SHALL BE COMPACTED USING A DOUBLE-DRUM ROLLER OR SIMILAR EQUIPMENT TO GIVE A FINAL DEPTH OF 3-1/2 INCHES WITH AN ABSOLUTE MINIMUM AT ANY POINT OF 2 INCHES. MANUFACTURES RECOMMENDATIONS MAY BE SUBSTITUTED FOR THESE PROCEDURES.
10. THE CONTRACTOR SHALL FURNISH AND INSTALL HEADERS AND HEADER STAKES FOR THE WALKWAYS AS SHOWN ON THE PLANS. HEADER BOARDS AND STAKES SHALL BE FOUNDATION GRADE REDWOOD CONFORMING TO THE REQUIREMENT OF THE USC STANDARD No 25-7, OR SHALL BE DOUGLAS FIR TREATED IN ACCORDANCE WITH THE REQUIREMENTS OF THE USC STANDARD No 25-12. NAILS SHALL BE HOT DIP GALVANIZED STEEL COMMON NAILS. PRE-DRILL HEADER BOARDS AND STAKES TO AVOID SPLITTING AS REQUIRED.
11. HEADER BOARDS SHALL BE INSTALLED STRAIGHT AND TRUE ALIGNMENT ALONG TANGENTS. WHERE THE HEADER BOARD IS ON CURVES, HAVE ALL CURVES SMOOTH AND AVOID NON-TANGENT END OF CURVES. USE OF MULTIPLE "BENDER" BOARDS WILL BE CONSIDERED BY THE INSPECTOR FOR SHARP CURVES.
12. IF NO HEADER BOARDS ARE CALLED FOR ON THE PLANS, THE CONTRACTOR SHALL PROVIDE EDGES THAT ARE EVEN AND UNIFORM IN APPEARANCE. EDGES ARE TO BE TAMPED, RAKED, OR FORMED IN ORDER TO ACHIEVE THIS.
13. IF BASE IS CALLED FOR ON THE PLANS, THE CONTRACTOR SHALL FURNISH, INSTALL, AND COMPACT TO 90% A MINIMUM OF 5 INCHES OF CLASS II AGGREGATE BASE.



1A DECOMPOSED GRANITE SIDEWALK DETAIL



LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD CONSTRUCTION NOTES

1. **Approved Plans** - No construction shall be started without plans approved by the Los Osos Community Services District (LOOSD). The LOOSD Inspector shall be notified at least 48 hours prior to starting of construction. Any construction done without approved plans and prior to notification to the LOOSD Inspector will be rejected and will be at the Contractor's and/or Owner's risk.
2. **Standard Specifications** - All construction work and installations shall conform to the LOOSD Standard Plans and Specifications, and all work shall be subject to the approval of the LOOSD Engineer.
3. **Inspection Agreement** - An executed inspection agreement is required prior to the start of construction.
4. **Inspection** - The LOOSD Inspector, acting on behalf of the LOOSD Engineer, may require revisions to the approved Plans and Specifications to solve unforeseen problems that may arise in the field.
5. **Encroachment Permit** - No work within a County or Caltrans right-of-way shall be performed without an encroachment permit.
6. **Utility Notification** - Prior to beginning any earthwork, the Contractor shall be responsible for contacting all agencies involved and shall locate all facilities prior to excavation in any area. The Contractor shall call Underground Service Alert (USA), toll free at 1-800-662-2444 at least 48 hours prior to the start of construction.
7. **Existing Utilities** - The locations and elevations of existing utilities shown on the plans are based on available records, and are approximate only. The Contractor agrees that he shall assume sole and complete responsibility for locating or having located all underground utilities and other facilities and for protecting the same during the course of construction to the project. Any deviations from the plan location of any existing facilities shall be immediately brought to the attention of the LOOSD Inspector.
8. **Safety** - Neither the Los Osos Community Services District nor the Engineer of Record will be responsible for compliance with safety measures or regulations. The Contractor (including the Owner/Builder) shall design, construct, and maintain all safety devices, and shall be solely responsible for conforming to all Local, State, and Federal, Safety and Health Standards, Laws, and Regulations.
9. **Indemnification** - The Applicant agrees that in accordance with generally accepted construction practices, Applicant shall assume sole and complete responsibility for the condition of the job site during the course of the project, including the safety of persons and property; that this requirement shall apply continuously and not be limited to normal working hours; and the Applicant shall defend, indemnify, and hold the District and District's agents, employees and consultants harmless from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the performance or attempted performance of the work on this project except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the negligence or willful misconduct of the District.

LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD DRAWING  
STANDARD CONSTRUCTION NOTES  
N-1  
NO SCALE

APPROVED BY THE DISTRICT ENGINEER DATE

10. **Protection of Property** - The Contractor shall be responsible for the protection of Public and Private property adjacent to his work, and shall exercise due caution to avoid damage to such property. The Contractor shall replace or repair in their original condition, all improvements within or adjacent to the work area which are not designed for removal, and which are damaged or removed as a result of his operations.

11. **Site Conditions** - The Contractor shall continually review job site conditions. Conditions requiring construction different from that shown on the plans shall be reported to the LOOSD Inspector prior to proceeding with the affected construction.

12. **Contractors Record of Changes** - The Contractor shall maintain a current, complete, and accurate record of all changes which deviate from the construction as shown on these Plans and Specifications for the purpose of providing the Engineer of Record with a basis for the preparation of Record Drawings.

13. **Record Drawings** - A Registered Civil Engineer must certify in accordance with Drawing N-3 that the improvements, when completed, are in conformance with the approved plans subject to approved changes. This certification shall be made prior to the request for final inspection. Record Drawings ("As-Built") are to be prepared by the Engineer of Record prior to Final Acceptance of the work by the LOOSD.

14. **Plan Corrections** - The Plan Check and Approval of these plans by the LOOSD does not relieve the Design Engineer from any discrepancies, errors, or omissions, which may become apparent prior to the completion of construction. The Design Engineer or other designated Engineers of work shall be responsible for correcting any design deficiencies, errors, or omissions to the approval of the LOOSD Engineer in accordance with the LOOSD Standard Plans and Specifications.

LOS OSOS COMMUNITY SERVICES DISTRICT  
STANDARD DRAWING  
STANDARD CONSTRUCTION NOTES  
N-2  
NO SCALE

APPROVED BY THE DISTRICT ENGINEER DATE

**RECORD DRAWING**  
JEFFREY J. CARROLL RCE 40557 EXP. 03/07  
DATE 4-10-05

RECORD DRAWING REVIEWED BY  
NAME DATE  
COUNTY OF SAN LUIS OBISPO

**PUBLIC IMPROVEMENT PLANS FOR TRACT 2161 DETAIL SHEET**  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

DESIGNER: COUNTY CHECKER: OFFICE ENG.: STAFF ENG.:  
APPROVED: 1/5/04  
COUNTY ENGINEER: RCE 26,098  
DEPUTY COUNTY ENGINEER: RCE 30,788  
COUNTY NO. 670  
E 1144

EDS ENGINEERING DEVELOPMENT ASSOCIATES  
1000 SANTA BARBARA ST., SAN LUIS OBISPO, CA 94901  
PHONE: (805) 842-8888 FAX: (805) 842-9504

PRINCIPAL ENGINEER: 12-8-03 7A OF 7

EDA JOB NO.: 20-1615/22512100

EDA JOB No.: 20-1615/2251210





## LEGEND

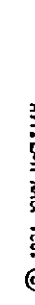
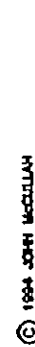
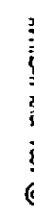
RECORD DRAWING  
REVIEWED BY  
*Jill Ogan* 8/3/05  
NAME DATE  
COUNTY OF SAN LUIS OBISPO

JEFFREY J. EMRICK RCE 40687 EXP. 03-07 DATE 4.6.07

THESE DRAWINGS ARE BASED ON INFORMATION SUPPLIED BY OTHERS WITHOUT VERIFICATION BY EDA DESIGN PROFESSIONALS. NO RESPONSIBILITY IS ASSUMED BY EDA DESIGN PROFESSIONALS FOR THE ACCURACY OR COMPLETENESS OF THIS INFORMATION.

**eda** professionals  
civil engineers • land surveyors • land planners  
1996 santa barbara st • san jose obispo, ca 93440  
ph: 805/465-8848 • email: eda@edainc.com

EDA JOB No.: 20-1615/2251210



**RECORD DRAWING**

design professionals

**eda**

civil engineers • land surveyors • land planners  
1996 santa barbara st. • san luis obispo, ca 93401  
ph: 805/546-4438 • email: eda@eda-inc.com

1

EDA /OR A/c: 30-1615/2251210



**CALIFORNIA COASTAL COMMISSION**

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

[www.coastal.ca.gov](http://www.coastal.ca.gov)



Page: 1

Date: September 24, 2004

**IMPORTANT PUBLIC HEARING NOTICE**  
**NEW APPEAL**

**PERMIT NUMBER:** A-3-SLO-04-019

**APPLICANT(S):** Claire Goedinghous

**APPELLANT(S):** Commissioner John Woolley; Commissioner Mike Reilly, Chair

**DECISION BEING APPEALED:**

Develop eight single family residences in two phases. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer; Phase 2 allows construction of four residences after sewer completion. Residences range in size from 3,920 sq.ft. to 5,580 sq.ft. located on eight parcels ranging from 14,800 sq.ft. to 22,000 sq.ft.

**PROJECT LOCATION:**

Highland & Mar Vista Drives (Estero planning area), Los Osos (San Luis Obispo County) (APN(s) 074-025-008)

**HEARING DATE AND LOCATION:**

**DATE:** Thursday, October 14, 2004

**TIME:** Meeting begins at 9:00 AM **ITEM NO:** Th8c

**PLACE:** Doubletree Club Hotel

1515 Hotel Circle South, San Diego, CA

**PHONE** (619) 881-6900

**HEARING PROCEDURES**

People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

**SUBMISSION OF WRITTEN MATERIALS:**

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

**CALIFORNIA COASTAL COMMISSION**

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

**Th8c**

Filed:	3/9/04
49th day:	4/27/04
49-Day Waiver:	3/24/04
Staff:	JB-SC
Staff report:	9/23/04
Hearing date:	10/14/04

**STAFF REPORT: APPEAL****SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS**

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

**Local Decision**.....D020349P - Approved with conditions (see Exhibit C).

**Appeal Number** .....A-3-SLO-04-019

**Applicant**.....Claire Goedinghaus

**Agent** .....TSLLC/MCD

**Appellants** .....Commissioners John Woolley and Mike Reilly.

**Project location**.....Highland and Mar Vista Drives, Los Osos, San Luis Obispo County (Estero Planning Area (APN(s) 074-025-008) (see Exhibit A).

**Project description** .....Develop eight single-family residences in two phases. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer; Phase 2 allows construction of four residences after sewer completion. Residences range in size from 3,920 s.f. to 5,580 s.f. located on eight parcels ranging from 14,800 s.f. to 22,000 s.f..

**File documents**.....County permit D020349P; San Luis Obispo County certified LCP; Tract 2161; COAL 94-097; Voluntary Merger (County File S030154V); *Evaluation of 1996 Existing Conditions and Habitat Conservation Plan Considerations for Tract 2161* (David Wolff Environmental, 6/7/04); Botanical Survey (V.L. Holland, Susan Weis, 8/3/94); Cultural Resource Investigation (Parker and Associates, 1994).

**Staff recommendation** ...**Project raises a Substantial Issue; Approval with special conditions.**

**Summary of Staff Recommendation**

The County of San Luis Obispo approved a proposal to develop eight single-family residences in two phases in the community of Los Osos. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer. Phase 2 allows construction of four additional residences after sewer completion. The residences range in size from 3,920 square feet to 5,580 square feet and are located on eight parcels ranging from 14,800 square feet to 22,000 square feet.



**California Coastal Commission**  
**October 2004 Meeting in San Diego**

Staff: J.Bishop Approved by: *[Signature]* 10/14/04

This decision has been appealed to the Commission. The standard of review for this project is the San Luis Obispo County certified Local Coastal Program (LCP). The Appellants contend that the project, as approved by the County, is inconsistent with standards and ordinances of the LCP regarding: 1) allowable development densities; and, 2) availability of adequate public services.

The County indicates that the subject 4.35-acre parcel was previously subdivided into eight individual lots (Tract 2161), and subsequently approved a two-phased project totaling eight single-family residences. The Appellants contend that the approved project exceeds the density allowed under the Coastal Zone Land Use Ordinance (CZLUO) of one single-family dwelling for each legal parcel by calling into question the underlying subdivision. The local approval of the subdivision Tract 2161 does not appear to have been appropriately noticed to the Commission and given the amount of time that has passed since the County approved the subdivision (approx. 8 years), it is likely that the coastal permit for Tract 2161 is expired although there is evidence in the record that the tentative tract map approval was properly extended. Coastal development permit extensions have not been filed in accordance with the LCP. Thus, the project as approved by the County raises a **substantial issue**.

Concerns are also raised regarding the availability of public services in the community of Los Osos. LCP Policy 1 for Public Services requires that new development demonstrate the availability of adequate public service capacities prior to issuance of the coastal development permit. The County approved a two-phased project, with Phase 2 being contingent upon connection to the community-wide sewer. In other words, four future homes have been approved reliant on a sewer system that has yet to be built. In addition, the availability of sustainable domestic water supplies in Los Osos remains a serious concern. The County approved project is inconsistent with the LCP because it relies on a phased development at a time when sustainable public service capacities are in question. Thus, a **substantial issue** is raised with respect to public services.

In the time since the appeal was filed, the Applicant has worked with Staff to address some of the substantial issues raised by the phased development, and has agreed to modify the proposed project accordingly. Most significantly, the Applicant has agreed to eliminate Phase 2 development. In addition to the Commission's standard conditions, three additional conditions are recommended here to bring the project into conformance with the LCP. The first identifies the new project through the submittal of modified plans (for clarity in permit implementation and condition compliance). The second condition requires retrofitting of existing facilities in the community to offset the additional water demands of the approved project. The final condition maintains the County conditions of approval, except for Phase 2 development, and indicates that any County conditions imposed under an authority other than the Coastal Act continue to apply. Thus, the proposed project, as conditioned, addresses the previously identified substantial issues, including issues raised by the original subdivision, and it can be found consistent with the LCP and the applicable access and recreation policies of the Coastal Act. Staff recommends **approval with conditions**.





## Staff Report Contents

Summary of Staff Recommendation.....	1
I. Local Government Action.....	4
II. Summary of Appeal Contentions .....	4
III. Standard of Review for Appeals .....	4
IV. Staff Recommendation on Substantial Issue.....	5
Recommended Findings and Declarations.....	5
V. Project Description.....	5
A. Project Background.....	5
B. County Approved Project Description .....	6
VI. Substantial Issue Findings.....	6
VII. Staff Recommendation on De Novo Permit .....	8
VIII. Conditions of Approval.....	9
A. Standard Conditions.....	9
B. Special Conditions.....	10
IX. De Novo Coastal Permit Findings .....	11
1. Allowable Density.....	11
1.1 LCP Allowable Density Standards.....	10
1.2 De Novo Analysis .....	12
1.3 De Novo Conclusion.....	12
2. Public Services.....	12
1.1 LCP Public Service Capacity Standards .....	12
1.2 De Novo Analysis .....	12
1.3 De Novo Conclusion.....	12
3. Public Access and Recreation.....	16
1.1 Coastal Act Standards .....	16
1.2 De Novo Analysis .....	16
1.3 De Novo Conclusion.....	16
X. California Environmental Quality Act (CEQA).....	16
XI. Exhibits	
A. Project Vicinity and Land Use Category Maps	
B. Project Site Plan	
C. Aerial Photos of Site	
D. County Final Local Action Notice	
E. Appellants' Contentions	
F. RWQCB letter regarding Waste Discharge Requirements	



## **I. Local Government Action**

On February 6, 2004, the San Luis Obispo County Hearing Officer approved a coastal development permit for construction of eight (8) single-family residences to be constructed in two phases. The action is subject to 20 Conditions of Approval. A Mitigated Negative Declaration under CEQA was completed for the project on November 20, 2003, and was approved at the same time. Notice of the County's action on the coastal permit was received in the Commission's Central Coast District Office on February 25, 2004. The Commission's ten-working day appeal period for this action began on February 26, 2004 and concluded at 5pm on March 10, 2004. A valid appeal (see below) from Commissioners Woolley and Reilly was received during the appeal period. The complete text of the County's findings and conditions of approval can be found in Exhibit C.

## **II. Summary of Appellants' Contentions**

The appellants, Commissioners Woolley and Reilly, have appealed the final action taken by the County of San Luis Obispo on the basis that approval of the project is inconsistent with policies of the certified Local Coastal Program pertaining to: 1) allowable development density; and 2) availability of public services. Specifically, they contend that the approved project exceeds the density allowed under the Coastal Zone Land Use Ordinance (CZLUO) of one single-family dwelling per legal parcel, and that the phased development project has not shown that adequate public service capacities exist. The appellants' contentions can be found in Exhibit D.

## **III. Standard of Review for Appeals**

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

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





#### **IV. Staff Recommendation on Substantial Issue**

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

**MOTION** : *I move that the Commission determine that Appeal No. A-3-SLO-04-019 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

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

#### **RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-3-SLO-04-019 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

### **Recommended Findings and Declarations**

The Commission finds and declares as follows:

## **V. Project Description**

### **A. Project Background**

The proposed project has a complex history involving a series of local approvals dating back to 1995. The current 8-lot configuration is the result of a lot line adjustment (COAL 94-097), a subdivision (Tract 2161), an amendment to the subdivision (Tract 2161), and a voluntary lot merger (S030184V). The following is a summary of how the 8 lots were created.

#### **COAL 94-097**

August 7, 1995 the County Subdivision Review Board approved a lot line adjustment (COAL 94-097) merging ten (10) lots into four (4) lots, for a net reduction of six (6) lots. These lots, also located in Los Osos, were part of a 10-lot Cuesta-by-the-sea grouping owned by the current applicant. Much of this property is subject to environmental constraints including high groundwater, flooding, and the presence of identified wetlands. The intention of the owner was to offset the density increase of the future subdivision proposal (Tract 2161).



### TRACT 2161

On February 8, 1996 the County approved the subdivision Tract 2161 on the subject 4.35-acre parcel. The six lots that were retired under COAL 94-097 were added to the Tract 2161 parcel for a new total of seven (7) lots. Embedded as a condition of this approval, the property owner was required to record COAL 94-097, as described above. The merger of COAL 94-097 was recorded in San Luis Obispo County on May 7, 1998.

### Road Exception Request

On July 17, 1997 the County amended Tract 2161 by granting a Road Exception Request to the tentative tract map. The road exception request allowed adjustment of the requirement for county standard sidewalk from concrete on both sides of the road (Seahorse Lane) to a decomposed granite pathway on one side of the road only. The Commission received a Final Local Action Notice for this decision on July 23, 1997.

### Voluntary Merger

Because the tentative map for Tract 2161 proposes eight lots instead of seven, one additional lot had to be merged. In 2003, prior to recordation of the final map for Tract 2161 (and as a means to obtain eight lots in Tract 2161), the owner merged two of the remaining Cuesta-by-the-sea lots, leaving a total of three lots. This merger was recorded on November 18, 2003.

## **B. Project Description**

At this time, the County has approved the development of eight single-family residences on Tract 2161 lots. The residences range in size from 3,920 square feet to 5,580 square feet and are located on eight lots ranging from 14,800 square feet to 22,000 square feet. The project is located on the west ends of Highland and Mar Vista Drives, approximately 600 feet west of Doris Avenue in the community of Los Osos, in the Estero Planning Area.

The County approved the development in two phases. Phase 1 allows construction of four residences prior to completion of the Los Osos community sewer. These lots are to be served by onsite septic systems and have been approved by the RWQCB. Upon completion of the Los Osos community sewer, these residences are required to connect to the community sewer and all septic systems are to be abandoned. Phase 2 would construct four new residences after sewer completion. These residences are required to be served by the new community sewer system. The County placed a scenic easement on lots 1, 3, 5, and 7 to assure that these residences could not be developed until after sewer completion (County Condition 3a).

In addition to the residences, the project includes roads, grading and drainage improvements, extensive tree planting, and a dedicated multi-purpose access trail for public use. The County approval includes 20 special conditions related to building heights; grading and erosion control; public works; archaeology; and compliance with RWQCB stormwater pollution provisions.





See Exhibit D for site plans, elevations, and the County's complete findings, and conditions of approval.

## VI. Substantial Issue Findings

The appeals by Commissioners Reilly and Woolley raise a substantial issue, because as approved by the County, the project is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) with respect to 1) allowable densities for new development; and 2) the adequacy of sewer and water supplies.

### Allowable Densities

Maintaining appropriate development densities is an important tool to protect coastal resources and ensure that adequate public services are available to serve the community. The Appellants allege that the County's approval of eight residences exceeds the LCP's density limit of one residence per legal lot (CZLUO Section 23.04.082), calling into question the validity of the underlying subdivision Tract 2161.

The County approval raises critical procedural issues. It appears the County failed to file a Notice of Final Local Action (FLAN) with the Commission for the original Tract 2161 approval. The FLAN would have been filed at the time the Tract 2161 map was approved by the County on February 8, 1996. The Commission has no record of receiving a FLAN and the County has been unable to find any paperwork that would indicate a FLAN was ever created or mailed to the Commission on the project.<sup>1</sup> It is noted that the Commission received a follow-up FLAN for a County approved modification to Tract 2161 (a road exception request) on July 17, 1997. The information transmitted with this FLAN repeats the original findings and conditions for Tract 2161. Arguably, this could have put the Commission on notice of the County's approval of the original subdivision.

Notwithstanding the noticing issue described above, it is believed that the coastal development permit issued for Tract 2161 is expired as there is no record of it being extended at the County. Under the LCP, a coastal development permit is valid for a maximum of 5 years.<sup>2</sup> The final expiration date of the coastal permit in this case, is February 8, 2001 (or July 17, 2002 if the road exception FLAN is used). Under either time scenario the permit appears void because substantial site work on the project did not occur, nor was the subdivision map recorded, within the permit time limit. Records show that the pre-construction meeting between the County and the applicant took place February 3, 2003, nearly two years after permit expiration. According to the applicant's representative tree removal and grubbing did not begin until October of 2002, and rough grading of the site commenced September 30, 2003.<sup>3</sup> The map for Tract 2161 was not recorded until February 2, 2004. Thus, it appears that the coastal permit for the underlying Tract 2161 was never exercised and is no longer valid.

<sup>1</sup> Email communication with Matt Janssen, SLO County Department of Planning and Building, May 10, 2004.

<sup>2</sup> Under CZLUO Section 23.02.050, a maximum number of three, 12-month extensions to the initial 2 year time limit may be granted.

<sup>3</sup> Phone communication with Jeff Edwards, project representative, September 15, 2004.



With respect to other permit extensions, the County records show that the tentative map for Tract 2161 was appropriately extended under the rules of the Subdivision Map Act. However, there is a difference between extending the subdivision tract map and extending the coastal development permit. As described previously, the LCP has specific standards and procedures for permit extensions. In addition to requisite findings, the third and final permit extension requires noticing, a public hearing, and appeal procedures to be followed.

Because of the questions about the validity of the original subdivision, the County approved project for eight single-family homes appears to exceed the allowable density of one residence per legal parcel. Thus, the project raises a **substantial issue**.

#### **Public Services**

LCP Public Works Policy 1 requires that there are "sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line" prior to permitting all new development. The Appellants allege that the approved subdivision and resultant development is inconsistent with the LCP because the County approved project relies on speculative water and sewer service.

#### Water supplies

The proposed project will increase the demand for groundwater at a time when significant concerns remain regarding sustainable water supplies in Los Osos. According to estimates cited by the LCP, the basin is currently being drafted at a greater rate than it is being recharged. New development, particularly residential subdivisions, typically will demand additional water withdrawals from limited groundwater to the detriment of habitat and water supply.

#### Sewer Service

The County approved the project in two phases. Phase 1 approval includes four residences served with on-site septic systems. Phase 2 of the project is to be constructed following completion of a communitywide sewer. Upon completion, the entire development must hook up to the community sewer. Although the sewer project has recently been approved, the phased project relies on a sewer system that has not yet been built. The County approved project is inconsistent with the LCP because it relies on a phased development scheme when adequate sewer service capacities remain in question.

Thus, the project raises a **substantial issue** with respect to the availability of public services.





## VII. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Goedinghaus coastal development permit with conditions.

**MOTION** : *I move that the Commission approve Coastal Development Permit No. A-3-SLO-04-019 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

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

### **RESOLUTION TO APPROVE THE PERMIT:**

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

## VIII. Conditions of Approval

### **A. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **B. Special Conditions**

1. **Authorized Project.** This Coastal Development Permit authorizes only: Phase 1 development of four (4) single-family residences constructed on Tract 2161 lots 2, 4, 6, and 8, consistent with the final plans detailed in Special Condition #2 below.
2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final plans to the Executive Director of the Coastal Commission for review and approval. The final project plans shall demonstrate the following:
  - a) The County required scenic easement (County Condition 3a) shall be noted on undeveloped lots 1, 3, 5, and 7. A notation should be included on the plans that future development of these parcels is subject to a separate coastal development permit.
  - b) The County imposed public access improvements (County Condition 3b), shall be graphically depicted on the project plans. The plans shall be accompanied by evidence that the design and location of the public access improvements have been reviewed and approved by San Luis Obispo County Parks Division.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to the special conditions. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Retrofitting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, evidence that the anticipated water use of this development has been completely offset through the retrofit of existing water fixtures within the Los Osos Community Service District's service area or other verifiable action to reduce existing water use in the service area (e.g., replacement of irrigated landscaping with xeriscaping). The documentation submitted to the Executive Director shall include:
  - a. A detailed assessment of anticipated total water use (including water used for both domestic and landscaping purposes) of the approved development, measured in gallons per year, prepared by a qualified professional, and approved by the Los Osos Community Services District. This assessment shall include the specific data and analyses used to estimate water use, including the number of bedrooms/occupants, the number and types of water fixtures and appliances, the type and extent of project landscaping, and the proposed method of landscape irrigation.





- b. A detailed description of the water saving action(s) that have been taken to offset the amount of water that will be used by the project, and the amount of water savings expected to result from these actions in gallons per year. For retrofits, this shall include a description of the existing and replacement fixtures, their associated water flows, their estimated frequency of use, and the quantity of water savings expected as a result of the retrofits, calculated by a qualified professional. For water savings achieved by reducing landscape irrigation, the applicant shall document the landscaping to be removed, and submit a replacement landscape plan that documents the use of native drought resistant plants and water conserving irrigation techniques, and a quantification of the expected water savings calculated by a landscape professional.
  - c. The specific address/location of where the retrofits and/or landscaping changes identified in the preceding subsection took place and the dates that they were completed, including certification of successful installation by the installers.
  - d. Written verification that the Los Osos Community Services District concurs that the completed retrofits and/or landscape changes will result in water savings that meets or exceeds the anticipated water use of the project.
3. **County Conditions of Approval.** Except for County conditions of approval #1, and #13, all conditions of San Luis Obispo County's approval of the project become conditions of this permit. All conditions of San Luis Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply.

## IX. De Novo Coastal Permit Findings

By finding a substantial issue the Commission takes jurisdiction over the coastal development permit (CDP) for the proposed project. The standard of review for this CDP determination is the County LCP and the Public Access and Recreation policies of the Coastal Act.

### 1. Development Density

#### 1.1 Applicable Policies

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.082b allows for the development of one (1) single family dwelling for each legal parcel. It states in part:

*CZLUO Section 23.04.082 – Single-Family Dwelling: In land use categories where single-family dwellings or mobilehomes are identified by the Land Use Element "A" uses, the number of dwellings allowed on a single lot is as follows...*

*b. Residential categories: One for each legal parcel as defined in Chapter 23.11 (Definitions – Parcel)...*



## 1.2 Analysis of Consistency with Applicable Policies

The Commission has not approved new subdivisions in Los Osos recently given the degree of concerns related to sensitive habitat protection and sustainable public service capacities in the community that have been raised in recent years.<sup>4</sup> However, given the particular circumstances and equities of this case, and the fact that the specific resource impacts due to this project can be effectively addressed through special conditions, the project can still be approved consistent with the LCP.

There is strong evidence in the record that the subdivision development underlying the current approval is a violation because it occurred under an expired permit for Tract 2161. Nonetheless, pursuing it as such makes little sense because of the complex procedural history of the project, inaccurate County direction to the Applicant concerning the validity of the subdivision and the substantial reliance of the applicant on this direction, and the relatively small benefits, in any, that potentially could be achieved through an order to remove existing development and restore the site. To the extent that an increase in residential density in this area raises resource issues under the LCP, these can be effectively addressed through the conditions attached to this permit. Public Service concerns are addressed below in subsequent findings; With respect to habitat, biological studies and environmental documents for the subdivision did not identify any sensitive habitat on the site at the time of the subdivision. (The site has since been substantially developed (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed).) In addition, the project site is bound on three sides by residential development and lacks connectivity with other nearby habitat areas (See Aerial Photo in Exhibit B). This is an important distinction to make given the known sensitive habitat areas further upslope and to the south of the project site. The project is residential infill within an existing developed area. Moreover, the increase in residential density and associated resource demand has been at least partially mitigated by the retirement of seven lots from nearby Cuesta-by-the-Sea. These lots were highly constrained due to the presence of wetlands. To the extent that there was development potential associated with these lots, their elimination is a benefit, as development potential has been shifted from wetlands to an urban area.

With respect to the equities of the case and the reliance of the applicant, the rules for extending coastal development permits are complicated in the LCP, particularly for the third (and final) extension. Approval of a third time extension requires specific findings to be made, additional noticing, and a new public hearing. More important, the County records show that the Applicant made efforts to extend the permits in a timely manner consistent with the direction of the County. The Applicant followed the County's direction and was led to believe that extending the tract map would also extend the life of the coastal development permit. It does not seem reasonable to penalize the Applicant for the many procedural missteps of this case.

As described, the project has a complex history. The procedural issues (i.e. noticing, permit expiration, and extensions) discussed in the Substantial Issue findings reveal a lack of coordination between the Commission and the County on this particular project. This issue was highlighted in the Periodic

---

<sup>4</sup> Denials of proposed subdivisions and conditional certificates of compliance in Los Osos by the Coastal Commission include coastal development permit applications A-3-SLO-98-087 (Pratt/Cabrillo Associates, Tract 1873), A-3-SLO-99-079 (Linsley Subdivision), and A-3-SLO-01-108 (Schoenfield Certificates of Compliance)





Review of 2001. The County has recently responded to these concerns through the Phase One Periodic Review Implementation effort which further clarifies and implements appropriate noticing procedures.

### 1.3 De Novo Conclusion

The project has a complex permitting history and raises important procedural issues. Adequate noticing of local approvals and accurate information regarding County procedures has been an ongoing concern with Commission staff and the County and strides are being made to improve this situation. In this case, however, it seems unreasonable to place the burden on the Applicants. As mentioned, the Applicant pursued the development in accordance with the direction given by the County. As applied in this case, the special conditions in the following sections of this report effectively resolve the substantive resource protection concerns raised by the appeal.

## 2. Public Services

### 2.1 Applicable Policies

As required by Public Works Policy 1, all new development must demonstrate that there are sufficient public service capacities to serve the development:

*Public Works Policy 1: Availability of Service Capacity. New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...*

The Estero Area Plan contains the Interim Service Capacity Allocation standard for new water allocations in the community of Los Osos, and states:

*Interim Service Capacity Allocation. Prior to completion of a Resource Capacity Study, the following priorities for water use shall be established, which shall be implemented through the review and approval of subdivision and development plan proposals.*

- a. Reservation of 800 acre-feet per year (consumptive use) for agricultural use to protect existing and projected agricultural water needs in accordance with the Brown and Caldwell study (1974).*
- b. Projected infill of residential, commercial, and visitor-serving uses on existing subdivided lots.*
- c. Extend services to areas where services will correct existing or potential problems (e.g., areas with high nitrate readings) where individual wells are now in use.*
- d. Additional land division will be permitted within substantially subdivided areas in*



*accordance with lot sizes permitted in the Land Use Element and Coastal Zone Land Use Ordinance. Findings must be made that resources are adequate to serve the previously identified higher priorities uses in addition to proposed lots.*

*e. Additional divisions would be permitted within the urban service line boundary only where adequate additional capacity is identified and it can be demonstrated that the proposed development would not jeopardize the availability of resources available to higher priority proposed uses.*

*f. Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and on-half acres.*

## **2.2 Analysis of Consistency with Applicable Policies**

The LCP requires that new development be environmentally-sustainable, both in terms of available infrastructure and in terms of potential impacts to environmental resources such as groundwater. Public Works Policy 1 requires that there are "sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line" prior to permitting all new development. In this case, significant issues have been raised regarding the availability of adequate public services to support the project.

### **Sewer**

The proposed project was approved in two phases by San Luis Obispo County; Phase 1 commencing initially with septic tank service and Phase 2 taking place when that portion of the project can be connected to a community sewer system (County Condition #1, Exhibit C). Upon completion, the entire development must hook up to the community sewer.

This phased development scheme is the only manner that the project as a whole could be considered due to the current sewer moratorium in Los Osos. In January 1988, the Regional Water Quality Board imposed a septic tank discharge moratorium due to water quality degradation of the Bay and the groundwater basin from septic disposal. A prohibition zone has been established where expansions of existing buildings and new residential construction has been halted until the County provides a solution to the water degradation problem. Projects in Los Osos within the prohibition area (as is the case here) are limited to replacement of existing discharges. However, in this case, the Regional Water Quality Control Board (RWQCB) has exempted the project from the septic system prohibition because the phasing allows the project to maintain one-acre minimums for septic tank disposals (See letter from the RWQCB dated July 11, 2001 in Exhibit F of this report.)

Even though Phase 2 development can only occur once a community sewer system is in place, the phasing scheme approved by the County raises significant concern. First, it is uncertain when a community sewer system will be online. As discussed in preceding paragraphs, there has been over 20 years of community discussion surrounding substandard septic systems and adverse impacts to the quality of groundwater. While progress has been made recently regarding site design and a community sewage treatment plant, and the Commission has approved a permit for a sewer plant, the details of anticipated





community buildout, treatment plant capacity, and schedules of service remain uncertain.

Secondly, circumstances may change affecting the way in which the proposed future Phase 2 project would be analyzed. In the amount of time it takes to connect Phase 2 development with the communitywide sewer, a number of changed circumstances may occur. Changed circumstances can include a change in statewide resource policies, new knowledge about environmental threats, or newly listed endangered species in Los Osos, such as occurred in 1994 when the endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) was federally listed. Changed circumstances such as this would affect the way in which new development projects in the area would be evaluated.

In the time since the appeal was filed, the Applicant has worked with Staff to address the issues raised by the development. The applicant has agreed to modify their proposed project to eliminate the speculative Phase 2 development. Special Condition 1 requires the applicant to submit modified plans showing the elimination of Phase 2 for clarity in permit implementation and condition compliance.

### **Water Supply**

In addition to the issues surrounding community sewer capacities, there are also concerns regarding the additional water demands created by the development. This is problematic due to the uncertainty surrounding the safe yield of the Los Osos groundwater basin from which Los Osos receives its water. According to estimates cited by the LCP, the Los Osos groundwater basin is currently being drafted at a greater rate than it is being recharged. The Resource Management System has recommended a Level of Severity (LOS)<sup>5</sup> of either II or III for water supply and distribution in Los Osos. This issue is detailed in the findings from the Coastal Commission Periodic Review of the San Luis Obispo County LCP.<sup>6</sup>

Most recently, the Los Osos Community Services District prepared a Safe Yield Analysis for Los Osos. The report was prepared by Cleath & Associates and was made part of the Los Osos Water Master Plan (August 2002). The findings state that under current conditions the Los Osos Valley ground water basin is estimated to have a yield of 3,560 acre-feet per year. Current ground water production in the basin has averaged 3,380 afy over the past 10 years. However, as noted in the 2001 Periodic Review, eight of the past fifteen years have been in overdraft. The safe yield analysis suggests that limited growth may be accommodated if accompanied by strategic use of extraction and recharge systems. However, without passing judgment on this assessment, it is premature to rely upon it. A thorough review and analysis of the new information through the LCP Estero Area Plan Update is needed.

The Estero Area Plan prioritizes water allocations for new development in Los Osos through the Interim Service Capacity Allocation (ISCA). Under the ISCA, new subdivisions are a low priority compared to us such as infill development on existing subdivided lots and agriculture. The Applicants highlight the fact that the increased density has been mitigated by the retirement of seven lots from Cuesta-by-the-Sea.

---

<sup>5</sup> For water resources a LOS III exists when water demand equals the available resource; the amount of consumption has reached the dependable supply of the resource. LOS II occurs when water demand equals or exceeds the estimated dependable supply.

<sup>6</sup> page 62-63 of Exhibit A to Periodic Review Report dated July 12, 2001



To address concerns related to water supplies, Special condition 2 requires the applicant to implement a special retrofitting condition that would offset the additional water withdrawals caused by four new residences. The conditions of this permit allow the proposed development to be constructed only if its anticipated water use is completely offset through the implementation of verifiable water conserving actions, such as by replacing existing water fixtures with water conserving fixtures, and/or replacing irrigated landscapes with landscaping that requires little to no water. This approach will allow the project to proceed in a manner that will not exacerbate existing concerns regarding the adequacy of Los Osos water supplies.

This approach, by itself, does not provide adequate guarantees that retrofits will be completed in a timely fashion, or adequately compensate for the additional water use attributable to the proposed development. Therefore, the conditions of this permit specify that the water conserving actions required to offset the increase in water demand associated with the project must be completed before the coastal development permit is issued. The terms of this condition also call for the LOCSO to participate in reviewing the adequacy of the proposed water savings actions, and in ensuring that the necessary water saving actions are effectively implemented and maintained. With this condition, the project will avoid inconsistencies with LCP requirements calling for adequate water supplies.

### **2.3. Public Services Conclusion**

Given the uncertainty surrounding existing and future public service capacities and the potential for changing environmental resource constraints in Los Osos, it is appropriate to take a precautionary approach and not approve Phase 2 development at this time. Following the appeal, the Applicant has agreed to delete Phase 2 from the approved project.

By prohibiting a net increase in water use (see Special Condition 2), the project will not result in additional withdrawals and will thereby avoid adverse impacts to coastal resources. By prohibiting Phase 2 development (see Special Condition 1) and requiring retrofitting (see Special Condition 2), the project will not rely on speculative public service capacities or water availability and will thereby avoid potential adverse impacts to coastal resources. Only with these conditions can the Commission approve the project consistent with the Public Works policies of the LCP.

## **3. Public Access and Recreation**

### **3.1 Applicable Policies**

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Because this project is located between Los Osos Valley Road (the first through public road) and the sea, for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act. The Coastal Act includes requirements to maximize access, protect existing access, provide access in new





development projects, and protect lands for public recreational uses and facilities (including Coastal Act policies 30210 – 30214, 30221 – 30223, and 30240(b)).

### **3.2 Analysis**

#### **Multi-purpose Access Trail**

In the past the public has used the parcel as a through public access/equestrian connection from inland Sea Horse Lane through to Pecho Road and the beach. In part, this is the reason for the County's requirements to construct a public access trail at the southern property boundary. The proposed multi-purpose public trail would enhance through access from Sea Horse Lane to Pecho Road by providing a designated space for pedestrians, bicyclists, and horseback riders to move between these two roads towards the coast. According to the applicant a portion of this trail is already complete. This portion of the project should enhance public access as directed by the Coastal Act cited above. To formalize the multi-purpose access trail Special Condition 1c requires that it be visually depicted on final plans and that the design and location be approved by the County Parks Division.

#### **3.3. Public Access and Recreation Conclusion**

The proposed development can be found consistent with the LCP and Coastal Act public access, recreation, and priority site policies cited above.

### **X. California Environmental Quality Act (CEQA)**

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

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.



**CALIFORNIA COASTAL COMMISSION**

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

**Th8a****RECORD PACKET COPY**

Filed: 3/9/04  
49th day: 4/27/04  
49-Day Waiver: 3/24/04  
Staff: JB-SC  
Approved w/ Conditions: 10/14/04  
Revised Findings Staff report: 10/28/04  
Revised Findings Hearing date: 11/18/04

**COASTAL DEVELOPMENT PERMIT REVISED FINDINGS**

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

**Local Decision**.....D020349P - Approved with conditions (see Exhibit C).

**Appeal Number** .....A-3-SLO-04-019

**Applicant**.....Claire Goedinghaus

**Agent** .....TSLLC/MCD

**Appellants** .....Commissioners John Woolley and Mike Reilly.

**Project location**.....Highland and Mar Vista Drives, Los Osos, San Luis Obispo County (Estero Planning Area (APN(s) 074-025-008) (see Exhibit A).

**Project description** .....Develop eight single-family residences in two phases. Phase 1 allows the construction of four residences prior to completion of the Los Osos community sewer; Phase 2 allows construction of four residences after sewer completion. Residences range in size from 3,920 s.f. to 5,580 s.f. located on eight parcels ranging from 14,800 s.f. to 22,000 s.f..

**File documents**.....County permit D020349P; San Luis Obispo County certified LCP; Tract 2161; COAL 94-097; Voluntary Merger (County File S030154V); *Evaluation of 1996 Existing Conditions and Habitat Conservation Plan Considerations for Tract 2161*(David Wolff Environmental, 6/7/04); Botanical Survey (V.L. Holland, Susan Weis, 8/3/94); Cultural Resource Investigation (Parker and Associates, 1994).

**Staff recommendation** ...Approval

**Commissioners Eligible to Vote:** Caldwell, Iseman, Kram, Kruer, Nava, Neely, Peters, Potter, Rose, Albert, and Burke.

**California Coastal Commission****November 2004 Meeting in San Pedro**Staff: J.Bishop Approved by: *C.J.L. 10/28/04*



**Summary:** On October 14, 2004 the Commission found Substantial Issue with respect to the appeal of this project in Los Osos, and subsequently approved the project pursuant to the staff recommendation with one change to Special Condition #3. The Commission replaced a recommended water retrofit condition with a condition to minimize water use associated with the project. Revisions to the Conditions and Findings to reflect this Commission action are on page 6 (Special Condition #3), and pages 10 and 11.

## Staff Report Contents

1. Staff Recommendation on Revised Findings.....	3
De Novo Findings and Declarations .....	3
2. Project Description.....	3
A. Project Background.....	3
B. Project Description.....	4
3. Conditions of Approval.....	5
A. Standard Conditions.....	5
B. Special Conditions .....	5
4. Coastal Development Permit Findings .....	6
A. Development Density.....	6
B. Public Services .....	8
C. Public Access and Recreation .....	11
5. California Environmental Quality Act (CEQA) .....	12
6. Exhibits	
A. Project Vicinity and Land Use Category Maps	
B. Project Site Plan	
C. Aerial Photos of Site	
D. County Final Local Action Notice	
E. Appellants' Contentions	
F. RWQCB letter regarding Waste Discharge Requirements	



## 1. Staff Recommendation on Revised Findings

Staff recommends that the Commission adopt the following revised findings in support of its conditional approval of a coastal development permit for the proposed development on October 14, 2004.

**Motion.** I move that the Commission adopt the revised findings in support of the Commission's action on October 14, 2004 approving the development with conditions proposed under appeal number A-3-SLO-04-019 pursuant to the staff recommendation.

**Staff Recommendation of Adoption.** Staff recommends a **YES** vote. Passage of this motion will result in adoption of the revised findings as set forth in this report. The motion requires a majority vote of the members from the prevailing side present at the October 14, 2004 hearing, with at least three of the prevailing members voting. Commissioners eligible to vote on the revised findings are Commissioners Caldwell, Iseman, Kram, Kruer, Nava, Neely, Peters, Potter, Rose, Albert, and Burke. If the motion fails, the revised findings are postponed to a later meeting.

**Resolution.** The Commission hereby adopts the findings set forth below for approval with conditions of a coastal development permit for the proposed development on the grounds that the findings support the Commission's decision made on October 14, 2004 and accurately reflect reasons for it.

## De Novo Findings and Declarations

### 2. Project Description

#### A. Project Background

The proposed project has a complex history involving a series of local approvals dating back to 1995. The current 8-lot configuration is the result of a lot line adjustment (COAL 94-097), a subdivision (Tract 2161), an amendment to the subdivision (Tract 2161), and a voluntary lot merger (S030184V). The following is a summary of how the 8 lots were created.

##### COAL 94-097

August 7, 1995 the County Subdivision Review Board approved a lot line adjustment (COAL 94-097) merging ten (10) lots into four (4) lots, for a net reduction of six (6) lots. These lots, also located in Los Osos, were part of a 10-lot Cuesta-by-the-sea grouping owned by the current applicant. Much of this property is subject to environmental constraints including high groundwater, flooding, and the presence of identified wetlands. The intention of the owner was to offset the density increase of the future subdivision proposal (Tract 2161).

##### TRACT 2161

On February 8, 1996 the County approved the subdivision Tract 2161 on the subject 4.35-acre parcel.





The six lots that were retired under COAL 94-097 were added to the Tract 2161 parcel for a new total of seven (7) lots. Embedded as a condition of this approval, the property owner was required to record COAL 94-097, as described above. The merger of COAL 94-097 was recorded in San Luis Obispo County on May 7, 1998.

#### Road Exception Request

On July 17, 1997 the County amended Tract 2161 by granting a Road Exception Request to the tentative tract map. The road exception request allowed adjustment of the requirement for county standard sidewalk from concrete on both sides of the road (Seahorse Lane) to a decomposed granite pathway on one side of the road only. The Commission received a Final Local Action Notice for this decision on July 23, 1997.

#### Voluntary Merger

Because the tentative map for Tract 2161 proposes eight lots instead of seven, one additional lot had to be merged. In 2003, prior to recordation of the final map for Tract 2161 (and as a means to obtain eight lots in Tract 2161), the owner merged two of the remaining Cuesta-by-the-sea lots, leaving a total of three lots. This merger was recorded on November 18, 2003.

### **B. Project Description**

At this time, the County has approved the development of eight single-family residences on Tract 2161 lots. The residences range in size from 3,920 square feet to 5,580 square feet and are located on eight lots ranging from 14,800 square feet to 22,000 square feet. The project is located on the west ends of Highland and Mar Vista Drives, approximately 600 feet west of Doris Avenue in the community of Los Osos, in the Estero Planning Area.

The County approved the development in two phases. Phase 1 allows construction of four residences prior to completion of the Los Osos community sewer. These lots are to be served by onsite septic systems and have been approved by the RWQCB. Upon completion of the Los Osos community sewer, these residences are required to connect to the community sewer and all septic systems are to be abandoned. Phase 2 would construct four new residences after sewer completion. These residences are required to be served by the new community sewer system. The County placed a scenic easement on lots 1, 3, 5, and 7 to assure that these residences could not be developed until after sewer completion (County Condition 3a).

In addition to the residences, the project includes roads, grading and drainage improvements, extensive tree planting, and a dedicated multi-purpose access trail for public use. The County approval includes 20 special conditions related to building heights; grading and erosion control; public works; archaeology; and compliance with RWQCB stormwater pollution provisions.

**See Exhibit D for site plans, elevations, and the County's complete findings, and conditions of approval.**



### 3. Conditions of Approval

#### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

#### B. Special Conditions

1. **Authorized Project.** This Coastal Development Permit authorizes only: Phase 1 development of four (4) single-family residences constructed on Tract 2161 lots 2, 4, 6, and 8, consistent with the final plans detailed in Special Condition #2 below.
2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final plans to the Executive Director of the Coastal Commission for review and approval. The final project plans shall demonstrate the following:
  - a) The County required scenic easement (County Condition 3a) shall be noted on undeveloped lots 1, 3, 5, and 7. A notation should be included on the plans that future development of these parcels is subject to a separate coastal development permit.
  - b) The County imposed public access improvements (County Condition 3b), shall be graphically depicted on the project plans. The plans shall be accompanied by evidence that the design and location of the public access improvements have been reviewed and approved by San Luis Obispo County Parks Division.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to the special conditions. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur





without a Commission amendment to coastal development permit unless the Executive Director determines that no amendment is necessary.

3. **Water Conservation.** Each parcel shall be developed and maintained with the following water conservation measures:

Exterior

All landscaping shall be drought tolerant trees and native plants ("xeriscape"), with drip irrigation as necessary to establish said vegetation. Each parcel shall be allowed a single turf area not to exceed 500 square feet. Flow restrictors shall be installed on exterior hose bibs.

Interior

All plumbing fixtures will be rated "low flow" (1.6 gallons per flush for toilets). All water-consuming appliances, including washing machines, shall be "Energy Star" rated.

4. **County Conditions of Approval.** Except for County conditions of approval #1, and #13, all conditions of San Luis Obispo County's approval of the project become conditions of this permit. All conditions of San Luis Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply.

## 4. Coastal Development Permit Findings

### A. Development Density

#### 1.1 Applicable Policies

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.082b allows for the development of one (1) single family dwelling for each legal parcel. It states in part:

*CZLUO Section 23.04.082 – Single-Family Dwelling: In land use categories where single-family dwellings or mobilehomes are identified by the Land Use Element "A" uses, the number of dwellings allowed on a single lot is as follows...*

*b. Residential categories: One for each legal parcel as defined in Chapter 23.11 (Definitions – Parcel)...*

#### 1.2 Analysis of Consistency with Applicable Policies

The Commission has not approved new subdivisions in Los Osos recently given the degree of concerns related to sensitive habitat protection and sustainable public service capacities in the community that



have been raised in recent years.<sup>1</sup> However, given the particular circumstances and equities of this case, and the fact that the specific resource impacts due to this project can be effectively addressed through special conditions, the project can still be approved consistent with the LCP.

There is strong evidence in the record that the subdivision development underlying the current approval is a violation because it occurred under an expired permit for Tract 2161. Nonetheless, pursuing it as such makes little sense because of the complex procedural history of the project, inaccurate County direction to the Applicant concerning the validity of the subdivision and the substantial reliance of the applicant on this direction, and the relatively small benefits, in any, that potentially could be achieved through an order to remove existing development and restore the site. To the extent that an increase in residential density in this area raises resource issues under the LCP, these can be effectively addressed through the conditions attached to this permit. Public Service concerns are addressed below in subsequent findings; With respect to habitat, biological studies and environmental documents for the subdivision did not identify any sensitive habitat on the site at the time of the subdivision. The site has since been substantially developed (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed). In addition, the project site is bound on three sides by residential development and lacks connectivity with other nearby habitat areas (See Aerial Photo in Exhibit B). This is an important distinction to make given the known sensitive habitat areas further upslope and to the south of the project site. The project is residential infill within an existing developed area. Moreover, the increase in residential density and associated resource demand has been at least partially mitigated by the retirement of seven lots from nearby Cuesta-by-the-Sea. These lots were highly constrained due to the presence of wetlands. To the extent that there was development potential associated with these lots, their elimination is a benefit, as development potential has been shifted from wetlands to an urban area.

With respect to the equities of the case and the reliance of the applicant, the rules for extending coastal development permits are complicated in the LCP, particularly for the third (and final) extension. Approval of a third time extension requires specific findings to be made, additional noticing, and a new public hearing. More important, the County records show that the Applicant made efforts to extend the permits in a timely manner consistent with the direction of the County. The Applicant followed the County's direction and was led to believe that extending the tract map would also extend the life of the coastal development permit. It does not seem reasonable to penalize the Applicant for the many procedural missteps of this case.

As described, the project has a complex history. The procedural issues (i.e. noticing, permit expiration, and extensions) discussed in the Substantial Issue findings reveal a lack of coordination between the Commission and the County on this particular project. This issue was highlighted in the Periodic Review of 2001. The County has recently responded to these concerns through the Phase One Periodic Review Implementation effort which further clarifies and implements appropriate noticing procedures.

---

<sup>1</sup> Denials of proposed subdivisions and conditional certificates of compliance in Los Osos by the Coastal Commission include coastal development permit applications A-3-SLO-98-087 (Pratt/Cabrillo Associates, Tract 1873), A-3-SLO-99-079 (Linsley Subdivision), and A-3-SLO-01-108 (Schoenfeld Certificates of Compliance)



### 1.3 De Novo Conclusion

The project has a complex permitting history and raises important procedural issues. Adequate noticing of local approvals and accurate information regarding County procedures has been an ongoing concern with Commission staff and the County and strides are being made to improve this situation. In this case, however, it seems unreasonable to place the burden on the Applicants. As mentioned, the Applicant pursued the development in accordance with the direction given by the County. As applied in this case, the special conditions in the following sections of this report effectively resolve the substantive resource protection concerns raised by the appeal.

## B. Public Services

### 2.1 Applicable Policies

As required by Public Works Policy 1, all new development must demonstrate that there are sufficient public service capacities to serve the development:

*Public Works Policy 1: Availability of Service Capacity. New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...*

The Estero Area Plan contains the Interim Service Capacity Allocation standard for new water allocations in the community of Los Osos, and states:

*Interim Service Capacity Allocation. Prior to completion of a Resource Capacity Study, the following priorities for water use shall be established, which shall be implemented through the review and approval of subdivision and development plan proposals.*

- a. Reservation of 800 acre-feet per year (consumptive use) for agricultural use to protect existing and projected agricultural water needs in accordance with the Brown and Caldwell study (1974).*
- b. Projected infill of residential, commercial, and visitor-serving uses on existing subdivided lots.*
- c. Extend services to areas where services will correct existing or potential problems (e.g., areas with high nitrate readings) where individual wells are now in use.*
- d. Additional land division will be permitted within substantially subdivided areas in accordance with lot sizes permitted in the Land Use Element and Coastal Zone Land Use Ordinance. Findings must be made that resources are adequate to serve the previously identified higher priorities uses in addition to proposed lots.*





*e. Additional divisions would be permitted within the urban service line boundary only where adequate additional capacity is identified and it can be demonstrated that the proposed development would not jeopardize the availability of resources available to higher priority proposed uses.*

*f. Land divisions in the areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and on-half acres.*

## **2.2 Analysis of Consistency with Applicable Policies**

The LCP requires that new development be environmentally-sustainable, both in terms of available infrastructure and in terms of potential impacts to environmental resources such as groundwater. Public Works Policy 1 requires that there are "sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line" prior to permitting all new development. In this case, significant issues have been raised regarding the availability of adequate public services to support the project.

### **Sewer**

The proposed project was approved in two phases by San Luis Obispo County; Phase 1 commencing initially with septic tank service and Phase 2 taking place when that portion of the project can be connected to a community sewer system (County Condition #1, Exhibit C). Upon completion, the entire development must hook up to the community sewer.

This phased development scheme is the only manner that the project as a whole could be considered due to the current sewer moratorium in Los Osos. In January 1988, the Regional Water Quality Board imposed a septic tank discharge moratorium due to water quality degradation of the Bay and the groundwater basin from septic disposal. A prohibition zone has been established where expansions of existing buildings and new residential construction has been halted until the County provides a solution to the water degradation problem. Projects in Los Osos within the prohibition area (as is the case here) are limited to replacement of existing discharges. However, in this case, the Regional Water Quality Control Board (RWQCB) has exempted the project from the septic system prohibition because the phasing allows the project to maintain one-acre minimums for septic tank disposals (See letter from the RWQCB dated July 11, 2001 in Exhibit F of this report.)

Even though Phase 2 development can only occur once a community sewer system is in place, the phasing scheme approved by the County raises significant concern. First, it is uncertain when a community sewer system will be online. As discussed in preceding paragraphs, there has been over 20 years of community discussion surrounding substandard septic systems and adverse impacts to the quality of groundwater. While progress has been made recently regarding site design and a community sewage treatment plant, and the Commission has approved a permit for a sewer plant, the details of anticipated community buildout, treatment plant capacity, and schedules of service remain uncertain.

Secondly, circumstances may change affecting the way in which the proposed future Phase 2 project would be analyzed. In the amount of time it takes to connect Phase 2 development with the



communitywide sewer, a number of changed circumstances may occur. Changed circumstances can include a change in statewide resource policies, new knowledge about environmental threats, or newly listed endangered species in Los Osos, such as occurred in 1994 when the endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) was federally listed. Changed circumstances such as this would affect the way in which new development projects in the area would be evaluated.

In the time since the appeal was filed, the Applicant has worked with Staff to address the issues raised by the development. The applicant has agreed to modify their proposed project to eliminate the speculative Phase 2 development. Special Condition 1 requires the applicant to submit modified plans showing the elimination of Phase 2 for clarity in permit implementation and condition compliance.

### **Water Supply**

In addition to the issues surrounding community sewer capacities, there are also concerns regarding the additional water demands created by the development. This is problematic due to the uncertainty surrounding the safe yield of the Los Osos groundwater basin from which Los Osos receives its water. According to estimates cited by the LCP, the Los Osos groundwater basin is currently being drafted at a greater rate than it is being recharged. The Resource Management System has recommended a Level of Severity (LOS)<sup>2</sup> of either II or III for water supply and distribution in Los Osos. This issue is detailed in the findings from the Coastal Commission Periodic Review of the San Luis Obispo County LCP.<sup>3</sup>

Most recently, the Los Osos Community Services District prepared a Safe Yield Analysis for Los Osos. The report was prepared by Cleath & Associates and was made part of the Los Osos Water Master Plan (August 2002). The findings state that under current conditions the Los Osos Valley ground water basin is estimated to have a yield of 3,560 acre-feet per year. Current ground water production in the basin has averaged 3,380 afy over the past 10 years. However, as noted in the 2001 Periodic Review, eight of the past fifteen years have been in overdraft. The safe yield analysis suggests that limited growth may be accommodated if accompanied by strategic use of extraction and recharge systems. However, without passing judgment on this assessment, it is premature to rely upon it. A thorough review and analysis of the new information through the LCP Estero Area Plan Update is needed.

The Estero Area Plan prioritizes water allocations for new development in Los Osos through the Interim Service Capacity Allocation (ISCA). Under the ISCA, new subdivisions are a low priority compared to us such as infill development on existing subdivided lots and agriculture. The Applicants highlight the fact that the increased density has been mitigated by the retirement of seven lots from Cuesta-by-the-Sea.

To address concerns related to water supplies, Special condition 3 requires the applicant to minimize water use associated with the project through the use of both exterior (e.g. landscaping) and interior water conservation measures. A retrofit condition would not be appropriate given the current absence of a retrofit program in Los Osos. With this condition, the project will avoid inconsistencies with LCP

<sup>2</sup> For water resources a LOS III exists when water demand equals the available resource; the amount of consumption has reached the dependable supply of the resource. LOS II occurs when water demand equals or exceeds the estimated dependable supply.

<sup>3</sup> page 62-63 of Exhibit A to Periodic Review Report dated July 12, 2001



requirements calling for adequate water supplies.

### **2.3. Public Services Conclusion**

Given the uncertainty surrounding existing and future public service capacities and the potential for changing environmental resource constraints in Los Osos, it is appropriate to take a precautionary approach and not approve Phase 2 development at this time. Following the appeal, the Applicant has agreed to delete Phase 2 from the approved project.

By minimizing new water use (see Special Condition 3), the project will avoid adverse impacts to coastal resources. By prohibiting Phase 2 development (see Special Condition 1) the project will not rely on speculative public service capacities and will thereby avoid potential adverse impacts to coastal resources. Only with these conditions can the Commission approve the project consistent with the Public Works policies of the LCP.

## **C. Public Access and Recreation**

### **3.1 Applicable Policies**

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Because this project is located between Los Osos Valley Road (the first through public road) and the sea, for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act. The Coastal Act includes requirements to maximize access, protect existing access, provide access in new development projects, and protect lands for public recreational uses and facilities (including Coastal Act policies 30210 – 30214, 30221 – 30223, and 30240(b)).

### **3.2 Analysis**

#### **Multi-purpose Access Trail**

In the past the public has used the parcel as a through public access/equestrian connection from inland Sea Horse Lane through to Pecho Road and the beach. In part, this is the reason for the County's requirements to construct a public access trail at the southern property boundary. The proposed multi-purpose public trail would enhance through access from Sea Horse Lane to Pecho Road by providing a designated space for pedestrians, bicyclists, and horseback riders to move between these two roads towards the coast. According to the applicant a portion of this trail is already complete. This portion of the project should enhance public access as directed by the Coastal Act cited above. To formalize the multi-purpose access trail Special Condition 1c requires that it be visually depicted on final plans and that the design and location be approved by the County Parks Division.





### **3.3. Public Access and Recreation Conclusion**

The proposed development can be found consistent with the LCP and Coastal Act public access, recreation, and priority site policies cited above.

## **5. California Environmental Quality Act (CEQA)**

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

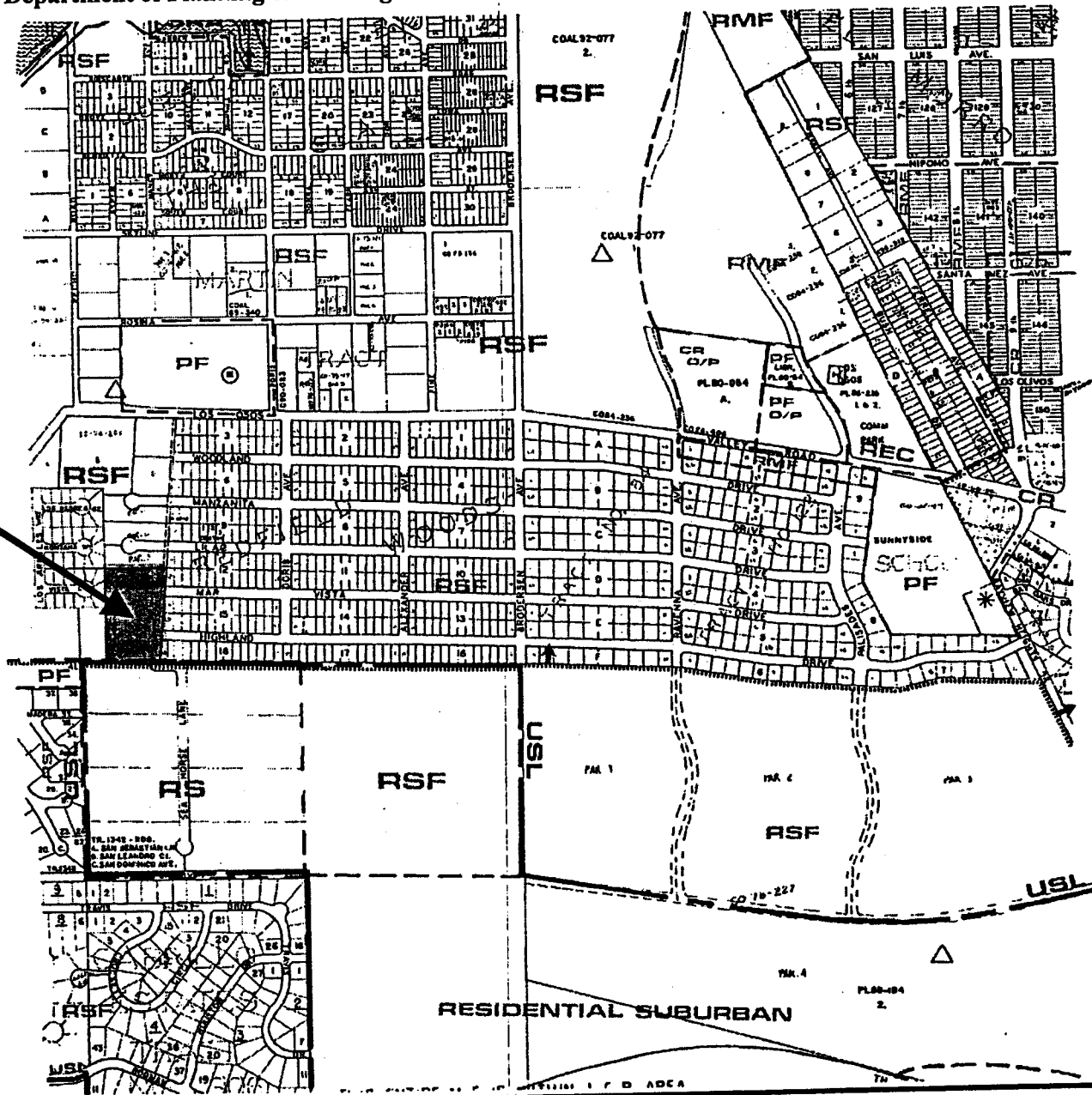
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.





**Exhibit**  
**Vicinity Map**

Site

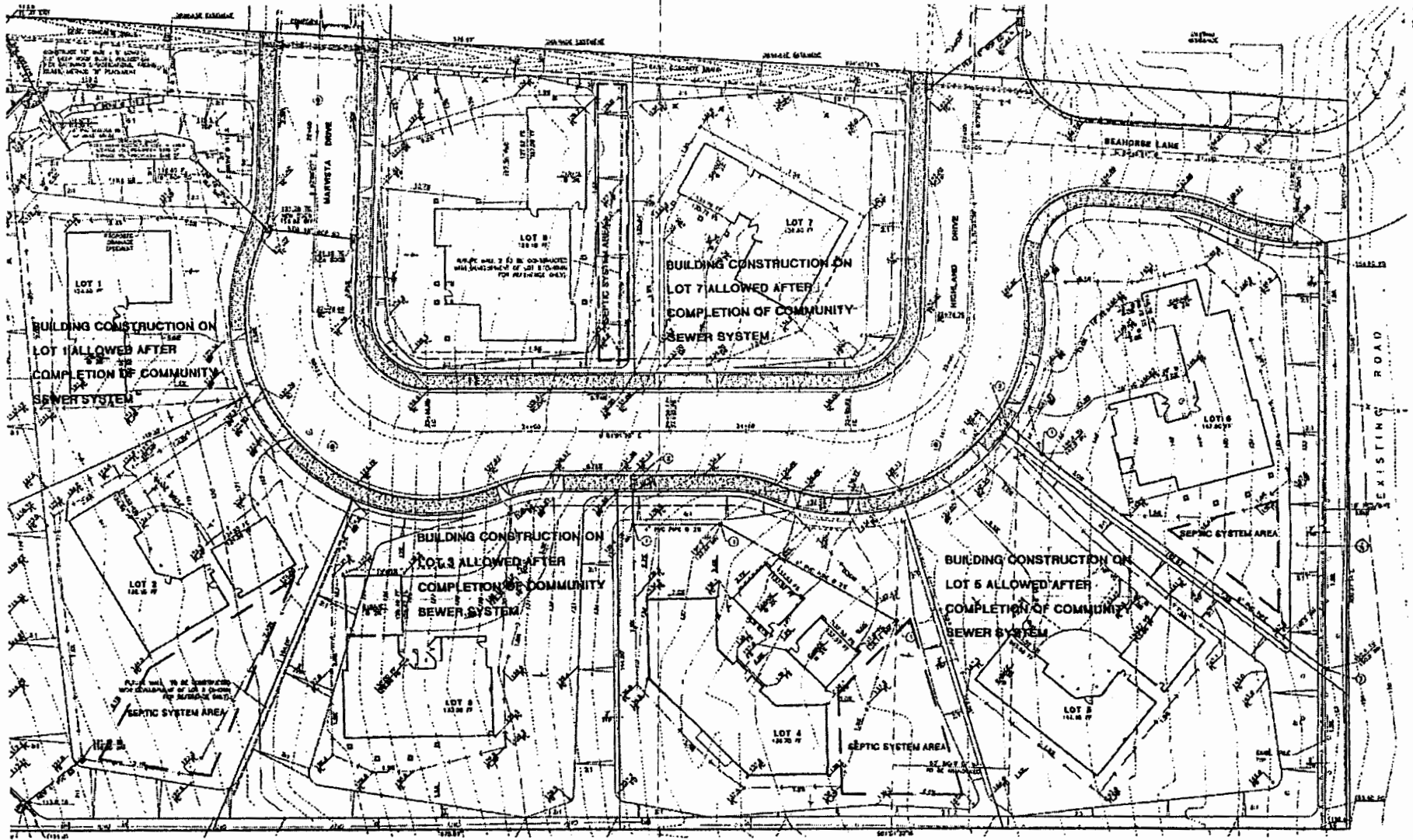


Project  
Minor Use Permit/ Coastal Development Permit  
Goedinghaus - D020349P



Exhibit  
Land Use Category Map





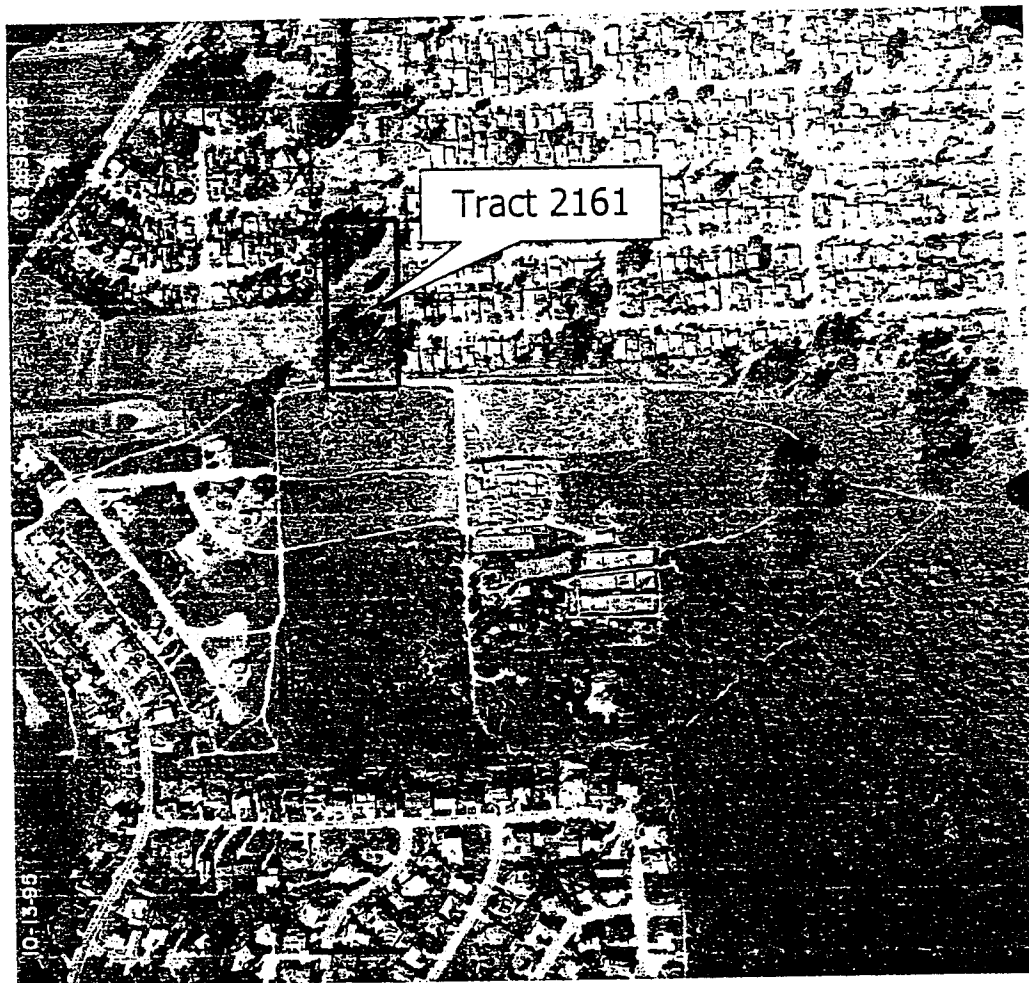
Project  
Minor Use Permit/ Coastal Development Permit  
Goedinghaus – D020349P



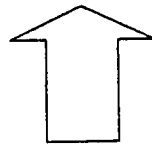
Exhibit  
Site Plan



EXHIBIT 6  
OCTOBER 1995 COLOR AERIAL IMAGE OF AREA SURROUNDING TRACT 2161



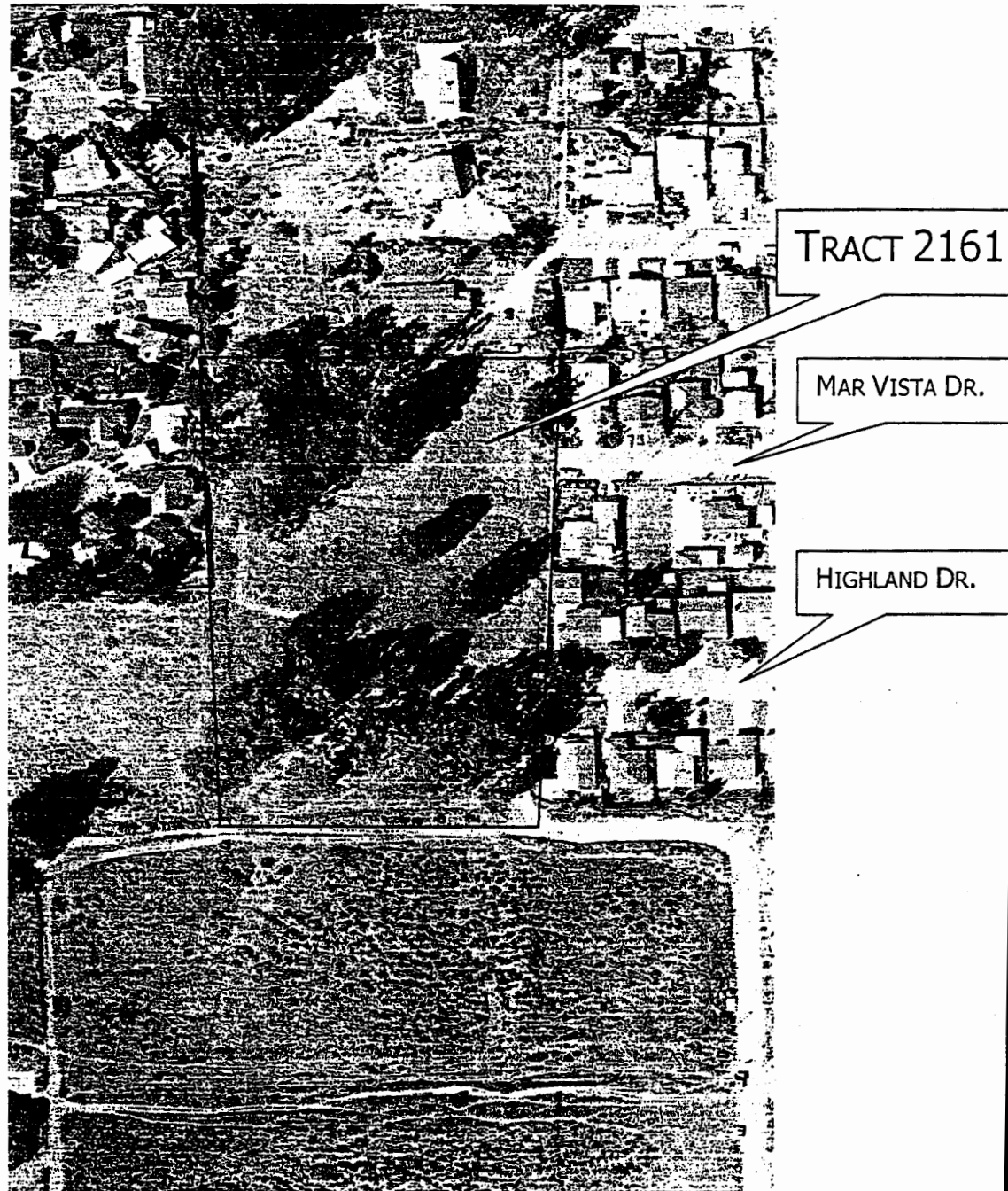
North



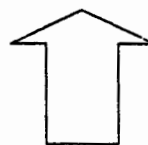
**CCC Exhibit C**  
**(page 1 of 2 pages)**



EXHIBIT 3  
OCTOBER 1995 CLOSE UP COLOR AERIAL IMAGE OF TRACT 2161



North



CCC Exhibit C  
(page 2 of 2 page)



C.C.C.

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

**RECEIVED**

February 11, 2004

FEB 25 2004

J.H. Edwards  
P.O. Box 6070  
Los Osos, CA 93412

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

VICTOR HOLANDA, AICP  
DIRECTOR

<b>FINAL LOCAL ACTION NOTICE</b>
REFERENCE # <u>3-SLO-04-073</u>
APPEAL PERIOD <u>2/26-3/10/04</u>

**NOTICE OF FINAL COUNTY ACTION**

HEARING DATE: February 6, 2004

SUBJECT: GOEDINGHAUS – County File No. D020349P  
Document No. 2004-031

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the Hearing Officer, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the Board of Supervisors within 14 days of this action. If there are Coastal grounds for the appeal there will be no fee. If an appeal is filed with non coastal issues there is a fee of \$474.00. This action may also be appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall

**C.C.C. Exhibit D**  
(page 1 of 6 pages)

expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

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

If you have questions regarding your project, please contact your planner at (805) 781-5600. If you have any questions regarding these procedures, please contact me at (805) 781-5612.

Sincerely,

Lona Franklin, Secretary  
PLANNING DEPARTMENT HEARINGS

---

(Planning Department Use Only)

Date NOFA copy mailed to Coastal Commission: after February 21, 2004

Enclosed:              X   Staff Report  
                           X   Findings and Conditions

000 Exhibit D  
(page 2 of 6 pages)



## EXHIBIT A - FINDINGS

### *Environmental Determination*

- A. The Environmental Coordinator, after completion of the Initial Study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration: ED03-167 (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on November 20, 2003 for this project. Mitigation measures are proposed to address Geology and Soils, Public Services/Utilities, Transportation/Circulation, and Water and are included as conditions of approval.

### *Minor Use Permit*

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the project is for single family residences in the Residential Single Family land use category and because it is consistent with Coastal Plan Policies, as it is conditioned to provide will-serve letters for water and sewer availability, is located on existing lots of record on slopes less than 20 percent, is required to have an erosion and sedimentation control plan, will not impact cultural resources, and will not inhibit or interfere with shoreline access.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code, including height and setback requirements of the Zoning Ordinance.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the subdivision of the project site is designed with roads to be constructed to a level able to handle any additional traffic associated with the project.

### *Coastal Access*

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project will not inhibit access to the coastal waters and recreation areas. The subdivision of the project site is designed to provide public access westward through the site and towards the ocean.

### *Archeological Sensitive Area*

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because no resources were found during the preliminary site survey.

## EXHIBIT B - CONDITIONS OF APPROVAL

### Authorized Use

1. This approval authorizes eight (8) single family residences to be constructed in two phases, as follows:
  - a. Phase 1: Four (4) single family residences constructed on future Tract 2161 lots 2, 4, 6, and 8 prior to completion of the Los Osos community sewer. Upon completion of the community sewer, the four residences shall connect to the sewer and the septic systems shall be abandoned in accordance with the requirements of the Department of Planning and Building and the Los Osos Community Services District.
  - b. Phase 2: Four (4) single family residences constructed on future Tract 2161 lots 1, 3, 5 and 7 after completion of the Los Osos community sewer.
2. Proposed retaining wall 1 (between lots 2 and 3) and proposed retaining wall 2 (between lots 7 and 8) shall both be constructed by the applicant.
3. All development shall be consistent with the approved floor plans, architectural elevations, and a revised site plan. The revised site plan shall indicate the following:
  - a. The existing scenic preservation easement on all lots to be developed in Phase 2 of the project (lots 1, 3, 5, and 7).
  - b. A 15 foot wide trail easement along the southern border of lots 5 and 6 and a 25 foot wide trail transition area on the southwest corner of the site. The trail corridor shall be subject to the review and approval of the Parks Division prior to issuance of a building permit for any residence associated with this project, #D020349P or Tract 2161. The trail corridor shall be unobstructed along its width.
4. No construction shall begin until tentative Tract 2161, as tentatively approved on February 8, 1996, is recorded, except for the following development:
  - a. Construction of one of the single family residence included in Phase 1 of this permit, subject to applicable setback requirements of the Coastal Zone Land Use Ordinance.
  - b. Subdivision improvements to meet conditions for Tract 2161.

### Building Height

5. The maximum height of the project is 28 feet from average finished grade.
  - a. Prior to any site disturbance, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average finished grade and set a reference point (benchmark).
  - b. Prior to approval of the foundation inspection, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
  - c. Prior to approval of the roof nailing inspection, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil.

### Grading, Drainage, Sedimentation and Erosion Control

6. Prior to issuance of construction permits, if grading is to occur between October 15 to April 15, a

sedimentation and erosion control plan shall be submitted pursuant to Coastal Zone Land Use Ordinance Section 23.05.036.

7. **Prior to issuance of construction permits**, the applicant shall submit a drainage plan for review and approval by the County Public Works Department.

#### **Fire Safety**

8. **Prior to issuance of a construction permit**, the applicant shall provide the county Department of Planning and Building with a fire safety plan approved by South Bay Fire.
9. **Prior to occupancy or final inspection**, which ever occurs first, the applicant shall obtain final inspection and approval from South Bay Fire of all required fire/life safety measures.

#### **Public Works**

10. **Prior to issuance of building permits for Phase 1 and Phase 2**, the applicant shall meet all requirements of the County Public Works Department. This condition does not preclude the construction of subdivision improvements consistent with the conditions for Tract 2161.
11. **Prior to issuance of building permits for Phase 1**, the applicant shall submit to the Department of Planning and Building a will serve letter from the California Cities Water Company for water for the residences to be constructed in Phase 1.
12. Upon completion of the Los Osos community sewer, the residences constructed in Phase 1 of the project shall connect to the community sewer and the septic systems shall be abandoned in accordance with the requirements of the Department of Planning and Building and the Los Osos Community Services District.
13. **Prior to issuance of building permits for Phase 2**, the applicant shall submit to the county Department of Planning and Building a will serve letter for water from the California Cities Water Company and community sewer service from the Los Osos Community Services District for the residences to be constructed in Phase 2.

#### **Los Osos Moratorium Compliance**

14. **Prior to issuance of a construction permit**, the applicant shall complete a Los Osos Compliance form.

#### **Archaeology**

15. In the event archaeological resources are unearthed or discovered during any construction activities, the following standards apply:
  - a. Construction activities shall cease and the Environmental Coordinator and Planning Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may be accomplished in accordance with state and federal law.
  - b. In the event archaeological resources are found to include human remains, or in any other case where human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department and Environmental Coordinator so that proper disposition may be accomplished.

#### **Miscellaneous**

16. The applicant shall comply with all requirements of the California Regional Water Quality Control Board,

000 Exhibit D  
(page 5 of 6 pages)



including obtaining a SWPPP Permit, as applicable.

17. **Prior to issuance of construction permits**, the applicant shall pay all applicable school and public facilities fees.
18. **Prior to occupancy of any structure associated with this approval**, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
19. This permit is valid for a period of 60 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050. This permit is generally considered to be vested once a building permit has been issued and substantial site work has been completed. Substantial site work is defined (Section 23.02.042) as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade ('sticks in the air').
20. **Prior to issuance of construction permits for development on any Phase 2 lot (lots 1, 3, 5 and 7)**, the existing scenic preservation easement shall be removed.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

**COMMISSION NOTIFICATION OF APPEAL**

DATE: March 11, 2004

TO: Pat Beck, Chief Of Permitting  
County of San Luis Obispo, Planning & Building Department  
County Government Center  
San Luis Obispo, CA 93408

FROM: Steve Monowitz, Permit Supervisor

RE: Commission Appeal No. A-3-SLO-04-019

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: D020349P

Applicant(s): Claire Goedinghous, Attn: J. H. Edwards

Description: Allow eight single family residences constructed in two phases. Phase 1: Construct 4 residences prior to completion of the Los Osos community sewer; Phase 2: Construct four residences after sewer completion. Residences range in sizes from 3,920 square feet to 5,580 sq.ft. and will be located on eight parcels ranging in size from 14,800 sq.ft. to 22,000 sq.ft.

Location: Highland & Mar Vista Drives (Estero planning area), Los Osos (San Luis Obispo County) (APN(s) 074-025-008)

Local Decision: Approved w/ Conditions

Appellant(s): Commissioner John Woolley; Commissioner Mike Reilly, Chair

Date Appeal Filed: 3/9/2004

The Commission appeal number assigned to this appeal is A-3-SLO-04-019. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Luis Obispo's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Jonathan Bishop at the Central Coast District office.

**CCC Exhibit E**  
Page 1 of 6 pages

## CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s):

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

Commissioner John Woolley

Commissioner Mike Reilly, Chair

45 Fremont Street, Suite 2000

45 Fremont Street, Suite 2000

San Francisco, CA 94105

San Francisco, CA 94105

(415) 904-5200

(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Minor Use Permit/Coastal Development Permit for construction of eight (8) single family residences in two phases. Phase 1: Construct four (4) residences prior to completion of the Los Osos community sewer; Phase 2: Construct four (4) residences after sewer completion.

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

Highland & Mar Vista Drives, Los Osos, San Luis Obispo County APN 074-025-008.

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions:   X  

c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-04-019

DATE FILED: March 9, 2004

DISTRICT: Central Coast

RECEIVED

MAR 09 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Exhibit E

(page 2 of 6 pages)



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

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

a. ☒ Planning Director/Zoning  
Administrator

c. ☐ Planning Commission

b. ☐ City Council/Board of  
Supervisors

d. ☐ Other: \_\_\_\_\_

6. Date of local government's decision: 2/6/04

7. Local government's file number: D020349P

**SECTION III Identification of Other Interested Persons**

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

a. Name and mailing address of permit applicant:

Claire Goedinghouse

c/o Jeff Edwards

P.O. Box 6070, Los Osos, CA 93412

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

(1) O. Allen Kellogg

273 Vista Ct.

Los Osos, CA 93402

(2) Pat Beck, Chief of Planning

SLO County Bldg. & Plng. Dept

County Government Center, Rm. 310

San Luis Obispo, CA 93408

(3) \_\_\_\_\_

(4) \_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed:   
Appellant or Agent

Date: March 9, 2004

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: *Mike Ruff*  
Appellant or Agent

Date: March 9, 2004

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**Reasons for Appeal: San Luis Obispo County Coastal Development Permit D020349P (Goedinghaus)**

The County approved project involves the development eight (8) single family residences in two phases (4 residences constructed prior to completion of the Los Osos community sewer, and 4 residences constructed after completion of the sewer) on a 4.35 acre site in the community of Los Osos. The project is inconsistent with the policies and ordinances of the San Luis Obispo County Local Coastal Program, as detailed below.

1. Development Density – CZLUO Section 23.04.082 allows one single-family dwelling (SFD) for each legal parcel. The County approval indicates that the site was previously subdivided into eight (8) parcels (Tract 2161) ranging from 14,800 square feet to 22,000 square feet. However, at this time Commission staff has been unable to confirm that a valid coastal development permit was issued for this subdivision. The County approved project allows for a two-phased development totaling eight (8) SFD's. Given the fact that Tract 2161 appears not to be a valid subdivision, the project is inconsistent with the LCP because the County approved project exceeds the LCP density standards.
2. LCP Policy 1 for Public Services requires that new development demonstrate the availability of sufficient public service capacities to serve the development. The proposed project involves the development of eight residences in two phases. Phase I includes four (4) single-family residences constructed prior to completion of the Los Osos community sewer. Phase II includes the construction of four (4) additional single-family residences following completion of the sewer. The San Luis Obispo County approval of the second phase of the project is contingent upon connection to a community-wide sewer system. In this case, four future homes have been approved with no current provision to serve the development with wastewater service. The project is inconsistent with the LCP because it relies on a phased development scheme in a time where public service capacities are uncertain.



# California Regional Water Quality Control Board

## Central Coast Region

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb3>  
81 Higuera Street, Suite 200, San Luis Obispo, California 93401-5411  
Phone (805) 549-3147 • FAX (805) 543-0397



Gray Davis  
Governor

# RECEIVED

July 11, 2001

MAR 05 2004

Claire Goedinghaus  
13106 Neff Road  
La Mirada, CA 90638

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Ms. Goedinghaus:

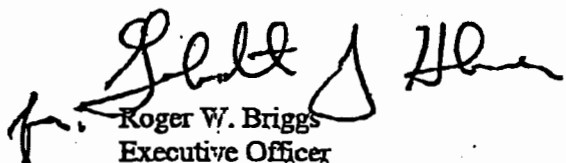
### COVERAGE UNDER GENERAL ORDER NO. 00-12, WASTE DISCHARGE REQUIREMENTS FOR RESIDENTIAL ON-SITE WASTEWATER SYSTEMS WITHIN THE BAYVIEW HEIGHTS AND MARTIN TRACT AREAS OF LOS OSOS, SAN LUIS OBISPO COUNTY

We have reviewed your revised Notices of Intent (applications) to comply with General Waste Discharge Requirements Order No. 00-12 and find them to be complete. Your revised submittal indicates that your proposed on-site wastewater discharges on parcels (APN) 074-025-008 (lots 1 through 4) may comply with the conditions for coverage under Order No. 00-12. Your submittal also indicates the proposed project may be consistent with criteria specified in the Water Quality Control Plan, Central Coast Region (Basin Plan) for siting and design of on-site wastewater systems. In order to assure compliance with Order No. 00-12 and the Basin Plan, the wastewater system must be installed as described in your submittal. Plus a leachfield expansion area (equal to 100% of the required disposal area as required by Basin Plan) must be indicated on your site plans. (plans submitted did not include the expansion area). Also, in order to prolong the useful life of the disposal system, we recommend you alternate disposal field use periodically (such as annually).

This letter documents exemption to the Basin Plan prohibition of waste discharges within the Los Osos area (Resolution 83-13) and coverage under General Order No. 00-12 provided ongoing compliance with the requirements of the Order are demonstrated. Please note there are monitoring and reporting requirements associated with this Order as well as payment of annual fees. A copy of the Order is attached for your records.

If you have questions, please call Sorrel Marks at 549-3695 or Gerhardt Hubner at 542-4647.

Sincerely,

  
Roger W. Briggs  
Executive Officer

S:\wb\southern\staff\sorrel\00-12\yanbeurden.approval

- c: Jeff Edwards, P. O. Box 6070, Los Osos, CA 93412 (without attachment)  
Pat Beck, Planning & Building, Co. Govt. Center, San Luis Obispo, CA 93408 (without attachment)  
Bruce Buel, Los Osos CSD, P. O. Box 6064, Los Osos, CA 93412 (without attachment)

California Environmental Protection Agency



Recycled Paper

CCC Exhibit

(page 1 of 1 pages)

F





**From:** [CentralCoast@Coastal](mailto:CentralCoast@Coastal)  
**To:** [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)  
**Subject:** Fwd: Coastal Development Permit Application Number A-3-SLO-19-0180  
**Date:** Tuesday, June 23, 2020 1:41:11 PM

---

---

**From:** jgentilu@gmail.com <jgentilu@gmail.com>  
**Sent:** Tuesday, June 23, 2020 12:16:10 PM  
**To:** CentralCoast@Coastal <CentralCoast@coastal.ca.gov>; jgentilu@gmail.com <jgentilu@gmail.com>; Cathy Gentilucci <cgentilu@gmail.com>  
**Subject:** Coastal Development Permit Application Number A-3-SLO-19-0180

Dear Commissioners:

We are writing to **express our strong support** for the application by Shear Development Co., LLC to construct 3 single-family homes on 3 existing vacant parcels in Los Osos, California. We are the owners of 307 Mar Vista Avenue, a vacant lot located approximately adjacent to the proposed new construction.

The Shear application aligns well with the Los Osos Community Plan, recently updated with an approved EIR, which recommends giving priority for new home development to infill property within the urban reserve zone of Los Osos. We understand that final approval of the updated LOCP and EIR is pending and that water projects required for new development are completed or underway. In light of these (soon-to-be) accomplishments, **we urge the Commission to approve the application.**

We look forward to working with the local community, county government, and state agencies as Los Osos moves forward to permit new housing construction for the first time in over 30 years.

Sincerely,

James Gentilucci, Ph.D.  
Catherine Gentilucci, M.B.A.

1404 14<sup>th</sup> Street  
Los Osos, CA 93402  
[jgentilu@gmail.com](mailto:jgentilu@gmail.com)

**From:** [CentralCoast@Coastal](mailto:CentralCoast@Coastal)  
**To:** [O'Neill, Brian@Coastal](mailto:O'Neill.Brian@Coastal)  
**Subject:** Fw: Comments for Hearing Application # A-3-SLO-19-0180 ( Shear Development)  
**Date:** Tuesday, June 30, 2020 7:32:33 AM

---

---

**From:** Ken Starr MD Wellness Group <ken@kenstarrmd.com>  
**Sent:** Tuesday, June 30, 2020 2:17 PM  
**To:** CentralCoast@Coastal <CentralCoast@coastal.ca.gov>  
**Cc:** paul.beard@fisherbroyles.com <paul.beard@fisherbroyles.com>; tim.shea64@gmail.com <tim.shea64@gmail.com>; cmf@oasisassoc.com <cmf@oasisassoc.com>; molnarcustomhomes@icloud.com <molnarcustomhomes@icloud.com>  
**Subject:** Comments for Hearing Application # A-3-SLO-19-0180 ( Shear Development)

**Application # A-3-SLO-19-0180 ( Shear Development)**

For Hearing on July 9th, 2020.

Comments in support of the granting of a CDP and recommending dismissal of the appeal.

June 30th, 2020

Dear Honorable Commissioners,

My name is Dr. Ken Starr and I live at 295 Mar Vista Drive in Los Osos, CA. My home is adjacent to the underdeveloped lots involved in this appeal.

I kindly and respectfully ask that the developers be permitted to complete this home construction. My perspective is as a resident at this location for the last ten years.

1. These are **partially developed** or underdeveloped lots, not *undeveloped*. Shear Development at great expense has already installed permitted sidewalks, active water meters, sewer laterals/collectors, retaining walls, underground utilities, and fencing.

2. These lots are **not an environmentally sensitive habitat**. The reality is these lots are surrounded in all directions by hundreds of homes. These are infill lots. Additionally, snail studies done years apart have **failed to find any endangered snail habitat**.

3. The developers were asked more than ten years ago to wait until the construction of a wastewater treatment plant before the final homes could be permitted. They have patiently waited and now all sites are hooked up to the treatment facility. The community has enough water to provide to these three sites as well as handle any sewer discharge. In fact, active water meters and sewer systems are currently and have already been in use.

4. Given the extreme housing shortage on the Central Coast, it makes no sense to further deny the completion of this project.

Thank you for your consideration,

Ken Starr MD

--



**Ken Starr MD FASAM FABEM**  
**Medical Director**

Ken Starr MD Wellness Group  
107 Nelson Street  
Arroyo Grande CA 93420

O: 805-242-1360  
F: 805-528-8178

[www.kenstarrmd.com](http://www.kenstarrmd.com)  
<https://www.facebook.com/KenStarrMd/>  
<http://provider.kareo.com/ken-starr-md>

The contents of this email message and its attachments are intended solely for the addressee(s) hereof. This email transmission is confidential. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply email. We request that you immediately delete this message and its attachments if any. UNAUTHORIZED INTERCEPTION PROHIBITED BY FEDERAL LAW (18 U.S.C 2510-2522).



## **CALIFORNIA COASTAL COMMISSION**

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



# **Th13d**

**A-3-SLO-19-0180 (SHEAR DEVELOPMENT SFDS)**

**JULY 9, 2020 HEARING**

**CORRESPONDENCE**

February 7, 2020

**VIA EMAIL TO Brian.O'Neill@coastal.ca.gov**  
Chairperson Padilla and Honorable Commissioners  
California Coastal Commission

**ITEM: W14c**

**Re: De Novo Hearing for Appeal No. A-3-SLO-19-0180**

Dear Chairperson Padilla and Honorable Commissioners:

We represent the applicant, Shear Development Co., LLC. We urge the Commission to dismiss the appeal as improvidently granted. Alternatively, the Commission should grant a CDP for the project, as approved by the County.

#### **EXECUTIVE SUMMARY**

The Commission took this appeal in mistaken reliance on staff's representations that (1) the site is in an area mapped as Environmental Sensitive Habitat Area ("ESHA"), and (2) the project (Single-Family Dwellings on three lots) does not conform to the Principal Permitted Use for the zone ("Residential Single-Family"). Both representations are false. There is no ESHA on or near the project site and, despite multiple opportunities, staff has failed to produce a single official map designating the site or its environs as ESHA. Second, a Single-Family Dwelling on each of the three lots is, as a matter of fact and law, *the* Principal Permitted Use for this zone. Thus, the project is unappealable, and the appeal should be dismissed as improvidently granted.

Even if appealable, the project would easily satisfy the LCP. Staff says the project violates ESHA and water/wastewater policies. First, because the site is not ESHA, ESHA policies aren't implicated, so the project can't violate those policies. Second, overwhelming evidence supports the County's findings (twice made—once for the 1996 subdivision to which these lots belong, and a second time for this project) that the lots have adequate water/wastewater service. Special Condition 6 of the County's 2010 CDP for the Los Osos Wastewater Project does not preclude this project. Among other reasons, the condition applies only to "undeveloped" lots. As the Commission itself acknowledged in a 2004 CDP for development of the first half of the subdivision, this subdivision (including these three lots) is "**substantially developed** (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed)" (emphasis added). Special Condition 6 is a red herring and does not apply.

Finally, denial of this project would constitute an unlawful taking. The Coastal Act, as well as the U.S. Constitution, prohibits such a taking, requiring the Commission to approve this project.

February 7, 2020  
Page 2 of 27

## I.

### THIS APPEAL WAS IMPROVIDENTLY GRANTED

When this appeal was before the Commission for a “substantial issue” determination, we submitted two comment letters explaining the reasons why the project is not appealable. We urged the Commission to dismiss the appeal and allow the County-approved CDP to stand. Unfortunately, on October 18, the Commission relied on staff’s representations and adopted its recommendation to find “substantial issue,” so that it could review the project *de novo*. It is our hope that the Commission will reconsider that mistaken determination and dismiss the appeal, for the reasons stated below.

#### A. The Project Is Not the Kind of Project That Is Appealable

The Commission’s conclusion that it has appeal jurisdiction over this project is premised on two erroneous findings: (1) the project is in a “Sensitive Coastal Resource Area . . . mapped and designated as Environmental Sensitive Habitats (ESHA) in the Local Coastal Plan (San Luis Obispo County Coastal Zone Land Use Ordinance (CZLUO) § 23.01.043(3)(i)), and (2) the project is not “designated [by County law] as the principal permitted use” (Pub. Res. Code § 30603(a)(4)). Those findings lack legal and factual support, and the Commission therefore has no jurisdiction to proceed with a *de novo* hearing.

##### 1. The Project Is Not in an Area Mapped As ESHA

The County’s CZLUO clearly defines what constitutes “Mapped ESHA.”<sup>1</sup> Mapped ESHA must be “mapped as Land Use Element combining designations.” (CZLUO § 23.11.030). In other words, mapped ESHA must be depicted on *a map*. And not just any map. It must be an “official map” adopted as part of the *Land Use Element*. (CZLUO § 23.07.160 (“The Sensitive Resource

---

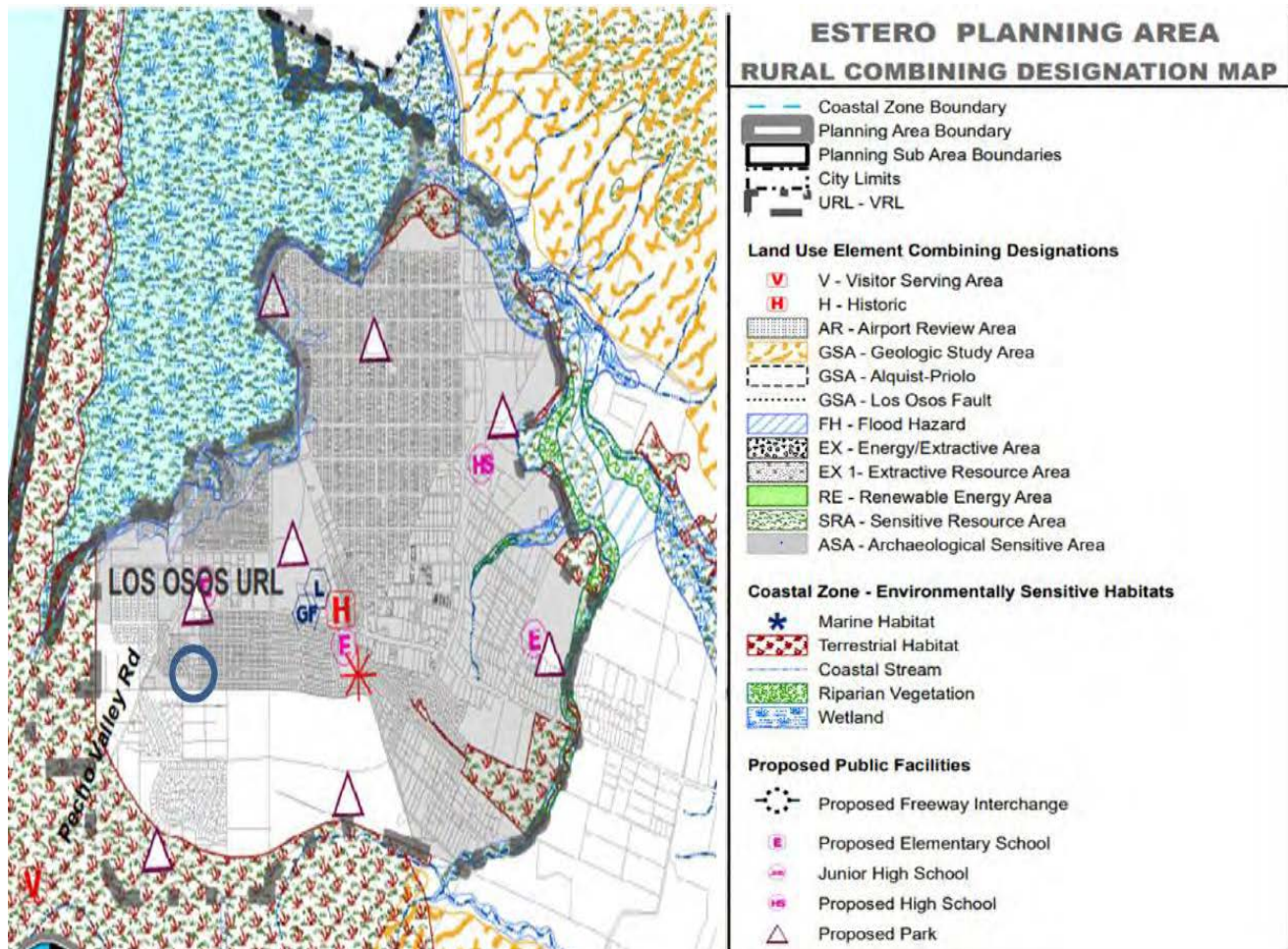
<sup>1</sup> The project’s appealability was not based on the existence of so-called “Unmapped ESHA,” which is a legal term specifically defined in the CZLUO. CZLUO § 23.11.030. Unmapped ESHA can be designated by the County only at or before the time of land-use application acceptance. *Id.* The County did not make such a determination here. Moreover, even if the County *had* designated the lots as Unmapped ESHA, the project still would be unappealable. That’s because, under the Commission-approved LCP, a project in Unmapped ESHA is specifically designated as non-appealable. CZLUO § 23.01.043(3)(i).



February 7, 2020  
Page 3 of 27

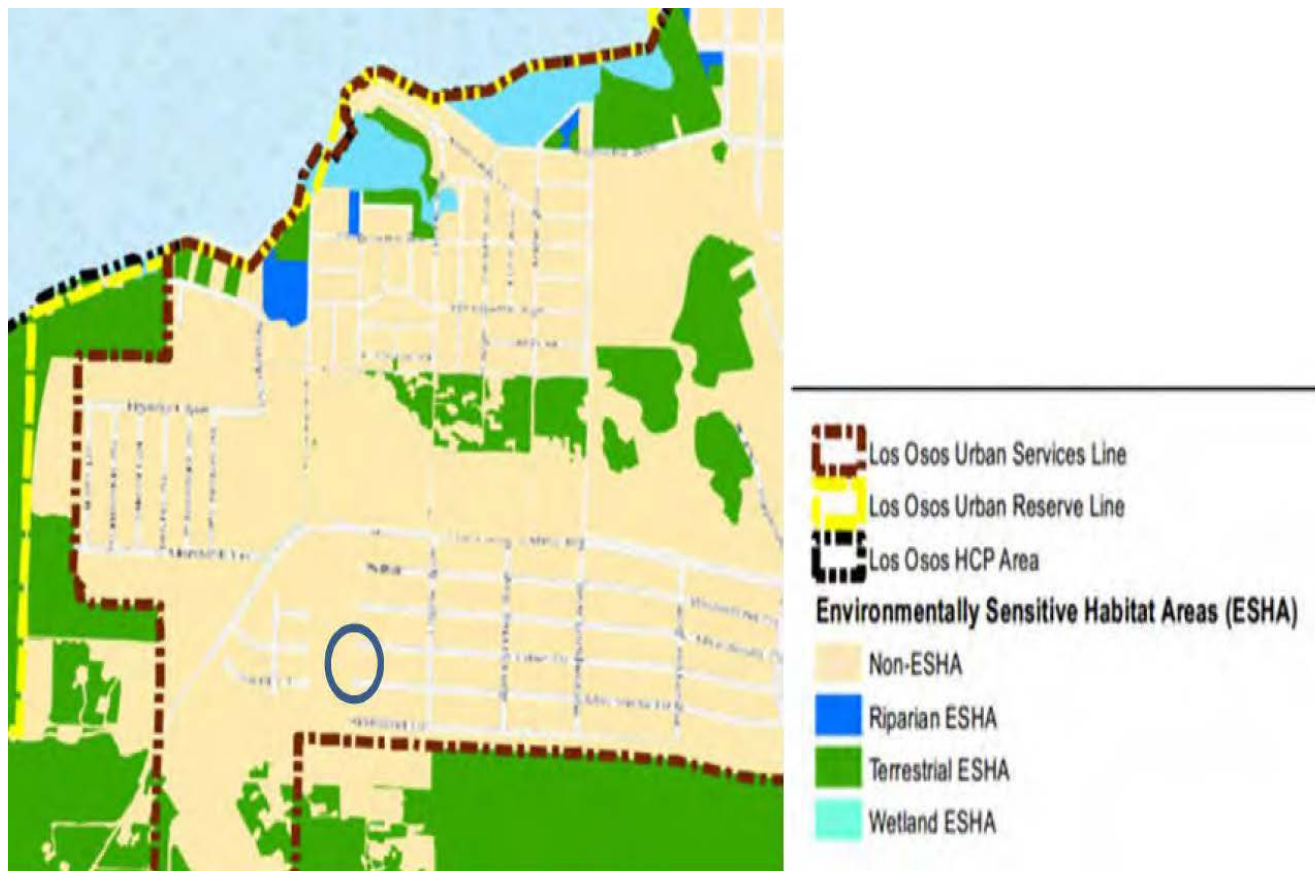
Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources.”).

There is no map that depicts the project site (located in the Estero Area) as mapped ESHA. The “Land Use Element combining designations” map for the Estero Area, which is the only map that can lawfully designate Mapped ESHA, does label some areas as ESHA. But notably, that official map does not designate the project site or the vast area around it as Mapped ESHA:



February 7, 2020  
Page 4 of 27

The County has confirmed what its official “Land Use Element combining designations” map establishes. In its 2019 Draft EIR for the Los Osos Community Plan Update, the County published a map showing that the project site and the area around it are specifically “Non-ESHA”:



The Commission’s finding that the project is in mapped ESHA appears to be based, not on any official map, but rather on text in the Estero Area Plan and an associated “figure”—i.e., Figure 6.3.<sup>2</sup> According to the Commission, the text and figure designate the Los Osos Dune Sands

<sup>2</sup> It is telling that, in its October 17, 2019, Staff Report Addendum responding to the arguments against appealability, staff implicitly concedes that the “Land Use Element combining designations” map for the Estero Area is relevant and legitimate: “This map ... is not the only LCP map that specifies the existence of ESHA in Los Osos.” In other words, staff acknowledges that the “Land Use Element combining designations” map cited by us depicts Mapped ESHA, but insists that other maps allegedly purport to do

February 7, 2020

Page 5 of 27

(“LODS”) as ESHA and as a Sensitive Resource Area (“SRA”). Because the project site purportedly lies in the LODS, the Commission reasoned, the project site therefore must be ESHA. That is factually and legally wrong.

First, neither language from the Estero Area Plan nor any figure associated with it is the legal equivalent of a “Land Use Element combining designations” map, which is the sole legal source of Mapped ESHA under the certified LCP. (CZLUO § 23.11.030 (“Mapped ESHA” is “mapped as Land Use Element combining designations.”)). In fact, the Estero Area Plan itself distinguishes between its own “figures” and “the official maps . . . of the Land Use Element, on file with the County Department of Planning and Building.” (*See* Estero Area Plan at 6-4).

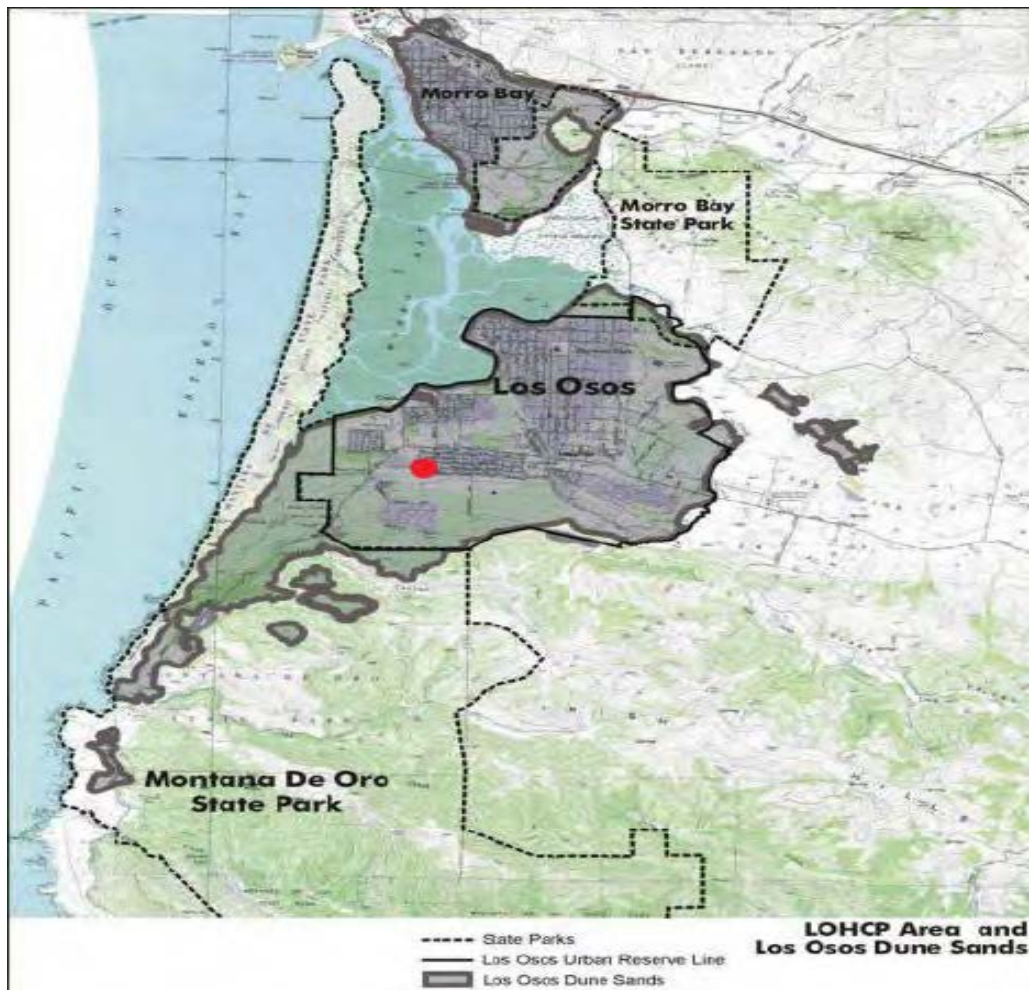
Second, Figure 6.3 doesn’t actually depict ESHA. It doesn’t even purport to be an ESHA-designating or other “combining designations” map. At most, Figure 6.3 depicts the “LOHCP Area and Los Osos Dune Sands,” with no mention whatsoever of ESHA. Here’s a reproduction of Figure 6.3:

---

so as well. Of course, staff has never produced a map showing the project site to be in Mapped ESHA. And even if such a map explicitly contradicting the “Land Use Element combining designations” map for the Estero Area existed (which it does not), that alternative map would be an illegitimate source of Mapped ESHA and would have to yield to the “Land Use Element combining designations” map. The reason is simple: The LCP specifically requires Mapped ESHA to be shown on the “Land Use Element combining designations” map. The LCP does not authorize the depiction of Mapped ESHA on any other document. Staff’s suggestion that other “area plans” trump the relevant “Land Use Element combining designations” map, because “area plans” provide “more detailed prescriptions” that “take precedence over a policy or ordinance,” misses the mark. Staff Report Addendum, pp. 1-2 & n.3. The question is not which “prescription” or “standard” governs a site with Mapped ESHA. The questions are whether a site has Mapped ESHA in the first place, and whether the only legitimate source of Mapped ESHA (“Land Use Element combining designations” map) can somehow be overridden by texts and figures of “area plans” or any other document. Under the LCP, the answer to both those questions is an unequivocal “no.”



February 7, 2020  
Page 6 of 27



Third, the cited language from the Estero Area Plan does not support the proposition that the project site is ESHA, let alone *Mapped* ESHA. The Estero Area Plan may designate the LODS as a “sensitive resource area.” But not all SRAs are ESHA. CZLUO § 23.01.043(3) (clarifying that, in addition to Mapped ESHAs, SRAs can be areas of recreational value, highly scenic areas, archaeological sites, and other non-ESHA areas). Further, the Estero Area Plan is not entirely clear as to whether all of the dune habitat is or is not potential, mappable ESHA. *Compare* Estero Area Plan, p. 7-3 (referring to the Dune Sands area, “much of which is an Environmentally Sensitive Area,” but not all of it) *with id.* (indiscriminately referring to the Dune Sands Area as ESHA). Staff might argue that the Estero Area Plan language is meant to create a rebuttable

February 7, 2020  
Page 7 of 27

presumption that some or all of the LODS is *Unmapped* ESHA. But a determination of Unmapped ESHA can only be made by the County at or before the time it accepts a land-use application for a specific project on a specific site. CZLUO § 23.11.030 (definition of “Unmapped ESHA”). No such determination was made here. And even if it had been, a project in Unmapped ESHA is not appealable to the Commission. CZLUO § 23.01.043(3)(i) (A project in an SRA is appealable on the ground that it is Mapped ESHA; for the purpose of appealability to the Commission, an SRA “[d]oes not include resource areas determined by the County to be Unmapped ESHA.”).

## **2. The Project Is a Principal Permitted Use—and *The* Principal Permitted Use**

Under the County’s CZLUO, “[a]ny approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use” may be appealed to the Commission. (CZLUO § 23.01.043(c)(4)). The project unquestionably qualifies as a Principal Permitted Use. It consists of the construction of a Single-Family Dwelling, which is a Principal Permitted Use for the project site’s zone (i.e., “Residential Single-Family”). Thus, the project is unappealable under section 23.01.043(c)(4).

At staff’s urging, the Commission ignored the LCP and looked instead to section 30603(a)(4) of the Coastal Act. That provision allows the appeal of a county-approved project that is not “the principal permitted use under the zoning ordinance or zoning district map” of the county. Pub. Res. Code § 30603(a)(4). Coastal Table O actually lists three Principal Permitted Uses for the project site—“Single-Family Dwelling,” “Coastal Accessways,” and “Passive Recreation.” Because there is no *single* Principal Permitted Use for the project site, the Commission reasoned that the project must be appealable. That reasoning—the product of an apparently recent change of policy and practice—is fatally flawed.

First, the reasoning overstates the significance of the Legislature’s use of the word “the,” versus “a,” in modifying “principal permitted use.” The legislative purpose behind this provision obviously was to *limit* the appealability of county-approved projects. Consistent with that purpose, the Legislature no doubt would have acknowledged that a project that comports with any of a number of “principal permitted uses” in a particular zone would be unappealable, because there is far less concern about principal permitted uses, which are encouraged and do not trigger special standards or permit procedures. (San Luis Obispo County Land Use Element—Part I, at 6-24). Indeed, the Coastal Act alternatively employs both “a” and “the” to modify “principal permitted use,” showing that the Legislature viewed the two articles to be semantically interchangeable.

February 7, 2020  
Page 8 of 27

(Pub. Res. Code § 30624(a) (authorizing issuance of a CDP, without compliance with Chapter 7 procedures, for—among other things—“any development specifically authorized as *a* principal permitted use” (emphasis added))). It is hard to imagine a legislative rationale for allowing any development specifically authorized as “a” principal permitted use to circumvent compliance with Chapter 7 procedures, but requiring that such a use, if approved by a county, to be appealable to the Commission.

Second, staff’s interpretive approach leads to absurd results, as least as far as County-approved projects are considered. Under Coastal Table O, “Coastal Accessways” is listed as a Principal Permitted Use for *all zones* in the County. Every zone has both the Principal Permitted Use one would normally expect as the true principal permitted use (e.g., “Single-Family Dwelling” for the “Residential Single-Family” zone), as well as the so-called principally permitted use of “Coastal Accessways.” By staff’s lights, because no zone has a single principal permitted use, *every single project approved by the County is appealable to the Commission*. Not only is that absurd on its face, but it undermines the very purpose of section 30603 of the Coastal Act—namely, to strictly limit Commission oversight of locally approved projects, once the local government has a certified LCP. Pub. Res. Code § 30603(a) (“After certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the commission for *only* the following types of developments ....” (emphasis added))).

Third, staff’s interpretative approach creates unnecessary conflict between the County’s LCP and the Coastal Act. The only way out of that manufactured conflict is to acknowledge that a project that satisfies any one of the Principal Permitted Uses listed in Coastal Table O is unappealable, consistent with the Legislature’s reference to “a principal permitted use” in section 30624(a). That harmonizes section 30603(a)(4) of the Public Resources Code and section 23.01.043(c)(4) of the CZLUO, which the Commission knowingly certified as consistent with the Coastal Act. (*In re Jenson* (2018) 24 Cal. App. 5th 266, 275 (requiring harmonization of laws in statutory interpretation)). It promotes the legislative intent behind section 30603(a)(4), which is to limit the Commission’s appellate jurisdiction over projects governed by certified LCPs. And it makes good policy sense: As noted above, because Principal Permitted Uses are not uses requiring the application of special standards or permit procedures, they do not demand the kind of second-guessing and regulatory oversight that the Commission’s appeal power involves.

Indeed, that is the interpretive approach adopted by the Court of Appeal. In *DeCicco v. California Coastal Commission* (2011) 199 Cal.App.4th 947, the Commission had accepted the



February 7, 2020  
Page 9 of 27

appeal of a project approved by San Luis Obispo County, consisting of a subdivision and the development of a mixed-use building. Under the County's Coastal Table O, Principal Permitted Uses for the property were Residential Multi-Family and Commercial Retail—and, of course, Coastal Accessways. The County argued the project was not appealable, because it was consistent with the listed principal permitted uses. The Commission disagreed, saying the project was in fact appealable. **But, significantly, the Commission did not argue that the project was appealable on the ground that the project site had multiple principal permitted uses.** Instead, the Commission made the more nuanced argument that the project was appealable, because the project involved a *subdivision*, which was *not* listed in Coastal Table O as one of the Principal Permitted Uses for the project site. When the Commission granted the appeal on those grounds, the project proponent sued, arguing the Commission lacked appellate jurisdiction.

In a published opinion, the Court of Appeal held the project was appealable. Consistent with the Commission's arguments, the Court concluded that the project's appealability rested on the fact that one component of the project—subdivision—was not listed as one of the Principal Permitted Uses. And like the Commission, the Court did not view the fact that the project site had multiple Principal Permitted Uses as relevant, let alone dispositive of the appealability issue. Here's what the Court said:

“A county's approval of a ‘principal permitted use’ development within a coastal zone is not appealable to the California Coastal Commission. But when the development project also requires approval of a subdivision, the California Coastal Commission has appellate jurisdiction.”

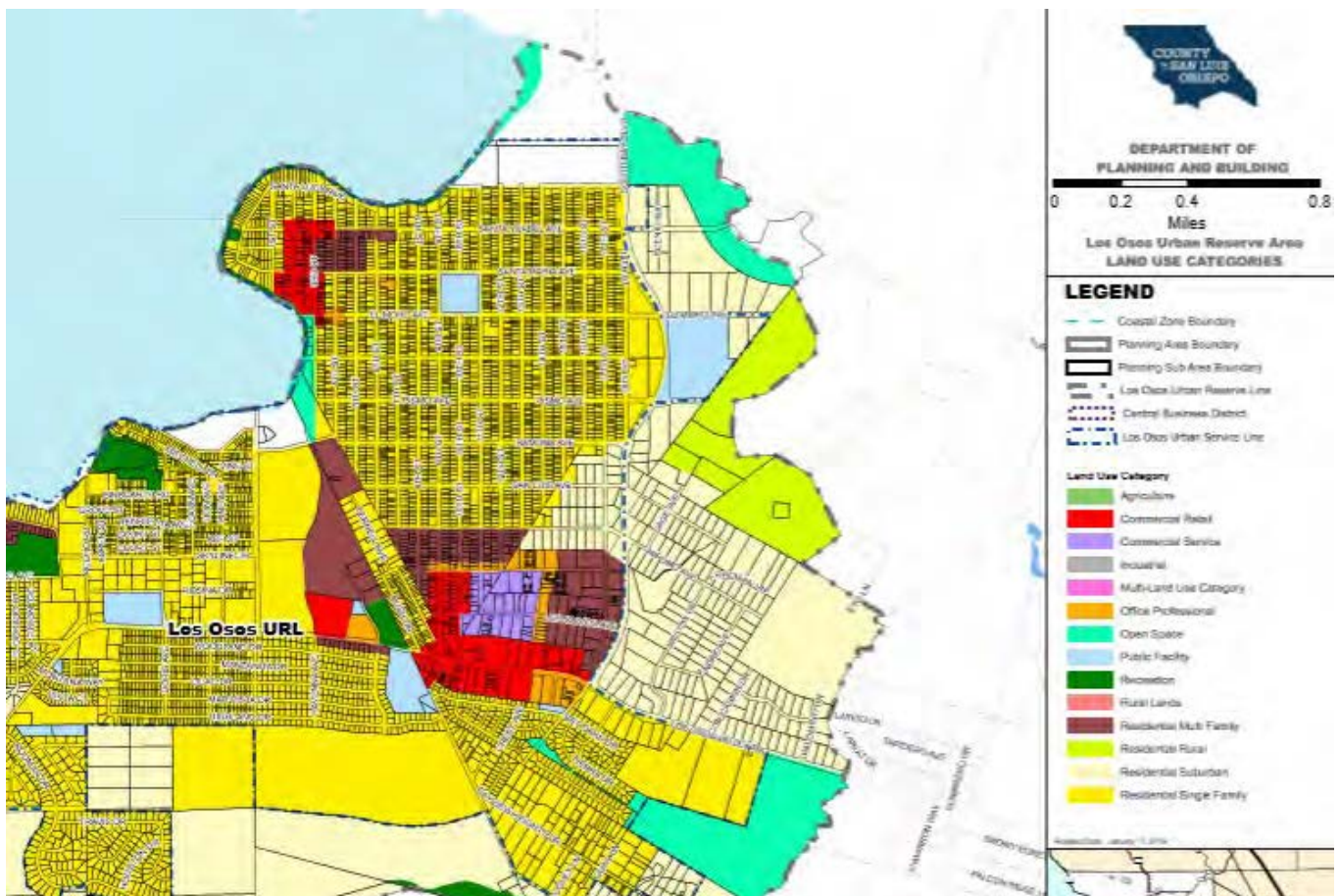
*Id.* at 949. *DeCicco* is binding precedent that must be adhered to.

Fourth, even if staff's novel approach were correct, the project still would be unappealable. The reason is that, as a matter of legislative intent and as a matter of fact, ***the*** Principal Permitted Use for the project site ***is*** a Single-Family Dwelling, which is exactly what the project proposes. When the County and Commission adopted and certified the LCP, including Coastal Table O, they intended this zone—categorized as “Residential Single-Family”—to be developed principally (if not exclusively) with Single-Family Dwellings. They could not have intended the Principal Permitted Use for the zone to be a coastal accessway and passive recreation. The County and Commission included coastal accessways and passive recreation, not because they were to be ***the*** Principal Permitted Uses for this zone, but because they understood that such non-intensive

February 7, 2020  
Page 10 of 27

and uncontroversial uses—if ever they were proposed—should be encouraged and would not require the Commission’s regulatory oversight.

The clear legislative intent behind Coastal Table O’s list of Principal Permitted Uses for the “Residential Single-Family” zone has been borne out by the actual use and development of properties in and around the project site. As the image below from the County’s website shows, the area surrounding the project is developed, not with coastal accessways and passive recreation, but with Single-Family Dwellings (depicted in yellow). It is perfectly accurate and consistent with legislative intent to say that *the* Principal Permitted Use for each of the three lots here is a Single-Family Dwelling. Because the project conforms to that use, it is unappealable.



February 7, 2020  
Page 11 of 27

Finally, if an irreconcilable conflict truly exists between section 30603(a)(4) of the Coastal Act and CZLUO § 23.01.043(c)(4), then the former must yield to the latter. The Commission knowingly approved the CZLUO, including section 23.01.043(c)(4), recognizing the ordinance conforms to and carries out the provisions of the County's certified Land Use Plan. Pub. Res. Code § 30513. Further, for almost all of the LCP's history, the Commission has not asserted appeal jurisdiction over a County-approved project on the basis that the project was not *the* Principal Permitted Use listed in Coastal Table O. In other words, as a legal and factual matter, the Commission historically has acknowledged section 23.01.043(c)(4) as the lawful and applicable standard since the LCP's adoption over thirty years ago.<sup>3</sup> Under basic equitable and due-process principles, the Commission is estopped from suddenly changing course, without notice and to the detriment of the County and its citizens, who have reasonably relied on the consistent and undisputed application of section 23.01.043(c)(4) as written and adopted.

Of course, if staff or the Commission has changed its mind about the legal adequacy or supremacy of section 23.01.043(c)(4), then lawful mechanisms exist for it to try to conform that provision to its view of the law. Pub. Res. Code § 30519.5. And it appears that staff is, in fact, pursuing the amendment route on the "principal permitted use" issue. But until a certified amendment occurs, section 23.01.043(c)(4) governs. *Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 421-22 ("Nothing in the statutory scheme [of the Coastal Act] grants the Commission the authority to make changes to the context of [an] LCP during an appeal from [a local government's] grant of a CDP.").

## **B. The Project Raises No "Substantial Issue"**

In our October 11 and 18 comment letters submitted prior to the "substantial issue" hearing, we stated that, even if this project were the kind of project that is appealable, the Commission should dismiss the appeal, because it raises no "substantial issue" of compliance with the LCP.

---

<sup>3</sup> Apparently, the Commission's staff has more recently insisted that County-approved projects are all appealable, based on its creative interpretation of section 30603(a)(4). But, again, that is a relatively recent phenomenon, without precedent or basis in the LCP, the Coastal Act, the case law, or rational policy considerations. Consistent with staff's more recent change of heart, we understand staff has been pressing the County to amend its LCP in order to designate only one principal permitted use per zone. That effort only underscores the fact that, in the event of an actual conflict, the certified LCP governs. After all, why demand an LCP amendment to conform to staff's new view of the "principal permitted use" issue, if section 30603(a)(4) purportedly trumps the LCP anyway?



February 7, 2020  
Page 12 of 27

Here, we reiterate that the project's compliance with the LCP is yet another, independent reason why the appeal should be dismissed, and the County's CDP upheld.

For efficiency's sake, we discuss the project's compliance with the LCP in Part II of this letter, below. But the discussion in Part II applies with equal force to both the "substantial issue" question and the merits of the project on *de novo* review by the Commission; compliance with the LCP means there was not "substantial issue" to begin with, and therefore no basis for asserting appellate jurisdiction over this project. If the Commission wishes to hear this appeal then, following the *de novo* hearing, the Commission should grant a CDP for the project, as approved by the County, for the reasons stated in Part II.

## II.

### THE PROJECT COMPLIES WITH THE LCP

Staff asserts the project must be denied, because it purportedly violates the LCP's ESHA and Public Works policies. Neither pretext for denying the project holds up to scrutiny. As the County concluded, the project complies with the LCP and should be approved.

#### A. The Project Does Not Implicate, Let Alone Violate, LCP's ESHA Policies

As established above, the project site and the vast area around the site do not contain ESHA. First, there is no "Land Use Element combining designations" map that depicts the site and surrounding area as Mapped ESHA. Second, the County did not make a determination, at or before the time it accepted the land-use permit application, that the project site is in or adjacent to Unmapped ESHA.

Because of this irrefutable fact, none of the ESHA policies that staff cites are implicated. Those policies are triggered *if and only if* the site is in or adjacent to Mapped or Unmapped ESHA. As section 23.07.170 of the CZLUO (Environmentally Sensitive Habitats) states, "[t]he provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title," which legally recognizes only Mapped and Unmapped ESHA. (CZLUO § 23.07.170). The ESHA policies cited by staff (ESHA Policies 1, 2, 6, 7, and 20) are all implemented pursuant to CZLUO § 23.07.170, *et seq.*—and, by their own terms, apply if and only if the site in question is in or adjacent to Mapped or Unmapped ESHA. Given that ESHA Policies 1, 2, 6, 7 and 20 (or any other ESHA policy) do not apply, this project cannot be denied on the basis that it violates those policies.

February 7, 2020  
Page 13 of 27

The staff report makes the extraordinary claim that “all of the undeveloped land within” Los Osos is “ESHA as designated in the LCP.” Staff Report at 13. But, tellingly, staff does not produce a single official map of the Land Use Element establishing that all of undeveloped Los Osos, or the project site in particular, is ESHA. Staff claims that the “LCP recognizes that any area that is underlain by ‘Baywood fines’ soil is considered ... ESHA.” Staff Report, p. 14. That view is not supported by any official map of the Land Use Element, and it’s not the County’s considered view of the issue. The County has made clear that “[t]he presence of underlying Baywood fine sand substrate alone does not make all of Los Osos an ESHA.” Indeed, according to the County, the area in and surrounding the project site “does not meet the key elements of the definition of ESHA: the area is generally disturbed and degraded (not pristine), remaining habitat is greatly fragmented, and thus the area is not especially valuable for species persistence.”<sup>4</sup> (See Los Osos Habitat Conservation Plan, Draft EIR, SCH # 2013091071, Appendices A and B, p. 1-9 (April 2019)). This should come as no surprise, as the project site’s area is nearly fully developed with residences.

Without evidence of a lawful designation of the site and surrounding area as ESHA, consistent with the LCP, staff’s assertion is utterly unsubstantiated. For the Commission to unilaterally designate Los Osos, including the project site, as ESHA—or even “rebuttable” ESHA, a totally made-up concept not found in the LCP—would be to re-write the LCP, which defines the sole legal mechanisms for designating ESHA. Further, the fact that the Commission may have in the past recognized “the entire community ... as ESHA” does not give it the authority to unilaterally change the LCP on the appeal of this project. (*Security Nat’l Guaranty, Inc. (SNG) v. Cal. Coastal Comm’n* (2008) 159 Cal.App.4th 402, 422 (reiterating that the certified LCP is the sole standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

The staff report also speculates that the area in and around the project site is “potential” habitat for the Morro Shoulderband Snail (“MSS”), a federally protected species. Staff Report at 14. Speculation is not evidence of anything. (*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756 (“Speculation is not evidence.”)). On the other hand, there is uncontradicted, expert evidence that the three lots that constitute the project site neither host, nor are suitable habitat for, the MSS. The most recent expert report is the March 24, 2019, MSS

---

<sup>4</sup> It bears repeating: Even if the County considered the project site to be potential ESHA, the site would not be ESHA, with all of the legal consequences that flow from that designation, unless it were mapped as such on an official map of the Land Use Element, or it were designated as Unmapped ESHA at or before the time of acceptance of a permit application.

February 7, 2020

Page 14 of 27

Habitat Assessment and Protocol Survey Report by Ecological Assets Management, LLC (“EAM”).<sup>5</sup> The report contains findings from five *protocol-level* MSS surveys, as well as five habitat assessments for the MSS, conducted on the three lots from December 2018 to February 2019. Exhibit A (EAM Report). The surveys and assessments establish no MSS, and no suitable habitat for the MSS, on the project site:

“No live or empty MSS shells were observed on lots 1, 3, or 7 and is likely due to the absence of native habitats suitable for MSS, historic and recent disturbances (e.g. grading, annual mowing, etc.), and isolation from adjacent areas of suitable MSS habitat. The absence of live MSS, current habitats, and the thorough survey efforts indicate a very low potential for live MSS to be present on lots 1, 3, and 7 at this time. Due to these results and conditions, take of MSS is not anticipated to occur from a proposed project at this time.

*Id.* at 8. The staff report’s claim that “no formal field surveys” were conducted on the project site for the MSS is simply false. Staff Report at 14.

Exhibit B contains two additional reports/surveys, undertaken in 2004 (by David Wolff) and in 2018 (Kevin Merk Associates, LLC). Both establish, consistent with the above protocol-level report, that the project site contains no MSS and lacks suitable habitat for MSS. That the project site or surrounding area is potential habit for MSS is a purely speculative, if not fantastic, claim with no evidence to support it. All these expert reports are fully consistent with the Commission’s findings about the potential for sensitive habitat on the project site. In its 2004 approval of a CDP for construction of homes on the first four lots in this subdivision, the Commission acknowledged the absence of sensitive habitat in or adjacent to the project site, concluding: “With respect to habitat, biological studies and environmental documents for the subdivision did not identify any sensitive habitat on the site at the time of the subdivision,” and “the project site is bound on three sides by residential development and lacks connectivity with other nearby habitat areas.” 9/23/04 Staff Report, A-3-SLO-04-19 (“2004 CDP Staff Report”) at 12. The 2019 protocol survey report confirms the continued validity of the Commission’s conclusion.

---

<sup>5</sup> San Luis Obispo County lists EAM as qualified in the area of the Morro Shoulderband Snail [https://www.slocounty.ca.gov/Departments/Planning-Building/Planning-\(Current-and-Environmental\)/Services/Environmental-Review/Qualified-Environmental-Consultants.aspx](https://www.slocounty.ca.gov/Departments/Planning-Building/Planning-(Current-and-Environmental)/Services/Environmental-Review/Qualified-Environmental-Consultants.aspx).



February 7, 2020  
Page 15 of 27

Further, the fact that the project site may be included within the “critical habitat” of the MSS, as originally designated by the U.S. Fish & Wildlife Service in the 1990s, does not change the result.<sup>6</sup> Designation of critical habitat for a species does not transform the affected land into Mapped ESHA as defined in the LCP. Mapped ESHA must be designated by an official map of the Land Use Element. Mapped ESHA does not spring into existence by way of a federal “critical habitat” designation.

Indeed, a “critical habitat” designation of private property does not even prevent its use or development. The designation plays a role in permitting decisions only if a project has a federal nexus—i.e., the project applicant requires a federal permit or funding for his proposal. (*Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.* (2018) 139 S.Ct. 361, 365-66 (“A critical-habitat designation does not directly limit the rights of private landowners. It instead places conditions on the Federal Government’s authority to effect any physical changes to the designated area, whether through activities of its own or by facilitating private development.”)). Nevertheless, staff urges the Commission to use the federal “critical habitat” designation of the project site to *deny* this project—a drastic measure not permitted or even contemplated by federal law.

Staff also refers to the County’s work on a draft Habitat Conservation Plan that has not been adopted. The Commission cannot judge the merits of the project based on yet-to-be-adopted, undefined standards—a clearly unfair and arbitrary practice that violates the applicant’s due process rights against retroactive application of vague rules. (U.S. Const. amend. XIV). In addition, the LCP is the *sole* standard for reviewing this project. Yet staff readily concedes that, because no plan has been adopted, it has “not been made part of the LCP.” Staff Report at 14. By staff’s own admission, the HCP cannot, as a matter of law, be used to evaluate and deny this project. (Pub. Res. Code § 30603(b)(1); *Schneider v. Cal. Coastal Comm.* (2006) 140 Cal.App.4th 1339, 1348 (“When Coastal Commission certified the LCP in 1988, it lacked authority to create or originate any land use rules and regulations or draft any part of the coastal plan. In reviewing the proposed development to determine whether it was consistent with the certified LCP, Coastal

---

<sup>6</sup> Federal concern for the MSS has waned. In 2006, following a five-year review, the U.S. Fish & Wildlife Service recommended the MSS for down-listing to threatened; however, the final rulemaking process has not been completed. The Service recently initiated another five-year review for the MSS. (Fed. Reg., Vol., 83, No. 117 (June 18, 2018); *see also* <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=G00D>)). Further, in the draft EIR for the Habitat Conservation Plan being prepared for Los Osos, the project site and surrounding area—which is residentially developed—is outside the designated critical habitat for the Morro Shoulderband Snail. (*See* Los Osos Habitat Conservation Plan, Draft EIR, SCH # 2013091071, Appendices A and B, p. 4-47, Figure 4-3 (April 2019)).

February 7, 2020

Page 16 of 27

Commission was not empowered to adopt a new offshore visual resource policy for San Luis Obispo County.”)). In any event, even incorporation of HCP standards into the LCP would not be the legal equivalent of mapping ESHA pursuant to the strict requirements of the LCP and therefore could not trigger application of any ESHA policies.

Finally, the staff report cites Coastal Watersheds Policies 1 and 2 for the proposition that the project will result in “adverse impacts to wetlands and Morro Bay watershed ESHA.” Not so. Policy 1 requires that the “safe yield of the groundwater basis ... not be exceeded as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacts.” Policy 2 simply requires that “[e]xtractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits,” and that “[g]roundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for the optimum populations of marine organisms, and for the protection of human health.” The project is perfectly consistent with those policies. As the County concluded when it approved this project: “[T]he applicant is required to retrofit existing development to result in a savings of 300 gallons of water per day for each new residence. This will off-set the project’s demand for water at a 2-1 ratio.” In other words, the project will have *no impact*—let alone a “significantly adverse[] impact[]”—on the demand for water or aquatic habitats. In addition, staff’s attempt to use the Coastal Watersheds Policies to buttress its ESHA arguments fails, because this project is not in or near *any* ESHA, and there is no evidence in the record to suggest the project will affect even distant ESHAs. The staff report offers only speculation, which is not evidence of anything. (*Citizens*, 222 Cal.App.3d at 756).

To summarize, the project is not in or adjacent to ESHA, and does not impact any ESHA. The project therefore cannot lead to the permanent loss of ESHA, and triggers none of the ESHA-related requirements of mitigation and monitoring contained in the LCP. All the evidence establishes that the project is also consistent with the ESHA-related Coastal Watershed Policies cited in the staff report. Permit denial based on ESHA or related watershed policies would constitute a clear abuse of discretion subject to legal challenge.

## **B. The Project Complies with the LCP’s Public Works Policy 1**

The staff report claims that the project violates Public Works Policy 1, which states in relevant part:

“New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.”

By its own terms, the policy is to be implemented pursuant to, among other provisions not relevant here, section 23.04.430 of the CZLUO. That section states that a “permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.” CZLUO § 23.04.430. Priority is given to “infilling development within the urban service line over development proposed between the USL and URL.” *Id.* This project consists of infilling development within the USL, so is entitled to priority.

### **1. There Is Sufficient Water and Wastewater Service Available to the Lots**

The current eight-lot subdivision, also known as “Tract 2161” and which includes the three lots at issue here, has a long and complex history. The Tract’s history makes the three lots at issue here unique among the hundreds of other lots in Los Osos that do not have homes on them.

The then-owner of the land encompassed by the subdivision also owned ten lots in Cuesta-by-the-Sea. In 1995, the County approved a lot-line adjustment merging those ten lots into four. The purpose of the merger was to completely offset the increased density—and *water/wastewater demands*—of what would become subdivision Tract 2161. Note that the Cuesta-by-the-Sea grouping and Tract 2161 are in the same groundwater basin. The County approved the Tract 2161 subdivision in 1996. The six lots that were retired under the lot-line adjustment described above were added to Tract 2161 for a new total of seven lots. Because the tentative map for Tract 2161 proposed eight lots instead of seven, one additional lot from the Cuesta-by-the-Sea grouping had to be merged. So, in 2003, prior to recordation of the final map for Tract 2161, the owner merged two of the remaining Cuesta-by-the-Sea lots, leaving a total of three lots in that grouping—and raising the total lots in Tract 2161 to eight.



February 7, 2020  
Page 18 of 27

Significantly, the County's approval of the subdivision was premised on findings that adequate water and wastewater services existed to serve the development of the lots therein. *See, e.g.*, Gov. Code § 66473.7 (requiring adequate water supply for subdivision approval). In the staff report approving the vesting tentative map and Coastal Development Permit for the Tract 2161 subdivision, the County found: "Water would be provided by California Cities Water Company" and "[w]astewater would be handled by a future community sewer or with on-site septic systems (if any exemption is granted from the Regional Water Quality Control Board." Exhibit C (County VTP Approval). As the Commission knows, the Board did grant the exemption, and on-site septic systems were installed on the first four lots to be built out. Exhibit D (RWQCB Exemption).

As part of the subdivision approval and as required by law, the owner was required to substantially develop the lots with the necessary infrastructure in preparation for, and in the expectation of, constructing homes on each of the lots. *See, e.g.*, Gov. Code § 66462 (approval of the final map requires completion of "public improvements" required by the local government); see also CZLUO §§ 21.03.010; 21.03.048 (conditions of tentative tract map approval). The Tract lots were significantly developed with sidewalks, gutters, landscaping water meters, water and sewer mains, and laterals. The subdivision and substantial improvements to the lots would *not* have been approved and built unless the owner had established that the lots had access to adequate water and wastewater service. The County's findings under Public Works Policy 1 and section 23.04.430 of the CZLUO are final and unimpeachable, and the Commission at least implicitly ratified them when it acquiesced in the County's subdivision approval and approved a CDP in 2004 for construction of homes on the first four lots of the Tract. There is no authority for second-guessing or denying those findings at this time. (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 881-82 (Final, unchallenged administrative findings made as the result of a quasi-judicial proceeding (e.g., like land-use permit hearings) have preclusive effect and cannot be collaterally attacked.)).

Of course, the County effectively upheld the same findings under Public Works Policy 1 and section 23.04.430 of the CZLUO, in connection with approval of a CDP for construction of homes on the three lots at issue here. Like the 1996 subdivision findings, the County's findings are fully supported by the evidence:

- The 1-for-1 retirement of the buildable Cuesta-by-the-Sea lots, in exchange for the creation and development of the 8 lots here, translates into an offset in the increase

February 7, 2020  
Page 19 of 27

in density and water/wastewater use of the subdivision. That is no net increase in water demand.

- As noted above, the three lots at issue here already have 5/8''-water meters and have had active water use for landscaping since 2007. There has been no limitation whatsoever on the amount of water accessible for the lots. The applicant has been paying for those water meters and water use for thirteen years, with the reasonable expectation that houses would be constructed. In other words, the lots are *already* using water, which has been—and continues to be—made available to the lots **without limitation**. If homes existed on the three lots today, there would be unfettered access to water. The lots' access to water is undisputed. Exhibit E (Steve Molnar Declaration).
- The three lots will be subject to Title 19 retrofits, at a savings of 300 gallons of water per day for each new residence built. In addition to the offset associated with the Questa-by-the-Sea transaction, this further off-sets the project's demand for water at a 2:1 ratio.

Surprisingly, the staff report declares that “there is currently a lack of evidence supporting a determination that adequate water exists to serve the development.” Staff Report at 12. Staff cites no evidence to the contrary, but only speculation. In sum, there is undisputed evidence that the project has adequate water supply, and therefore satisfies Public Works Policy 1 and section 23.04.430.

Finally, adequate wastewater service exists to serve this project. The project is not within the discharge prohibition zone. Exhibit F (prohibition/exception map). It lies within the sewer service district. It should be emphasized, too, that the wastewater situation has dramatically improved since 1996, when the subdivision was approved for development based on the finding that there was sufficient wastewater service to the lots. Since that time almost 25 years ago, a wastewater plant has been built and become operational, displacing septic systems. Today, the wastewater plant is significantly under-capacity. Exhibit G (Los Osos Basin Plan Groundwater Monitoring Program, 2017 and 2018 Annual Monitoring Reports). And, of course, with the displacement of septic systems, the water quality issue has dramatically improved.

To summarize, the project complies fully with Public Works Policy 1 and section 23.04.430. The lots do as a *factual* matter have ready access to wastewater service. But as explained in the following subsection, staff urges the Commission to use a *legal* bar to wastewater

February 7, 2020  
Page 20 of 27

service, which doesn't apply here, in order to deny the project—namely, Special Condition 6 of the County's 2010 CDP for its Los Osos Wastewater Project ("LOWWP").

## **2. Special Condition 6 Is a Red Herring and Does Not Preclude This Project**

Special Condition 6 of the LOWWP CDP issued to the County provides as follows: "Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats." For each of the following independent reasons, Special Condition 6 does not preclude this project.

### **a. The Three Lots Are Not "Undeveloped"**

The subject lots are not "undeveloped" within the meaning of that condition and, therefore, are not subject to its purported prohibition.

Whether "development" has occurred on a parcel—i.e., whether it is "developed" or "undeveloped"—is not defined in the LOWWP CDP. However, the term "development" is defined in the County's LCP, which adopts *verbatim* the Coastal Act's definition of "development":

"'Development' means, on land, in or under water, 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 Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber



February 7, 2020  
Page 21 of 27

operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511)."

CZLUO § 21.11.030 (definitions section); Pub. Res. Code § 30106 (definition of "development").

The Coastal Act adds that "[a]s used in this section [defining 'development'], 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." Pub. Res. Code § 30106. The CZLUO defines "structure" as "[a]ny artifact constructed or erected, the use of which requires attachment to the ground, including any building, but not including fences or walls six feet or less in height." CZLUO § 21.11.030 (definitions section).

The three lots that are the subject of this project clearly have been substantially developed. The lots are the result of a subdivision for construction of single-family homes; a subdivision is a development. The lots have been significantly improved with the placement of structures in the ground, in the form of water mains, laterals, water meters, landscaping, curbs, and gutters<sup>7</sup>—all of them developments. And the lots have been subject to a change in the intensity and use of land and water, in the form of water use for 13 years—another clear-cut case of development. The fact

---

<sup>7</sup> The staff report calls into question the validity of these substantial improvements by referencing the "scenic preservation agreement" that was recorded against the lots at issue here, as required by the County's approval of the development of the 8-lot subdivision. Staff Report at 11. That easement was recorded in January 2004—before the Commission approved, on appeal, a CDP for four of those lots. The easement states, in relevant part: "Owner hereby agrees to preserve the natural condition of the Subject Property for the term specified in paragraph 8 below [i.e., "until such time as all eight lots in Tract 2161 are connected to the community sewer system"]. . . . No buildings, structures, or other improvements shall be placed, constructed, or erected *upon* the Subject Property . . . . [N]othing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County by Court approval Subdivision Improvement Plans or the conditions of approval of Tract 2161." Exhibit H (Scenic Easement) (emphasis added). No component of the substantial development of the three lots described above consists of "buildings, structures, or other improvements . . . placed, constructed, or erected *upon*" those lots. The development consists of *underground* improvements or improvements that otherwise preserve the "natural condition" of the lots and do not implicate "scenic" values (e.g., water hook-up and use on all three lots). The development of the three lots is fully consistent with the easement.

February 7, 2020  
Page 22 of 27

that the lots are not also improved with homes does not mean the lots are “undeveloped” under the definition of “development” contained in both the LCP and the Coastal Act. *Gualala Festivals Committee v. California Coastal Com.* (2010) 183 Cal. App. 4th 60 (a fireworks display is a development); *LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 776 (installation of gates with “no trespassing” signs is development); *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 239–240 (lot-line adjustment is development); *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 605–609 (conversion of existing apartments into a stock cooperative is development); *Monterey Sand Co. v. California Coastal Com.* (1987) 191 Cal.App.3d 169, 176 (offshore sand extraction is development).

In fact, the Commission itself has designated the three lots as “developed.” In its 2004 CDP approval for construction of homes on the first four lots, the Commission discussed the long and complex history of Tract 2161. While the Commission thought it was problematic that it had not received notice of some of the local actions culminating in approval of that Tract, it concluded that it made little sense to force the owner to unwind the approval and “remove existing **development**” in order to “restore the site.” 2004 CDP Staff Report at 12 (emphasis added). Specifically, the Commission found that the owner “pursued the **development** in accordance with the direction given by the County,” and that “[t]he site has since been **substantially developed** (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed).” *Id.* at 12-13 (emphasis added). The Commission itself appreciated the unique circumstances of this subdivision: Unlike the vast majority of other vacant lots in Los Osos, this subdivision’s lots are substantially developed. *Id.* at 12 (noting the uniqueness of the Tract 2161 subdivision approval, because “[t]he Commission has not approved new subdivisions in Los Osos recently” due to its view that, among other things, it could not find that adequate public services were available for those proposed subdivisions).

The three lots’ status as developed lots, including their unfettered access to and continued use of water for over a decade, makes them unique among the hundreds of vacant lots in Los Osos. Further, the “substantial develop[ment]” of the lots—as the Commission rightly characterized them—was completed by 2004, with water meters on the three lots installed by 2007. Exhibit E (Steve Molnar Declaration). That development occurred before the Commission approved the County’s CDP for the LOWWP. In that sense, the three developed lots were a part of the “baseline” that existed at the time of that LOWWP’s approval, not lots that a reasonable person would have deemed to be included among the hundreds of actually “undeveloped” lots in Los Osos.

February 7, 2020  
Page 23 of 27

**b. Special Condition 6 Is Not a Part of the LCP, Which Is the Only Standard of Review**

Because the County has a certified LCP, the LCP is the sole standard of review. The Commission cannot rely on purported standards *outside* the LCP to review, let alone deny, a project. Specifically, alleged noncompliance with a CDP, especially a CDP belonging to a third party, cannot be the basis for review and denial of a project. (*Security Nat'l Guaranty, Inc.*, 159 Cal.App.4th at 422 (reiterating that the certified LCP is the sole standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

The CDP for the LOWWP is not a part of the LCP. Even though the Commission could have pursued an LCP amendment to incorporate the alleged prohibition contained in Special Condition 6, it did not do so. As such, the terms and conditions of an unrelated CDP cannot be the basis of denial of a project that is otherwise consistent with the LCP.

**c. Special Condition 6 is Unenforceable As Applied to This Project**

Even if the three lots at issue here implicated Special Condition 6 (which they clearly do not, because they are “developed” lots), and the condition were a relevant standard of review, the condition would be unenforceable against the project.

First, the purported power to impose Special Condition 6 on the County was based on Public Works Policies 1 and 6, certain ESHA policies, and sections 30250 and 30254 of the Coastal Act. Staff Report for LOWWP CDP (“LOWWP Staff Report”) at 64. As the LOWWP Staff Report acknowledges, “the standard of review for [the LOWWP] project is the certified San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act.” Sections 30250 and 30254 of the Act are not public access and recreation policies. Therefore, as a matter of law, they cannot provide a legal basis for Special Condition 6.<sup>8</sup>

---

<sup>8</sup> In any event, neither provision authorizes, let alone requires, Special Condition 6. Section 30250 simply discusses, in relevant part, the siting of specific developments (residential, commercial or industrial). Section 30524 mandates that “public works facilities ... be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of [the Coastal Act],” and that where “existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to



February 7, 2020  
Page 24 of 27

Policies 1 and 6 are part of the LCP. Policy 1 says that “[n]ew development” must “demonstrate that adequate public or private service capacities are available to serve the proposed development.” Special Condition 6 purports to nullify that LCP policy. It purports to make it unlawful for the County to apply that policy on a case-by-case basis and approve a project that can be shown to have adequate public/private service capacities. In relevant part, Policy 6 requires the County to implement the Resource Management System “to consider whether the necessary resources exist or can be readily developed to support new land uses,” and requires the County enforce the requirement that “[p]ermitted public service expansions ... ensure the protection of coastal natural resources.” Again, Special Condition 6 purports to nullify that policy, by eliminating the County’s power and discretion contained in Policy 6, and instead categorically prohibiting service to “undeveloped” parcels.

There is also reference in the LOWWP Staff Report to the need to protect ESHA through Special Condition 6. But, as explained at length above, the project site and vast surrounding areas are not mapped as ESHA. As a consequence, Special Condition 6 cannot be legally justified on the basis of the LCP’s ESHA policies.

Second, Special Condition 6 violates the prohibition against the Commission’s unilateral amendment of the County’s certified LCP. The Coastal Act makes clear that “[t]he precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and with full public participation.” Pub. Res. Code § 30500(c). Specifically, “the commission is not authorized by any provision of [the Coastal Act] to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.” The Commission “cannot itself draft any part of the coastal plan.” *Yost v. Thomas*, 36 Cal.3d 561, 572 (1984). And amendments to a land use plan, or any other LCP component, cannot be mandated or dictated by the Commission. *Id.* at 30514; *Security National*, 159 Cal.App.4th at 422-23 (“[T]he Commission has purported to exercise powers that the Legislature has expressly allocated to local government, which has decreed that LCP’s may be amended ‘by the appropriate local government.’ ([Pub. Res. Code] § 30514, subd. (a).) By declaring the site an ESHA, the Commission has impermissibly attempted to amend part of Sand City’s LCP.”).

the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.” Neither provision speaks to Special Condition 6.

February 7, 2020

Page 25 of 27

Special Condition 6 conditions approval of the County's CDP for the LOWWP, and the County's unfettered exercise of said CDP, on the County's agreement to amend its Estero Area Plan in a very specific way. Not only is there no policy or provision that authorizes such a condition, but the condition plainly purports to "diminish or abridge the authority of [the County] to adopt and establish, by ordinance, the precise content of its land use plan." As applied to this project, Special Condition 6 is *ultra vires* and unenforceable.

### III.

#### DENIAL OF THE PROJECT EFFECTS AN UNLAWFUL TAKING

If in spite of the foregoing, the Commission denies the project, the denial will effect an unlawful taking of private without compensation.

The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to state and local governments via the Fourteenth Amendment, bars the taking of private property without just compensation. U.S. Const. amends. X, XIV. "[a] regulation that permanently requires a property owner to sacrifice all economically beneficial uses of his or her land" constitutes a taking. *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 32 (2012) (citing *Lucas v. South Carolina Coastal Council*, 505 U.S. 10043, 1019 (1992)). The Coastal Act specifically prohibits the Commission from taking private property. Pub. Res. Code § 30010.

"[T]akings temporary in duration can be compensable." *Ark. Game & Fish*, 568 U.S. at 32; *see also First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 318 (1987) ("[T]emporary takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation."). The Supreme Court has made clear that temporary takings can occur even in the context of a regulation temporarily prohibiting use. "A temporary takings claim [can] be maintained as well when government action occurring outside the property [gives] rise to a direct and immediate interference with the enjoyment and use of the land." *Ark. Game & Fish*, 568 U.S. at 33 (internal citation and quotation marks omitted). To put it simply, the Court has "rejected the argument that government action must be permanent to qualify as a taking"; "[o]nce the government's actions have worked a taking of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *Id.* Factors that courts weigh to determine whether a temporary taking is compensable include the length of time of the taking, whether the interference with the enjoyment and use of

February 7, 2020  
Page 26 of 27

one's land is the foreseeable result of authorized government action, the character of the land, and the owner's "reasonable investment-backed expectations" regarding the land's use. *Id.* at 38-39.

If the Commission adopts the staff report and denies the project on the basis of ESHA and/or Special Condition 6, the denial would result in an unlawful taking of the lots, even if the denial of all beneficial use of the lots is "temporary."

The staff report designates the entire area of the three lots as ESHA and federally designated critical habitat for the MSS. Worse, despite the overwhelming expert evidence establishing that the three lots have no MSS or even suitable habitat for that species, staff declares that said evidence "is not conclusive evidence that this sensitive species will not be present at a later date when the project is constructed." Staff Report at 14. In other words, in staff's view, no amount of *factual* evidence would alter the *legal* conclusion that the lots may—some day in the future—host MSS habitat. With the entire project site allegedly burdened with layer upon layer of staff-created legal protections (for purported ESHA and the MSS), it is no wonder that the staff report contains no hint of alternative projects that could be approved. As a matter of law, project denial would mean that no project is allowed at this time because of those environmental constraints.

The same applies to the application of Special Condition 6. The Commission would be denying the project, not because the three lots cannot, as a factual matter, access water and wastewater services. To the contrary, the project *can* access such public services—and, with respect to water, already *has* for 13 years. Instead, the Commission would be denying the project based on a regulation that requires the County to make specific changes to a land use plan before it authorizes wastewater service to certain lots.

Further, this would be the *second* time the Commission has denied a proposal to build modest homes on the three lots. The Commission's first denial came in 2004, when the Commission said that the owner had to wait until a wastewater plant was built. That condition was fulfilled, leading the owner to make the current application to build homes on the three lots. A second denial based on a new purported regulation—Special Condition 6, adopted in 2010—making it abundantly clear that the Commission intends no homes to be built on the lots for an indefinite period of time, if ever.

At pages 18-19, the staff report discusses a California court of appeal case that staff views as dispositive on the takings issue: *Charles A. Pratt Construction Co., Inc. v. California Coastal Comm.* (2008) 162 Cal.App.4th 1068. There, the Commission denied a project on the basis of ESHA and because, as a matter of *fact*, the project had inadequate water service. The owner

February 7, 2020

Page 27 of 27

brought a taking claim against the Commission. But the Commission held the claim was unripe, noting that the Commission offered less intensive alternatives to the proposal, making clear that “a less intense project could ... gain approval.” *Id.* at 1081. As the court concluded, “This is the only opportunity the Commission has been given to review a development proposal for this parcel. What development plan, if any, the Commission will approve has yet to be determined.” *Id.* at 1082.

The facts here are dramatically different. If the Commission adopts the staff report and denies the project, the denial will leave no room for doubt that the construction of homes on the three lots is positively prohibited for an indefinite period of time. The staff report does not remotely suggest “less intense” alternatives—no houses are allowed, period. Further, the Commission’s findings for denial would be rooted in a purported *legal* prohibition on wastewater service to the lots and on the purported existence of ESHA and MSS habitat across the entirety of the three lots. Unlike the reasons the Commission denied the project in *Pratt*, these are classic regulatory prohibitions that give rise to unlawful takings.<sup>9</sup>

### CONCLUSION

The Commission should dismiss this appeal as improvidently granted. This project is unappealable, and the County’s CDP should be reinstated. In the alternative, the Commission should grant the CDP as approved by the County. Not only does the project comply with the County’s LCP, but denying the project would result in an unlawful taking actionable in federal court.

Very truly yours,

**FisherBroyles, LLP**



Paul J. Beard II

Counsel for Shear Development Co., LLC

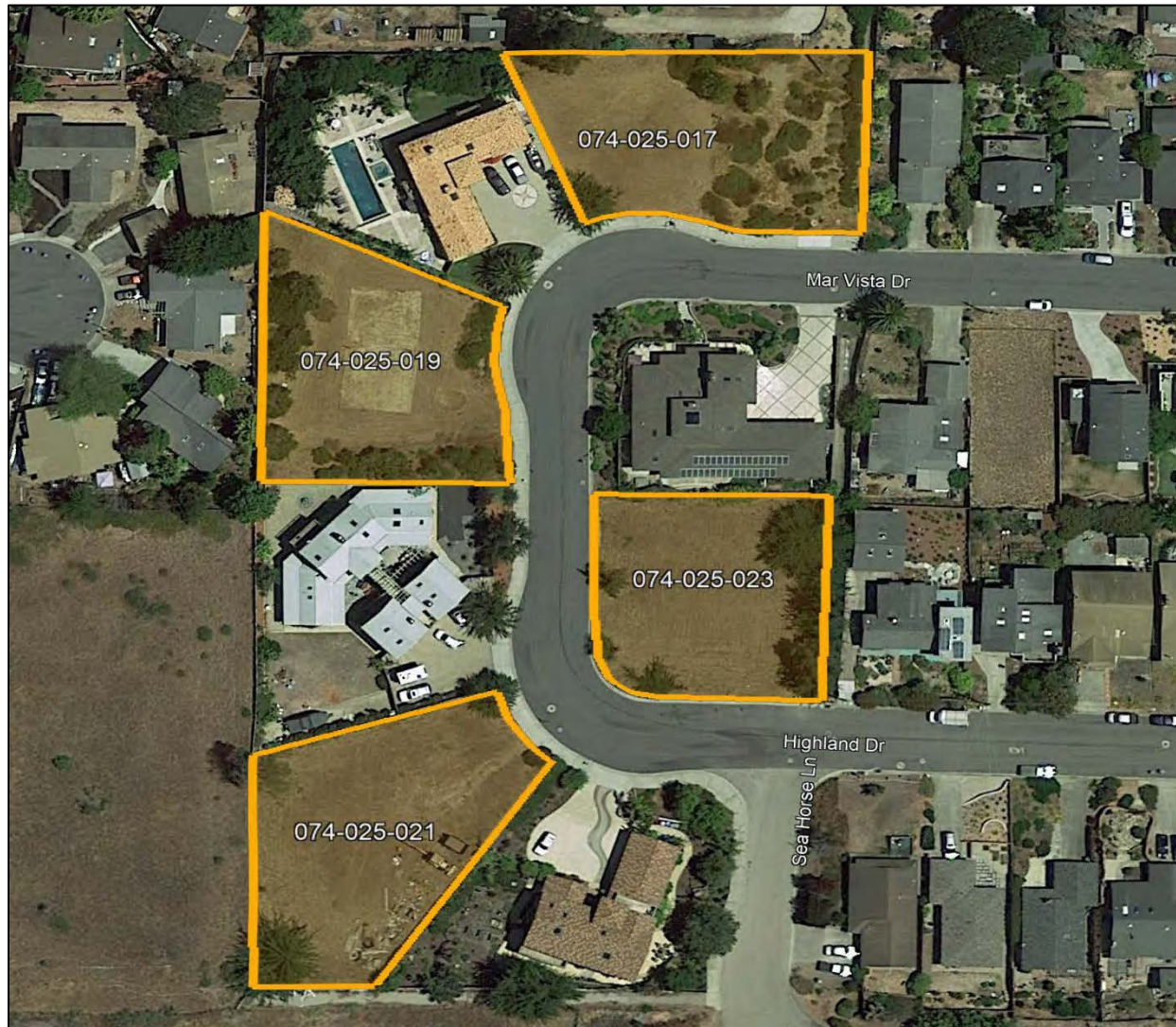
---

<sup>9</sup> In any event, with last year’s U.S Supreme Court decision in *Knick v. Township of Scott* (2019) 139 S.Ct. 2162, a federal taking claim can be brought directly in federal court, without having to first file that claim in a California court. With all due respect to the court of appeal in *Pratt*, its decision in that case would carry no precedential weight.



# **EXHIBIT A**

**Morro Shoulderband Snail Habitat Assessment and Protocol Survey  
Report for the Shear Development MUP DRC2017-00029, Lots 1, 3, 5,  
and 7 of Tract 2161, Los Osos, San Luis Obispo County, California**



Prepared for:

Carol Florence, AICP  
Oasis Associates, Inc.  
3427 Miguelito Court  
San Luis Obispo, CA 93401

Prepared by:



March 14, 2019

## **Introduction**

The following Morro shoulderband snail (*Helminthoglypta walkeriana*) protocol survey report has been prepared by Ecological Assets Management LLC (EAM) for Ms. Carol Florence, AICP, Principal Planner with Oasis Associates, Inc., on four lots located at 294 and 282 Mar Vista Drive and 284 and 289 Highland Drive, Los Osos, San Luis Obispo County, California. This report presents the methods and results of five protocol-level Morro shoulderband snail (MSS) surveys conducted from December 17, 2018, to February 15, 2019. A concurrent habitat assessment was also conducted with the protocol surveys to determine if habitats suitable for MSS were present. This report provides a description of existing conditions on the subject parcels and adjacent areas, and, in combination with the results of the five protocol surveys, determines whether MSS and/or suitable habitat for MSS are present.

In summary, during the five protocol surveys conducted on the four lots, fourteen (14) live MSS were observed on lot 5. These live MSS were observed in three different areas of lot 5 and were associated with scattered debris, ornamental landscaping and New Zealand spinach (a nonnative species). A project on lot 5 has the potential to result in take of MSS. No live or empty MSS shells were observed on lots 1, 3, or 7 during the five surveys, and based on the habitats present, existing conditions, and absence of adjacent suitable MSS habitat, "take" of MSS is unlikely to occur from the proposed projects on these three lots. In addition, numerous live and empty shells of the brown garden snails (*Helix aspera*) were observed during the surveys on the four lots.

## **Protocol Survey and Habitat Assessment Methods**

This report is based on five site visits to the subject parcel by permitted biologist Dwayne Oberhoff and Bob Sloan that were conducted during protocol conditions on December 17, 2018; January 6, 14; and February 3 and 15, 2019. Bob Sloan assisted with the protocol survey on December 12, 2018, and conducted the survey on February 15, 2019, individually. Dwayne Oberhoff is permitted to conduct MSS protocol surveys under federal recovery permit TE-180579-1. Bob Sloan is permitted to conduct MSS protocol s surveys under federal recovery permit TE-43937B-0.

The 2003 United States Fish and Wildlife Service (USFWS) Protocol Survey Guidelines for MSS require that protocol surveys be performed during or immediately following a rain event to establish the presence or absence of MSS at a location. Protocol surveys must include a general habitat assessment that identifies key habitat features within and adjacent to the survey area. The five protocol surveys and habitat assessment were conducted on foot and covered all areas to determine the presence/absence of MSS and whether suitable MSS habitat is located on the subject parcel. Survey efforts focused on all areas, including nonnative habitat, ornamental plantings, anthropogenic debris, and edges of building foundations, fence lines, and other manmade structures that could provide habitat or shelter for MSS.

### **Description of Morro Shoulderband Snail and its Habitat**

MSS is found in western San Luis Obispo County within the vicinity of Morro Bay. Specifically, it is found south from the northern portion of the city of Morro Bay, west of Los Osos Creek and north of Hazard Canyon. Within this area, the primary habitat components for MSS are coastal dune and coastal scrub plant communities found on sandy soils with  $\leq 10$  percent (%) slopes. Key native plant species associated with MSS include mock heather (*Ericameria ericoides*), coast buckwheat (*Eriogonum parvifolium*), dune bush lupine (*Lupinus chamissonis*), deerweed (*Acmispon glaber*), California croton (*Croton californicus*), seaside golden yarrow (*Eriophyllum staechadifolium*), black sage (*Salvia mellifera*) and California sagebrush (*Artemisia californica*). MSS are also commonly found in association with nonnative plant species such as veldt grass (*Ehrharta calycina*), ice plant (*Carpobrotus edulis*), and anthropogenic structures or debris/garbage (i.e. plywood, cardboard, etc).

Due to threats from habitat destruction, colonization of invasive plant species, aging habitat, and off-road vehicle use, MSS was listed as endangered by the USFWS on December 15, 1994. In 2006, following the five year review conducted by the USFWS, the USFWS recommended MSS be downlisted from endangered to threatened, however the final rulemaking process for downlisting has not been completed.

### **Site Location and Existing Conditions**

The four lots are located in western San Luis Obispo County, California, within the community of Los Osos (refer to Figure 1 and Appendix A). The parcels are located at the western terminus of Mar Vista Drive and Highland Drive where the two streets meet. The closest cross street is Doris Avenue located 0.17-miles to the east of the properties.

During the surveys, the four parcels were observed to be relatively flat, but had terracing along the perimeters. Grading of the four parcels occurred during the initial development in 2004 when all vegetation and soils in the development were disturbed (KMA 2018). All four lots were observed to be dominated by nonnative annual grasses and herbs and most of the lots have a heavy infestation of the nonnative and extremely invasive devil's thorn (*Emex spinosa*). The lots also contain a few trees along the perimeter such as coast live oak (*Quercus agrifolia*), Monterey cypress (*Hesperocyparis macrocarpa*) and eucalyptus (*Eucalyptus* sp.). No native coastal scrub habitat was observed on or adjacent to any of the lots during the surveys. All of the lots appeared to be mowed on an annual basis for fire protection.

The following are additional details of each lot:



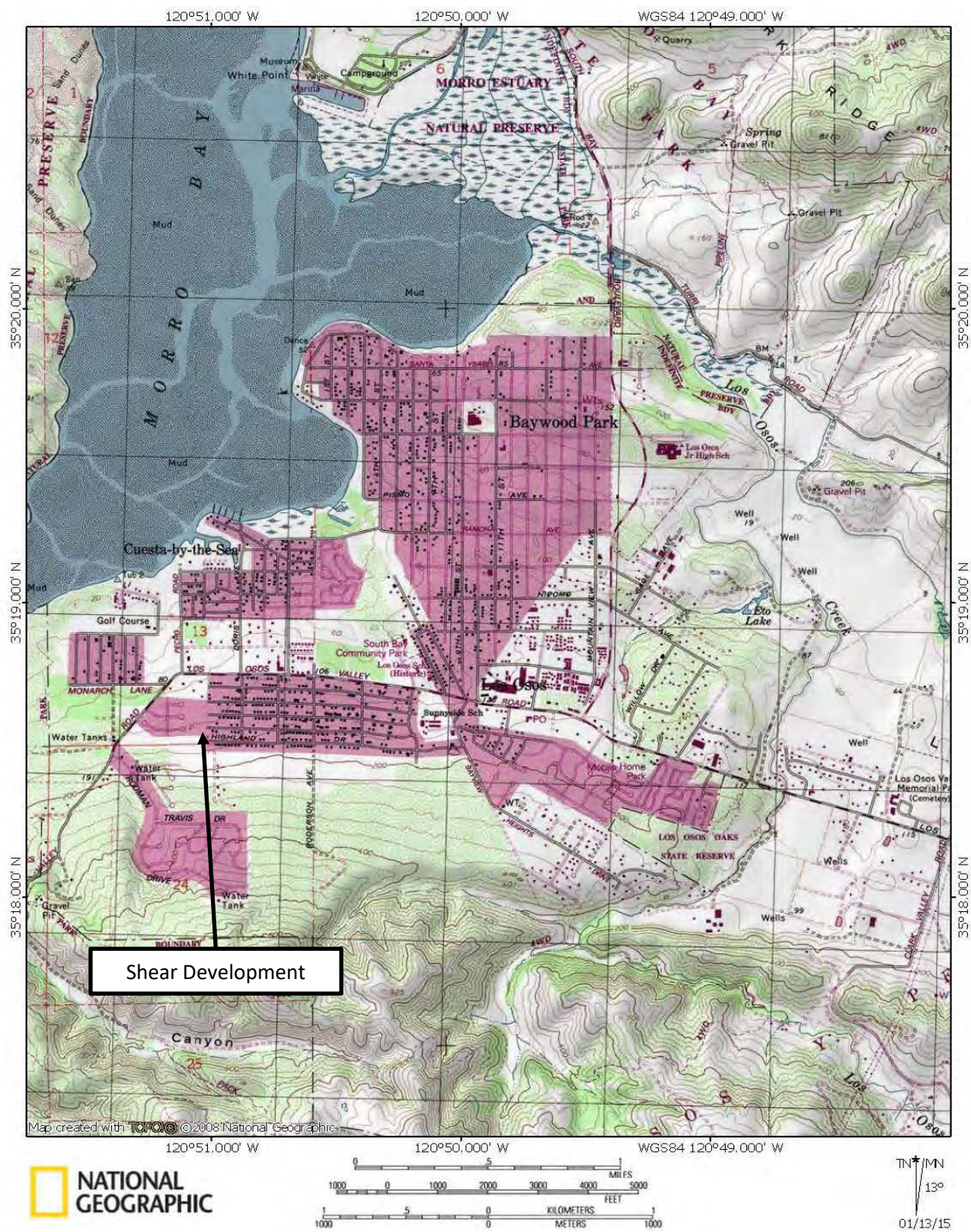


FIGURE 1. Location map of lots in Los Osos, CA.



- Lot 1, 295 Mar Vista Drive, APN 074-025-017 - Lot 1 has a single Monterey cypress on the western perimeter at the front of the lot, eucalyptus trees on the northern perimeter and a stormwater/sediment basin in the eastern portion of the lot that is landscaped with a variety of ornamental landscape species.
- Lot 3, 282 Mar Vista Drive, APN 074-025-019 – Lot has a developed volleyball court that is no longer maintained and ornamental landscaping and coast live oak trees along the southern, western and eastern perimeters.
- Lot 5, 289 Highland Drive, APN 074-025-021 – Lot was cleared of the “scattered debris consisting of old wood, trash, and construction equipment” documented in the October 3, 2018, MSS habitat assessment prepared by KMA just prior to EAM’s first site visit on December 17, 2018. The remaining items observed by EAM on lot 5 included a backhoe tractor and its implements, an empty plastic trashcan, a few pieces of scattered wood, and a stack of bricks. A Monterey cypress is located along the southern perimeter and a eucalyptus tree on the western perimeter. A paved access road located on the Kroll parcel separates lot 5 from the Kroll parcel (refer to Appendix C, Photo 10).
- Lot 7, 284 Highland Drive, APN 074-025-023 – Lot has a line of Monterey cypress growing along the western perimeter and is completely surrounded by existing development and sidewalks/roadways.

A primary habitat component for MSS is sand or sandy soils with a slope not greater than 10 percent (%). The University of California Davis, Soil Resource Laboratory online soil mapping website, “SoilWeb” (<http://casoilresource.lawr.ucdavis.edu/gmap/>), maps a single soil unit on the lots: Baywood fine sand, 2 to 9 percent (%) slopes.

Lots 1, 3, and 7 are bordered by existing developed residences and paved streets/sidewalks. Lot 5 is bordered by existing residences and a paved street/sidewalk on the north and east. The south and west side of parcel 5 borders undeveloped areas associated with the Kroll parcel (south) and the “Farm” parcel (west) that is owned by Anastasi Development Company. Both of these undeveloped parcels are dominated by annual grasses such as veldt grass (e.g. suitable nonnative MSS habitat) and do not contain native coastal scrub habitats suitable for MSS. However, MSS is known from the Kroll parcel and to mitigate impacts to MSS on the parcel from a residential project, Mr. Jim Kroll prepared a HCP to receive an Incidental Take Permit.

The subject parcel is located outside of the boundaries of critical habitat units for MSS designated on February 7, 2001. The nearest critical habitat unit for MSS is Unit 2 located approximately 0.18-mile east of the lots.

## **Proposed Project**

The habitat assessment prepared by Kevin Merk Associates on October 3, 2018, describes the proposed project as:

*The proposed project is the development of four remaining lots in Tract 2161 (an eight-lot subdivision) located at the western end of Highland Drive and Mar Vista Drive. The property and project have been referred to as the Goedenhaus property and "Highlands development" in MSS studies conducted in the area (Tenera, 2007; SWCA, 2014). Based on our understanding of the project and review of historic aerial imagery on Google Earth, the entire tract had eucalyptus trees (*Eucalyptus globulus*) trees removed and was graded in 2004. Pads were constructed on each of the eight lots, and four homes were approved for development at that time. The four remaining lots, which are the focus of this analysis, were largely left untouched since the initial grading with the exception of the construction of a beach volleyball court on lot 3 and annual weed abatement and mowing on all four lots. Lot 1 in the northern part of the site also had a detention basin constructed on the eastern part, which was landscaped primarily with native species. Landscaping of primarily ornamental species including Monterey cypress trees (*Hesperocyparis macrocarpa*) occurred along the streets and sidewalks.*

## **Results**

Five site visits to the subject parcel to conduct focused surveys for MSS during protocol conditions were conducted (refer to Table 1) by EAM Biologist Dwayne Oberhoff and Bob Sloan. A total of 8.2 person-hours (9.9 person-hours/hectare) were spent conducting the five protocol surveys on the four lots. During the five protocol surveys, fourteen live MSS were observed on lot 5. No live or empty MSS shells were observed on lots 1, 3, or 7. A few live and dead *Helix* were observed on these parcels also during the surveys.

Following the first survey on December 17, 2018, EAM biologists contacted the USFWS to provide notification that MSS were observed on lot 5 and to seek their guidance on how to proceed with the additional surveys on lot 5. The USFWS recommended that the remaining four surveys be conducted on lot 5 to document distribution of MSS on the lot, and this is in addition to continuing four more surveys on the other three lots.

The live MSS observed in the eastern portion of lot 5 during the December 17 (one MSS), January 14 (one MSS) and February 15 (four MSS) surveys were associated with pieces of remnant debris (e.g. wooden board and an empty plastic trash can which provided structure) that remained of the large amount of debris documented in KMA's report (refer to Appendix C. Photo 9 of report). The bulk of this debris was removed prior to the start of the December 17 survey, with the final efforts to remove the debris being completed on the morning of the December 17 just prior to the arrival of EAM biologists.

In addition, seven live MSS were observed in the northwestern corner of the parcel under New Zealand spinach (*Tetragonia tetragonoides*) and one live MSS was observed under ornamental shrubs in the northeastern corner of the parcel adjacent to Highland Drive. Refer to Appendix A for locations of MSS observations on lot 5.

**Table 1. MSS Survey Results for Shear Development MUP DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California**

Survey #	Survey Date and Time	Surveyor	Weather Conditions	Protocol Survey	Results*
1	12/17/2018 1120 - 1300 hrs	B. Sloan and D. Oberhoff	0.76" of precip day/night before survey, overcast w/ clearing skies during survey.	Yes	Three live MSS on Lot 5. No MSS on other the lots.
2	1/6/2019 0940 - 1045 hrs	D. Oberhoff	0.94" rain previous day/night, 100% cloud cover, no wind.	Yes	Three live MSS on Lot 5. No MSS on other lots.
3	1/14/2019 1610 - 1705 hrs	D. Oberhoff	Cloudy and wet during during survey, light rain previous night.	Yes	One live juvenile MSS on Lot 5. No MSS on other lots
4	2/3/2019 1540 - 1630 hrs	D. Oberhoff	1.65" of rain day/night before survey. Cool and windy drying survey.	Yes	No MSS observed.
5	2/15/2019 1000 - 1200 hrs	B. Sloan	1.13" rain prior to survey and lite rain during survey. Vegetation very wet.	Yes	Seven live MSS observed on Lot 5. No MSS observed on other Lots.

\*MSS - Morro shoulderband snail

## Discussion

The survey results documented above provide a determination that the four lots are dominated by nonnative and disturbed habitats and native habitats (i.e. coastal scrub) suitable for MSS are not present. However, lot 5 has anthropogenic features (e.g. scattered debris) that provides habitat for MSS dispersing from the adjacent undeveloped parcels (e.g. Kroll and the "Farm") located to the west and south. The remnant debris observed by EAM biologists on lot 5 has the potential to continue provide habitat, and specifically estivating habitat. Because of the presence of MSS in this portion of lot 5, removal or manipulation of these anthropogenic features (e.g. backhoe, plastic trash can, wooden boards, pile of bricks) has the potential to result in take of MSS. However, the New Zealand ice plant located in the northwestern portion of the lot will likely not provide suitable habitat for MSS because it is a succulent-like prostrate annual plant that will desiccate in the summer and likely not provide the



microclimate MSS require during estivation. In addition, due to the presence of known nonnative MSS habitat adjacent to lot 5, MSS has the potential to continue to disperse onto the lot during future winter rain events.

No live or empty MSS shells were observed on lots 1, 3, or 7 and is likely due to the absence of native habitats suitable for MSS, historic and recent disturbances (e.g. grading, annual mowing, etc.), and isolation from adjacent areas of suitable MSS habitat. The absence of live MSS, current habitats, and the thorough survey efforts indicate a very low potential for live MSS to be present on lots 1, 3, and 7 at this time. Due to these results and conditions, take of MSS is not anticipated to occur from a proposed project at this time.

If a project can be shown to have no adverse impacts to MSS, USFWS may grant a Concurrence Authorization, which allows construction to occur. If a concurrence authorization is not granted by the USFWS, mitigation through preparation of a Habitat Conservation Plan (HCP) and receipt of an Incidental Take Permit would be necessary prior to construction.

Based on the absence of live MSS observed during the protocol surveys on lots 1, 3, and 7, the proposed projects on these lots are unlikely to result in take of MSS, and therefore may be eligible to proceed under a Concurrence Authorization. Due to the presence of live MSS throughout lot 5, a Concurrence authorization would likely not be granted and either an Incidental take Permit through the preparation of an Individual Habitat Conservation Plan or participation in the forthcoming Los Osos Community-wide HCP would be necessary for construction to occur.

## References

- Kevin Merk Associates LLC. 2018. Morro Shoulderband Snail Habitat Assessment for Shear Development MUP DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California.
- Roth, B. 1985. Status Survey of the Banded Dune Snail, (*Helminthoglypta walkeriana*). Prepared for the U.S. Fish and Wildlife Service. Sacramento, California.
- Roth, B. and Tupen, J. 2004. Revision of the systematic status of *Helminthoglypta walkeriana morroensis* (Hemphill, 1911) (Gastropoda: Pulmonata). *Zootaxa*, 616: 1-213.
- SWCA Environmental Consultants. 2012. Annual Construction Monitoring Report for the Los Osos Wastewater Project, San Luis Obispo, California.
- SWCA Environmental Consultants. 2013. Annual Construction Monitoring Report for the Los Osos Wastewater Project, San Luis Obispo, California.
- SWCA Environmental Consultants. 2014. Annual Construction Monitoring Report for the Los Osos Wastewater Project, San Luis Obispo, California.
- SWCA. 2014. Low Effect Habitat Conservation Plan for the Kroll Property (APN 074-022-041), Los Osos, California. Includes survey reports from Tenera in 2003 and 2007.
- U.S. Fish and Wildlife Service. 1998. Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2003. Protocol Survey Guidelines for the Morro Shoulderband Snail. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2006. Morro Shoulderband Snail 5-Year Review. U.S. Fish and Wildlife Service. Ventura Fish and Wildlife Field Office, Ventura California.

## **Appendix A: Lot Map and Survey Results Map**







## **Appendix B: Photo Pages**

- **6 Photos**



Photo 1: Photo of Lot 5 showing clearing of the debris from site just prior to first survey on December 17, 2018. One live MSS was observed in this location during the survey.

December 17, 2019





Photo 2: Photo of lot 1 viewing northeast. Note annual grasses that dominate the site.

February 24, 2019





Photo 3: Photo of landscaped sediment/stormwater basin along eastern side of lot 1.  
February 24, 2019





Photo 4: Photo of unmaintained volleyball court and annual grasses that dominate lot 3.

February 24, 2019





Photo 5: Photo southeast through lot 7. Note nonnative annual grasses that dominate the lot.

February 24, 2019





Photo 6: Phot viewing southwest through lot 5. Note annual grasses that dominate the site.



**Appendix C: Kevin Merk Associates, LLC Report  
– “Morro Shoulderband Snail Habitat Assessment  
for Shear Development MUP DRC2017-00029,  
Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San  
Luis Obispo County, California”**



Kevin Merk Associates, LLC | P.O. Box 318, San Luis Obispo, CA 93406 | 805-748-5837

October 3, 2018

C.M. Florence, AICP  
Oasis Associates, Inc.  
3427 Miguelito Court  
San Luis Obispo, CA 93401

**Subject: Morro Shoulderband Snail Habitat Assessment for Shear Development MUP DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California**

Dear Ms. Florence:

At your request and to enable the County of San Luis Obispo Planning and Building Department to complete the environmental determination, Kevin Merk Associates, LLC (KMA) conducted a Morro shoulderband snail (*Helminthoglypta morroensis*; MSS) habitat assessment to evaluate the potential presence of suitable MSS habitat on undeveloped lots 1, 3, 5 and 7 of Tract 2161 in the community of Los Osos. Please refer to Figure 1, the Site Location Map, and Figure 2, the Aerial Overview Map included as attachments for site location information. The lots are identified by the following Assessor's Parcel Numbers:

- 074-025-017 (lot 1);
- 074-025-019 (lot 3);
- 074-025-021 (lot 5); and
- 074-025-023 (lot 7).

The following report provides a brief summary of our understanding of the project, a description of MSS and its suitable habitat, as well as the methods and results of the habitat assessment.

## **PROPOSED PROJECT**

The proposed project is the development of four remaining parcels or lots in Tract 2161 (an eight lot subdivision) located at the western end of Highland Drive and Mar Vista Drive. The property and project have been referred to as the Goedenhaus property and "Highlands development" in MSS studies conducted in the area (Tenera, 2007; SWCA, 2014). Based on our understanding of the project and review of historic aerial imagery on Google Earth, the entire tract had eucalyptus trees (*Eucalyptus globulus*) trees removed and was graded in 2004. Pads were constructed on each of the eight lots, and four homes were approved for development at that time. The four remaining lots, which are the focus of this analysis, were largely left untouched since the initial grading with the exception of the construction of a beach volleyball court on lot 3 and annual weed abatement and mowing on all four lots. Lot 1 in the northern part of the site also had a detention basin constructed on the eastern part, which was landscaped primarily with native species. Landscaping of primarily ornamental species including Monterey cypress trees (*Hesperocyparis macrocarpa*) occurred along the streets and sidewalks.

## **MORRO SHOULDERBAND SNAIL SPECIES AND HABITAT DESCRIPTION**

MSS is a member of the land snail family Helminthoglyptidae, and is closely related to the surf shoulderband snail (*Helminthoglypta fieldii*), which occurs in coastal dune habitats south of the San

---

Luis range to Point Arguello. The MSS is associated with sandy soils of coastal dune and coastal sage scrub communities near Morro Bay, California. Native plant species associated with MSS include mock heather (*Ericameria ericoides*), coast buckwheat (*Eriogonum parvifolium*), dune bush lupine (*Lupinus chamissonis*), deerweed (*Acmispon glaber*), California croton (*Croton californicus*), seaside golden yarrow (*Eriophyllum staechadifolium*), black sage (*Salvia mellifera*) and California sagebrush (*Artemisia californica*). MSS is also commonly found in association with non-native plant species such as veldt grass (*Ehrharta calycina*), ice plant (*Carpobrotus* spp.), and anthropogenic structures or debris/garbage (i.e. building foundations, woodpiles, cardboard, etc.).

Due to threats from habitat destruction, colonization of invasive plant species, aging habitat, and off-road vehicle use, MSS was listed as endangered by the United States Fish and Wildlife Service (USFWS) on December 15, 1994. In 2006, following a five-year review conducted by the USFWS, the species was recommended for downlisting from endangered to threatened, however, the final rulemaking process for this action has not been completed. The USFWS has recently initiated another five-year review for this species (Federal Register, Vol. 83, No. 117; June 18, 2018)

## **METHODS**

Prior to field work, background documents including survey reports and the Habitat Conservation Plan for the Kroll parcel (Tenere, 2004 and 2007; SWCA, 2014; HCP) were reviewed. The California Natural Diversity Data Base was queried for MSS occurrences within one mile of the site to aid in the habitat assessment, and historic aerial photographs accessed on Google Earth (2018) were also reviewed. KMA principal biologist Kevin Merk conducted site visits of the four lots on September 17 and 21, 2018. The site visits occurred in the morning hours and weather was generally overcast with coastal fog clearing by mid-morning. This was a focused habitat assessment to evaluate site conditions and characterize conditions and vegetation present on each parcel and in close proximity of the sites. It was not a protocol-level survey consistent with 2003 Survey Guidelines for MSS (USFWS).

Each lot was traversed on foot and aerial imagery obtained from Google Earth (2018) was used to identify key features within and adjacent to the study area. All vegetated areas within the study area were thoroughly examined in order to assess potentially suitable habitat onsite. Since the surveys were conducted during the dry season, the site inspection searched for empty shells, suitable habitat, or other resources considered potentially suitable habitat for MSS. Non-native vegetation, ornamental plantings, anthropogenic debris, and edges of concrete retaining walls, fences, and other manmade structures that could provide habitat or shelter for MSS were also carefully examined to avoid potential impacts to aestivating individuals. Photographs from strategic vantage points were taken of each parcel to document conditions at the time of the surveys.

## **RESULTS**

### Background Review

Review of the CNDDDB did not identify any recorded occurrences of MSS on the four lots comprising the study area. Please refer to Figure 3, the CNDDDB Occurrence Map for detail. Immediately adjacent to the southern site boundary is an MSS occurrence polygon (identified as Occurrence 22) that includes documented live MSS from surveys conducted on several projects in Cabrillo Estates. This includes the Kroll parcel, which immediately abuts the southern lot 5 and ultimately had an HCP prepared by SWCA in 2014 for issuance of an Incidental Take Permit to facilitate development



on that site. Review of the Kroll HCP and survey reports supporting that document confirmed MSS were present in low numbers due to the lack of intact native habitat, historic disturbances and ongoing land uses on the site. The conservation area developed for the Kroll project includes an approximate one acre part of the western property where habitat restoration will occur once development commences. Avocado trees planted along the northern perimeter of the Kroll parcel (visible in aerial imagery) have been allowed to die in support of the habitat restoration work that will occur in this area.

No documented MSS occurrences or readily available survey work cover the Anastasi parcel to the west of lot 5. Historic aerial photograph review showed this parcel was completely denuded of vegetation and planted in blueberries, and potentially other row crops, sometime in or prior to 2004. This is generally the time when Tract 2161 had all surface vegetation removed and all eight lots were graded to create the pads and current site topography. Aerial photograph review also showed the concrete retaining walls installed around the outer perimeters of the site and associated fencing. To the north and east of the study area are existing residences with no suitable MSS habitat evident.

#### Field Investigation

***The habitat assessment conducted within the study area found no live MSS or empty MSS shells on any of the four lots.*** As stated above, the lots subject to the habitat assessment were all graded in 2004 and surface vegetation was removed, and soils disturbed. Pads were constructed on all eight lots, concrete retaining walls and privacy fencing and homes were constructed on four lots as shown on Figure 2, the Aerial Overview Map. The retaining walls and privacy fencing were also constructed around lots 1 and 3. Lots 1, 3, 5 and 7 have remained undeveloped, and appear to have been mowed and maintained on an annual basis. A volleyball court was present on lot 3, and scattered debris consisting of old construction materials and trash was present on lot 5. Please refer to Figure 2 and the attached Photo Plate for site conditions.

The habitat assessment found no native habitat elements suitable for MSS present within the study area. The pads consisted of veldt grass mowed to approximately two inches above ground with excessive bare sands, including bare imported sand for the volleyball court on lot 3. Exposed soils in the lots were sandy consistent with dune sands in the area. Several areas of rocky fill soils were observed at driveway cuts and along the retaining walls. The lots also had landscaping present along the streets and planted trees consisted of Monterey cypress and coast live oak, as well as other ornamental species. Lots appear to be consistently sunny and dry with no suitable microhabitat features for MSS, with the exception of the scattered debris on lot 5. Lots 1, 3, and 7 also had barriers surrounding the lots consisting of concrete retaining walls and privacy fences at least six feet in height, and were separated from known MSS occurrences by other residential development and streets. Therefore, lots 1, 3, and 7 were determined to be unlikely to support MSS.

Lot 5 contained scattered debris consisting of old wood, trash, and construction equipment. It abuts a paved driveway that separates it from the Kroll property to the south. Split rail fencing is present along the perimeter of lot 5 compared to the six foot tall privacy fencing on other lots. Shade cloth or similar material was also installed along the outer part of the fence, apparently to deter MSS from moving onto the site from neighboring properties. At the time of the surveys, the "snail fencing" was torn in many areas and overall in a state of disrepair (refer to photos 8 and 10).

Two MSS shells were found on the paved driveway just outside the southern study area boundary during the September 21<sup>st</sup> survey. Class A (likely less than one year old) and B (upwards of two years old) shells were observed along the paved driveway next to the curb under the overhanging canopy of veldt grass (refer to Photos 10 and 11 in the attached Photo Plate). Empty common garden snails (*Helix aspera*) and shell fragments were also observed littered throughout this general location. Elements of native coastal dune scrub habitat consisting of patchy occurrences of California sagebrush (*Artemisia californica*) and coyote brush (*Baccharis pilularis*) are present to the south of lot 5. To the west on the Anastasi parcel, some bush lupine shrubs (*Lupinus chamissonis*) were observed in dense veldt grass recolonizing the former farmed field. Therefore, given the presence of the scattered debris on lot 5 and its proximity to known MSS occurrences to the south on the Kroll parcel, potential, albeit low, exists for MSS to be present under the wood piles or in shady locations at the base of the split rail fence, likely away from the Monterey cypress tree in the southwest corner.

## **REGULATORY IMPLICATIONS**

Section 3(18) of the Endangered Species Act defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” As further defined by the USFWS, “harm” includes significant habitat modification or degradation which actually kills or injures wildlife by “significantly impairing essential behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.” Therefore, activities such as construction, mowing, brush or debris removal, or grading within a property that is known to support MSS or MSS habitat can result in take. Take can occur through both direct impact and by loss of or degradation of known habitat, even non-native anthropogenic features such as old wood piles. Unauthorized take is a violation of the Endangered Species Act and could result in penalties of up to \$100,000 and/or up to one-year imprisonment. If a project can be shown to have no adverse impacts to MSS or their habitat, USFWS may grant a “Concurrence Authorization” and concur that take subject to the Endangered Species Act would not result from the project. The pending region-wide Habitat Conservation Plan will also provide regulatory compliance mechanisms to authorize future development once it is approved.

## **CONCLUSION**

***The field surveys found no live MSS, empty shells, or suitable native habitat conditions for the species within the four lots inspected.*** Two MSS shells were observed just to the south of lot 5 along the paved access road. Areas of scattered debris consisting of old wood, trash and construction equipment on lot 5 (i.e., the southern lot) represents potential habitat for the species since no significant barrier to MSS movement is present. Given the proximity of lot 5 to known occurrences on the Kroll parcel to the south coupled with direct observations of Class A and B shells along the paved access road to the south of the lot, we cannot rule out the potential that MSS may have moved onto this lot since the initial site disturbance occurred.

The habitat assessment was conducted in the driest part of the year, and as such, no wood or other debris was moved to ensure any aestivating MSS, should they be present, were not injured or harmed. The survey results and site conditions documented in this report indicate an unlikely or very low potential for MSS presence on lots 1, 3, and 7 due to past grading and construction activities within Tract 2161, ongoing disturbance (i.e., mowing and weed abatement), lack of suitable native habitat, and separation from known occurrences by existing residential development and streets. Furthermore, it appears that MSS numbers to the south are low (Tenera, 2007 and SWCA, 2014), which would reduce the potential for MSS to occur in lots 1, 3, and 7.

In conclusion, ***completion of protocol-level surveys is not recommended for lots 1, 3 and 7 given their disturbed nature and separation from potential habitat and known occurrences of MSS.***

The scattered debris pile on lot 5 represents potential anthropogenic, non-native habitat for MSS since the parcel abuts known occurrences on the Kroll property to the south. The fact that two MSS shells were found along the paved driveway, and there was no significant barrier to prevent movement of MSS onto the site, potential exists that MSS could have moved onto this lot and occupy the debris pile along the southern fence line. As such, completion of protocol-level surveys following current USFWS guidance are recommended to accurately determine presence or absence of MSS from lot 5.

## REFERENCES

- California Department of Fish and Wildlife. 2018. California Natural Diversity Data Base. Queried in September 2018 for Morro shoulderband snail within one mile of study area.
- Roth. 1985. Status Survey of the Banded Dune Snail, (*Helminthoglypta walkeriana*). Prepared for the U.S. Fish and Wildlife Service. Sacramento, California.
- SWCA. 2014. Low Effect Habitat Conservation Plan for the Kroll Property (APN 074-022-041), Los Osos, California. Includes survey reports from Tenera in 2003 and 2007.
- U.S. Fish and Wildlife Service. 1998. Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2003. Protocol Survey Guidelines for the Morro Shoulderband Snail. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2006. Morro Shoulderband Snail 5-Year Review. U.S. Fish and Wildlife Service. Ventura Fish and Wildlife Field Office, Ventura California.
- U.S. Fish and Wildlife Service. 2018. Initiation of 5-Year Status Reviews of 50 Species in California, Nevada, and the Klamath Basin of Oregon. U.S. Fish and Wildlife Service.



Thank you for the opportunity to provide environmental consulting services for this project. If you have any questions regarding the information contained herein, please contact me directly.

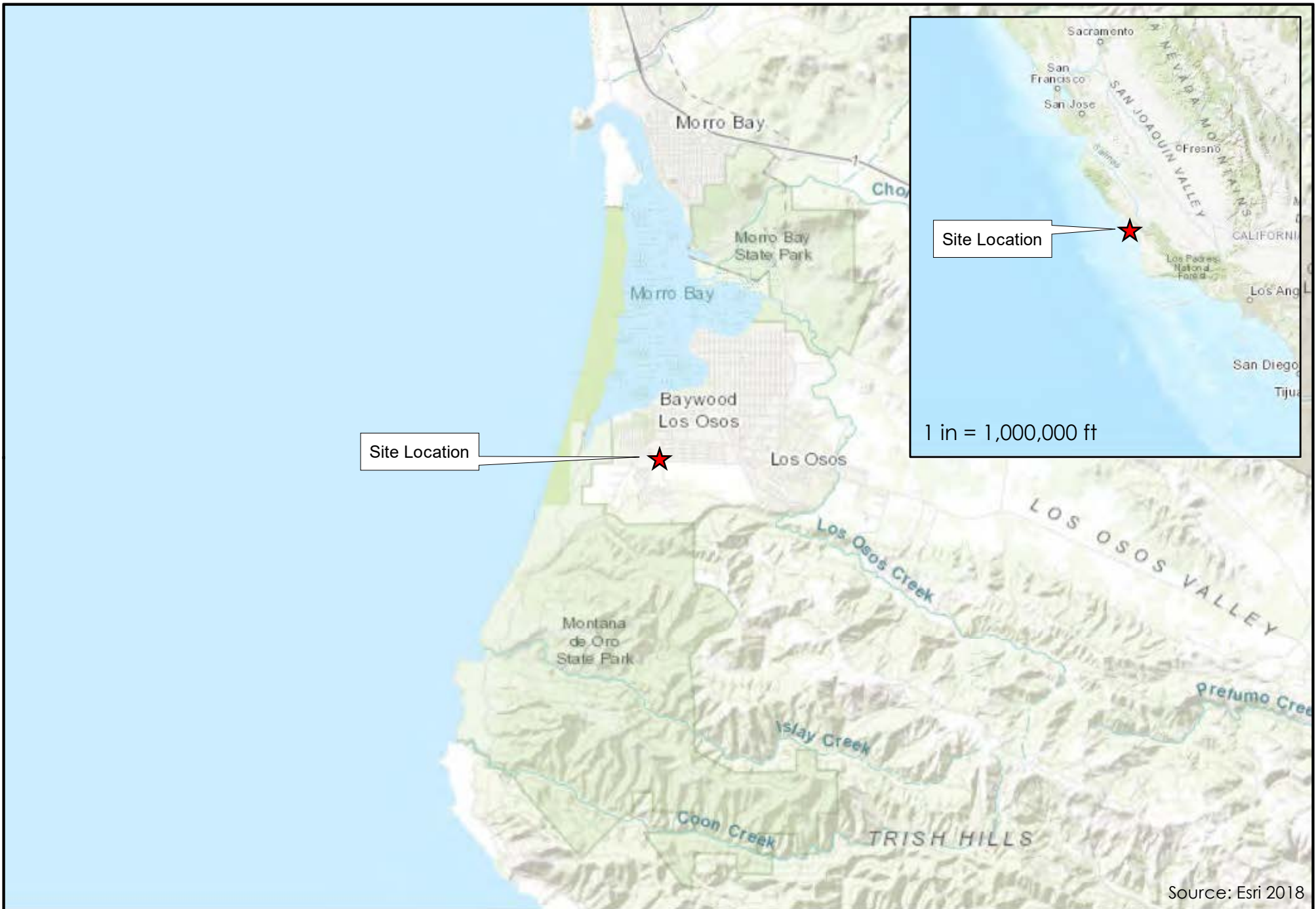
Sincerely,  
**KEVIN MERK ASSOCIATES, LLC**



Kevin B. Merk  
Principal Biologist

Attachments: Figure 1 – Site Location Map  
Figure 2 – Overview Map  
Figure 3 – CNDDDB Occurrence Map  
Photo Plate





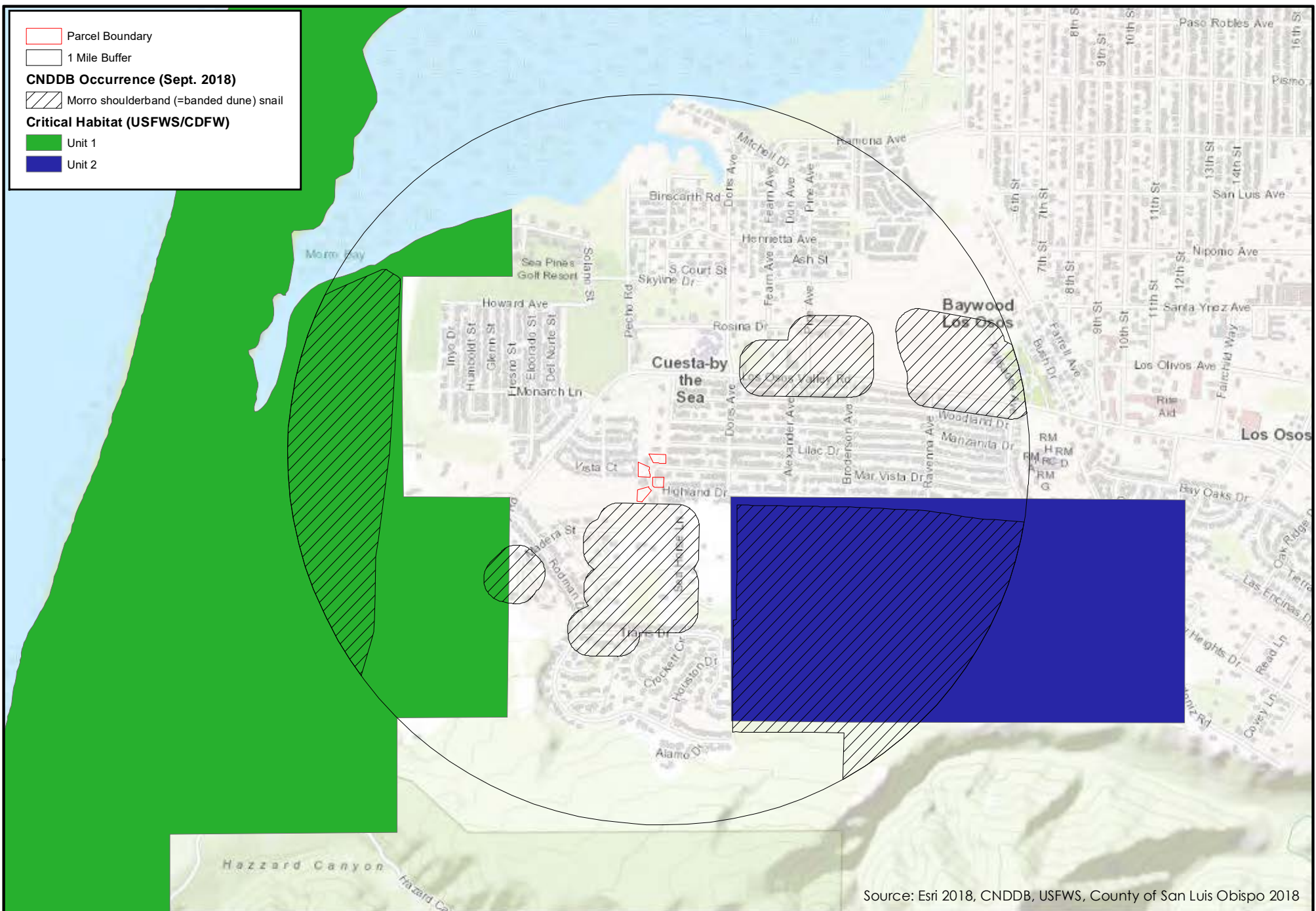
Source: Esri 2018





Source: Esri 2018, County of San Luis Obispo 2018

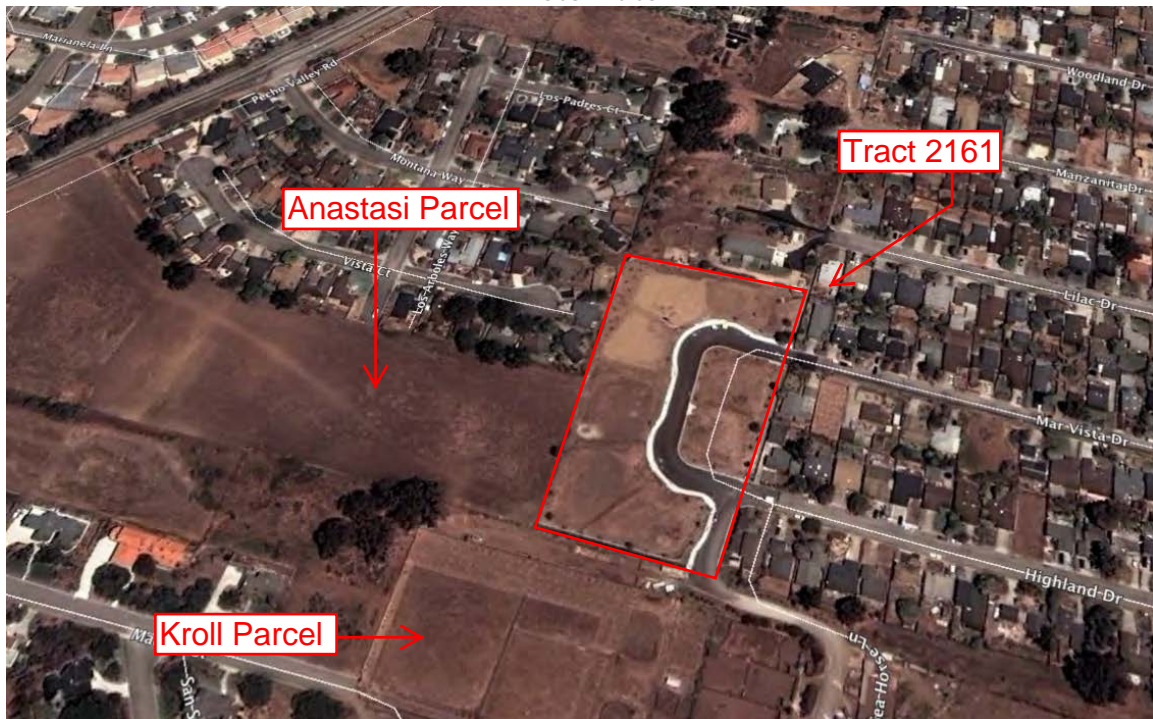




Source: Esri 2018, CNDDDB, USFWS, County of San Luis Obispo 2018



**Photo Plate**



**Photo 1.** July 2004 aerial shows entire site graded with no native habitat present. Anastasi parcel to the west was disked and planted to blueberries with no suitable MSS habitat present to the west. Kroll parcel to the south had maintained fire break and avocado/citrus orchard planted.

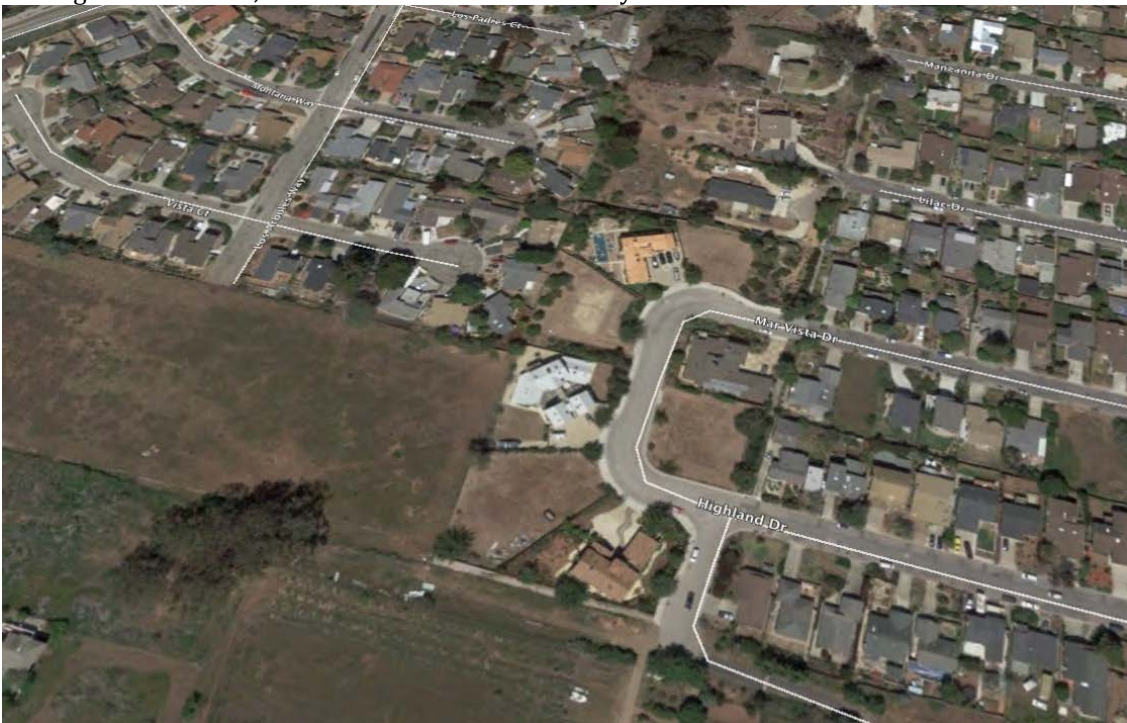


**Photo 2.** December 2004 aerial shows graded pads and two homes under construction. Grading of tract removed any potentially suitable MSS habitat and a concrete retaining wall and fence were constructed around perimeter. MSS were observed in low numbers on Kroll parcel to the south (Tenera, 2007).





**Photo 3.** March 2011 aerial photograph shows sites driveway abutting southern tract boundary with Kroll parcel planted to avocados. Anastasi parcel still disturbed from farming, and residential development surrounding the northwest, north and east sides of the study area.



**Photo 4.** April 2015 aerial showing four of the eight lots developed with homes and the four remaining lots subject to this analysis were actively maintained with ornamental plantings present within the concrete retaining wall and fence line. Farming of the Anastasi parcel was halted and irrigation to the avocado plantings along the northern part of the Kroll parcel was terminated as part of a restoration plan and Incidental Take Permit for development of that site.





**Photo 5.** Lot identified as APN 074-025-017 showing mowed veldt grass on constructed pad surrounded by concrete retaining wall and privacy fence. Landscaping was present in the constructed basin in the upper left corner of photo and Monterey cypress in upper right.



**Photo 6.** Westerly view of APN 074-025 -019 showing mowed veldt grass and beach volleyball court on graded pad. Residences surround site and landscaping including coast live oaks were present along perimeter. Concrete retaining wall and privacy fencing were also present along the perimeter.





**Photo 7.** Westerly view of APN 074-025-023 showing mowed veldt grass on constructed pad surrounded by roads and existing residential development. Several Monterey cypress trees were present at fence line.



**Photo 8.** Westerly view of APN 074-025-021 showing mowed veldt grass on constructed pad. Split rail fence with weathered "snail fencing" was present along Anastasi parcel to west. Scattered construction debris also present along the southern parcel boundary adjacent to constructed access road to the south.



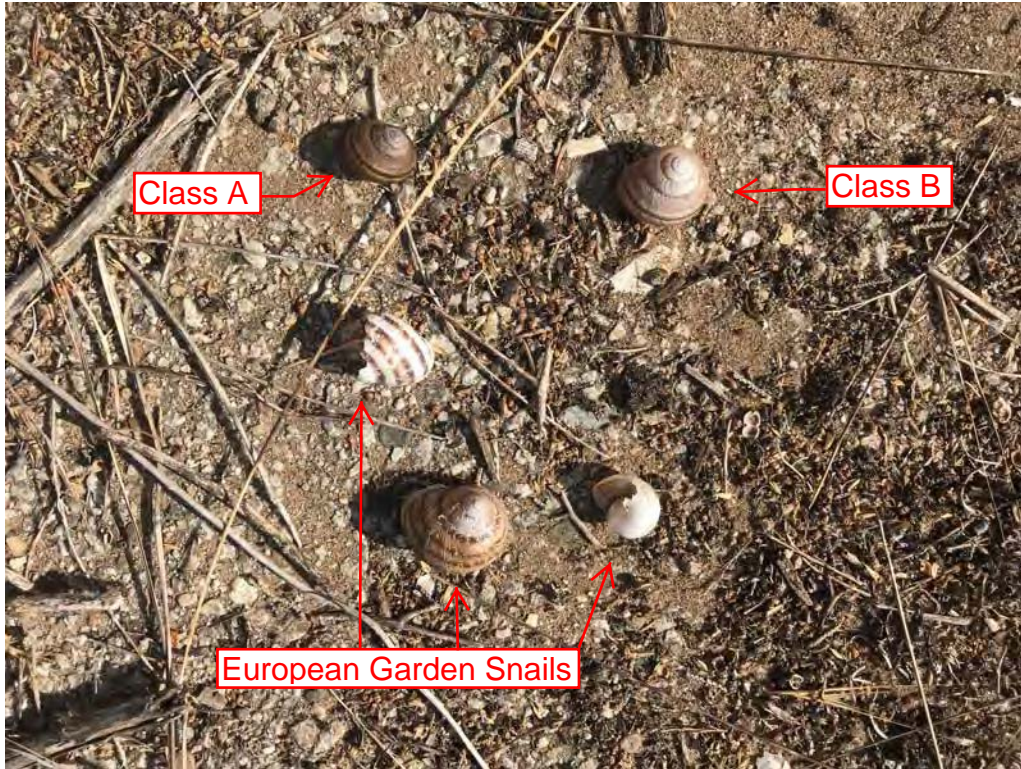


**Photo 9.** Northeasterly view of southern fence line of APN 074-025-021 showing scattered debris and excavator. Only the common European garden snail was observed in and around the debris piles.



**Photo 10.** Westerly view of paved access road south of APN 074-025-021. Split rail fence and weathered “snail fencing” separate the property from the Kroll parcel. Two MSS shells were observed along curb under veldt grass canopy on south side of road (left side of photo).





**Photo 11.** Representative photo of two MSS shells (one Class A and one Class B) and three garden snails observed on road to the south of APN 074-025-021.



**Photo 12.** Southerly view of Kroll parcel from access road on the south side of APN 074-025-021. Surveys conducted by Tenera in 2003 and 2007 observed live MSS on this parcel, including one under the Myoporum shrub along the fence. Subsequent surveys by SWCA in 2014 did not locate live MSS onsite.



# **EXHIBIT B**



Kevin Merk Associates, LLC | P.O. Box 318, San Luis Obispo, CA 93406 | 805-748-5837

October 3, 2018

C.M. Florence, AICP  
Oasis Associates, Inc.  
3427 Miguelito Court  
San Luis Obispo, CA 93401

**Subject: Morro Shoulderband Snail Habitat Assessment for Shear Development MUP DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California**

Dear Ms. Florence:

At your request and to enable the County of San Luis Obispo Planning and Building Department to complete the environmental determination, Kevin Merk Associates, LLC (KMA) conducted a Morro shoulderband snail (*Helminthoglypta morroensis*; MSS) habitat assessment to evaluate the potential presence of suitable MSS habitat on undeveloped lots 1, 3, 5 and 7 of Tract 2161 in the community of Los Osos. Please refer to Figure 1, the Site Location Map, and Figure 2, the Aerial Overview Map included as attachments for site location information. The lots are identified by the following Assessor's Parcel Numbers:

- 074-025-017 (lot 1);
- 074-025-019 (lot 3);
- 074-025-021 (lot 5); and
- 074-025-023 (lot 7).

The following report provides a brief summary of our understanding of the project, a description of MSS and its suitable habitat, as well as the methods and results of the habitat assessment.

## **PROPOSED PROJECT**

The proposed project is the development of four remaining parcels or lots in Tract 2161 (an eight lot subdivision) located at the western end of Highland Drive and Mar Vista Drive. The property and project have been referred to as the Goedenhaus property and "Highlands development" in MSS studies conducted in the area (Tenera, 2007; SWCA, 2014). Based on our understanding of the project and review of historic aerial imagery on Google Earth, the entire tract had eucalyptus trees (*Eucalyptus globulus*) trees removed and was graded in 2004. Pads were constructed on each of the eight lots, and four homes were approved for development at that time. The four remaining lots, which are the focus of this analysis, were largely left untouched since the initial grading with the exception of the construction of a beach volleyball court on lot 3 and annual weed abatement and mowing on all four lots. Lot 1 in the northern part of the site also had a detention basin constructed on the eastern part, which was landscaped primarily with native species. Landscaping of primarily ornamental species including Monterey cypress trees (*Hesperocyparis macrocarpa*) occurred along the streets and sidewalks.

## **MORRO SHOULDERBAND SNAIL SPECIES AND HABITAT DESCRIPTION**

MSS is a member of the land snail family Helminthoglyptidae, and is closely related to the surf shoulderband snail (*Helminthoglypta fieldii*), which occurs in coastal dune habitats south of the San

---

Luis range to Point Arguello. The MSS is associated with sandy soils of coastal dune and coastal sage scrub communities near Morro Bay, California. Native plant species associated with MSS include mock heather (*Ericameria ericoides*), coast buckwheat (*Eriogonum parvifolium*), dune bush lupine (*Lupinus chamissonis*), deerweed (*Acmispon glaber*), California croton (*Croton californicus*), seaside golden yarrow (*Eriophyllum staechadifolium*), black sage (*Salvia mellifera*) and California sagebrush (*Artemisia californica*). MSS is also commonly found in association with non-native plant species such as veldt grass (*Ehrharta calycina*), ice plant (*Carpobrotus* spp.), and anthropogenic structures or debris/garbage (i.e. building foundations, woodpiles, cardboard, etc.).

Due to threats from habitat destruction, colonization of invasive plant species, aging habitat, and off-road vehicle use, MSS was listed as endangered by the United States Fish and Wildlife Service (USFWS) on December 15, 1994. In 2006, following a five-year review conducted by the USFWS, the species was recommended for downlisting from endangered to threatened, however, the final rulemaking process for this action has not been completed. The USFWS has recently initiated another five-year review for this species (Federal Register, Vol. 83, No. 117; June 18, 2018)

## **METHODS**

Prior to field work, background documents including survey reports and the Habitat Conservation Plan for the Kroll parcel (Tenere, 2004 and 2007; SWCA, 2014; HCP) were reviewed. The California Natural Diversity Data Base was queried for MSS occurrences within one mile of the site to aid in the habitat assessment, and historic aerial photographs accessed on Google Earth (2018) were also reviewed. KMA principal biologist Kevin Merk conducted site visits of the four lots on September 17 and 21, 2018. The site visits occurred in the morning hours and weather was generally overcast with coastal fog clearing by mid-morning. This was a focused habitat assessment to evaluate site conditions and characterize conditions and vegetation present on each parcel and in close proximity of the sites. It was not a protocol-level survey consistent with 2003 Survey Guidelines for MSS (USFWS).

Each lot was traversed on foot and aerial imagery obtained from Google Earth (2018) was used to identify key features within and adjacent to the study area. All vegetated areas within the study area were thoroughly examined in order to assess potentially suitable habitat onsite. Since the surveys were conducted during the dry season, the site inspection searched for empty shells, suitable habitat, or other resources considered potentially suitable habitat for MSS. Non-native vegetation, ornamental plantings, anthropogenic debris, and edges of concrete retaining walls, fences, and other manmade structures that could provide habitat or shelter for MSS were also carefully examined to avoid potential impacts to aestivating individuals. Photographs from strategic vantage points were taken of each parcel to document conditions at the time of the surveys.

## **RESULTS**

### Background Review

Review of the CNDDDB did not identify any recorded occurrences of MSS on the four lots comprising the study area. Please refer to Figure 3, the CNDDDB Occurrence Map for detail. Immediately adjacent to the southern site boundary is an MSS occurrence polygon (identified as Occurrence 22) that includes documented live MSS from surveys conducted on several projects in Cabrillo Estates. This includes the Kroll parcel, which immediately abuts the southern lot 5 and ultimately had an HCP prepared by SWCA in 2014 for issuance of an Incidental Take Permit to facilitate development



on that site. Review of the Kroll HCP and survey reports supporting that document confirmed MSS were present in low numbers due to the lack of intact native habitat, historic disturbances and ongoing land uses on the site. The conservation area developed for the Kroll project includes an approximate one acre part of the western property where habitat restoration will occur once development commences. Avocado trees planted along the northern perimeter of the Kroll parcel (visible in aerial imagery) have been allowed to die in support of the habitat restoration work that will occur in this area.

No documented MSS occurrences or readily available survey work cover the Anastasi parcel to the west of lot 5. Historic aerial photograph review showed this parcel was completely denuded of vegetation and planted in blueberries, and potentially other row crops, sometime in or prior to 2004. This is generally the time when Tract 2161 had all surface vegetation removed and all eight lots were graded to create the pads and current site topography. Aerial photograph review also showed the concrete retaining walls installed around the outer perimeters of the site and associated fencing. To the north and east of the study area are existing residences with no suitable MSS habitat evident.

#### Field Investigation

***The habitat assessment conducted within the study area found no live MSS or empty MSS shells on any of the four lots.*** As stated above, the lots subject to the habitat assessment were all graded in 2004 and surface vegetation was removed, and soils disturbed. Pads were constructed on all eight lots, concrete retaining walls and privacy fencing and homes were constructed on four lots as shown on Figure 2, the Aerial Overview Map. The retaining walls and privacy fencing were also constructed around lots 1 and 3. Lots 1, 3, 5 and 7 have remained undeveloped, and appear to have been mowed and maintained on an annual basis. A volleyball court was present on lot 3, and scattered debris consisting of old construction materials and trash was present on lot 5. Please refer to Figure 2 and the attached Photo Plate for site conditions.

The habitat assessment found no native habitat elements suitable for MSS present within the study area. The pads consisted of veldt grass mowed to approximately two inches above ground with excessive bare sands, including bare imported sand for the volleyball court on lot 3. Exposed soils in the lots were sandy consistent with dune sands in the area. Several areas of rocky fill soils were observed at driveway cuts and along the retaining walls. The lots also had landscaping present along the streets and planted trees consisted of Monterey cypress and coast live oak, as well as other ornamental species. Lots appear to be consistently sunny and dry with no suitable microhabitat features for MSS, with the exception of the scattered debris on lot 5. Lots 1, 3, and 7 also had barriers surrounding the lots consisting of concrete retaining walls and privacy fences at least six feet in height, and were separated from known MSS occurrences by other residential development and streets. Therefore, lots 1, 3, and 7 were determined to be unlikely to support MSS.

Lot 5 contained scattered debris consisting of old wood, trash, and construction equipment. It abuts a paved driveway that separates it from the Kroll property to the south. Split rail fencing is present along the perimeter of lot 5 compared to the six foot tall privacy fencing on other lots. Shade cloth or similar material was also installed along the outer part of the fence, apparently to deter MSS from moving onto the site from neighboring properties. At the time of the surveys, the "snail fencing" was torn in many areas and overall in a state of disrepair (refer to photos 8 and 10).

Two MSS shells were found on the paved driveway just outside the southern study area boundary during the September 21<sup>st</sup> survey. Class A (likely less than one year old) and B (upwards of two years old) shells were observed along the paved driveway next to the curb under the overhanging canopy of veldt grass (refer to Photos 10 and 11 in the attached Photo Plate). Empty common garden snails (*Helix aspera*) and shell fragments were also observed littered throughout this general location. Elements of native coastal dune scrub habitat consisting of patchy occurrences of California sagebrush (*Artemisia californica*) and coyote brush (*Baccharis pilularis*) are present to the south of lot 5. To the west on the Anastasi parcel, some bush lupine shrubs (*Lupinus chamissonis*) were observed in dense veldt grass recolonizing the former farmed field. Therefore, given the presence of the scattered debris on lot 5 and its proximity to known MSS occurrences to the south on the Kroll parcel, potential, albeit low, exists for MSS to be present under the wood piles or in shady locations at the base of the split rail fence, likely away from the Monterey cypress tree in the southwest corner.

## **REGULATORY IMPLICATIONS**

Section 3(18) of the Endangered Species Act defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” As further defined by the USFWS, “harm” includes significant habitat modification or degradation which actually kills or injures wildlife by “significantly impairing essential behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.” Therefore, activities such as construction, mowing, brush or debris removal, or grading within a property that is known to support MSS or MSS habitat can result in take. Take can occur through both direct impact and by loss of or degradation of known habitat, even non-native anthropogenic features such as old wood piles. Unauthorized take is a violation of the Endangered Species Act and could result in penalties of up to \$100,000 and/or up to one-year imprisonment. If a project can be shown to have no adverse impacts to MSS or their habitat, USFWS may grant a “Concurrence Authorization” and concur that take subject to the Endangered Species Act would not result from the project. The pending region-wide Habitat Conservation Plan will also provide regulatory compliance mechanisms to authorize future development once it is approved.

## **CONCLUSION**

***The field surveys found no live MSS, empty shells, or suitable native habitat conditions for the species within the four lots inspected.*** Two MSS shells were observed just to the south of lot 5 along the paved access road. Areas of scattered debris consisting of old wood, trash and construction equipment on lot 5 (i.e., the southern lot) represents potential habitat for the species since no significant barrier to MSS movement is present. Given the proximity of lot 5 to known occurrences on the Kroll parcel to the south coupled with direct observations of Class A and B shells along the paved access road to the south of the lot, we cannot rule out the potential that MSS may have moved onto this lot since the initial site disturbance occurred.

The habitat assessment was conducted in the driest part of the year, and as such, no wood or other debris was moved to ensure any aestivating MSS, should they be present, were not injured or harmed. The survey results and site conditions documented in this report indicate an unlikely or very low potential for MSS presence on lots 1, 3, and 7 due to past grading and construction activities within Tract 2161, ongoing disturbance (i.e., mowing and weed abatement), lack of suitable native habitat, and separation from known occurrences by existing residential development and streets. Furthermore, it appears that MSS numbers to the south are low (Tenera, 2007 and SWCA, 2014), which would reduce the potential for MSS to occur in lots 1, 3, and 7.

In conclusion, ***completion of protocol-level surveys is not recommended for lots 1, 3 and 7 given their disturbed nature and separation from potential habitat and known occurrences of MSS.*** The scattered debris pile on lot 5 represents potential anthropogenic, non-native habitat for MSS since the parcel abuts known occurrences on the Kroll property to the south. The fact that two MSS shells were found along the paved driveway, and there was no significant barrier to prevent movement of MSS onto the site, potential exists that MSS could have moved onto this lot and occupy the debris pile along the southern fence line. As such, completion of protocol-level surveys following current USFWS guidance are recommended to accurately determine presence or absence of MSS from lot 5.

## REFERENCES

- California Department of Fish and Wildlife. 2018. California Natural Diversity Data Base. Queried in September 2018 for Morro shoulderband snail within one mile of study area.
- Roth. 1985. Status Survey of the Banded Dune Snail, (*Helminthoglypta walkeriana*). Prepared for the U.S. Fish and Wildlife Service. Sacramento, California.
- SWCA. 2014. Low Effect Habitat Conservation Plan for the Kroll Property (APN 074-022-041), Los Osos, California. Includes survey reports from Tenera in 2003 and 2007.
- U.S. Fish and Wildlife Service. 1998. Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2003. Protocol Survey Guidelines for the Morro Shoulderband Snail. U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service. 2006. Morro Shoulderband Snail 5-Year Review. U.S. Fish and Wildlife Service. Ventura Fish and Wildlife Field Office, Ventura California.
- U.S. Fish and Wildlife Service. 2018. Initiation of 5-Year Status Reviews of 50 Species in California, Nevada, and the Klamath Basin of Oregon. U.S. Fish and Wildlife Service.



Thank you for the opportunity to provide environmental consulting services for this project. If you have any questions regarding the information contained herein, please contact me directly.

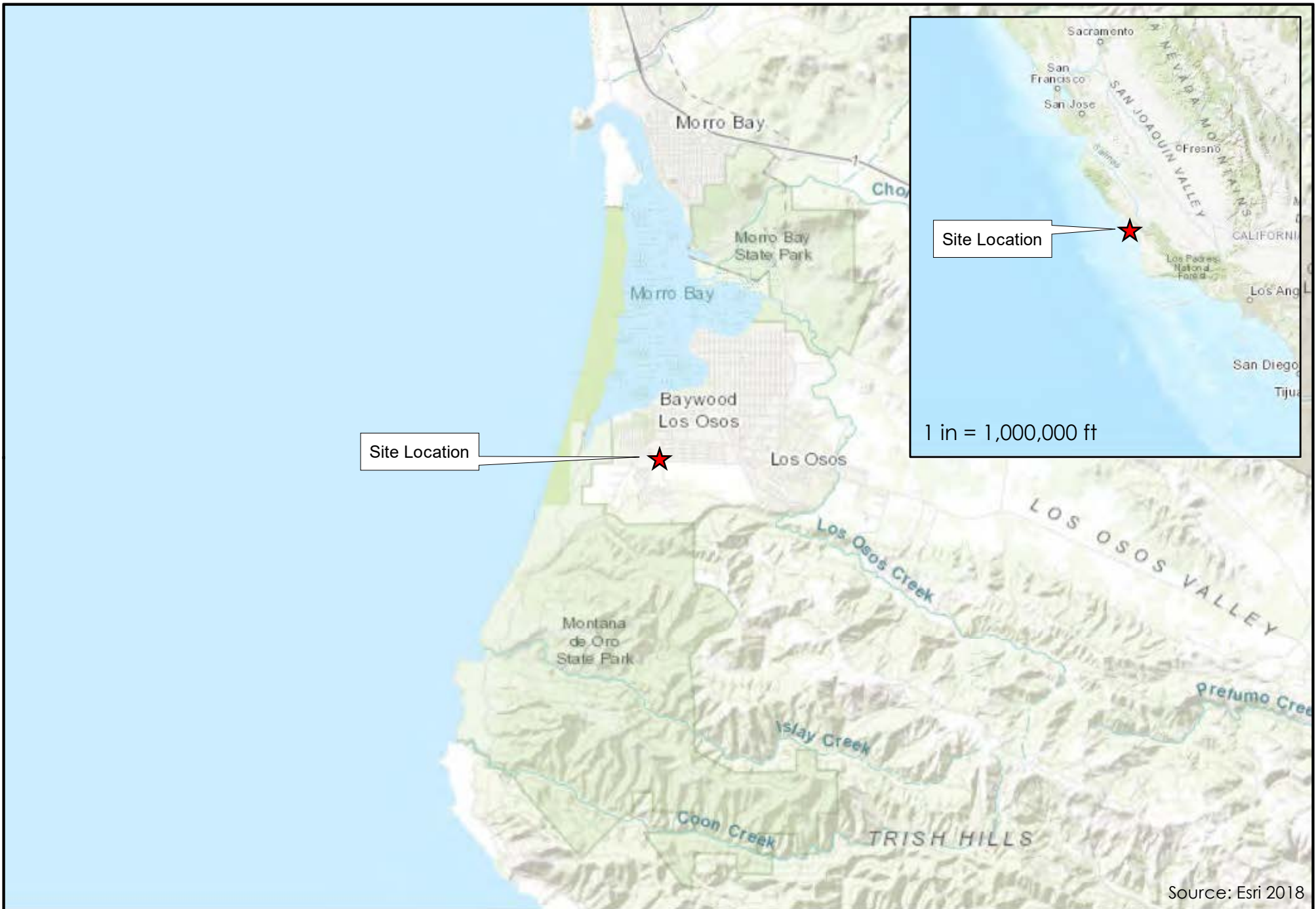
Sincerely,  
**KEVIN MERK ASSOCIATES, LLC**



Kevin B. Merk  
Principal Biologist

Attachments: Figure 1 – Site Location Map  
Figure 2 – Overview Map  
Figure 3 – CNDDDB Occurrence Map  
Photo Plate





Source: Esri 2018





Source: Esri 2018, County of San Luis Obispo 2018



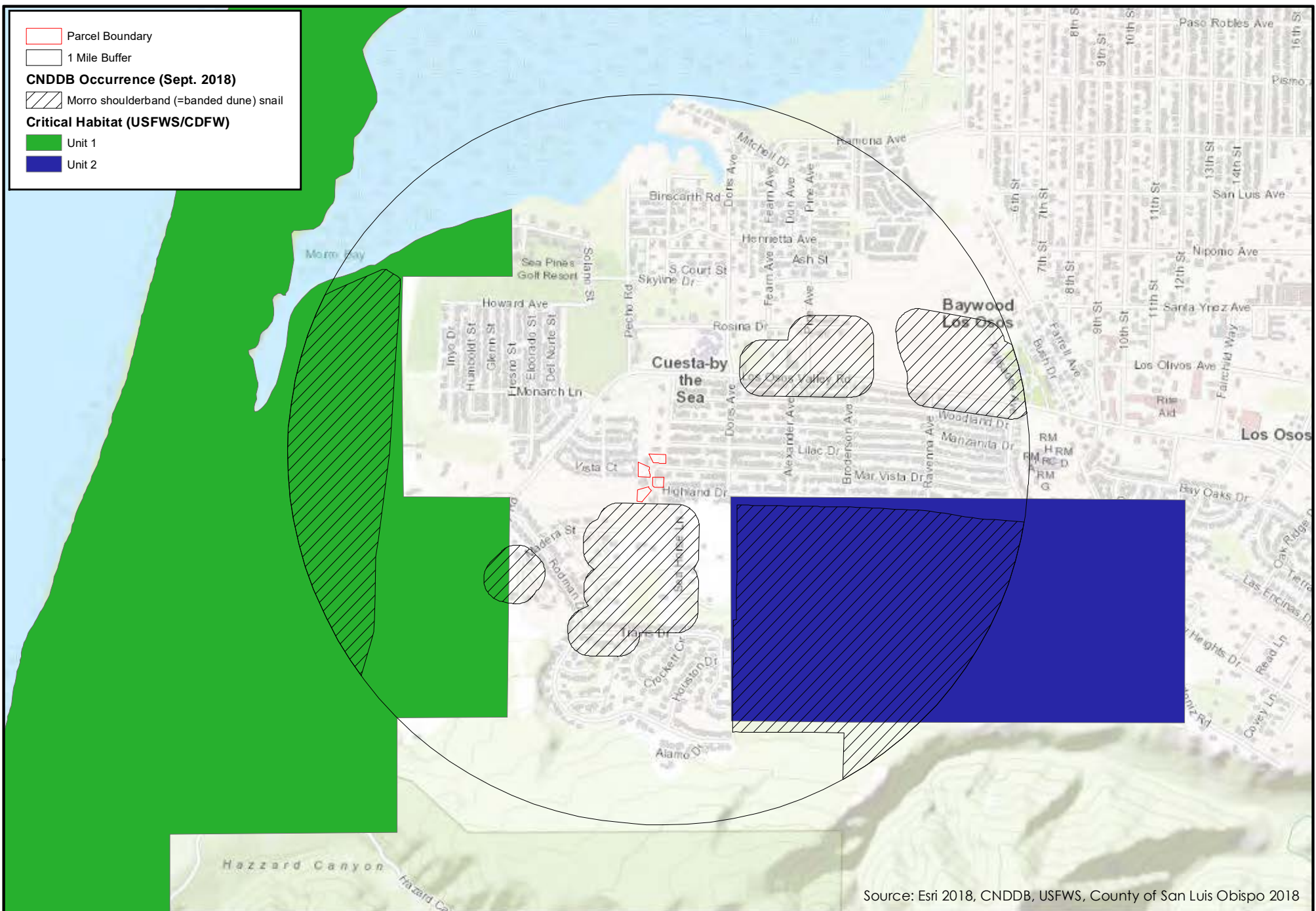
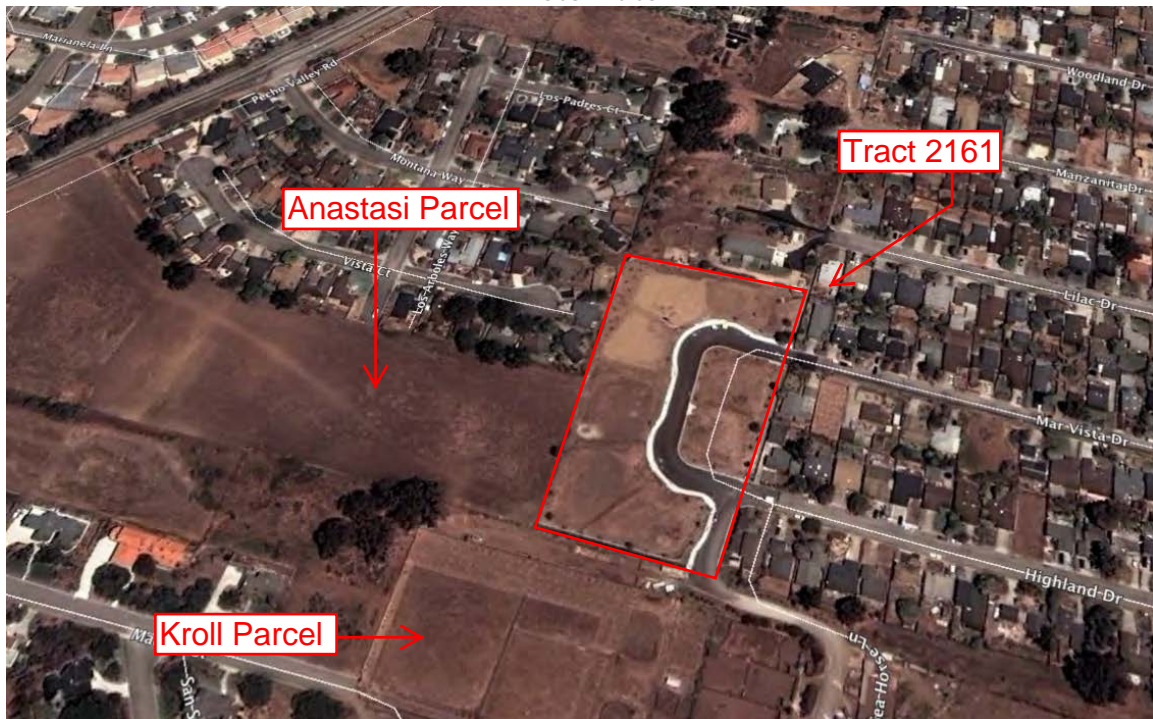




Photo Plate

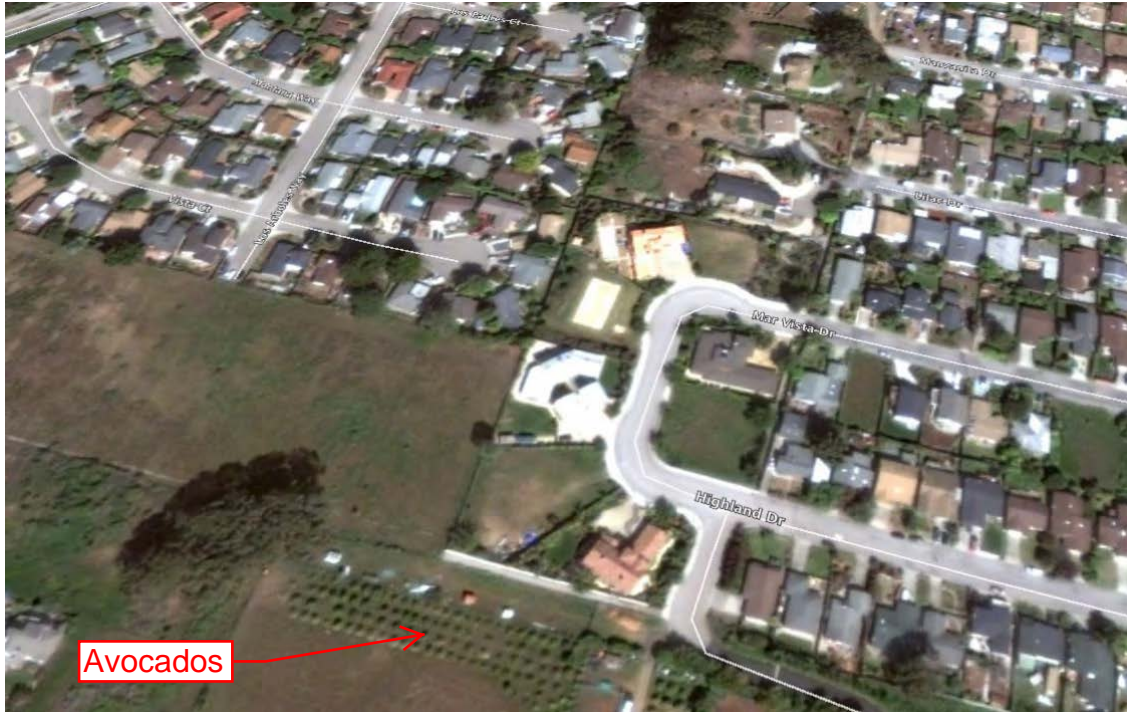


**Photo 1.** July 2004 aerial shows entire site graded with no native habitat present. Anastasi parcel to the west was disked and planted to blueberries with no suitable MSS habitat present to the west. Kroll parcel to the south had maintained fire break and avocado/citrus orchard planted.

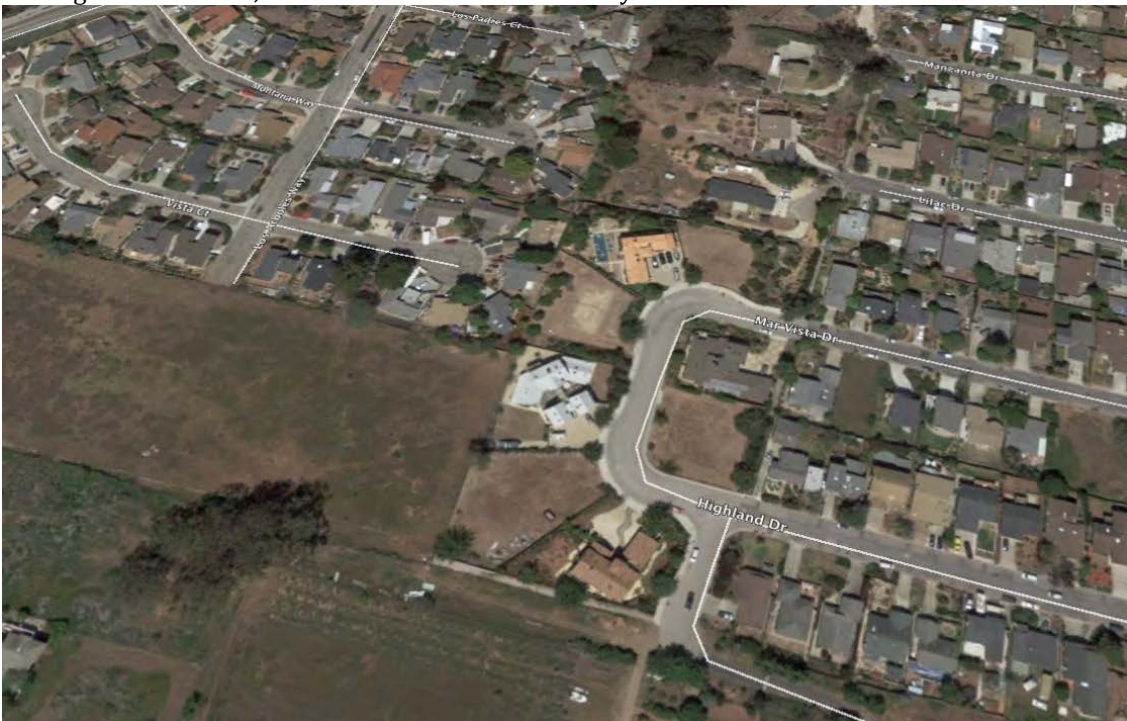


**Photo 2.** December 2004 aerial shows graded pads and two homes under construction. Grading of tract removed any potentially suitable MSS habitat and a concrete retaining wall and fence were constructed around perimeter. MSS were observed in low numbers on Kroll parcel to the south (Tenera, 2007).





**Photo 3.** March 2011 aerial photograph shows sites driveway abutting southern tract boundary with Kroll parcel planted to avocados. Anastasi parcel still disturbed from farming, and residential development surrounding the northwest, north and east sides of the study area.



**Photo 4.** April 2015 aerial showing four of the eight lots developed with homes and the four remaining lots subject to this analysis were actively maintained with ornamental plantings present within the concrete retaining wall and fence line. Farming of the Anastasi parcel was halted and irrigation to the avocado plantings along the northern part of the Kroll parcel was terminated as part of a restoration plan and Incidental Take Permit for development of that site.





**Photo 5.** Lot identified as APN 074-025-017 showing mowed veldt grass on constructed pad surrounded by concrete retaining wall and privacy fence. Landscaping was present in the constructed basin in the upper left corner of photo and Monterey cypress in upper right.



**Photo 6.** Westerly view of APN 074-025 -019 showing mowed veldt grass and beach volleyball court on graded pad. Residences surround site and landscaping including coast live oaks were present along perimeter. Concrete retaining wall and privacy fencing were also present along the perimeter.





**Photo 7.** Westerly view of APN 074-025-023 showing mowed veldt grass on constructed pad surrounded by roads and existing residential development. Several Monterey cypress trees were present at fence line.



**Photo 8.** Westerly view of APN 074-025-021 showing mowed veldt grass on constructed pad. Split rail fence with weathered “snail fencing” was present along Anastasi parcel to west. Scattered construction debris also present along the southern parcel boundary adjacent to constructed access road to the south.



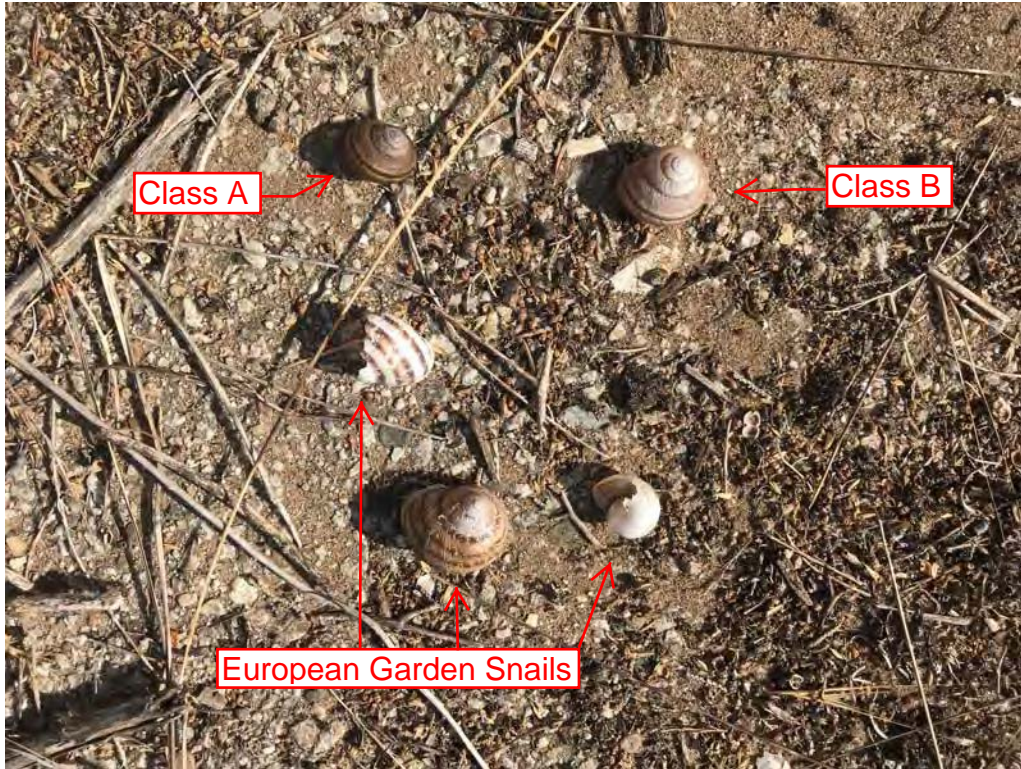


**Photo 9.** Northeasterly view of southern fence line of APN 074-025-021 showing scattered debris and excavator. Only the common European garden snail was observed in and around the debris piles.



**Photo 10.** Westerly view of paved access road south of APN 074-025-021. Split rail fence and weathered “snail fencing” separate the property from the Kroll parcel. Two MSS shells were observed along curb under veldt grass canopy on south side of road (left side of photo).





**Photo 11.** Representative photo of two MSS shells (one Class A and one Class B) and three garden snails observed on road to the south of APN 074-025-021.



**Photo 12.** Southerly view of Kroll parcel from access road on the south side of APN 074-025-021. Surveys conducted by Tenera in 2003 and 2007 observed live MSS on this parcel, including one under the Myoporum shrub along the fence. Subsequent surveys by SWCA in 2014 did not locate live MSS onsite.



June 7, 2004

Steve Mulnar, Jeff Edwards  
P.O. Box 6070  
Los Osos, CA 93412

**SUBJECT:** Evaluation of 1996 Existing Conditions and Habitat Conservation Plan Considerations  
for the Tract 2161 Subdivision, Los Osos, San Luis Obispo County, California

Dear Steve and Jeff:

At your request, I have gathered and reviewed available information and conducted a site visit to address the California Coastal Commission's staff request for information on the Tract 2161 subdivision project site. You requested addressing the following two specific issues for the Tract 2161 subdivision: 1) Evaluate the 1996 biological resources conditions when the subdivision was approved; and 2) Review how the Tract 2161 subdivision would affect conservation scenarios being developed for the Los Osos sewer Habitat Conservation Plan. This letter presents my findings and opinions in regard to these two issues.

### **1996 BIOLOGICAL RESOURCES EXISTING CONDITIONS**

I have reviewed aerial photographs of the site from May 1994 and October 1995, reviewed a report prepared for a botanical survey conducted on the site in July 1994, interviewed Jeff as landowner/manager during the 1990's, and reviewed the U.S. Fish and Wildlife Service (USFWS) 1995 final rule listing package and 1998 recovery plan for the Morro shoulderband snail.

As described in the botanical survey (attached as Exhibit 1), the Tract 2161 subdivision site was dominated by tall eucalyptus trees with a dense understory of veldt grass under the eucalyptus trees and in the open areas. Several planted Monterey pines and one canyon live oak, non-native annual grassland herbaceous species, and scattered native shrubs were identified as a lesser component of the on-site vegetation. The May 1994 TerraServer black and white image and an October 1995 color aerial photographs (attached as Exhibits 2 and 3 respectively) support the findings of the botanical report by showing approximately 70 percent tree canopy cover and that very few shrubs appear on the 1995 low altitude aerial image. The 1994 and 1995 aerial images indicate that the site conditions in regards to trees, shrubs and open areas were unchanged during that period of time.

The 1994 botanical survey concluded that, although not a definitive study because the survey was conducted late in the growing season and the site had been recently mowed, no rare or endangered plants were observed and would not be expected to occur based on the current conditions of the site observed at the time the survey was conducted. It is my understanding that you would have the site mowed each year as required for fire suppression concerns. The Morro shoulderband snail recovery plan states that, while veldt grass occurs in habitat occupied by the Morro shoulderband snail, this non-native perennial grass species does not offer a suitable microhabitat for the snail. The dominant eucalyptus overstory and understory of veldt grass observed in 1994 with only a few scattered shrubs



suggests the site did not support suitable habitat for the Morro shoulderband snail. An August 13, 2003 e-mail from Matt Janssen of San Luis Obispo County (attached as Exhibit 4) suggests that the USFWS is not taking issue with the Morro shoulderband snail for the Tract 2161 project.

In regards to potential impacts on non-listed special-status species, the monarch butterfly and the Morro blue butterfly, I would provide the opinion that impacts would have been less than significant. The eucalyptus trees on site were a somewhat small and open grove of trees. While monarch butterflies could have roosted and patrolled in the trees, a large aggregation would not have been likely given the exposure of the relatively small stand of trees to prevailing winds and the abundance of more suitable roosting habitat in the large grove of trees on the other side of Pecho Road (see Exhibit 2). Monarch butterflies typically seek roost sites that are sheltered or protected from the elements for thermal regulation. The Morro blue butterfly, like most other "blues," use lupine plants for egg laying as an exclusive larval food plant. The botanical report and aerial photographs suggest very few lupine plants were present on the site, therefore, making the impacts on potential Morro blue butterfly habitat very minimal.

### **HABITAT CONSERVATION PLAN CONSIDERATIONS**

To address the relationship between the Tract 2161 subdivision site and conservation efforts being considered under the Los Osos sewer Habitat Conservation Plan (HCP), I interviewed the consultant preparing the HCP, and I also reviewed the conservation areas in the above mentioned 1998 USFWS recovery plan. Figure 8 from the recovery plan (attached as Exhibit 5) identifies six conservation planning areas for Morro Bay listed species including the Morro shoulderband snail. Tract 2161 is not included in any of these conservation areas identified in the recovery plan, therefore, development of this tract would not have precluded recovery of the species as considered in 1998.

I interviewed Lisa Wise of Crawford, Multari, and Clark Associates who is the consultant to the Los Osos Community Services District for preparing the sewer HCP. Currently, there is an administrative draft HCP under agency review that is not available for public review. However, Ms. Wise was able to provide the following information regarding the relationship of Tract 2161 and the current conservation strategies being considered under the HCP.

- Ms. Wise indicated that in looking for suitable conservation areas for the HCP, a five-acre minimum parcel criterion was established by the USFWS as a guideline for identifying potential conservation areas. It is a generally accepted conservation practice to favor fewer larger preserves as they are easier to acquire and manage than many small preserves. More attention has been paid to parcels greater than five acres in terms of evaluation for habitat quality and availability for HCP conservation lands. Given that Tract 2161 is less than five acres, it would not be considered as a primary location for conservation under the HCP.
- Ms. Wise indicated that the undeveloped areas around Sea Horse Lane have been identified as a potential conservation corridor that would provide an east/west habitat linkage below Cabrillo Heights. The HCP planners recognize that there is limited conservation value given:
  - The current intensive horse stable use, and past and present agricultural use would require an extensive habitat restoration effort for these lands to support snail habitat.
  - They are private lands with multiple owners having varied interests in how the land would be used or developed.



- Ecologically it represents a narrow corridor surrounded by urban development.
- Ms. Wise concluded that the area has limited viability as a conservation corridor from both an environmental and political land use standpoint.

In viewing a broader perspective of the lands surrounding Tract 2161 as shown in Exhibit 2 and the 1995 aerial image attached as Exhibit 6, the site was surrounded on three sides by existing urban development at the time of the subdivision. In addition, it appears that the undeveloped areas surrounding Tract 2161 have been cleared of scrub habitat, presumably for horse pasture and annual cultivation. The dense scrub habitat occurs further up the hill.

In summary, the dominance of non-native eucalyptus and veldt grass vegetation established on the Tract 2161 site in 1996 substantially limited the suitability of the site to support special-status native plant and wildlife species. Given the site is surrounded by developed land on three sides, and cleared land surrounds the site, both the 1996 condition and the current surrounding land use conditions severely limit the habitat value of the site as a habitat conservation corridor. Further, this area was not included in the 1998 recovery plan conservation areas. Since the site and surrounding lands did not support high quality coastal scrub habitat and would require extensive restoration, it is not likely to rank high on the HCP priority list for conservation areas being considered under the current HCP effort.

## References

- Edwards, Jeff. May 28, 2004. Personal communication regarding land ownership and land use in and around Tract 2161.
- Holland, V.L. and Weis, Susan. August 3, 1994. *Botanical Survey for Tract 2126 on Highland Drive, Los Osos, California*. Prepared for J.H. Edwards.
- U.S. Fish and Wildlife Service. December 15, 1994. Final Rule, Endangered or Threatened Status for Five Plants and the Morro Shoulderband Snail from Western San Luis Obispo County, California.
- U.S. Fish and Wildlife Service. September 26, 1998. *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California*.
- Wise, Lisa. June 2, 2004. Personal communication regarding the administrative draft Los Osos sewer Habitat Conservation Plan.



Thank you for the opportunity to provide biological consulting services for this project. Please contact me if you have any questions or need any additional information.

Very truly yours,

David K. Wolff  
Principal Ecologist  
Certified Professional Wetland Scientist

Attachments:

- Exhibit 1 - Botanical Survey Report
- Exhibit 2 - May 1994 USGS Terra Server black and white aerial image
- Exhibit 3 - October 1995 close up color aerial image of Tract 2161
- Exhibit 4 - August 13, 2003 Matt Janssen e-mail
- Exhibit 5 - 1998 USFWS Recovery Plan Figure 8, Conservation Areas
- Exhibit 6 - October 1995 color aerial image of area surrounding Tract 2161

**BOTANICAL SURVEY  
FOR TRACT 2126 ON HIGHLAND DRIVE  
LOS OSOS, CALIFORNIA**

Prepared for:

J.H. Edwards  
P.O. Box 6070  
Los Osos, California 93412

Prepared by:

V.L. Holland, Ph.D.  
Plant Ecologist  
1697 El Cerrito Ct.  
San Luis Obispo, CA 93401

and

Susan Weis  
Field Botanist

August 3, 1994

## INTRODUCTION

The subject property is a 4.35 acre almost rectangular parcel, Tract 2126, extending across the northern ends of Highland Drive and Mar Vista Drive in Los Osos, CA. The site is slightly sloped toward the west, and the soil is sandy, characteristic of the sand dune complex in the Los Osos area. There are residences along the south, west, and northwestern boundaries. Open space used by nearby stables borders the east and northeastern edges.

The present vegetation is almost entirely anthropogenic, consisting of *Eucalyptus* trees with a grassland understory dominated by *Ehrharta calycina* (veldt grass). There are a few scattered shrubs, mostly *Lupinus chamissonis*, characteristic of the coastal scrub community and patches of garden escapees from neighboring residences.

The purpose of this survey is to examine the existing vegetation on the site to determine if any rare, endangered or otherwise sensitive plant species or habitats are present.

## DESCRIPTION OF VEGETATION

A vegetation survey of the site was carried out on July 31, 1994. The entire area is easily accessible and was canvassed on foot, with records made of all plants in identifiable condition. A list of the plant species found is included (Table 1). As the inspection was performed in late July and the area had been recently mowed, not all species present are likely to be included in the species list. A thorough survey through the entire year would be necessary for a complete listing of the flora; however, if a spring survey is conducted it should be adequate for this site's flora.

Tall blue gum (*Eucalyptus globulus*) trees are scattered over most of the site, with four Monterey pines (*Pinus radiata*) and a canyon live oak planted in the southwest corner. (One of the Monterey pines was dead.) The open spaces and understory is dominated by the alien veldt grass (*Ehrharta calycina*) but includes several other annual grasses such as wild oats (*Avena barbata*) and wild rye (*Lolium perenne*). There are scattered shrubs, coastal silver lupine (*Lupinus chamissonis*) and California sage (*Artemisia californica*), one patch of shrubby poison oak (*Toxicodendron diversilobum*), and some matlike plants, for example *Croton californicus*, characteristic of coastal scrub. Near the fenced perimeter, various escaped ornamentals such as African daisy, honeysuckle, and ornamental iceplant are growing. A few invasive weeds such as iceplant (*Carpobrotus* spp.) and pampas grass (*Cortaderia jubata*) are also present. As indicated above, the area had been recently mowed, so not all species present are likely to be included in the survey.



# EXHIBIT 1

No rare or endangered plants were found on the site. Based on current conditions, we would not expect any rare plants to be present. However, we recommend a spring survey be conducted during the months of April to May, 1995 for a more complete examination of the property.

## REFERENCES

- California Department of Fish and Game, The Resources Agency. 1982. Designated Endangered or Rare Plants (Alphabetical by Scientific Name). 4 pp.
- California Department of Fish and Game. 1988. Natural Diversity Data Base. Special Plants. 58 pp.
- Hickman, J. C. (ed.) 1993. The Jepson Manual. Higher plants of California. Univ. of California Press, Berkeley, Los Angeles, and London.
- Holland, Robert F. 1986. Preliminary Description of Terrestrial Natural Communities of California. State of California, The Resources Agency, Department of Fish and Game.
- Holland, V. L. and D. J. Keil. 1990. California Vegetation. El Corral Publications. 318 pp.
- Hoover, Robert F. 1970. The Vascular Plants of San Luis Obispo County, California. U. C. Press, Berkeley, CA.
- Munz, P. A., and D. D. Keck. 1959. A California Flora. University of California Press, Berkeley.
- . 1968. Supplement to A California Flora. University of California Press, Berkeley.
- Skinner, M.W. and B.M. Pavlik, eds. 1994. Inventory of Rare and Endangered Vascular Plants of California, Fifth Edition. California Native Plant Society, Sacramento, CA.
- Smith, J. P., and Ken Berg. 1988. California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California. California Native Plant Society, Special Publication No. 1 (Fourth Edition), Sacramento.
- United States Department of the Interior, Fish and Wildlife Service. 1990. Endangered and Threatened Wildlife and Plants; Review of Plant Taxa for Listing as Endangered or Threatened Species; Federal Register 55 (35):6184-6229.

Table 1. List of plant species present on property at north end of Highland Drive, Los Osos, California, July 30, 1994.

## TREES and SHRUBS

<i>Artemisia californica</i>	California sage
<i>Baccharis pilularis</i>	Coyote brush
* <i>Cortaderia jubata</i>	Pampas grass
* <i>Eucalyptus</i> sp.	Eucalyptus
<i>Lupinus arboreus</i>	Tree lupine
<i>Lupinus chamissonis</i>	Silver lupine
<i>Pinus radiata</i>	Monterey pine
<i>Quercus chrysolepis</i>	Canyon live oak
<i>Toxicodendron diversilobum</i>	Poison oak

## HERBS

* <i>Avena barbata</i>	Slender wild oats
<i>Baccharis douglasii</i>	Marsh baccharis
* <i>Bromus catharticus</i>	Rescue grass
* <i>Carpobrotus chilensis</i>	Ice plant
* <i>Carpobrotus edulis</i>	Ice plant
<i>Croton californicus</i>	Croton
* <i>Ehrharta calycina</i>	Veldt grass
<i>Eschscholzia californica</i>	California poppy
* <i>Heterotheca grandifolia</i>	Telegraph weed
<i>Horkelia cuneata</i>	Horkelia
<i>Lessingia filaginifolia</i>	California aster
* <i>Lolium perenne</i>	Perennial ryegrass
* <i>Malva</i> sp.	Cheeseweed
<i>Marah fabaceus</i> (? dead)	Wild cucumber
* <i>Raphanus sativa</i>	Wild radish
* <i>Sonchus oleraceus</i>	Sow thistle
<i>Stephanomeria</i> sp.	Wire lettuce

\*Non-native

species

## GARDEN ESCAPEES

<i>Aloe</i> spp.	Aloe
<i>Passiflora manicata</i>	Red passion flower
<i>Lonicera</i> sp.	Honeysuckle
<i>Amaryllis belladonna</i>	Naked ladies
<i>Geranium</i> sp.	Geranium
<i>Diosanthemum</i> sp.	Ice plant
<i>Osteospermum</i> sp.	African daisy
<i>Crassula</i> sp.	Jade plant



EXHIBIT 2  
MAY 1994 USGS TERRASERVER BLACK AND WHITE AERIAL IMAGE

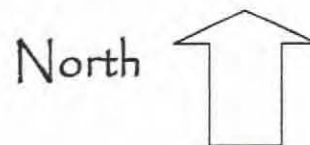
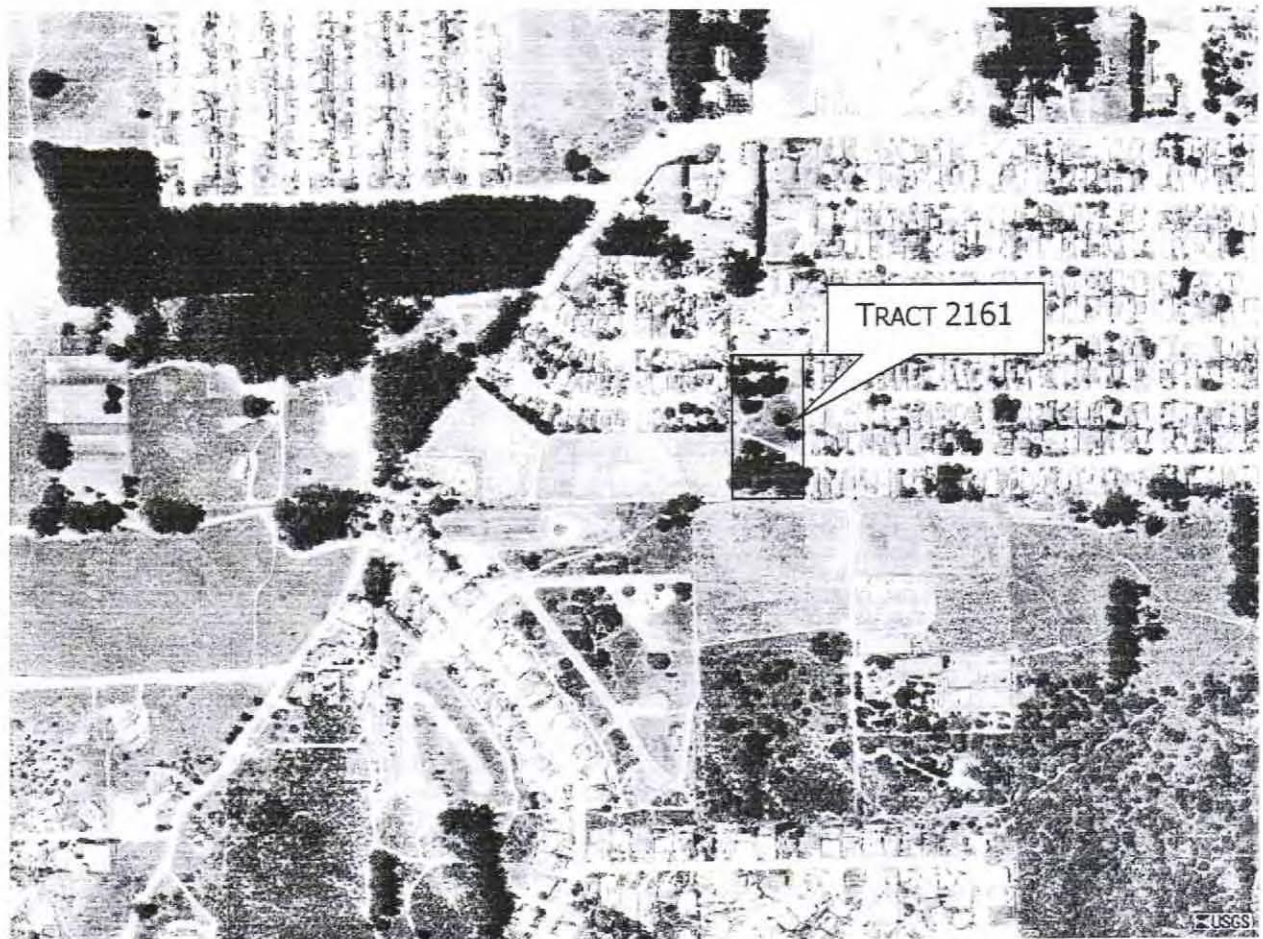
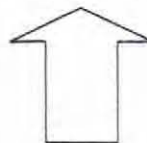




EXHIBIT 3  
OCTOBER 1995 CLOSE UP COLOR AERIAL IMAGE OF TRACT 2161



North





Matthew Janssen

08/13/2003 09:48 AM

To: Kerry O'Neill/CountyofSLO@Wings

cc:

Subject: goedinghaus snails

Kerry:

I spoke with Della yesterday regarding our requirement for a snail survey on Geodinghaus. She said that as long as the snail fencing remains in place for the construction period, and as long as it is a currently denuded site, she is ok removing the snail survey request. I have told Jeff and he is, as expected, happy.

Della and I agreed, however, that it is a good idea to require these surveys up front on sites where there are known snails adjacent on at least one side (regardless of vegetation on site). We also agreed that it's good to require them on most Jeff projects to keep him "on his toes..."

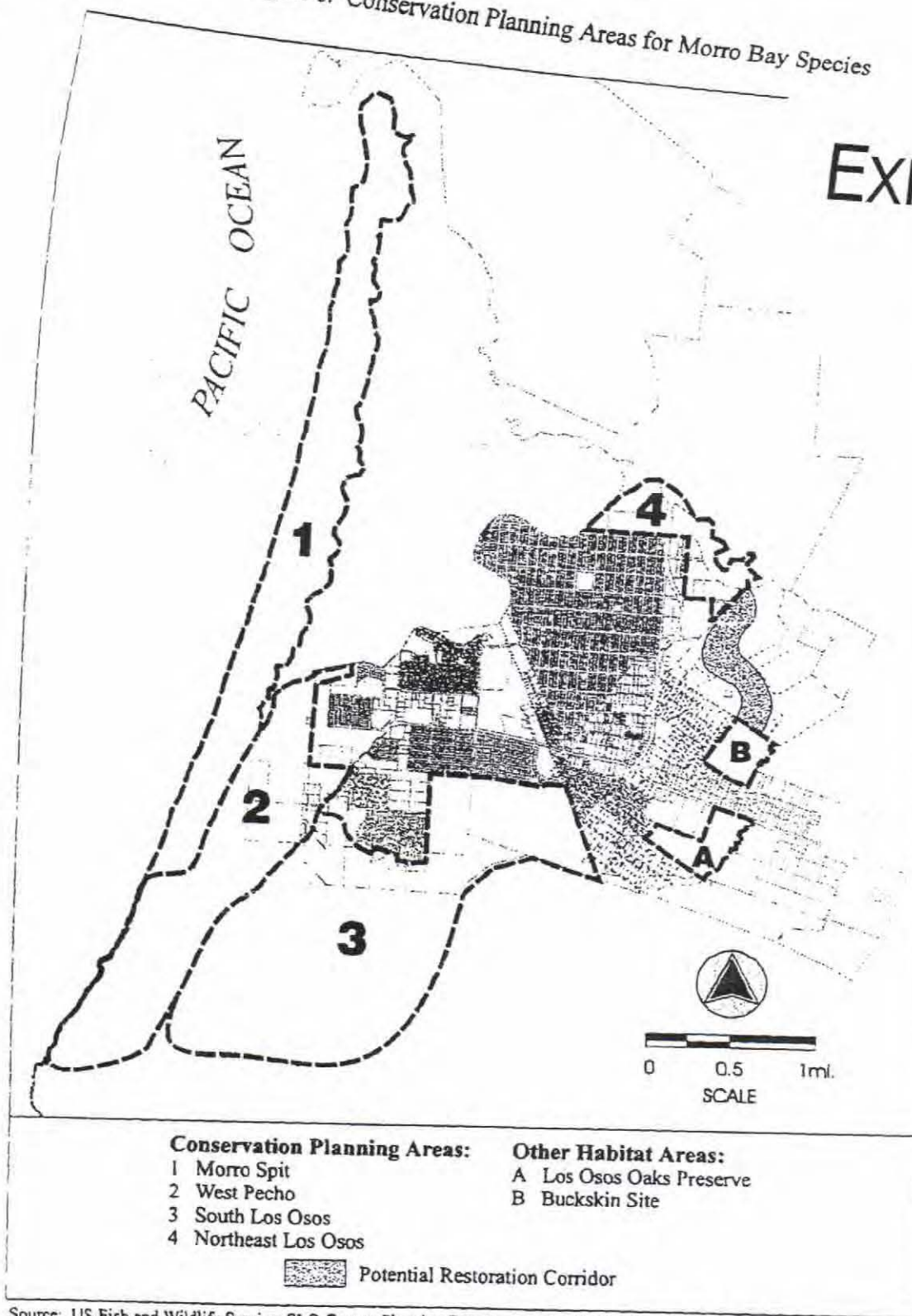
Thanks,  
Matt

# EXHIBIT 4



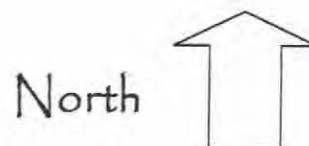
Figure 8. Conservation Planning Areas for Morro Bay Species

# EXHIBIT 5



Source: US Fish and Wildlife Service; SLO County Planning Department; Crawford Multari & Clark Associates

EXHIBIT 6  
OCTOBER 1995 COLOR AERIAL IMAGE OF AREA SURROUNDING TRACT 2161



# **EXHIBIT C**



2-1

## Staff Report

San Luis Obispo County Department of Planning and Building

DATE: FEBRUARY 8, 1996  
TO: PLANNING COMMISSION  
FROM: JAY JOHNSON, ASSOCIATE PLANNER  
MARK HUTCHINSON, ENVIRONMENTAL SPECIALIST  
SUBJECT: VESTING TENTATIVE MAP AND COASTAL DEVELOPMENT PERMIT  
(TRACT 2161) IN LOS OSOS FOR CLAIRE GOEDINGHAUS/JEFF  
EDWARDS

ATTACHMENTS 1. Findings  
2. Conditions of Approval  
3. Graphics  
4. Negative Declaration

### SUMMARY

The applicant is proposing a subdivision of a 4.35 acre site into eight lots ranging from 21,442 to 30,676 square feet each. Access to the site is from Mar Vista and Highland Drives. Water would be provided by California Cities Water Company. Wastewater would be handled by a future community sewer or with on-site septic systems (if an exemption is granted from the Regional Water Quality Control Board). Supervisorial District No.: 2

### RECOMMENDATIONS

Approve the Negative Declaration and the tentative map as described in this report, based on the findings found in Exhibit A, and the conditions found in Exhibit B.

### PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

Location: At the west end of Highland and Mar Vista Drives, south of Los Osos Valley Road in the community of Los Osos, in the San Luis Bay planning area. Assessor Parcel Number: 74-025-08.

General Plan: Residential Single Family/Local Coastal Program/Non-open space

Planning Area Stds: Communitywide: 2. Interim Service Capacity Allocation.

Existing Uses and Improvements: Undeveloped

g:\jay\goeding.j

County Government Center, San Luis Obispo, CA 93408 - (805) 781-5600

Surrounding Land Uses (category):

North: Undeveloped (Residential Single Family)  
East: Single family residences (Residential Single Family)  
South: Suburban residences (Residential Single Family)  
West: Single family residences and approved tentative tract - Tract 1638  
(Residential Single Family)

Site Area: 4.35 acres  
Topography: Moderately sloping to the north  
Vegetation: Oaks, eucalyptus, chaparral, forbs and grasses  
Water and Sewer: Community water; on-site septic system or community sewer  
Fire Protection: South Bay Fire Department

ENVIRONMENTAL DETERMINATION

A Negative Declaration was issued on September 29, 1995. After completing an initial study and reviewing all comments received, the Environmental Division has determined that a Negative Declaration is appropriate under the provisions of CEQA. Special environmental consideration was given to wastewater and water supply.

DISCUSSION

Planning Area Standards

The Estero Area Plan contains an allocation priority for water use in Los Osos. This project falls under priority "d" - additional land divisions within substantially subdivided areas. According to this standard, the water demand for the higher priorities "a-c" must be met. The county Board of Supervisor's has established with recently approved subdivisions in Los Osos that the water demand for priorities "a-c" have been met, provided the applicant can demonstrate that an adequate reduction in water demand elsewhere on-site or within the community can be achieved.

The applicant has agreed as part of this project description to voluntarily record, before or simultaneously with this tract, an approved lot line adjustment (COAL 94-097). COAL 94-097 was approved by the Subdivision Review Board on August 7, 1995. The approved adjustment will reduce the number of lots in a Cuesta-by-the-Sea neighborhood from 10 to four. Please refer to the Land Use Category map. It should be noted that four of the six lots to be retired are within a wetland. By adding the six lots that are to be retired and the parent parcel of this tract the number of allowable new lots is seven. The tentative map proposes eight lots. The discrepancy between seven and eight lots can be handled with the final map (or certificates of compliance for the lot line adjustment) by showing only seven lots with this tract or by recording only three lots with the lot line adjustment. The total number of lots with both projects should not exceed 11. Condition number 14 addresses this issue.



3 2-3

Ordinance Compliance

Section 23.04.028 of the Coastal Zone Land Use Ordinance establishes minimum parcel size tests for the Residential Single Family land use category. The project evaluated against the two tests is as follows:

1. Access test: Access from a local street = 6,000 square foot lot.
2. Slope test: Average slope of the parcels are 15% or less = 6,000 square foot lot.
3. Sewer test: Community sewer = 6,000 square foot lot; Septic tanks with 0-5 minutes per inch leaching capabilities = 20,000 square foot lot.

The parcels as proposed, meet all requirements as specified in the Coastal Zone Land Use Ordinance.

The proposed subdivision is consistent with the design standards of Section 21.03.010 of the Real Property Division Ordinance. Street trees are required at a ratio of one tree per 25 feet of frontage by Section 21.03.010c(7). The street trees may be grouped.

Section 21.09.010 requires this subdivision to contribute fees in lieu of land dedication for park and recreation purposes. The amount of the fee is established by Section 21.09.018.

Street Improvements

The recommended street improvements and right-of-ways are consistent with the Circulation Element. The tentative map shows an offer of dedication for the future extension of Highland Drive. This right-of-way offer overlaps a 10 foot wide pedestrian and equestrian easement. Should Highland Drive not be extended, then the pedestrian and equestrian easement would remain.

EXHIBIT A  
FINDINGS - Tract 2161

Environmental Determination

- A. On the basis of the Initial Study and all the comments received, there is no substantial evidence that the project will have a significant effect on the environment.

Tentative Map

- B. The proposed map is consistent with applicable county general and specific plans because COAL 94-097 is to be recorded prior to or with Tract 2161 and the combined number of lots will not exceed 11.
- C. The design and improvement of the proposed subdivision are consistent with the applicable county general and specific plans.
- D. The site is physically suitable for the type of development proposed.
- E. The site is physically suitable for the proposed density of the development proposed.



**EXHIBIT A**  
**FINDINGS - Tract 2161**

**Environmental Determination**

- A. On the basis of the Initial Study and all the comments received, there is no substantial evidence that the project will have a significant effect on the environment.

**Tentative Map**

- B. The proposed map is consistent with applicable county general and specific plans because COAL 94-097 is to be recorded prior to or with Tract 2161 and the combined number of lots will not exceed 11.
- C. The design and improvement of the proposed subdivision are consistent with the applicable county general and specific plans.
- D. The site is physically suitable for the type of development proposed.
- E. The site is physically suitable for the proposed density of the development proposed.
- F. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- G. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision; or that substantially equivalent alternate easements are provided.
- H. The proposed subdivision complies with Section 66474.6 of the State Subdivision Map Act, as to methods of handling and discharge of waste.
- I. The proposed subdivision be found consistent with the county zoning and subdivision ordinance.

**EXHIBIT B**  
**CONDITIONS OF APPROVAL - Tract 2161**

**Wastewater**

1. Prior to recordation of the final map, the applicant shall:
  - a. provide a "will serve" letter from a community-wide sewer provider. Such letter shall contain a commitment to provide sewer service to the project at the time of final map approval, or
  - b. provide a valid exception/exemption from the RWQCB moratorium.

**Access and Improvements**

2. On-site streets constructed to an A-2 (urban) section within a fifty foot dedicated right-of-way.
  - a. Offer for dedication of a 16 foot easement for bicycle, pedestrian and equestrian easement along line between lots 4 and 5 of the tentative map.
3. All grading shall be done in accordance with Chapter 70 of the Uniform Building Code. All lot lines shall be considered as Site Area Boundaries with slopes set back accordingly.

**Drainage**

4. Drainage must be detained or retained a drainage basin on the property. The design of the basin to be approved by the County Engineer, in accordance with county standards.
5. The drainage basin along with rights of ingress and egress be offered for dedication to the public by certificate on the map with an additional easement reserved in favor of the owners and assigns.

**Utilities**

6. Electric and telephone lines be installed.
7. Cable T.V. conduits be installed in the street.
8. Gas lines are to be installed.

**Plans**

9. Improvement plans be prepared in accordance with San Luis Obispo County Improvement Standards and Specifications by a Registered Civil Engineer and submitted to the County Engineer, County Health Department and Environmental Coordinator's Office for approval. The plan to include:
  - a. Street plan and profile;
  - b. Drainage ditches, culverts, and other structures (if drainage calculations require);
  - c. Water plan (County Health);
  - d. Sewer plan, if required (County Health);
  - e. Grading and erosion control plan for subdivision related improvements;
  - f. Public utility; and,
  - g. Street tree and landscape plan to be approved jointly with the Planning Director.
10. The applicant shall enter into an agreement with the county for inspection of said



improvements.

11. The engineer, upon completion of the improvements, must certify to the County Engineer that the improvements are made in accordance with Subdivision Review Board requirements and the approved plans.

**Parks and Recreation Fees**

12. Prior to recordation of the final map, the applicant shall pay in lieu fees for park and recreational purposes pursuant to Section 21.09.

**Fire Safety**

13. Prior to recordation of the final map, the applicant shall obtain a fire safety clearance letter from the South Bay Fire Department establishing fire safety requirements.

**Miscellaneous**

Recorded  
5/17/90

14. Prior to recordation (or at the time of recordation) of the final map, the applicant shall record COAL 94-097. The total number of lots to be recorded between Tract 2161 and COAL 94-097 cannot exceed 11.
15. All lots to have a minimum of 20,000 square foot net area.
16. This subdivision is also subject to the standard conditions of approval for all subdivisions utilizing community water and community sewer or individual septic systems (as applicable), copies of which is attached hereto and incorporated by reference herein as though set forth in full.
17. The subdivision approval of this tentative map will expire in two years (24 months) from the date of this approval, unless the final map is recorded first. The tentative map may be granted extensions of time. The applicant must submit a written request for the extensions with the appropriate fees to the Planning Department prior to the expiration date.





**J H EDWARDS CO**  
A REAL PROPERTY CONCERN  
P.O. Box 6070 • Los Osos, CA 93412

195 APR 6 PM 4 45

April 5, 1995

San Luis Obispo County  
Planning and Building Department  
County Government Center  
San Luis Obispo, CA 93408

Attention: Alex Hinds, Director

Re: Tract 2161 and COAL 94-097

Dear Mr. Hinds:

I have been working with Jay Johnson and Mark Hutchinson of your department in connection with the above referenced applications. As you may know, while the applications are separate they have been submitted concurrently and it is proposed that the recordation of the tract map may be conditioned upon the prior recording of the lot line adjustment.

By way of history, the real property subject of the lot line adjustment is presently comprised of ten existing lots of record. The land associated with the tract map is undivided. In consultation with the property owner, Claire Goedinghaus, it was determined the best planning and land use result for each property and the surrounding neighborhoods may be to decrease the density at one location and in effect move or transfer that density to the other parcel.

A related issue is how the Interim Service Capacity Allocation (ISCA) could be addressed in the context of the tract map request. Since general plan consistency, of which ISCA is a part, must be found prior to a project's approval, the present proposal appears to afford your department a basis for the consistency finding. The voluntary merger of the ten lots into four would have the result of the "freeing up" six parcels in the context of ISCA. Given ISCA effect projects throughout the South Bay and both proposals are in the same area, the inventory of residential building lots following the approval and recordation of the respective maps would remain unchanged.

Staff has suggested general plan amendments, variances and other equally unworkable vehicles to facilitate the approval of the subject proposals. What has been presented is a common sense, voluntary and practical approach with a sound planning foundation. In a world of increasing complexity, I submit simplicity should be embraced at every opportunity.

TELEPHONE (805) 528-1567 • FAX (805) 528-4473

Cat E. 21084, 15305 class 5



San Luis Obispo County  
Planning and Building Department  
County Government Center  
San Luis Obispo, CA 93408

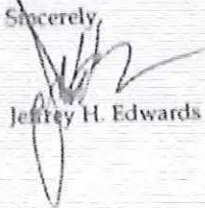
April 5, 1995  
Page 2

Subject: Tract 2161 and COAL 94-097

An alternative for the property owner is to wait for the sewer issue to be resolved. In that event, it is possible if not likely that both properties could be "maxed out" with density in a manner that may not be the best result. The approval of the tract map is not only good planning, but also good precedent. The concept associated with the proposals may offer the opportunity to "retire" small lots and others that may not be ideal for development. Your department's support and favorable recommendation concerning the subject request would be appreciated.

In closing, it was suggested that a meeting to discuss the issues in more detail would be productive. I would be pleased to have such an opportunity. Please have Jay or Mark advise me as to when would be convenient for you.

Sincerely,



Jeffrey H. Edwards

cc: Claire Goedinghaus  
Jay Johnson  
Mark Hutchinson

---

TELEPHONE (805) 528-1567 • FAX (805) 528-4473



A-5-3

**EXHIBIT A**

**FINDINGS - COAL 94-097  
CLAIRE GOEDINGHAUS/JEFF EDWARDS**

- A. As conditioned, the proposed parcels, with respect to parcel design and wetland setbacks and other zoning and building ordinances are acceptable.

**EXHIBIT B**

**CONDITIONS OF APPROVAL - COAL 94-097  
CLAIRE GOEDINGHAUS/JEFF EDWARDS**

1. Prior to filing of a map or recordation of a certificate of compliance effectuating the adjustment, the map or certificate shall provide a minimum 30 foot setback between the adjusted property line and the existing structures on Parcel 1, or the structures shall be relocated to allow for the 30 foot side setback required by the county Land Use Ordinance.
2. If a map is filed, it shall show:
  - a. All public utility easements.
  - b. All approved street names.
3. Any private easements described in the title report must be shown on the map, with recording data.
4. When the map is submitted for checking, or when the certificate of compliance is filed for review, provide a preliminary title report to the County Engineer or the Planning Director for review.
5. 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 adjustment. Recordation of a map is at the option of the applicant. However, if a map is not filed, recordation of a certificate of compliance is mandatory.
6. 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.
7. 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 involved quitclaim their interest in one another 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.

A-5-4

8. After approval by the Subdivision Review Board, compliance with the preceding conditions will bring the proposed adjustment into conformance 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 appropriate fees to the Planning Department prior to the expiration date.

Staff report prepared by Jay Johnson,  
Development Review Section and reviewed  
by Michael Draz, Supervising Planner





THIS MAP MAY BE USED FOR ANY PURPOSE, BUT NOT FOR THE PURPOSE OF ASSESSMENT. THE ASSessor'S BLOCK AND LOT NUMBERS SHOWN IN CIRCLES ARE FOR ASSESSMENT PURPOSES ONLY. THE ASSessor'S BLOCK AND LOT NUMBERS SHOWN IN CIRCLES ARE FOR ASSESSMENT PURPOSES ONLY. THE ASSessor'S BLOCK AND LOT NUMBERS SHOWN IN CIRCLES ARE FOR ASSESSMENT PURPOSES ONLY.

CUESTA BY THE SEA  
SAN LUIS OBISPO  
CALIFORNIA

NOTE - ASSessor'S BLOCK & LOT  
NUMBERS SHOWN IN CIRCLES

THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY.



# **EXHIBIT D**



# California Regional Water Quality Control Board

## Central Coast Region

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb3>  
81 Higuera Street, Suite 200, San Luis Obispo, California 93401-5411  
Phone (805) 549-3147 • FAX (805) 543-0397



Gray Davis  
Governor

# RECEIVED

July 11, 2001

MAR 05 2004

Claire Goedinghaus  
13106 Neff Road  
La Mirada, CA 90638

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Ms. Goedinghaus:

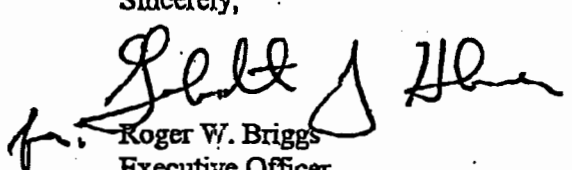
### COVERAGE UNDER GENERAL ORDER NO. 00-12, WASTE DISCHARGE REQUIREMENTS FOR RESIDENTIAL ON-SITE WASTEWATER SYSTEMS WITHIN THE BAYVIEW HEIGHTS AND MARTIN TRACT AREAS OF LOS OSOS, SAN LUIS OBISPO COUNTY

We have reviewed your revised Notices of Intent (applications) to comply with General Waste Discharge Requirements Order No. 00-12 and find them to be complete. Your revised submittal indicates that your proposed on-site wastewater discharges on parcels (APN) 074-025-008 (lots 1 through 4) may comply with the conditions for coverage under Order No. 00-12. Your submittal also indicates the proposed project may be consistent with criteria specified in the Water Quality Control Plan, Central Coast Region (Basin Plan) for siting and design of on-site wastewater systems. In order to assure compliance with Order No. 00-12 and the Basin Plan, the wastewater system must be installed as described in your submittal. Plus a leachfield expansion area (equal to 100% of the required disposal area as required by Basin Plan) must be indicated on your site plans. (plans submitted did not include the expansion area). Also, in order to prolong the useful life of the disposal system, we recommend you alternate disposal field use periodically (such as annually).

This letter documents exemption to the Basin Plan prohibition of waste discharges within the Los Osos area (Resolution 83-13) and coverage under General Order No. 00-12 provided ongoing compliance with the requirements of the Order are demonstrated. Please note there are monitoring and reporting requirements associated with this Order as well as payment of annual fees. A copy of the Order is attached for your records.

If you have questions, please call Sorrel Marks at 549-3695 or Gerhardt Hubner at 542-4647.

Sincerely,

  
Roger W. Briggs  
Executive Officer

S:\wb\southern\staff\sorrel\00-12\yanbeurden.approval

- c: Jeff Edwards, P. O. Box 6070, Los Osos, CA 93412 (without attachment)  
Pat Beck, Planning & Building, Co. Govt. Center, San Luis Obispo, CA 93408 (without attachment)  
Bruce Buel, Los Osos CSD, P. O. Box 6064, Los Osos, CA 93412 (without attachment)

California Environmental Protection Agency



Recycled Paper

CCC Exhibit

(page 1 of 1 pages)

F

# **EXHIBIT E**



## **DECLARATION**

1. My name is Steve Molnar. I am an owner and manager of Shear Development Co., LLC, which owns 282 Mar Vista Drive, 294 Mar Vista Drive, and 284 Highland Drive in the unincorporated Los Osos area of San Luis Obispo County just inland of Morro Bay (APNs 074-025-019, -017, -023) (hereinafter, “the Subject Lots”), which are part of Tract 2161. I have personal knowledge of the facts stated herein and, if called to testify, would and could do so.

2. I have lived and worked as a builder in Los Osos since 1992. As a resident of and builder in the community, I am intimately familiar with the development of lots in Los Osos, including the status of the many hundreds of vacant lots over the years. Shear Development acquired the Subject Lots in 2003.

3. The Subject Lots are fully developed with curbs, gutters, sidewalks, storm drainage for the entire Tract 2161, as well as landscaping, water meters, sewer mains with 4” laterals to each lot, gas stubs to each lot, and level certified building pads for each lot, establishing our intent to build out three of the remaining vacant lots. Shear Development made nearly all those improvements by 2004, pursuant to the County’s approval of the Tract 2161 subdivision.

4. Each of the Subject Lots have had water meters since 2007. They are 5/8” water meters that have served the Subject Lots with an unrestricted supply of water since their installation. Importantly, there are no restrictions or limitations on the amount of water the Subject Lots can access. If houses existed on the Subject Lots today, there is nothing to prevent or limit the Subject Lots’ access to the water needed to service them.

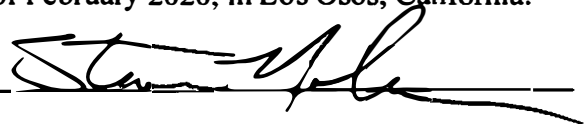
5. The Subject Lots have seen active water use for landscaping. On behalf of Shear Development, I have been paying for the water meters and for monthly use of water over the course of over a decade. In so doing, I and my co-owner have had the reasonable investment-backed

expectation that houses would eventually be constructed on the Subject Lots.

6. The Subject Lots are unique among vacant lots in Los Osos, because, among other reasons, the Subject Lots have long made and continue to make active use of water on the properties, and because the Subject Lots have long had and continue to have unrestricted access to water.

I declare under penalty of perjury, under the laws of the State of California, that the

foregoing is true and correct. Executed this 7th day of February 2020, in Los Osos, California.

A handwritten signature in black ink, appearing to read "Steve Molnar", is written over a horizontal line.

Steve Molnar

# **EXHIBIT F**



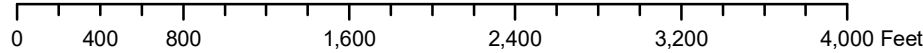
Los Osos Prohibition Zone

Legend

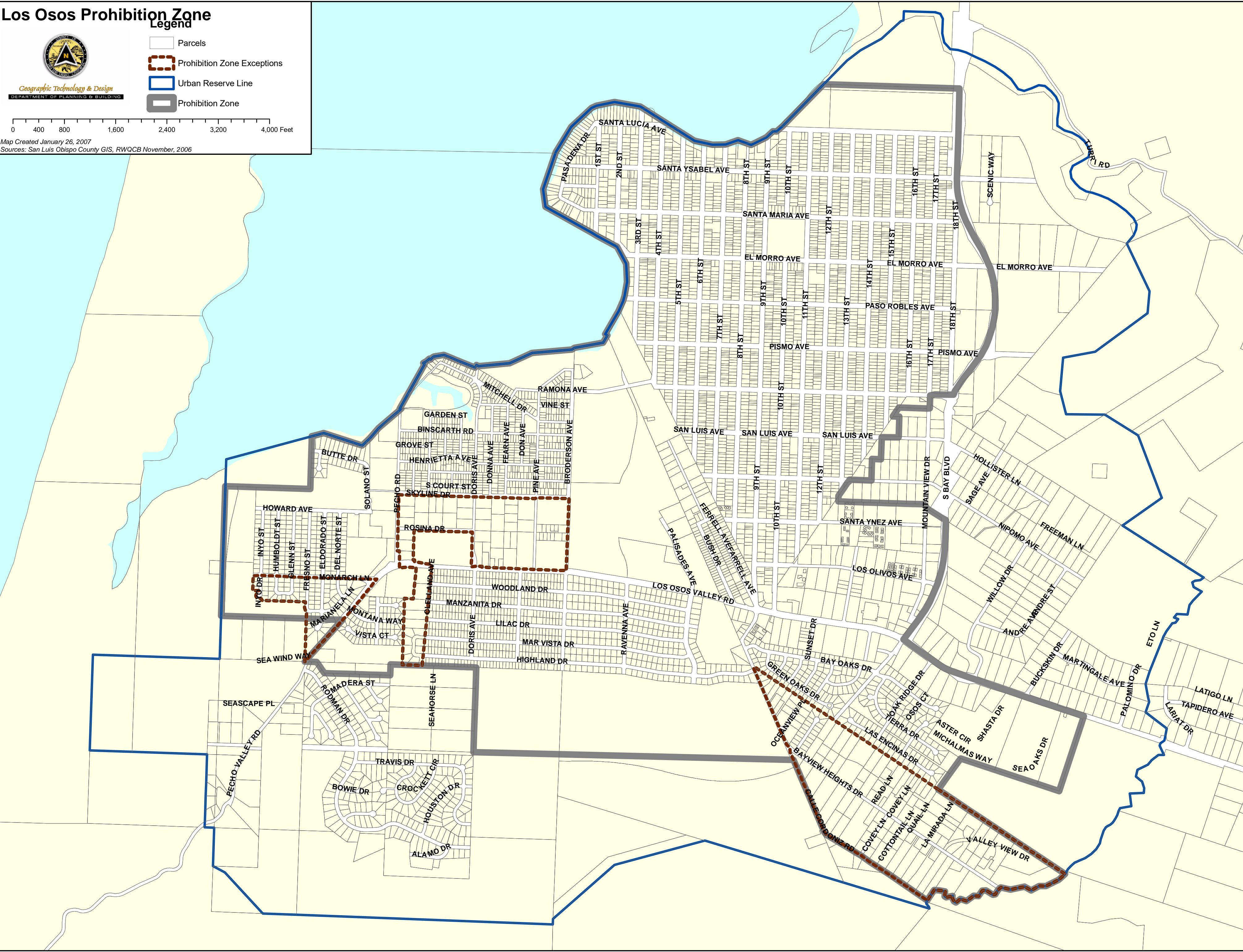


Geographic Technology & Design  
DEPARTMENT OF PLANNING & BUILDING

- Parcels
- Prohibition Zone Exceptions
- Urban Reserve Line
- Prohibition Zone



Map Created January 26, 2007  
Sources: San Luis Obispo County GIS, RWQCB November, 2006



# **EXHIBIT G**

**FINAL**

LOS OSOS BASIN PLAN  
GROUNDWATER MONITORING PROGRAM  
2017 ANNUAL MONITORING REPORT

Prepared for the  
BASIN MANAGEMENT COMMITTEE



JUNE 2018

CLEATH-HARRIS GEOLOGISTS  
71 Zaca Lane, Suite 140  
San Luis Obispo, California 93401





### 10.3.3 Urban Water Reinvestment Program

Implementation of the Urban Water Reinvestment Program was recommended in the LOBP to increase the sustainable yield of the Basin (and thus reduce the Basin Yield Metric). The Water Reinvestment Program will accomplish the LOBP's goal of reinvesting all water collected and treated by the LOWRF in the Basin, either through direct percolation to the aquifers or reuse. Water treated by the LOWRF will be of a sufficient quality to directly percolate into the Basin or to reuse for landscape or agricultural irrigation purposes. The planned uses of that water are listed in Table 29, along with the actual uses from 2017.<sup>4</sup>

<b>Table 29. Planned Recycled Water Uses in the Urban Water Reinvestment Program</b>		
<b>Potential Use</b>	<b>Estimated Annual Volume (AFY)</b>	<b>Actual Annual Volume in 2017 (AFY)</b>
Broderson Leach Fields	448	445
Bayridge Estates Leach Fields	33	7
Urban Reuse	63	0
Sea Pines Golf Course	40	0
Los Osos Valley Memorial Park	50	0
Agricultural Reuse	146	0
<b>Total</b>	<b>780</b>	<b>452</b>

The LOWRF construction was completed in March 2016. As of January 4, 2018, the sewer service area had connected 95 percent of 4,583 parcels (excluding vacant lots and properties with no structures with sewer facilities) that are required to connect. Flows from the wastewater plant are averaging approximately 450,000 gallons per day, with weekend peaks of 470,000 gallons per day (approximately 504 AFY). With 95 percent of the required parcels connected, average wastewater flows are lower than anticipated. Projecting the actual average flow per connection through the remainder of the project results in a total estimated volume of 580 AFY, which is 200 AFY less than the anticipated 780 AFY.

Treated water in 2017 was conveyed to the Broderson and Bayridge Estates leach fields. The anticipated groundwater mound resulting from localized recharge of recycled water was detected hydraulically downgradient of the Broderson site beginning in June 2017. Recycled water for irrigation will be provided to the schools, parks, and various agricultural areas within the basin once flows at the wastewater plant approach anticipated volumes.

<sup>4</sup> This Table was reproduced (with slight edits) from Table 2 of the LOBP.

**FINAL**

LOS OSOS BASIN PLAN  
GROUNDWATER MONITORING PROGRAM  
2018 ANNUAL MONITORING REPORT

Prepared for the  
BASIN MANAGEMENT COMMITTEE



JUNE 2019

CLEATH-HARRIS GEOLOGISTS  
71 Zaca Lane, Suite 140  
San Luis Obispo, California 93401



### 10.3.3 Urban Water Reinvestment Program

Implementation of the Urban Water Reinvestment Program was recommended in the LOBP to increase the sustainable yield of the Basin (and thus reduce the Basin Yield Metric). The Water Reinvestment Program will accomplish the LOBP's goal of reinvesting all water collected and treated by the LOWRF in the Basin, either through direct percolation to the aquifers or reuse. Water treated by the LOWRF will be of a sufficient quality to directly percolate into the Basin or to reuse for landscape or agricultural irrigation purposes. The planned uses of that water are listed in Table 29, along with the actual uses from 2018<sup>4</sup>.

<b>Table 29. Planned Recycled Water Uses in the Urban Water Reinvestment Program</b>		
<b>Potential Use</b>	<b>Estimated Annual Volume (AFY)</b>	<b>Actual Annual Volume in 2018 (AFY)</b>
Broderson Leach Fields	448	486
Bayridge Estates Leach Fields	33	20
Urban Reuse	63	0
Sea Pines Golf Course	40	0
Los Osos Valley Memorial Park	50	0
Agricultural Reuse	146	0
<b>Total</b>	<b>780</b>	<b>505</b>

The LOWRF construction was completed in March 2016. Through the end of 2018, the sewer service area had connected 97.7 percent of 4,583 parcels (excluding vacant lots and properties with no structures with sewer facilities) that are required to connect. Flows from the wastewater plant in December 2018 were averaging approximately 470,000 gallons per day, with weekend peaks of 500,000 gallons per day (approximately 530 AFY). With 97.7 percent of the required parcels connected, average wastewater flows are lower than anticipated. Projecting the actual average flow per connection through the remainder of the project results in a total estimated volume of 540 AFY, which is 240 AFY less than the anticipated 780 AFY.

Treated water in 2018 was conveyed to the Broderson and Bayridge Estates leach fields. The anticipated groundwater mound<sup>5</sup> resulting from infiltration of treated wastewater disposal to leach fields at the Broderson site was detected hydraulically downgradient beginning in June 2017. Recycled water for irrigation will be provided to the schools, parks, and various agricultural areas

<sup>4</sup>This Table was reproduced (with slight edits) from Table 2 of the LOBP.

<sup>5</sup>Cleath & Associates, 2000, Hydrogeologic Investigation of the Broderson Site, Phase 2 Impacts Assessment, prepared for Los Osos Community Services District, November 2000.



# **EXHIBIT H**

*Stephanie F.*

*tract 2161*

**IN THE BOARD OF SUPERVISORS**  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day January 27, 2004

**PRESENT: Supervisors** Shirley Bianchi, Peg Pinard, K.H. "Katcho" Achadjian  
Michael P. Ryan, and Chairperson Harry L. Ovitt

**ABSENT:** None

**RESOLUTION NO. 2004-32**

**RESOLUTION APPROVING SCENIC PRESERVATION AGREEMENT  
FOR TRACT 2161**

The following resolution is hereby offered and read:

WHEREAS, Government Code Section 6950 through 6954, inclusive, authorize the County of San Luis Obispo and a property owner, by agreement, to limit the future use of real property in the County of San Luis Obispo in order to preserve open space and areas of significant scenic or esthetic values; and

WHEREAS, the County of San Luis Obispo has been duly requested to approve and enter into a scenic preservation agreement in order to preserve and conserve for the public benefit the natural scenic beauty and existing openness, natural condition and present state of use of the real property described in the agreement until such time as a community-wide sewer is available and all lots in Tract 2161 are connected to it.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. The Board of Supervisors finds and determines that approval of the above agreement is categorically exempt from the requirements of the California Environmental Quality Act.
2. The Scenic Preservation Agreement for Tract 2161, a copy of which is attached hereto and incorporated by reference herein as though set forth in full, is hereby approved by the County of San Luis Obispo and the Chairman of the Board of Supervisors is hereby authorized and directed to execute said agreement on behalf of the County of San Luis Obispo.
3. The Clerk of the Board of Supervisors is hereby authorized and directed to record the above agreement and a certified copy of this resolution in the office of the County Recorder of the County of San Luis Obispo.

*23/MB/46*

*B25  
20*

Upon motion of Supervisor Achadjian, seconded by Supervisor  
Ryan, and on the following roll call vote, to wit:

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

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

HARRY L. OVITT  
Chairman of the Board of Supervisors

ATTEST:

Julie L. Rodewald  
Clerk of the Board of Supervisors  
By: CHERIE AISPURO Deputy Clerk  
[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By:   
Deputy County Counsel

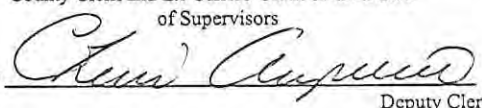
Dated: January 15-2004

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

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 28th  
day of January, 2004

(SEAL)

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



RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors  
County of San Luis Obispo  
County Government Center  
San Luis Obispo, CA 93408

---

APN 074-025-008

SCENIC PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 27 day of January, 2004, by and between TTS/MCD Joint Venture #1, a joint venture composed of T.S., LLC (also known as T.T.S., LLC), a California limited liability company, and Steven Molnar dba MCD CONSTRUCTION AND DEVELOPMENT CO., hereinafter referred to as "Owner", and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property (hereinafter referred to as "Owner's Property") located in the County of San Luis Obispo, State of California, described as lots 1 through 8, inclusive, of the Final Tract Map 2161, which is more particularly described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, as a condition of approval of Tract 2161 by County for Owner's Property, Owner is required prior to recordation of the final map, (a) provide a "will serve" letter from a community-wide sewer provider containing a commitment to

provide sewer service to the project at the time of final map approval, or (b) provide a valid exception/exemption from the Regional Water Quality Control Board moratorium; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property"), consisting of Lots Nos. 1,3,5, and 7 of Tract 2161, which is more particularly described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and the subsequent performance of its obligations by Owner and his successors in interest, will satisfy the requirement imposed by the County's general condition 16 of the conditions of approval of said Vesting Tentative Map; and

WHEREAS, Owner is willing to restrict the use of the Subject Property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, this agreement is entered into pursuant to Government Code sections 6950 through 6954, inclusive, and the terms, conditions, and restrictions of this agreement are not an enforceable restriction under the provisions of section 422 of the Revenue and Taxation Code nor section 8 of Article XIII of the Constitution of the State of California; and

WHEREAS, Owner has supplied County with a current title company preliminary title report or lot book guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on the Subject Property.

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 6950 through 6954, inclusive, and in

further consideration of the mutual promises, covenants, and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Preservation of the scenic and natural condition. Owner hereby agrees to preserve the natural condition of the Subject Property for the term specified in paragraph 8 below. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts which Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property until such time as all eight lots in Tract 2161 are connected to the community sewer system.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from the restrictions contained in this agreement and are expressly reserved to Owner:

(a) The right to maintain all existing private roads, bridges and trails lawfully erected and maintained upon the Subject Property.

(b) The development of single – family residences and appurtenant structures on lot Nos. 1,3,5, and 7 of Tract 2161 after such time as all eight lots in Tract 1261 are connected to the community sewer system.



4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all County ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein. Provided, however, nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County by Court approval Subdivision Improvement Plans or the conditions of approval of Tract 2161.

6. No authorization for public trespass. The restrictions contained herein do not authorize and are not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of restrictions. This agreement shall be effective upon execution, and it shall remain in effect until such time as all eight lots in Tract 2161 are connected to the community sewer system. Upon connection of all eight lots in Tract 2161 to the

community sewer system, the County shall execute and record a document acknowledging the termination of this Agreement.

9. No enforceable restriction. The parties hereto agree that under this agreement the Subject Property shall not be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code nor section 8 of Article XIII of the Constitution of the State of California.

10. Binding on successors in interest. All provisions of this agreement shall run with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest.

11. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

12. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

13. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

14. Enforceability. If any term, covenant, condition, or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, San Luis Obispo, California 93408. Notices required to be given to Owner shall be addressed as follows: TTS/MCD Joint Venture #1, c/o J.H. Edwards, P.O. Box 6070, Los Osos, California, 93412.

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

16. Subordination. The trust deed beneficiaries and mortgagees, if any, listed on preliminary title report or lot book guarantee referred to above, and whose signatures are affixed hereto, do hereby assent to this agreement and, further, do hereby subordinate their respective interests to the restrictions and obligations imposed herein.

17. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.



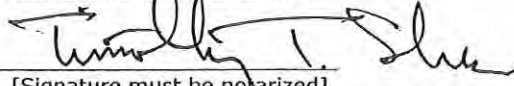
do hereby subordinate their respective interests to the restrictions and obligations imposed herein.

17. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.


OWNERS:

TTS/MCD Joint Venture #1

By:   
[Signature must be notarized]

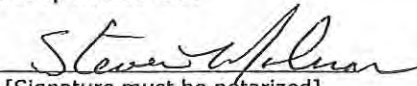
Title: Manager/President

T.S., LLC, also know as T.T.S., LLC,  
a California Limited Liability Co.

By:   
[Signature must be notarized]

Title: Manager/President

Steven Molnar dba MCD Construction  
& Development Co.

By:   
[Signature must be notarized]

Title: PRESIDENT

[Note: This agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

COUNTY OF SAN LUIS OBISPO

By HARRY L. OVITT  
Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD  
Clerk of the Board of Supervisors

By: VICKI M. SHELBY  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

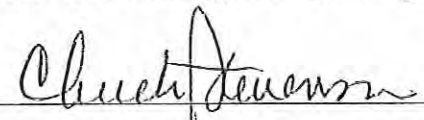
JAMES B. LINDHOLM, JR.  
County Counsel

By   
Deputy County Counsel

Dated: 1.15.04

APPROVED AS TO CONTENT:

VICTOR HOLANDA, AICP  
Director of Planning and Building

By 

Dated: JANUARY 15, 2004

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

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

LEGAL DESCRIPTION APPROVED AS TO FORM:

GLEN L. PRIDDY  
County Surveyor

By: *Daniel J. Marion*

Dated: *January 15, 2007*

NOTE: This Scenic Preservation Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]



**STATE OF CALIFORNIA            )  
COUNTY OF SAN LUIS OBISPO)**

On January 27, 2004 before me, **Vicki Shelby**, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared **Harry L. Ovitt**, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

**WITNESS** my hand and official seal.

**JULIE L. RODEWALD**, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By:   
Deputy County Clerk-Recorder

(SEAL)

STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO ) SS.:

On 1-14, 2004, before me, HILARY F. HOPKINS,  
a Notary Public, personally appeared STEVEN MOLNAR,  
personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature [Signature]

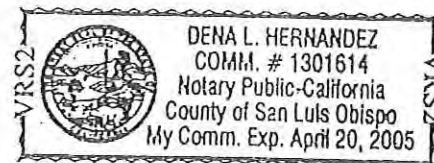


STATE OF CALIFORNIA )  
COUNTY OF San Luis Obispo ) SS.:

On January 15, 2004, before me, Dena L. Hernandez,  
a Notary Public, personally appeared Timothy T. Shea,  
~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized  
capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature [Signature]



STATE OF CALIFORNIA )  
COUNTY OF ) SS.:

On \_\_\_\_\_, 2004, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA   )  
COUNTY OF                    ) SS.:

On \_\_\_\_\_, 2004, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA   )  
COUNTY OF                    ) SS.:

On \_\_\_\_\_, 2004, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF                    )

On \_\_\_\_\_, before me, JULIE RODEWALD, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors, County of San Luis Obispo, State of California, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the persons who executed this instrument as the Chairman and the Clerk of the Board of Supervisors of the County of San Luis Obispo, State of California, and acknowledged to me that the County of San Luis Obispo executed it.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

## **EXHIBIT A**

Lots 1 through 8, inclusive, of the Final Tract Map 2161 recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

**EXHIBIT B**

Lots 1,3,5, and 7 of the Final Tract Map 2161 recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

23/MB/46



# 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



# W14c

**A-3-SLO-19-0180 (SHEAR DEVELOPMENT SFDS)**

**FEBRUARY 12, 2020 HEARING**

**CORRESPONDENCE**

**From:** [Craig.Susan@Coastal](mailto:Craig.Susan@Coastal)  
**To:** [O'Neill.Brian@Coastal](mailto:O'Neill.Brian@Coastal)  
**Cc:** [Carl.Dan@Coastal](mailto:Carl.Dan@Coastal)  
**Subject:** FW: Shear Development Co., LLC/ A-3-SLO-19-0180 - Friday's Agenda Item F11a  
**Date:** Monday, October 14, 2019 8:19:59 AM  
**Attachments:** [2019-09-30 Shear Dev White Paper DRC2017-00029.pdf](#)  
[Comment Letter Re Appeal No A-3-SLO-19-0180 \(Shear Development Co\).pdf](#)

---

Brian – FYI.

---

**From:** Staben, Jeff@Coastal  
**Sent:** Sunday, October 13, 2019 1:02 PM  
**To:** Carl, Dan@Coastal; Craig, Susan@Coastal  
**Cc:** Hardison, Laurie@Coastal  
**Subject:** Fwd: Shear Development Co., LLC/ A-3-SLO-19-0180 - Friday's Agenda Item F11a

For filing/posting

---

**From:** Carol Florence <[cmf@oasisassoc.com](mailto:cmf@oasisassoc.com)>  
**Sent:** Sunday, October 13, 2019 11:53 AM  
**To:** Brownsey, Donne@Coastal <[donne.brownsey@coastal.ca.gov](mailto:donne.brownsey@coastal.ca.gov)>  
**Subject:** Shear Development Co., LLC/ A-3-SLO-19-0180 - Friday's Agenda Item F11a

Dear Commissioner Brownsey,

Thank you, in advance, for reviewing my email and, perhaps, affording me an opportunity to speak with you prior to the hearing in Chula Vista. We represent the owner of the four (4) single-family residential lots located in Los Osos that is subject to the appeal by Commissioners Escalante and Howell. Let me initially opine that it is not lost on me that this project is small in comparison to many others that you review and, perhaps, more importantly that just saying “Los Osos” immediately has a response of “no” or the broad and consistent application of the sewer plant’s special condition #6. Nonetheless, given the unique circumstances surrounding this project, neither reaction should apply and I, therefore, beg for the Commission’s ear.

We approach this from a planning and environmental perspective (please see the attached “white paper”) and recently from a legal perspective. See correspondence from Alston & Bird to the Commission dated and uploaded to the CCC website on October 11, 2019 (also attached for ease of reference). I’ll not reiterate any of the points presented in those two documents, but would appreciate your considerate review of the information presented. Given your professional life + your Commission responsibilities, I know that your plate overfloweth, so your attention to my project is even more meaningful.

It has been a while since I was before the Commission, but then as now, I believe strongly that this project does not warrant a substantial issue determination or a de novo hearing. I hope that I am given the chance to prove that to you. I can be reached 24-7 on my mobile – 805.459.9972 or via email and look forward to you reaching out to me.

Yours respectfully,  
C.M.Florence, AICP  
Principal Planner

**OASIS ASSOCIATES, INC.**

3427 Miguelito Court  
San Luis Obispo, CA 93401  
**P:**805.541.4509**F:** 805.546.0525**M:**805.459.9972  
[www.oasisassoc.com](http://www.oasisassoc.com)



**PROJECT INFORMATION FOR BUILD-OUT OF TRACT 2161**  
294 & 282 MAR VISTA DRIVE AND 284 & 289 HIGHLAND DRIVE, LOS OSOS, CA  
DRC2017-000029, CCC APPEAL NO. A-3-SLO-19-0180  
December 2017, rev. September 2019

---

## A UNIQUE PROJECT



- **NO INCREASE IN OVERALL DEVELOPMENT**  
The tract was created with a density & development transfer from Cuesta-by-the-Sea properties and formed the base line for subsequent actions.
  - **NO NEW IMPACT ON THE WATER BASIN**  
Both the tract and the Cuesta-by-the-Sea properties are within the same ground water basin.
  - **NO NET INCREASE IN WATER USE**  
Properties have had active water use, while Title 19 retrofits will also be required.
  - **PARCELS ARE W/IN THE SEWER SERVICE DISTRICT**  
...and **NOT** within the wastewater discharge prohibition zone. Sewer main and laterals were installed as part of the tract improvements. Importantly, the County only allows installation of sewer laterals to developable properties.
  - **BUILD-OUT IS THE CONCLUSION OF THE COUNTY'S & CCC'S APPROVAL OF THE TRACT**  
With completion of the sewer plant, the County and the CA Coastal Commission can fulfill the original obligation to connect the entirety of the tract to the system.
- 
- **2004 COASTAL COMMISSION APPEAL**  
In 2003, County Coastal Development permit D020349P approved eight (8) single family residences on Tract 2161. This approval was appealed to the CA Coastal Commission. During the appeal process, the applicant separated the project into two (2) phases. In 2004, the CA Coastal Commission approved the Coastal Development Permit for the eight lots: Phase 1 (construction of Lot 2, 4, 6, and 8; utilizing on-site RWQCB-approved septic systems) with the expectation that all lots (Phase 1 & 2) would be connected to the community sewer system upon its completion.
  - **PROJECT MEETS THE INTENT OF THE COASTAL DEVELOPMENT SEWER PERMIT SPECIAL COA #6**  
The intent of Special Condition of Approval #6 (circa 2010) was to recognize the benefits of the new sewer plant, while requiring conclusive evidence of adequate water for development and habitat conservation. The development transfer that created Tract 2161, and its subsequent County approval, provided for water availability for the tract. With the Title 19 retrofit program, there is additional assurance of adequate water and no additional impacts on water resources. Impacts to biological resources were also considered, which concluded that the property itself was unsuitable for habitat conservation purposes, while protocol surveys for Morro Shoulderband Snails were recently conducted, as part of the County's Minor Use Permit process.
  - **PROJECT ACKNOWLEDGES THE BOARD OF SUPERVISORS' POLICY REGARDING SPECIAL COA #6**  
The Board's adopted policy established five (5) statements regarding Special Condition #6 and set forth the procedure to make an appeal to the Board of Supervisors, and if successful, would enable a request to be made to the California Coastal Commission. The initial concern regarding wastewater, and then much later water, had been resolved by Tract 2161 prior to COA #6, therefore creating this **unique** situation.

## DEVELOPMENT HISTORY

- 1996** Subdivision is approved creating Tract 2161
- 2004** Development permit is issued for Phase I of tract development (see CCC 2004 appeal above)
- 2007** Water meters, water and sewer mains, and laterals installed for all lots in Tract 2161
- 2008** County establishes the Title 19 retrofit program for Los Osos
- 2010** Coastal Development Permit (CDP) issued for the sewer plant
- 2016** Completion of sewer plant
- 2017** Minor Use Permit application submitted for construction of Tract 2161 Lots 1, 3, 5, 7.  
Planning Department Hearing occurs in November. Applicant appeals to Board of Supervisors.
- 2018** Appeal of Minor Use Permit is reviewed by Board of Supervisors. BOS tentatively upholds appeal (for approval of project) and directs staff to return with findings and analysis of the environmental review.
- 2019** Environment analysis completed by staff, with revised project being exempt from CEQA. Board of Supervisors subsequently approves Minor Use Permit DRC2017-000029.

## PROJECT DESCRIPTION (REVISED)

Tract 2161 created eight (8) half-acre single-family residential lots. The final tract map was recorded in 2004, with Lots 2, 4, 6, 8 being developed with single family residences shortly after the subdivision was completed. A Scenic Preservation Agreement was recorded concurrently with the final map stipulating that development of Lots 1, 3, 5, and 7 is permissible when all eight (8) lots are connected to the community sewer system. Additionally, the Scenic Preservation Agreement is to be terminated upon connection to the sewer system.

The proposed Minor Use Permit application was lodged to enable construction of the tract's remaining single-family residences on Lots 1, 3, 5, and 7 of Tract 2161, located along Mar Vista Drive and Highland Drive in Los Osos. Based upon the CA Coastal Commission's 2004 approval, a Minor Use Permit is required because the project is within the Coastal Zone which requires a Coastal Development Permit (CDP) prior to building permit issuance and construction.

As part of the environmental review completed in 2019, a Morro Shoulder-band Snail (MSS) protocol survey was completed on Lots 1, 3, 5, 7 (Morro Shoulderband Snail Habitat Assessment and Protocol Survey, Ecological Assets Management, LLC, 14 March 2019). Evidence of MSS were observed on Lot 5. In response to this analysis the applicant has modified the project description to be a request for construction of Lots 1, 3, and 7. The approval for construction on Lot 5 is expected to be pursued when the Los Osos community-wide Habitat Conservation Plan (HCP) is adopted and available. This will provide an appropriate mitigation program to address the MSS on Lot 5.

The following table provides the proposed development specifics for each lot.

TABLE 1.

LOT #	LOT ADDRESS	PARCEL SIZE (SF)	BUILDING (SF)	# OF STORIES
1	295 Mar Vista Drive	21,579	2,476	2
3	282 Mar Vista Drive	23,032	2,766	1
5	<del>289 Highland Drive</del>	<del>21,330</del>	<del>3,070</del>	<del>1</del>
7	284 Highland Drive	22,296	3,008	2

# ALSTON & BIRD

333 South Hope Street, 16th Floor  
Los Angeles, CA 90071-1410  
213-576-1000 | Fax: 213-576-1100

Paul J. Beard II

Direct Dial: 213-576-2564

Email: paul.beard@alston.com

October 11, 2019

VIA EMAIL TO BRIAN O'NEILL

**F11a**

Chairperson Bochco and Honorable  
Commissioners  
California Coastal Commission  
Email: Brian.O'Neill@coastal.ca.gov

Re: Appeal No. A-3-SLO-19-0180; SI Hearing: 10/18/19  
Applicant: Shear Development Co., LLC

Dear Chairperson Bochco and Honorable Commissioners,

We represent the applicant Shear Development Co., LLC, in the appeal of the County of San Luis Obispo's approval of its Coastal Development Permit (CDP).

The Staff Report recommends a finding of "substantial issue," and a denial of the CDP on *de novo* review.<sup>1</sup> The "substantial issue" recommendation is premised on a number of legal and factual errors. As explained in greater detail below, given its location and zoning characteristics, the project is not the kind of project that is appealable to the Commission. But even if it were, there are no valid grounds for appeal, because the project conforms to the County's certified Local Coastal Program (LCP)<sup>2</sup>—the *only* relevant standard for deciding whether the Commission should undertake *de novo* review of the project.

---

<sup>1</sup> The applicant requested and obtained a continuance of the *de novo* portion of the hearing, in the event the Commission finds "substantial issue." Consequently, this comment letter focuses exclusively on the "substantial issue" question, arguing there is no basis for an appeal.

<sup>2</sup> A second ground for appeal is the allegation that a development does not conform to the public-access policies of the Coastal Act. San Luis Obispo County Coastal Zone Land Use Ordinance § 23.01.043(d); *see also* Pub. Res. Code § 30603(b)(1). But neither the appellant nor staff alleges that the project has any impact on the Act's public-access policies. Thus, the only standard for answering the "substantial issue" question is the LCP.



We urge the Commission to find that the appeal raises **no substantial issue**, allowing the County's CDP approval to stand.

**I.  
The Project Is Not an Appealable Project**

The Staff Report asserts—based on Coastal Act provisions, not the LCP—that this project is the kind of project that is appealable. (Staff Report at 7). Citing to Public Resource Code section 30603, the Staff Report claims that the project lies in a “sensitive resource area”—specifically, an Environmentally Sensitive Habitat Area (ESHA)—and that the project is not designated as the principal permitted use in the LCP. (Staff Report at 7). The Staff Report is wrong.

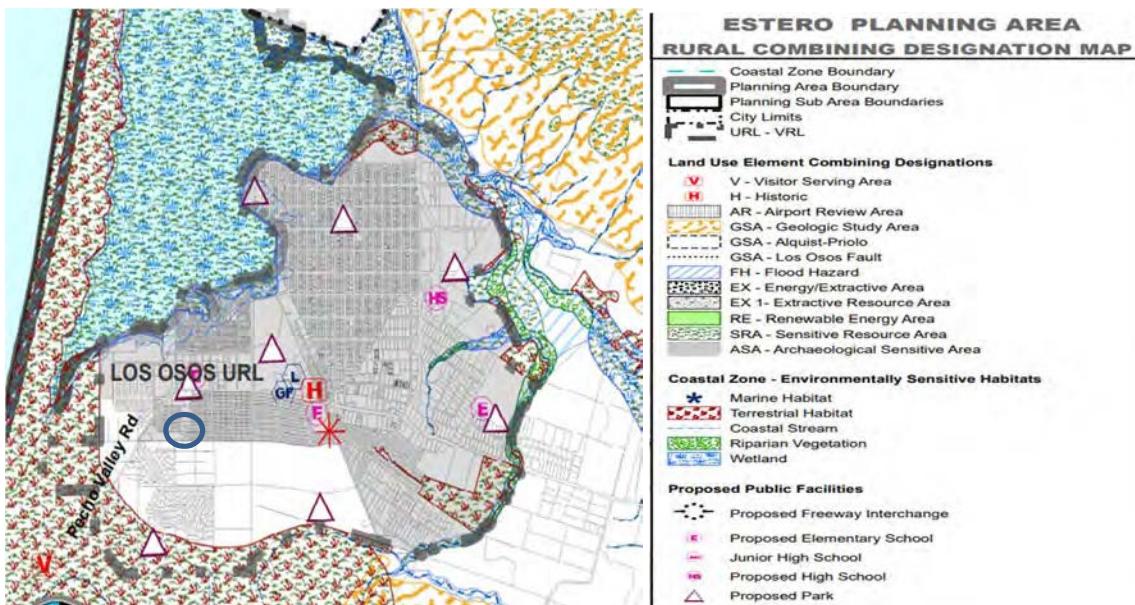
First, because the County has a certified LCP, the LCP's provisions on project appealability govern—not the Coastal Act. (*Security Nat'l Guaranty, Inc. (SNG) v. Cal. Coastal Comm'n* (2008) 159 Cal.App.4th 402, 422 (reiterating that the certified LCP is the *sole* standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

Second, the LCP precludes appeal of the project on the basis of ESHA, because there *is* no ESHA in the project area. The County's Coastal Zone Land Use Ordinance (CZLUO), which is part of its certified LCP, details the kinds of projects that are appealable to the Coastal Commission. The CZLUO provides that “developments . . . that are located in a Sensitive Coastal Resource Area” are appealable. But, unlike the Coastal Act, the CZLUO specifically defines “Sensitive Coastal Resource Area” as “[s]pecial marine and land habitat areas, wetlands, lagoons, and estuaries *mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan.*” The CZLUO categorically excludes “resource areas determined by the County to be Unmapped ESHA.” (CZLUO § 23.01.043(c)(3) (emphasis added)).

There is no mapped ESHA in the project area. For example, the County's Los Osos Community Plan DEIR (July 2019) contains a map showing that the project area is actually “**Non-ESHA**.” For the Commission's convenience, we reproduce the relevant part of that map, showing the approximate location of the project area (circled in blue) as “Non-EHSA”:



In addition, the County's Estero Planning Area map, which indicates areas designated as mapped ESHA, establish that the project area is not ESHA.<sup>3</sup> Again, for the Commission's convenience, we reproduce below the relevant part of the map, with the approximate location of the project area circled in blue.



<sup>3</sup> Available at: <https://www.slocounty.ca.gov/getattachment/6b2a1bf1-b279-4208-8cf3-131fd38320be/Estero-Planning-Area-Combining-Designations-Map.aspx>.

To summarize, there is no evidence—and the Staff Report cites to none—establishing that, under the County’s LCP, the project area is ESHA or otherwise qualifies as a “sensitive resource area” rendering the project appealable. The exact opposite is true: All the evidence points to the project area being non-ESHA under the LCP. Because the project area is not ESHA (mapped or unmapped) under the relevant legal standard, the alleged existence of ESHA cannot be the basis for appellate jurisdiction under the LCP.

Second, the Staff Report is wrong to claim that the project is not the principal permitted use for the parcels under the LCP. It is true that “any approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use” is appealable. CZLUO § 23.01.043(c)(4). But the project **does** involve development listed as a Principal Permitted Use. Unsurprisingly, Coastal Table O<sup>4</sup> establishes that a “Single-Family Dwelling” is a Principal Permitted Use (“P”) in “Residential Single-Family” areas:

# LAND USE CATEGORY

PAGE NUMBER  
OF USE

Agriculture - Prime Soils	Agriculture - Non-Prime Soils	Rural Lands	Recreation	Residential Rural	Residential Suburban	Residential Single-Family	Residential Multi-Family	Office & Professional	Commercial Retail	Commercial Service	Industrial	Public Facilities	Open Space
------------------------------	----------------------------------	-------------	------------	----------------------	-------------------------	------------------------------	-----------------------------	--------------------------	----------------------	-----------------------	------------	----------------------	------------

## D) MANUFACTURING & PROCESSING (CONTINUED)

Structural Clay & Pottery - Related Production	23
Textile Products	24

6-59

6-59

			S-15									P	
												P	

## E) RESIDENTIAL USES

Caretaker Residence	1
Farm Support Quarters	2
Home Occupations	3
Mobilehome Parks	4
Mobilehomes	5
Multi-Family Dwellings	6
Nursing & Personal Care	7
Organizational Houses	8
Residential Accessory Uses	9
Residential Care	10
Residential Vacation Rental	0
Secondary Dwelling	11
Single-Family Dwellings	12
Supportive Housing	14
Single Family Dwellings	
Multi-Family Dwellings	
Temporary Dwelling	13
Transitional Housing	15
Single Family Dwellings	
Multi-Family Dwellings	

6-42

6-45

6-48

6-51

6-51

6-51

6-52

6-53

6-56

6-56

6-57

6-57

6-48

6-59

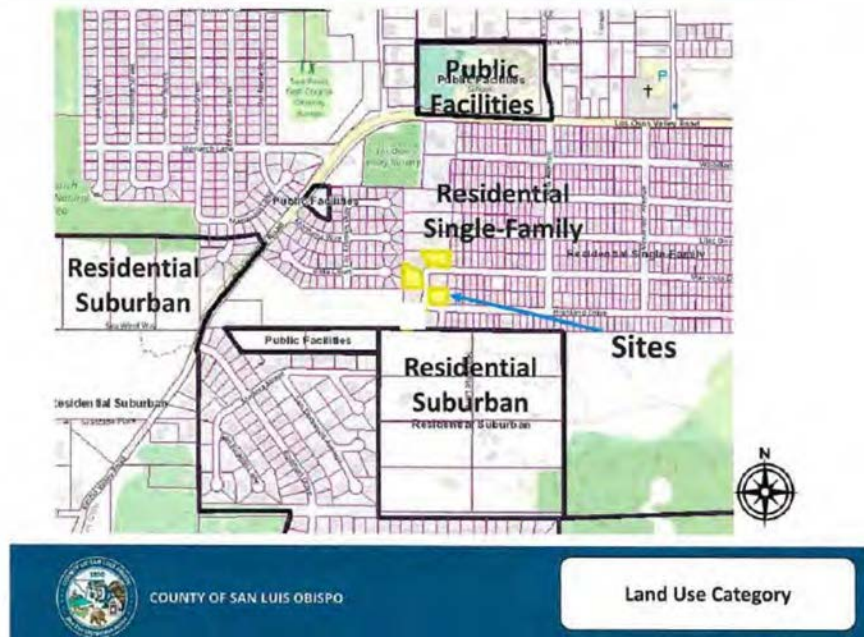
6-49

S-8	S-8	S-8-P	S-8-P	S-8-P	S-8-P			S-8	S-8	S-8	S-8	S-8	S-14
S-16	S-16-P	S-16-P											
S-16-P	S-16-P	S-16-P	S-16	S-16-P	S-16-P	S-16-P	S-16-P	S-16	S-16	S-16	S-16	S-16	
S-8	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8	S-8			S-8	
			S-8				P	S-8	S-8				
					S-6		S-6	P	S-6-P			A	
		S-8		S-8	S-8		S-8	S-8	S-8	S-8			
S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-14
		S-6		S-6	S-6	S-6	S-6	S-6				S-6	
S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8				
				S-8	S-8	S-8							
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
			S-8				P	S-8	S-8				
S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
			S-8				P	S-8	S-8				

Here, the project consists of building a single-family home on each of three parcels in an established single-family home area zoned for single-family homes:

<sup>4</sup> Available at: <https://www.slocounty.ca.gov/getattachment/d5c45208-d766-4cb6-ba83-0e41b8848f4d/Land-Use-Element-Coastal.aspx>.





Elsewhere in its report, staff readily acknowledges (perhaps unwittingly) that the project involves a Principal Permitted Use: “The parcels are zoned residential single family, which allows for one residence per legal parcel.” (Staff Report at 6). Indeed, it is hard to imagine what the Principal Permitted Use for a parcel in a single-family home area would be if not another single-family home. Section 23.01.043(c)(4) of the CZLUO (County approval of a non-Principal Permitted Use) cannot be the basis for asserting appellate jurisdiction over this project.

To conclude, there is no legal basis under the CZLUO for asserting jurisdiction over this project. Under the LCP, which is the governing legal standard, it is not the kind of project that is appealable to the Commission.

## II.

### **Even if the Project Were the Kind of Project That Is Appealable, There Are No Valid Grounds for *De Novo* Review**

The Commission need not consider whether the appellants have stated valid grounds for *de novo* review of the project, because the project is not the kind of project that is appealable. But if the Commission disagrees, it should still find “no substantial issue” and allow the County’s CDP approval to stand.

“The commission has limited jurisdiction to hear [an] appeal” from a local government’s approval of a Coastal Development Permit (CDP). (*City of Half Moon Bay v. Super. Ct.* (2003) 106 Cal.App.4th 795, 804; *Schneider v. Cal. Coastal Comm’n* (2006) 140 Cal.App. 1339, 1344 (same)). Under the CZLUO, “the grounds for appeal . . . shall be

limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the California Coastal Act.” (CZLUO § 23.01.043(d); *see also Pub. Res. Code* § 30603((b)(1) (same)). Because the Act’s public-access policies are not at issue here, the only relevant standard is the County’s LCP.

The Staff Report agrees with the appellant that the project raises a “substantial issue” with respect to conformance with LCP policies requiring adequate water and wastewater supply to a project, and LCP policies concerning ESHA. Both allegations are without merit.

**A. The Project Raises No Substantial Issue Regarding the LCP’s Water- and Wastewater-Supply Policies**

With respect to the water/wastewater allegation, the Staff Report relies on Public Works Policy 1 (Availability of Service Capacity) and CZLUO section 23.040.430 (Availability of Water Supply and Sewage Disposal Services). Public Works Policy 1 states that “[n]ew development shall demonstrate that adequate public or private service capacities are available to serve the proposed development.” Section 23.040.430 of the CZLUO states that “[a] land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.”

In its decision approving the CDP, the County made a specific finding establishing that there is sufficient water and wastewater service to the project, thereby satisfying both of the provisions cited by the Commission. Finding H states: “The capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development and allowed development on presently-vacant parcels within the urban services line ***because the applicant is required to retrofit existing development to result in a savings of 300 gallons of water per day for each new residence. This will off-set the project’s demand for water at a 2-1 ratio.*** See Exhibit 8 of Staff Report (emphasis added). (NOTE: The County standard for water usage is 150 gallons per household per day.) Thus, the project will have no impact on the demand for water and sewage disposal services.

The Staff Report references Special Condition 6, in the Los Osos Wastewater Project (LOWWP) CDP issued to the County in 2010. But Special Condition 6 is a red herring and is not a valid basis for appeal.

First, the *only* possible ground for appeal of this project is nonconformance with the County’s LCP. There is no other valid basis for the appeal. Importantly, alleged noncompliance with a CDP is ***not*** a valid ground for appealing a project. Thus, alleged noncompliance with the LOWWP CDP is not a valid ground for appeal of this project.

Second, the water and sewer infrastructure for the subject parcels in this already-developed residential area was built long before the 2010 LOWWP CDP was approved. Water and sewer mains and laterals pre-exist that CDP, and their installation was incorporated into the established baseline conditions for the sewer treatment plant design, the Los Osos Community Plan, and the Basin Plan. Special Condition 6 in the LOWWP CDP does not preclude this project, because the subject parcels are not “undeveloped”—again, they have full water and sewer infrastructure—and because the condition does not say that it extinguishes (and cannot retroactively extinguish) a property owner’s right to connect his pre-existing infrastructure.

To reiterate, neither the LOWWP CDP nor Special Condition 6 is part of or otherwise incorporated into the County’s LCP. Therefore, neither can be used as a basis for appeal. The Commission cannot add to or otherwise modify the LCP with new policies, requirements, and conditions. The only way for the Commission to incorporate Special Condition 6 into the LCP is via the LCP-amendment process. (*SNG*, 159 Cal.App.4th at 422 (reiterating that the certified LCP is the *sole* standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

#### **B. The Project Raises No Substantial Issue Regarding the LCP’s ESHA Policies**

For the reasons explained above, the project area is non-ESHA. Thus, none of the policies calling for the protection or promotion of ESHA are triggered. Absent ESHA, there is no basis for appealing the project on the basis of the LCP’s ESHA policies.<sup>5</sup>

Unilaterally proclaiming for appeal purposes that the project site is ESHA is inadvisable. As the Commission may recall from the *Security National Guaranty* decision, any attempt on an appeal to designate a project site as ESHA, when the local government’s LCP designates the same site as “non-ESHA,” is unlawful. (*SNG*, 159 Cal.App.4th at 423 (“By declaring the site an ESHA, the Commission has impermissibly attempted to amend part of Sand City’s LCP.”)). Nor is the argument that the LCP or its maps are “outdated” a justification for deviating from the LCP. As the *SNG* Court explained:

“To the extent that the Commission appears to argue that its ESHA designation is somehow justified because Sand City’s LCP was outdated, that argument was answered by the California Supreme Court in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553. In that case, the court held that in approving a development project a local government

---

<sup>5</sup> Further, the Staff Report’s efforts to link the project’s alleged water-supply issues and off-site ESHA impacts fall flat. (Staff Report at 16). As explained above, the project results in no adverse impacts to the water supply. To the contrary, under the CDP approved by the County, the project applicant is required to retrofit existing development at a savings of 300 gallons of water per day for each new residence, thereby off-setting the project’s demand for water at a 2-1 ratio.



was not required to demonstrate that the conclusions in the LCP still relate to current conditions. The court explained that requiring a reexamination of basic land-use policy with every permit application would impose an unnecessary and wasteful burden on local governments.”

(*Id.* at n.10 (internal citations and quotation marks omitted)).

### **Conclusion**

For the foregoing reasons, we respectfully request that the Commission find that the project raises “no substantial issue.” Short of that, we request that the Commission at least provide us with the opportunity to make our case by granting a public hearing on the “substantial issue” question.

Sincerely,



Paul Beard II  
Counsel for Shear Development Co., LLC

# ALSTON & BIRD

333 South Hope Street, 16th Floor  
Los Angeles, CA 90071-1410  
213-576-1000 | Fax: 213-576-1100

Paul J. Beard II

Direct Dial: 213-576-2564

Email: paul.beard@alston.com

October 11, 2019

**VIA EMAIL TO: CENTRALCOAST@COASTAL.CA.GOV**

**F11a**

Chairperson Bochco and Honorable  
Commissioners  
California Coastal Commission

Re: Appeal No. A-3-SLO-19-0180; SI Hearing: 10/18/19  
Applicant: Shear Development Co., LLC

Dear Chairperson Bochco and Honorable Commissioners,

We represent the applicant Shear Development Co., LLC, in the appeal of the County of San Luis Obispo's approval of its Coastal Development Permit (CDP).

The Staff Report recommends a finding of "substantial issue," and a denial of the CDP on *de novo* review.<sup>1</sup> The "substantial issue" recommendation is premised on a number of legal and factual errors. As explained in greater detail below, given its location and zoning characteristics, the project is not the kind of project that is appealable to the Commission. But even if it were, there are no valid grounds for appeal, because the project conforms to the County's certified Local Coastal Program (LCP)<sup>2</sup>—the *only* relevant standard for deciding whether the Commission should undertake *de novo* review of the project.

---

<sup>1</sup> The applicant requested and obtained a continuance of the *de novo* portion of the hearing, in the event the Commission finds "substantial issue." Consequently, this comment letter focuses exclusively on the "substantial issue" question, arguing there is no basis for an appeal.

<sup>2</sup> A second ground for appeal is the allegation that a development does not conform to the public-access policies of the Coastal Act. San Luis Obispo County Coastal Zone Land Use Ordinance § 23.01.043(d); *see also* Pub. Res. Code § 30603(b)(1). But neither the appellant nor staff alleges that the project has any impact on the Act's public-access policies. Thus, the only standard for answering the "substantial issue" question is the LCP.

We urge the Commission to find that the appeal raises **no substantial issue**, allowing the County's CDP approval to stand.

**I.  
The Project Is Not an Appealable Project**

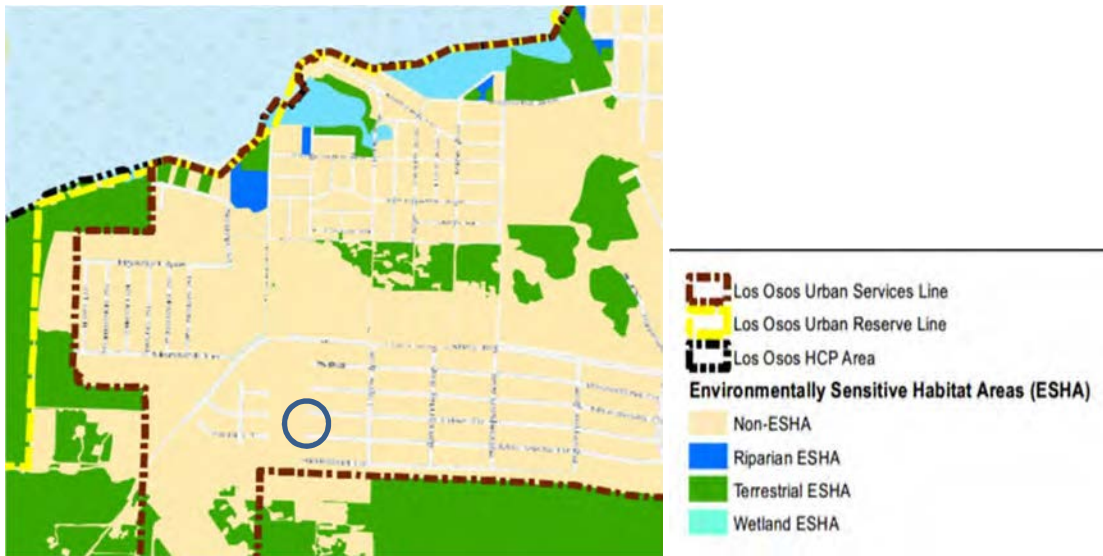
The Staff Report asserts—based on Coastal Act provisions, not the LCP—that this project is the kind of project that is appealable. (Staff Report at 7). Citing to Public Resource Code section 30603, the Staff Report claims that the project lies in a “sensitive resource area”—specifically, an Environmentally Sensitive Habitat Area (ESHA)—and that the project is not designated as the principal permitted use in the LCP. (Staff Report at 7). The Staff Report is wrong.

First, because the County has a certified LCP, the LCP's provisions on project appealability govern—not the Coastal Act. (*Security Nat'l Guaranty, Inc. (SNG) v. Cal. Coastal Comm'n* (2008) 159 Cal.App.4th 402, 422 (reiterating that the certified LCP is the *sole* standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

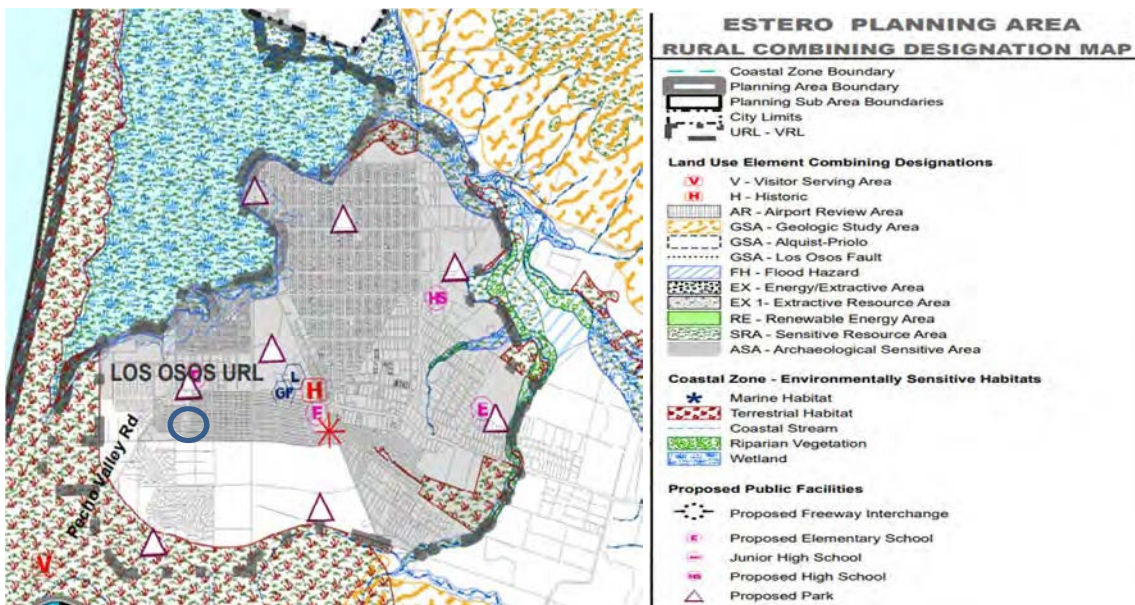
Second, the LCP precludes appeal of the project on the basis of ESHA, because there *is* no ESHA in the project area. The County's Coastal Zone Land Use Ordinance (CZLUO), which is part of its certified LCP, details the kinds of projects that are appealable to the Coastal Commission. The CZLUO provides that “developments . . . that are located in a Sensitive Coastal Resource Area” are appealable. But, unlike the Coastal Act, the CZLUO specifically defines “Sensitive Coastal Resource Area” as “[s]pecial marine and land habitat areas, wetlands, lagoons, and estuaries *mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan.*” The CZLUO categorically excludes “resource areas determined by the County to be Unmapped ESHA.” (CZLUO § 23.01.043(c)(3) (emphasis added)).

There is no mapped ESHA in the project area. For example, the County's Los Osos Community Plan DEIR (July 2019) contains a map showing that the project area is actually “**Non-ESHA**.” For the Commission's convenience, we reproduce the relevant part of that map, showing the approximate location of the project area (circled in blue) as “Non-EHSA”:





In addition, the County's Estero Planning Area map, which indicates areas designated as mapped ESHA, establish that the project area is ***not*** ESHA.<sup>3</sup> Again, for the Commission's convenience, we reproduce below the relevant part of the map, with the approximate location of the project area circled in blue.



<sup>3</sup> Available at: <https://www.slocounty.ca.gov/getattachment/6b2a1bf1-b279-4208-8cf3-131fd38320be/Estero-Planning-Area-Combining-Designations-Map.aspx>.

To summarize, there is no evidence—and the Staff Report cites to none—establishing that, under the County’s LCP, the project area is ESHA or otherwise qualifies as a “sensitive resource area” rendering the project appealable. The exact opposite is true: All the evidence points to the project area being non-ESHA under the LCP. Because the project area is not ESHA (mapped or unmapped) under the relevant legal standard, the alleged existence of ESHA cannot be the basis for appellate jurisdiction under the LCP.

Second, the Staff Report is wrong to claim that the project is not the principal permitted use for the parcels under the LCP. It is true that “any approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use” is appealable. CZLUO § 23.01.043(c)(4). But the project **does** involve development listed as a Principal Permitted Use. Unsurprisingly, Coastal Table O<sup>4</sup> establishes that a “Single-Family Dwelling” is a Principal Permitted Use (“P”) in “Residential Single-Family” areas:

# LAND USE CATEGORY

PAGE NUMBER  
OF USE

Agriculture - Prime Soils	Agriculture - Non-Prime Soils	Rural Lands	Recreation	Residential Rural	Residential Suburban	Residential Single-Family	Residential Multi-Family	Office & Professional	Retail	Commercial Service	Industrial	Public Facilities	Open Space
------------------------------	----------------------------------	-------------	------------	----------------------	-------------------------	------------------------------	-----------------------------	--------------------------	--------	-----------------------	------------	----------------------	------------

## D) MANUFACTURING & PROCESSING (CONTINUED)

Structural Clay & Pottery - Related Production	23
Textile Products	24

6-59

6-59

		S-15									P		
											P		

## E) RESIDENTIAL USES

Caretaker Residence	1
Farm Support Quarters	2
Home Occupations	3
Mobilehome Parks	4
Mobilehomes	5
Multi-Family Dwellings	6
Nursing & Personal Care	7
Organizational Houses	8
Residential Accessory Uses	9
Residential Care	10
Residential Vacation Rental	0
Secondary Dwelling	11
Single-Family Dwellings	12
Supportive Housing	14
Single Family Dwellings	
Multi-Family Dwellings	
Temporary Dwelling	13
Transitional Housing	15
Single Family Dwellings	
Multi-Family Dwellings	

6-42

6-45

6-48

6-51

6-51

6-51

6-52

6-53

6-56

6-56

6-57

6-57

6-48

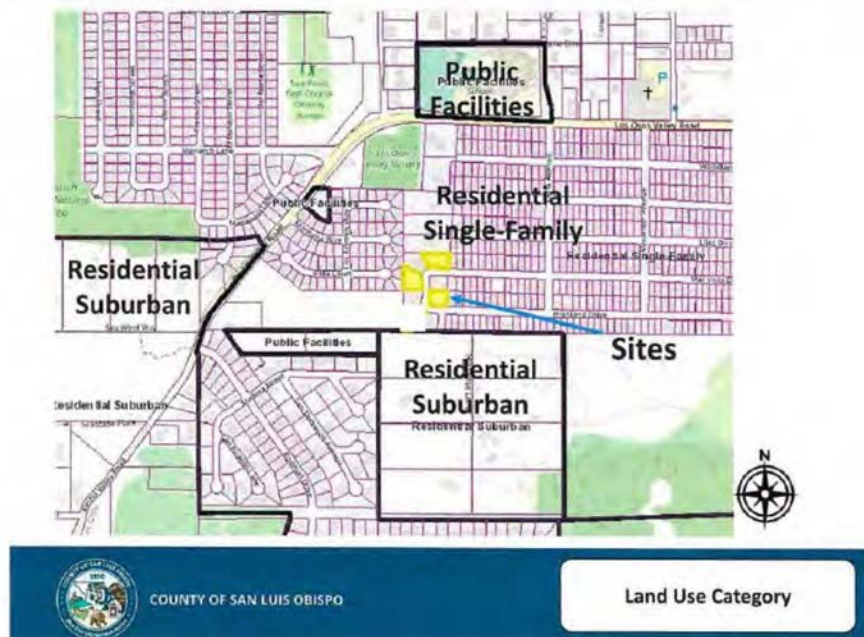
6-59

6-49

S-8	S-8	S-8-P	S-8-P	S-8-P	S-8-P			S-8	S-8	S-8	S-8	S-8	S-14
S-16	S-16-P	S-16-P											
S-16-P	S-16-P	S-16-P	S-16	S-16-P	S-16-P	S-16-P	S-16-P	S-16	S-16	S-16	S-16	S-16	
S-8	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8-P	S-8	S-8			S-8	
			S-8				P	S-8	S-8				
					S-6		S-6	P	S-6-P			A	
		S-8		S-8	S-8		S-8	S-8	S-8	S-8			
S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-16-P	S-14
		S-6		S-6	S-6	S-6	S-6	S-6				S-6	
S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8	S-8				
				S-8	S-8	S-8							
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
			S-8				P	S-8	S-8				
S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	S-17-P	
S-16	S-16-P	P	S-2-P	P	P	P	P	S-8	S-8				
			S-8				P	S-8	S-8				

Here, the project consists of building a single-family home on each of three parcels in an established single-family home area zoned for single-family homes:

<sup>4</sup> Available at: <https://www.slocounty.ca.gov/getattachment/d5c45208-d766-4cb6-ba83-0e41b8848f4d/Land-Use-Element-Coastal.aspx>.



Elsewhere in its report, staff readily acknowledges (perhaps unwittingly) that the project involves a Principal Permitted Use: “The parcels are zoned residential single family, which allows for one residence per legal parcel.” (Staff Report at 6). Indeed, it is hard to imagine what the Principal Permitted Use for a parcel in a single-family home area would be if not another single-family home. Section 23.01.043(c)(4) of the CZLUO (County approval of a non-Principal Permitted Use) cannot be the basis for asserting appellate jurisdiction over this project.

To conclude, there is no legal basis under the CZLUO for asserting jurisdiction over this project. Under the LCP, which is the governing legal standard, it is not the kind of project that is appealable to the Commission.

## II.

### **Even if the Project Were the Kind of Project That Is Appealable, There Are No Valid Grounds for *De Novo* Review**

The Commission need not consider whether the appellants have stated valid grounds for *de novo* review of the project, because the project is not the kind of project that is appealable. But if the Commission disagrees, it should still find “no substantial issue” and allow the County’s CDP approval to stand.

“The commission has limited jurisdiction to hear [an] appeal” from a local government’s approval of a Coastal Development Permit (CDP). (*City of Half Moon Bay v. Super. Ct.* (2003) 106 Cal.App.4th 795, 804; *Schneider v. Cal. Coastal Comm’n* (2006) 140 Cal.App. 1339, 1344 (same)). Under the CZLUO, “the grounds for appeal . . . shall be



limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the California Coastal Act.” (CZLUO § 23.01.043(d); *see also Pub. Res. Code* § 30603((b)(1) (same)). Because the Act’s public-access policies are not at issue here, the only relevant standard is the County’s LCP.

The Staff Report agrees with the appellant that the project raises a “substantial issue” with respect to conformance with LCP policies requiring adequate water and wastewater supply to a project, and LCP policies concerning ESHA. Both allegations are without merit.

**A. The Project Raises No Substantial Issue Regarding the LCP’s Water- and Wastewater-Supply Policies**

With respect to the water/wastewater allegation, the Staff Report relies on Public Works Policy 1 (Availability of Service Capacity) and CZLUO section 23.040.430 (Availability of Water Supply and Sewage Disposal Services). Public Works Policy 1 states that “[n]ew development shall demonstrate that adequate public or private service capacities are available to serve the proposed development.” Section 23.040.430 of the CZLUO states that “[a] land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.”

In its decision approving the CDP, the County made a specific finding establishing that there is sufficient water and wastewater service to the project, thereby satisfying both of the provisions cited by the Commission. Finding H states: “The capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development and allowed development on presently-vacant parcels within the urban services line *because the applicant is required to retrofit existing development to result in a savings of 300 gallons of water per day for each new residence. This will off-set the project’s demand for water at a 2-1 ratio.* See Exhibit 8 of Staff Report (emphasis added). (NOTE: The County standard for water usage is 150 gallons per household per day.) Thus, the project will have no impact on the demand for water and sewage disposal services.

The Staff Report references Special Condition 6, in the Los Osos Wastewater Project (LOWWP) CDP issued to the County in 2010. But Special Condition 6 is a red herring and is not a valid basis for appeal.

First, the *only* possible ground for appeal of this project is nonconformance with the County’s LCP. There is no other valid basis for the appeal. Importantly, alleged noncompliance with a CDP is *not* a valid ground for appealing a project. Thus, alleged noncompliance with the LOWWP CDP is not a valid ground for appeal of this project.

Second, the water and sewer infrastructure for the subject parcels in this already-developed residential area was built long before the 2010 LOWWP CDP was approved. Water and sewer mains and laterals pre-exist that CDP, and their installation was incorporated into the established baseline conditions for the sewer treatment plant design, the Los Osos Community Plan, and the Basin Plan. Special Condition 6 in the LOWWP CDP does not preclude this project, because the subject parcels are not “undeveloped”—again, they have full water and sewer infrastructure—and because the condition does not say that it extinguishes (and cannot retroactively extinguish) a property owner’s right to connect his pre-existing infrastructure.

To reiterate, neither the LOWWP CDP nor Special Condition 6 is part of or otherwise incorporated into the County’s LCP. Therefore, neither can be used as a basis for appeal. The Commission cannot add to or otherwise modify the LCP with new policies, requirements, and conditions. The only way for the Commission to incorporate Special Condition 6 into the LCP is via the LCP-amendment process. (*SNG*, 159 Cal.App.4th at 422 (reiterating that the certified LCP is the *sole* standard on appeal, and rejecting Coastal Commission attempt to add standards and requirements not found therein)).

#### **B. The Project Raises No Substantial Issue Regarding the LCP’s ESHA Policies**

For the reasons explained above, the project area is non-ESHA. Thus, none of the policies calling for the protection or promotion of ESHA are triggered. Absent ESHA, there is no basis for appealing the project on the basis of the LCP’s ESHA policies.<sup>5</sup>

Unilaterally proclaiming for appeal purposes that the project site is ESHA is inadvisable. As the Commission may recall from the *Security National Guaranty* decision, any attempt on an appeal to designate a project site as ESHA, when the local government’s LCP designates the same site as “non-ESHA,” is unlawful. (*SNG*, 159 Cal.App.4th at 423 (“By declaring the site an ESHA, the Commission has impermissibly attempted to amend part of Sand City’s LCP.”)). Nor is the argument that the LCP or its maps are “outdated” a justification for deviating from the LCP. As the *SNG* Court explained:

“To the extent that the Commission appears to argue that its ESHA designation is somehow justified because Sand City’s LCP was outdated, that argument was answered by the California Supreme Court in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553. In that case, the court held that in approving a development project a local government

---

<sup>5</sup> Further, the Staff Report’s efforts to link the project’s alleged water-supply issues and off-site ESHA impacts fall flat. (Staff Report at 16). As explained above, the project results in no adverse impacts to the water supply. To the contrary, under the CDP approved by the County, the project applicant is required to retrofit existing development at a savings of 300 gallons of water per day for each new residence, thereby off-setting the project’s demand for water at a 2-1 ratio.

was not required to demonstrate that the conclusions in the LCP still relate to current conditions. The court explained that requiring a reexamination of basic land-use policy with every permit application would impose an unnecessary and wasteful burden on local governments.”

(*Id.* at n.10 (internal citations and quotation marks omitted)).

### **Conclusion**

For the foregoing reasons, we respectfully request that the Commission find that the project raises “no substantial issue.” Short of that, we request that the Commission at least provide us with the opportunity to make our case by granting a public hearing on the “substantial issue” question.

Sincerely,



Paul Beard II  
Counsel for Shear Development Co., LLC



# ALSTON & BIRD

333 South Hope Street, 16th Floor  
Los Angeles, CA 90071-1410  
213-576-1000 | Fax: 213-576-1100

Paul J. Beard II

Direct Dial: 213-576-2564

Email: paul.beard@alston.com

October 18, 2019

**VIA HAND DELIVERY**

**F11a**

Chairperson Bochco and Honorable  
Commissioners  
California Coastal Commission

Re: Appeal No. A-3-SLO-19-0180; SI Hearing: 10/18/19  
Applicant: Shear Development Co., LLC

Dear Chairperson Bochco and Honorable Commissioners,

This letter responds to staff's addendum, dated October 17, in which staff attempts to rebut the reasons why this project is not appealable. None of staff's arguments has merit, and the Commission should dismiss this appeal. Having received staff's addendum late Thursday evening, time constraints compel us to focus only on the appealability issue—i.e., whether this is the kind of project that is appealable to the Commission. The applicant reserves the right, through its representatives, to object to a “substantial issue” determination at the October 18 hearing.

## **THE PROJECT IS NOT AN APPEALABLE PROJECT**

### **A. A Project's Appealability Is Determined by Reference to the LCP, not the Coastal Act**

On the question of the project's appealability, the original staff report completely ignored the County's LCP and instead relied exclusively on the Coastal Act. (Staff Report at p. 7). In its addendum, staff does better. Staff correctly relies on the LCP on the question whether the project site contains ESHA. (Staff Addendum at p. 1). But it incorrectly disregards the LCP in favor of the Coastal Act on the question whether the project is a “principal permitted use” for the site. (*Id.* at p. 3).

Staff can't have it both ways.

The reality is that the County's LCP applies to both the ESHA and the "principal permitted use" issues. The Commission certified the LCP as consistent with the Coastal Act, and it governs all land-use issues in the County's Coastal Zone. Given its approval of the LCP, as consistent with the Coastal Act, the Commission would be hard-pressed to argue—as staff urges—that certain disfavored provisions of the LCP somehow *violate* and thus are superseded by the Coastal Act.

## **B. Under the LCP, the Project Has No Mapped or Unmapped ESHA**

The LCP is very clear about what kind of a project can be appealed on the basis of ESHA. Under the LCP, projects that "are located in a Sensitive Coastal Resource Area ... ***mapped and designated*** as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan" can be appealed. CZLUO § 23.01.043(3)(i) (emphasis added). Importantly, "mapped ESHA" must be indicated on a very particular kind of LCP map: It must be shown on a "Land Use Element combining designations" map. *Id.* § 23.11.030 (definition of "Mapped ESHA").

Besides mapped ESHA, the LCP recognizes "unmapped ESHA." *Id.* § 23.11.030 (definition of "Unmapped ESHA"). Unmapped ESHA is determined by the County at or before the time it accepts a land-use application as complete. *Id.* But, under the LCP, a project in unmapped ESHA is specifically not appealable to the Commission. CZLUO § 23.01.043(3)(i). Only a project in *mapped* ESHA is appealable.

Other than mapped ESHA and unmapped ESHA, which have technical definitions and requirements, the LCP recognizes no other kind of ESHA for purposes of a project's appealability.

In our initial comment letter, we reproduced the relevant "Land Use Element combining designations" map for the Estero Area—again, the ***only*** kind of map that the LCP prescribes for the mapping of ESHA in that area. That map establishes that the project site contains no mapped ESHA. Tellingly, staff does not dispute the map's relevance or validity, or that it clearly reflects no mapped ESHA on the project site.<sup>1</sup>

Instead, staff points to the Estero Area Plan (EAP). According to staff, the plan purportedly "designates all Los Osos Dune Sands Habitat as ESHA and as an SRA

---

<sup>1</sup> Staff takes umbrage at our reproduction of the County's "ESHA Map" prepared for its DEIR for the Los Osos Community Plan (Figure 4.3-5). Despite a valiant effort to explain away the fact that Figure 4.3-5 labels the project site as "non-ESHA," the DEIR itself makes crystal clear the County's intent and purpose behind the figure: "Figure 4.3-5 shows the current known distribution of ESHAs within the Plan Area." Figure 4.3-5 simply confirms what we know: There is no mapped ESHA (or even unmapped ESHA) in the project area.

[Sensitive Resource Area]” and “maps all such areas in EAP Figure 6.3.” (Staff Addendum at p. 2). Staff is wrong.

Neither the plan, nor its “Figure 6-3,” is a “Land Use Element combining designations” map. The plan and figure don’t map ESHA at all, let alone on a “combining designations” map. At most, Figure 6-3 shows the location of the Los Osos Dune Sands.

There being no mapped ESHA, staff may think the project site has *unmapped* ESHA. But staff would be wrong, again. Unmapped ESHA is specifically defined in the LCP as ESHA that the County designates on a project site, at or before the time of application acceptance. Here, the County made no such determination of unmapped ESHA on the project site.

The area in and around the project site may have Los Osos Dune Sands habitat. And the EAP may designate the habitat as a “sensitive resource area.” But not all SRAs are potential unmapped ESHA. And the EAP is not entirely clear as to whether all of the dune habitat is or is not potential ESHA (for future mapping purposes, or for a future unmapped-ESHA determination). EAP at p. 7-3 (referring to the Dune Sands area, “much of which is an Environmentally Sensitive Area,” but not all of it); *but see id.* (indiscriminately referring to the Dune Sands Area as an (unmapped) ESHA).

Finally, even if the project site *did* contain unmapped ESHA, it wouldn’t make the project appealable to the Commission under the LCP. The LCP specifically exempts an “unmapped ESHA” project from appeal to the Commission. CZLUO § 23.01.043(3)(i). Thus, the project is not appealable on the basis that the site contains ESHA (mapped or unmapped).

### **C. Under the LCP, the Project Is a Principal Permitted Use—and Even “*the*” Principal Permitted Use**

While staff applies the LCP’s “appealability” provisions to the ESHA issue, it refuses to do so with respect to the “principal permitted use” issue. Staff provides no principled reason why the two issues should trigger different standards. They obviously should not, and our comment letter explains why. This part of the letter focuses on the reasons why, even under the *Coastal Act*’s “appealability” provisions, the project still is non-appealable on the basis of “principal permitted use.”

Section 30603(a)(4) provides for the appealability of “[a]ny development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map.” Pub. Res. Code § 30603(a)(4). As staff concedes, this project is listed in Coastal Table O, Part I of the County’s Land Use Element as a “principal permitted use” for the site. The project would involve the construction of single-family homes in an area zoned for single-family homes.



But, among the principal permitted uses for that zone, the project reflects *the* principal permitted use under the relevant zoning district map. Here's the Los Osos Land Use Categories Map, showing the area in and around the project site developed with the principal permitted use—single-family homes:



Neither of the other two listed “principal permitted uses” for the residential single-family zone (passive recreation and coastal accessway) are, as a factual or historic matter, *the* principal permitted uses. And that makes sense. Passive recreation or a coastal accessway in the middle of a developed residential neighborhood makes little to no sense:

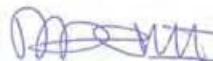


If an appeal could be taken from *this* project on the basis that it is only one of several listed principal permitted uses, then almost every County-approved project could be appealed on that basis. Except perhaps for the agricultural zones, all other zones identify more than one principal permitted use. That result is inconsistent with the intent of the Legislature when it sought to strictly limit the Commission’s appeal jurisdiction post-LCP-certification.

### **Conclusion**

Staff's addendum does not overcome the fact that this project is not appealable. The project site is not designated and mapped ESHA, and it is both a principal permitted use and *the* principal permitted use under the County's LCP and zoning district map. As a consequence, the Commission should dismiss the appeal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Beard II", is written over a horizontal line.

Paul Beard II  
Counsel for Shear Development Co., LLC