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Th12a

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Open and Continue	11/05/98
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STAFF REPORT: REGULAR CALENDAR

COASTAL DEVELOPMENT PERMIT

APPLICATION NO.:	A-3-SLO-98-087
APPLICANT:	**CABRILLO ASSOCIATES/CENTRAL COAST ENGINEERING (Charles Pratt and Ben Maddalena)**
PROJECT DESCRIPTION:	Subdivision of a 124-acre site into 41 residential lots ranging in size from 20,000 sq. ft. to 73,740 sq. ft. and 3 open space lots consisting of 88 acres for native plant preservation, a cul-de-sac turn around, and drainage and recreation facilities. The project includes a Variance to allow for grading on slopes greater than 20 percent.
PROJECT LOCATION:	Hillsides south of and surrounding the existing Cabrillo Estates development in the community of Los Osos, San Luis Obispo County (APNs: 074-021-036, 042, 043, and 74-022-033).
LOCAL APPROVALS:	On July 24, 1997, the San Luis Obispo County Planning Commission denied the Vesting Tentative Map (TR 1873) and approved a Variance (D960112V) and Coastal Development Permit (D890423D) with conditions that reduced the lot sizes and development area proposed by the applicant. The applicant appealed this decision to the Board of Supervisors, which reversed the Planning Commission's decision and approved the proposed subdivision.
FILE DOCUMENTS:	San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Final Local Action Notice for D890423D, D960112V, and Tract 1873; EIR for tract 1873; Estero Area Plan Update, Public Hearing Draft, February 1999; Draft EIR for the Estero Area Update, December 1999; Coastal Development Permit File A-3-SLO-99-079 (Linsley Subdivision)

SUMMARY OF STAFF RECOMMENDATION

The project is a subdivision of a 124-acre site into 41 residential lots ranging in size from 20,000 square feet to 73,740 square feet each and comprising 26 acres of the site. The remaining 88 acres will be made up of 3 open space lots used for native plant preservation, a cul-de-sac turnaround, and drainage and recreation facilities. Local conditions of approval require that at least 60% of the total site area (74.4 acres) be preserved as open space, and that residential development on each residential lot be limited to a 20,000 square foot building envelope. Areas outside of the residential building envelopes must remain undisturbed, be protected through private easements, and contribute a total of 10 more acres of open space/native vegetation protection.

The subdivision is located in the southern hillsides of Los Osos, outside of the Urban Services Line, and inside the Urban Reserve Line. Such areas are characterized by the LCP as "holding zones" where development of designated uses (in this case residential suburban) would be appropriate only when there is adequate services and facilities to accommodate such development, and the area is amended into the Urban Services Line.

This location is adjacent to the northern boundary of Montaña de Oro State Park, in an area of important maritime chaparral habitat, steep slopes, and visual prominence. Thus, most of the site has been designated by the LCP as a Sensitive Resource Area (please see Exhibits 3 and 8). Of particular significance is the presence of Morro manzanita, a rare plant listed as threatened by the U.S. Fish and Wildlife Service. According to page 5 of the CEQA findings adopted by the County, the proposed project is expected to result in the direct removal or disturbance of approximately 25-30 acres of Morro manzanita habitat. An additional 1.8 acres of Morro manzanita habitat is estimated to be lost as a result of the construction of a secondary access route to the project.

On January 13, 1999, the Commission took jurisdiction over the Coastal Development Permit application for this project by determining that the appeals[1] of the local approval raised a substantial issue. This decision was based on project inconsistencies with provisions of the San Luis Obispo County Local Coastal Program (LCP) protecting environmentally sensitive habitats and visual resources. The Coastal Commission then continued the de novo hearing in order to provide staff with additional time to further investigate the LCP issues raised by the appeals.

Since that time, the applicant submitted a Claim of Vested Rights, alleging that previous grading activities that occurred on the site vested the applicant's right to complete the subdivision. This claim is scheduled for Commissions consideration concurrently with this permit application, and staff has recommended that it be denied. (Please refer to staff report regarding agenda item Th11a.) Action on this appeal was delayed to accommodate the applicant's desire to proceed with the vested rights claim.

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[1] Appellants included Commissioners Wan and Reilly, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, California Department of Parks and Recreation, California Native Plant Society, John Chesnut, and Randall Knight.

Due to the lack of a vested right to undertake the project, and clear inconsistencies with LCP requirements, staff recommends that the Commission **deny** the permit application. The LCP inconsistencies are summarized in the following table, and detailed in the findings of this report. Conditional approval of an alternative lot configuration that would better protect coastal resources, such as the alternative approved by the County Planning Commission, is not recommended due to the lack of adequate public services, particularly water, available to serve new development within the Los Osos urban area.

Denial of this project does not preclude the property owner from making a reasonable economic use of private property. Alternative projects that would achieve conformance with LCP ESHA policies to the maximum extent feasible, and still allow for an economic use of the property, appear to be available. The project revisions that would be necessary to reach this balance are so significant, however, that denial of the proposed project is the only appropriate course of action. Moreover, there are fundamental infrastructure constraints that need to be resolved before the appropriate level of development can be defined, as detailed in subsequent findings of this report. These findings define the prerequisite issues that must be resolved before an economic use that will achieve maximum compliance with LCP standards can be approved on the site.

ISSUE	LCP REQUIREMENTS	PROJECT INCONSISTENCIES
Environmentally Sensitive Habitat Areas (ESHA)	Prohibit land divisions in ESHA (ESHA Policy 4, CZLUO Section 23.07.170) Prohibit significant disruptions to ESHA; only allow resource dependent uses (ESHA Policy 1, CZLUO Sections 23.07.170-178) Ensure biological continuance (ESHA Policy 2, CZLUO Section 23.07.170) Protect terrestrial habitats adjacent to State Parks (ESHA Policy 27, CZLUO Section 23.07.176) Protect rare and endangered native vegetation (ESHA Policies 28 and 33, CZLUO Section 23.07.176) Cluster new development away from Morro Bay Kangaroo Rat Habitat; protect Morro manzanita and large stands of Eucalyptus (South Bay Combining Designation Standards 7 and 8)	The subdivision is located within an Environmentally Sensitive Habitat Area critically important to the survival and recovery of the federally threatened Morro manzanita. It is also potential habitat for the federally endangered Morro Bay Kangaroo Rat, and is directly adjacent to Montaña de Oro State Park, which also supports these habitats. The project is not dependent on these sensitive resources, and will remove and degrade important stands of rare native vegetation.
Visual Resources	Preserve unique features of the landscape, including scenic vistas and sensitive habitats (Visual Policy 1)	The subdivision will be highly visible from numerous locations

	Protect scenic areas; minimize visibility and native vegetation removal (Visual Policies 2, 5, and 7; CZLUO Sections 23.05.034 and 23.05.064) Preserve areas of ecological and visual importance; prohibit development on slopes exceeding 20% (Residential Suburban Standard 13)	around and within the Morro Bay National Estuary and surrounding region. Development will take place on slopes exceeding 20%, and significantly degrade a scenic coastal area containing native vegetation and sensitive habitats.
Public Service Capacities	Demonstrate availability of adequate service capacities. Prioritize service to Coastal Act priority uses and subdivided areas within the urban services line (Public Works Policies 1, 6 and 8; CZLUO Section 23.04.430) Reserve 800 acre-feet per-year for agriculture, and prioritize service for the infill of existing subdivided lots (South Bay Urban Area Planning Standard 2) Prohibit land divisions unless sufficient water and sewage disposal capacities are available for existing development and future development on presently vacant parcels (CZLUO Section 23.04.021(c)) Meet the septic tank requirements of the Regional Water Quality Control Board (South Bay Urban Area Planning Standard 1).	Existing water withdrawals from the Los Osos groundwater basin exceed its safe-yield. Thus, there is inadequate water to support the proposed subdivision and protect Coastal Act priority uses. There are also unresolved questions regarding the feasibility for on-site septic systems to serve the projecct. Moreover, the proposed subdivision does not comply with RWQCB standards that call for a minimum lot size of one acre where wastewater disposal is proposed to occur via septic systems.
Hazards/Grading	Ensure structural stability while not contributing to erosion or geologic instability (Hazards Policy 2) Limit grading to slopes less than 20%. Allow exceptions only if there is no other method of establishing an allowable use on the site, and if grading is sensitive to natural landforms. Prohibit grading within 100 feet of ESHA (CZLUO Section 23.05.034).	The project creates lots in ESHA with slopes exceeding 20%; involves construction of roads on slopes of up to 25%; and will remove significant areas of native vegetation and Eucalyptus forest which has the potential to cause erosion and geologic instability.
Marine Resources/Water Quality	Protect the long-term integrity of groundwater basins (Coastal Watersheds Policy 1) Meet the septic tank requirements of the Regional Water Quality Control Board (South Bay Standard 1)	Many of the subdivided lots do not meet the RWQCB's one-acre minimum lot size for septic tanks. Existing groundwater problems will be exacerbated by the use of septic systems, increased withdrawals, and sedimentation.

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III. CALIFORNIA ENVIRONMENTAL QUALITY ACT 35

I. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, **deny** the coastal development permit required for the proposed subdivision.

MOTION: I move that the Commission approve Coastal Development Permit No. A-3-SLO-98-087 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform to the San Luis Obispo County certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Description

The proposed project has a long history, as described in detail by the Staff Report for vested Rights Claim 3-99-48-VRC (agenda item Th11a). As approved by the San Luis Obispo County Board of Supervisors, on September 1, 1998, the project involves the subdivision of a 124-acre site into 41 residential lots ranging in size from 20,000 sq. ft. to 73,740 sq. ft., 3 open space lots consisting of 88 acres, and associated roadway construction. Exhibits 6 and 8 provide maps of the locally approved subdivision. The open space lots will be used for native plant preservation, drainage facilities (i.e., two detention basins), a cul-de-sac turn around, and recreation facilities (i.e., three tennis courts, basketball court, putting green, walking/jogging trails, swimming pool, and club house/changing room). According to page III-1 of the Final EIR for the project, uses within the open space lots involve 2.4 acres of development. In total, the proposed project is expected to result in the direct removal or disturbance of approximately 25-30 acres of Morro manzanita habitat. An additional 1.8 acres of Morro manzanita habitat is estimated to be lost as a result of the construction of a secondary access route to the project[2].

The Board of Supervisor's approval requires that total open space equal or exceed 60% of the total site area, and that future residential development be limited to building envelopes of up to 20,000 square feet per lot, with remaining undisturbed areas protected through private easements. According to Condition 2 of the local approval, "private easements shall contribute more acres of native vegetation into private open space protection" (local conditions of approval attached as Exhibit 1).

The project also includes the grading and construction of access roads, the installation of the proposed recreational facilities, and the removal of eucalyptus groves, which cover approximately 6.8 acres of the site. Other vegetation removal and grading necessary to establish building pads will be subject to future coastal development permit review and approval. According to page III-1 of the Final EIR for the project, the new roadways will cover approximately 6.4 acres of the site. Some sections of these roadways will require grading on slopes in excess of 30%, for which the County approved a variance.

[2] County CEQA Findings, page 14

In addition to the new roads needed to serve the subdivision, the project involves the construction of an emergency access route to the east of the subdivision. According to page 1 of the California Environmental Quality Act (CEQA) findings adopted by the County:

> *The final alignment, width and design of this secondary access would be determined subsequent to approval of the proposed project at the time the applicant initiates final subdivision improvements. Therefore, design of the road (i.e., final roadway alignment, pavement width, height of cut and fill slopes, detention basin requirements, bike lane requirements, etc.) cannot be determined at this time. However, based on the Engineering Department's recommendation for dedication of a 60-foot right-of-way and an approximation of roadway alignment, a reasonable worst-case scenario has been developed to address the potential environmental impacts associated with the provision of emergency access.*

The alternative alignments for the emergency access are expected to require between 4,000 and 5,000 linear feet of new roadway. All of the alignments under consideration would involve undeveloped areas that support rare and endangered plant and animal species. It remains unclear if the project applicant has obtained the necessary approvals to construct such an emergency access route from the other private property owners that would be involved.

B. Project Location

The project is located in the southern portion of the Community of Los Osos, within the Estero Planning Area of San Luis Obispo County's coastal zone. It is bounded by the existing Cabrillo Estates development (Tract 308, designated Residential Single Family) to the north, Montaña de Oro State Park to the south, and undeveloped open space lands (also designated as Residential Suburban) to the east and west. (Please see Exhibit 2.)

According to the local record, the 124-acre site is composed of 4 parcels (Assessor Parcels 074-021-036, -042, -043, and 074-022-033). One of these parcels, the 3.6-acre Parcel No. 074-021-043 was previously placed in an open space easement. This portion of the site would be retained in open space by the proposed project.

The project site is designated as Residential Suburban by the LCP, in a location that is within the Urban Reserve Line designated by the LCP, but outside of the Urban Services Line (see Exhibit 4). Such areas are characterized by the LCP as "holding zones" where development of otherwise approvable designated uses (in this case residential suburban) would be appropriate only when there is adequate services and facilities to accommodate such development, and the area is amended into the Urban Services Line[3]. No such amendment of the Urban Services Line has accompanied the proposed project.

[3] Coastal Zone Framework For Planning, page 4-4

The proposed subdivision would occur within maritime chaparral habitat, dominated by Morro Manzanita (*Arctostaphylos morroensis*). This species is currently listed under the Federal Endangered Species Act as threatened. According to page IV-1 of the Final EIR:

> Vegetation at the site is primarily a mix of Morro Bay manzanita and coast live oak (86.2% of site), with lesser areas of coastal scrub (4.4%). Introduced eucalyptus occupy 5.5% of the site, interior live oaks 1.6%, willow woodland 0.4% and Bishop pines 0.2%. Veldt grass is encroaching into approximately 1.7% of the site.

Based upon the importance of the project area as habitat for Morro manzanita and other rare native plants and animals, it has been designated as Conservation Planning Area in the U.S. Fish and Wildlife Service's *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California* (September 1998). A map of the proposed conservation areas is attached to this report as Exhibit 9. Additional details regarding the importance of this site as habitat for rare and endangered species are provided in the following findings regarding environmentally sensitive habitats.

Other significant characteristics of the project site include its steep topography and visual prominence from many areas in the Morro Bay region. As described on page IV-1 of the Final EIR:

> The project site is located on moderately steep slopes on the south flank of Los Osos Valley. Slopes range from near flat up to approximately 100% (45º) on Open Space Lot 45, but are more typically in the range of 12 to 25% in the area of the proposed residential lots. The steepest slope on a proposed residential lot is 60% on the easterly portion of Lot 20. The proposed roads follow the more gentle portions of the site. The maximum slope along the proposed roads is 25% over a distance of 90 feet adjacent to the proposed Lot 23. Elevations range from 290 feet at the northwest corner of the site to 870 feet at the highest point along the south property line. The site is very prominent from many locations in the community, and it includes the highest locations within the Urban Reserve Line.

C. Environmentally Sensitive Habitat

1. LCP Requirements:

The San Luis Obispo County certified LCP is protective of environmentally sensitive habitat areas (ESHA), as called for by Coastal Act Section 30240. Applicable LCP policies, ordinances, and standards are cited below.

> ***ESHA Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats***

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

ESHA Policy 2: Permit Requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170-178 OF THE CZLUO.]

ESHA Policy 4: No Land Divisions in Association with Environmentally Sensitive Habitats

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

ESHA Policy 27: Protection of Terrestrial Habitats

Designed plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 28: Protection of Native Vegetation

Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 33: Protection of Vegetation

Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Ordinance 23.07.160: Sensitive Resource Area (SRA):

The Sensitive Resource 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. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act…

Ordinance 23.07.170: Environmentally Sensitive Habitats:

The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title[4], and as mapped by the Land Use Element combining designation maps[5].

a. ***Application content.*** *A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:*

- ***(1)*** *Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.*
- ***(2)*** *Recommends conditions of approval for the restoration of damaged habitats, where feasible.*
- ***(3)*** *Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.*
- ***(4)*** *Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.*

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[4] Ordinance 23.11.030 defines Environmentally Sensitive Habitats as "A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations".

[5] The Land Use Element combining designation map for the project area is attached as Exhibit 10 to this report. An approximation of the location of the mapped SRA area on the project site is shown by Exhibit 8. Irrespective of the boundaries of the mapped SRA, the Commission considers resources as they exist on the ground, rather than areas delineated on a map, in determining whether an area qualifies as an Environmentally Sensitive Habitat. See, for example, the Commission's consideration of the proposed Los Osos Wastewater Treatment Project (Coastal Development Permit File No. A-3-SLO-97-40).

b. Required findings: *Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:*

(1) *There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.*
(2) *The proposed use will not significantly disrupt the habitat.*

c. Land divisions: *No division of a parcel containing an Environmentally Sensitive Habitat shall he permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.*

d. Development standards for environmentally sensitive habitats:

(1) *New development within or adjacent to the habitat shall not significantly disrupt the resource.*
(2) *New development within the habitat shall be limited to those uses that are dependent upon the resource.*
(3) *Where feasible, damaged habitats shall be restored as a condition of development approval.*
(4) *Development shall be consistent with the biological continuance of the habitat.*
(5) *Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).*

Ordinance 23.07.176: Terrestrial Habitat Protection:

The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

a. Protection of vegetation. *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*

b. Terrestrial habitat development standards:

(1) Revegetation. *Native plants shall be used where vegetation is removed.*
(2) Area of disturbance. *The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
(3) Trails. *Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

South Bay Combining Designation Standards for Morro Bay Kangaroo Rat Habitat (SRA):

7. Site Selection and Clustering. *Wherever new development should be clustered and located as far from the identified habitat area as feasible. [sic]*

8. Vegetation Preservation. *Significant vegetation that is a habitat erosion retardant or adds to the visual integrity of the areas shall be protected. This vegetation includes but is not limited to pygmy oaks, scrub oaks, Morro Bay Manzanita, Bishop pine, large areas of sage brush, and large stands of introduced trees such as eucalyptus and cypress. Removal of hazardous trees will be permitted in accordance with the Land Use Ordinance.*

2. Analysis:

The San Luis Obispo County LCP ESHA policies reflect the general standards of Coastal Act Section 30240. In particular, ESHA Policy 1 allows only "resource dependent" development within an existing ESH. Further, it requires that new resource dependent development not significantly disrupt the resource. As shown above, these policies are repeated more specifically in Coastal Zone Land Use Ordinance 23.07.170. Other LCP ESHA provisions that are applicable to the project include the prohibition against land division within ESHA, and requirements that new developments be consistent the biological continuance of the habitat, and provide maximum mitigation.

The Project Site Constitutes ESHA

The project site clearly meets the LCP's definition of an Environmentally Sensitive Habitat Area (ESHA). It is mapped as a Terrestrial Habitat Sensitive Resource Area by the Land Use Element combing designation map (please see Exhibits 3 and 8), and supports rare plant and animal habitats that play a special role in the maritime chaparral ecosystem. Approximately 78.9% of the site, or 97.9 acres, are vegetated with Morro manzanita, a rare native plant species that has been listed as threatened pursuant to the federal Endangered Species Act[6]. As previously noted, the U.S. Fish and Wildlife Service has designated the project site as a Conservation Area that important to the survival and recovery of threatened and endangered species[7] (please see Exhibit 9). Morro manzanita is also listed as 1B by the California Native Plant Society[8].

According to the U.S. Fish and Wildlife Service, studies in 1992 indicated that the historic distribution of Morro manzanita has declined from an estimated range of between 2,000 and 2,700 acres to an area between 840 and 870 acres. However, half of this range consists of low-

[6] Final EIR, page V-10

[7] U.S. Fish and Wildlife Service *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California*, September 1998, pages 35-39

[8] Appeal by California Native Plant Society, referencing Skinner and Pavlik, 1994, Inventory of Rare and Endangered Plants of California, 5th edition.

density patches within and around developed areas of Los Osos and Baywood Park. The other half consists of more contiguous and dense stands (i.e., at least 50% cover). A more recent analysis of mapped distributions by cover classes conducted in 1996 suggests that actual coverage of Morro mazanita shrubs may be less than 400 acres. Approximately 65% of this habitat are within private ownership, and 35% is within Montaña de Oro State Park and two small preserves managed by the California Department of Fish and Game. Most of the habitat within public ownership supports only low or moderate densities of Morro manzanita.[9] The Fish and Wildlife Service's Recovery Plan for this species states, on page 16, that "[t]he greatest threat to Morro manzanita is loss and fragmentation of its habitat from development".

Additional information regarding the rare and sensitive nature of the project site, which qualifies it as an ESHA, was provided in the numerous appeals of the locally approved project. The appeal by the U.S. Fish and Wildlife states:

> Implementation of the proposed project … would result in the loss of maritime chaparral habitat which supports the federally threatened Morro manzanita. This species is only known to occur in the vicinity of the proposed project. *The project is proposed to be located within the heart of the range of this species* … (emphasis added)

The appeal by the California Department of Parks and Recreation states:

> Preliminary observations have indicated that seed viability in low density stands is significantly lower than high density stands, such as those found at the project area (Dennis Odion, pers. Comm.). Stand seed viability may likely effect species management in the long term. …
>
> … The two largest areas of contiguous high density Morro manzanita habitat, the area surrounding Cabrillo Estates [i.e., the area of the proposed project] and the area south of Highland Drive, between Broderson Avenue and Bayview Heights Drive, account for approximately 77 percent of the remaining habitat that is privately owned. The remaining 23 percent of privately owned land which supports Morro manzanita consists of small patches. Of [sic] low-density habitat that offer limited opportunities for protective efforts.
>
> Further, the report [Draft Report to the Fish and Game Commission] concluded that Morro Bay Manzanita is a threatened species and the petitioned action, to list the species as threatened, is warranted[10].

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[9] U.S. Fish and Wildlife Service *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California*, September 1998, page 17

[10] According to page V-12 of the Final EIR for the project, the California Fish and Game Commission, on August 5, 1993, determined not to list Morro manzanita, and supported the development of a conservation plan instead.

Other sensitive habitat qualities of the project site, in addition to the presence of Morro manzanita, includes the existence of 5.4 acres of coastal dune scrub, 2 acres of Live Oak/pygmy oak habitat, 0.5 acres of willow woodland, and 0.2 acres of Bishop Pine. As required by South Bay Combining Designation Standard 8 cited above, such vegetation is required to be protected. Although non-native Eucalyptus groves (which occurs on 6.8 acres of the site) are not typically considered sensitive habitats, Standard 8 calls for their protection as well, given their role in preventing erosion that could adversely affect surrounding habitats.

The coastal scrub habitat provides potential habitat for the federally endangered Morro Bay Kangaroo Rat and Morro Shoulderband snail. However, as reported in the EIR for the project, these coastal scrub areas support only marginal habitat for the Kangaroo rat, and surveys for the Shoulderband snail have failed to yield evidence that they exist on the site[11]. Nevertheless, as potential habitat that could play an important role in the regional recovery of these species, these habitat areas qualify as ESHA under the definition provided by Section 23.11.030 of the CZLUO.

The Project is Not an Allowable Use in ESHA

Given the project site's important role in supporting ESHA, particularly that of the threatened Morro manzanita, the proposed project conflicts with ESHA Policies 1 and 27, which limit new development within such areas to those uses that are dependent upon the resource. Clearly, the proposed residential subdivision is not a use that is dependent upon the sensitive habitat resources of the site. Examples of uses that would be dependent on these resources include programs to monitor, maintain and restore habitat values; and interpretive, educational, and scientific programs that promote habitat protection.

Moreover, ESHA Policy 4 and Section 23.07.170(c) specifically prohibit the division of a parcel containing ESHA unless all proposed building sites are located entirely outside of the applicable minimum setbacks. The proposed subdivision will result in the creation of new residential lots directly within the heart of critically sensitive maritime chaparral habitat, in direct violation of this requirement. As previously noted, these sensitive habitats have been formally designated and mapped by the LCP, and are identified as conservation areas in the U.S. Fish and Wildlife Service's Recovery Plan for Morro manzanita and the Morro Shoulderband snail. As a result, the proposed project, as approved by the County, should be denied because of its fundamental conflict with the LCP's resource dependence requirements and prohibitions against land divisions within ESHA.

The Project Will Significantly Disrupt ESHA

The proposed subdivision is further inconsistent with LCP requirements that prohibit any significant disruption to ESHA and require new development to minimize disruptions to ESHA and be consistent with their biological continuance (i.e., ESHA Policies 1, 2, 27, and 33; CZLUO

[11] FEIR pages V-14, V-16, X-2 – X-3

Sections 23.07.170b and d, and 23.07.176). It also does not comply with the directive of ESHA Policy 28, which calls for native trees and plant cover to be protected wherever possible. As stated in ESHA Policy 27, the emphasis for protecting ESHA should be placed on the *entire* ecological community.

According to page 5 of the CEQA findings adopted by the County, the proposed project is expected to result in the direct removal or disturbance of approximately 25-30 acres of Morro manzanita habitat. An additional 1.8 acres of Morro manzanita habitat is estimated to be lost as a result of the construction of a secondary access route to the project[12]. Additional habitat loss is posed by the need to protect future development from fire hazards, as the surrounding manzanita constitutes dense and highly flammable vegetation. The specific extent of vegetation that will need to be removed to effectively protect future development has yet to be determined. Rather, the conditions of approval and environmental mitigation measures call for a Fire Safety Plan to be prepared, and clearance from the fire protection agencies to be obtained, prior to the issuance of permits.

As described above, only 400 acres of Morro mazanita remains. Sixty five percent (or 260 acres) of this habitat is in high density and located on privately owned land. Thus, the low estimate of 30 acres of Morro manzanita habitat that would be removed by the project would result in the loss of approximately 12% of the last remaining high density stands of the federally threatened Morro manzanita.

In addition to the direct loss of rare and sensitive maritime chaparral habitat, the project would result in the fragmentation of a significant portion of the remaining area proposed to be preserved in open space. The locally approved lot configuration (shown by Exhibits 6 and 8) will result in about 30 acres of open space being located between the existing Cabrillo Estates subdivision and the proposed lots. Additional fragmentation of existing sensitive habitats to the east of the project and the existing Cabrillo Estates would occur with construction of the emergency access route.

As stated in the appeal by the Department of Parks and Recreation:

> This habitat fragmentation will effectively eliminate long-term management opportunities, such as prescribed fire, encourage the encroachment of invasive exotic plant species in part by creating and increased ‘edge effect’, and reduce wildlife habitat value. For example, cryptofauna such as the California thrasher whose habitat requirements include continuous cover will be effectively removed from the site.

The appeal by the U.S. Fish and Wildlife Service similarly states:

[12] County CEQA Findings, page 14

> The loss and fragmentation of habitat that supports [Morro manzanita], as well as the virtual loss of prescribed fire as a management tool from the need to protect the new residences from fire, would likely preclude the recovery of this species.

The fact that the habitat loss and fragmentation caused by the project will have a significant adverse environmental impact is further reflected in the "Statement of Overriding Considerations" adopted by the County pursuant to the California Environmental Quality Act. These findings state that impacts to sensitive rare plant species and the endangered Morro Shoulderband snail can not be mitigated to a level of insignificance with implementation of the approved project. As stated on pages 18 and 19 of the CEQA Findings adopted by the Board of Supervisors:

> The proposed project will result in the direct removal or disturbance of approximately 25 to 30 acres of Morro manzanita/pygmy oak habitat. Habitat fragmentation would occur as a result of constructing a roadway through an existing contiguous habitat area. These impacts will also contribute to significant cumulative impacts to coast live oak woodlands in the South Bay area. Mitigation measures in the form of minimization of construction impacts, and enhancement of remaining vegetation are insufficient to reduce the impacts to a level of insignificance.
>
> The proposed project has the potential for significant impacts to sensitive wildlife species as a result of construction of any of the emergency access alternatives. Potentially impacted species include the Morro Bay kangaroo rat and the Morro shoulderband snail. Based on recent biological reconnaissance, and information found in the County sponsored Los Osos community sewer FEIR, the greatest potential for impacts to the Morro shoulderband snail would be in the existing areas of coastal dune scrub near the southern terminus of Broderson Avenue. Potentially significant impacts to the shoulderband snail could be partially mitigated through pre-construction survey of the roadway alignment and monitoring and removal of any snails located during the construction process. The loss of snail habitat would also create the potential for significant impacts if in-kind habitat replacement is not implemented. Residual impacts to sensitive wildlife are considered significant and unavoidable.

The substantial evidence presented above clearly establishes that the proposed project will significantly disrupt ESHA and jeopardize the biological continuance of the habitat, particularly that which supports the federally threatened Morro manzanita. As a result, the project does not conform to LCP ESHA Policies 1, 2, 27, and 33. It is also inconsistent with CZLUO Sections 23.07.170b, d, and 23.07.176.

Project Impacts Have Not Been Adequately Mitigated

Finally, the project has failed to provide the maximum feasible mitigation required by ESHA Policy 2 and CZLUO Section 23.07.170a(1). The first and foremost mitigation that must be

considered is reducing the extent of habitat loss to the greatest degree feasible as required by CZLUO Section 23.07.176, and maximizing the protection of native trees and plant cover as called for by ESHA Policy 28. After identifying alternatives that would accomplish these objectives, any residual impacts to sensitive habitats must be mitigated to the maximum extent possible. Such mitigation must ensure the biological continuance of the habitat (ESHA Policy 2, CZLUO Section 23.07.170).

In this case, the locally approved project has neither minimized the extent of habitat disruption, nor provided the maximum mitigation for residual impacts. Alternative lot configurations, such as that which was approved by the Planning Commission but rejected by the Board of Supervisors upon appeal by the applicant, are available that would substantially reduce the extent of direct habitat loss, and minimize the degree of habitat fragmentation. For example, the alternative lot configuration approved by the Planning Commission (attached as Exhibit 7) limited the overall amount of habitat loss by reducing lot sizes to 10,000 to 20,000 square feet. This alternative also minimized habitat fragmentation by consolidating the subdivision to the northwest portion of the site, adjacent to the exiting Cabrillo Estates. The resulting configuration retained a connection between the area that would be retained in open space and the parkland to the south.

With respect to mitigating residual impacts, the locally approved project does not provide mitigation for the net loss of approximately 30 acres of Morro manzanita habitat that will result from project implementation. Although it is unclear how this impact is allowable under the LCP, mitigation that, in theory, should be provided in order to offset this impact has not been provided by the project. Such measures include acquiring, protecting, and restoring a equivalent type of habitat, in an amount that equates to the biological productivity of the habitat that will be lost as a result of the project.

For example, in addition to protecting the remaining on-site habitat, the project should provide for the perpetual protection of at least 30 acres of high density Morro manzanita habitat at an offsite location that is threatened by development or other forms of habitat degradation. If 30 acres of equivalent habitat is not available, an increased amount of moderate or low-density manzanita, proportional to the biological productivity of the impact area, should be acquired and protected.

While off-site mitigation is contemplated on page V-19 of the Final EIR, the EIR leaves it up to the County as to whether such mitigation should be required. There is nothing in the County's conditions of approval, or adopted CEQA findings, that specifically require implementation of off-site in-kind mitigation. Without such mitigation, the net loss of ESHA resulting from the project will jeopardize the biological continuance of rare and sensitive maritime chaparral habitat, inconsistent with LCP Policy 2 and CZLUO Section 23.07.170.

3. Conclusion:

As discussed above, the proposed project is fundamentally inconsistent with multiple LCP provisions protecting ESHA. The primary basis upon which the project must be denied is its clear inconsistency with LCP ESHA Policies 1, 4, and 27, as well as with CZLUO Section

23.07.170(c). These provisions limit development within ESHA to those uses that are dependent upon the resource, and specifically prohibit land divisions within ESHA.

The secondary basis for denying the project is the fact that it will significantly disrupt ESHA, in a manner that will jeopardize the biological continuance of the habitat, in conflict with LCP Policies 1, 2, 27, and 33 and CZLUO Sections 23.07.170b, d, and 23.07.176.

Finally, it is noted that the project is also inconsistent with ESHA Policies 2 and 28, and CZLUO Sections 23.07.170 and 23.07.176, because it does not provide adequate mitigation. Although this is not the primary basis for denial, these findings identify the method in which compliance with LCP can be achieved by alternative project proposals.

Along these lines, it is important to note that the Commission's denial of this project does not preclude the property owner from making a reasonable economic use of private property. Alternative projects that would achieve conformance with LCP ESHA policies to the maximum extent feasible, and still allow for an economic use of the property, appear to be available. The extent of project revisions that would be necessary to reach this balance are so significant though, that denial of the proposed project is the only appropriate course of action. Moreover, there are fundamental infrastructure constraints that need to be resolved before the appropriate level of development can be defined, as detailed in subsequent findings of this report. The detailed findings provided in this report define the prerequisite issues that must be resolved before an economic use that will achieve maximum compliance with LCP standards can be approved on the site.

D. Public Service Capacities:

1. Background:

To carry out the requirements of Coastal Act Section 30250(a), the San Luis Obispo County certified LCP establishes Urban Services Lines (URL) and Urban Reserve Lines (USL). In combination with the LCP's Resource Management System (RMS), and the policies and ordinances cited below, these various LCP provisions are intended to ensure that new development is located and scaled consistent with available public service capacities. They are further intended to ensure that the amount of new development does not preclude the provision of adequate public services to Coastal Act priority uses (i.e., coastal dependent development, agriculture, and access and recreational facilities).

In this case, the proposed project is located within the URL, but outside the USL (please see Exhibit 4). The USL is the Urban-Rural boundary as defined in the Local Coastal Plan[13]. As previously noted, page 4-4 of the LCP Framework for Planning document describes areas between the Urban Services Line and the Urban Reserve Line as "holding zones". Within such areas, development of designated uses (in this case residential suburban) would be appropriate

[13] Framework for Planning, page 4-3

only when there are adequate services and facilities to accommodate such development and the area is amended into the Urban Services Line.

With respect to the LCP's Resource Management System, the 1999 Annual Resource Summary Report adopted by the San Luis Obispo County Board of Supervisors on December 7, 1999 recommended Alert Level II for the Los Osos water supply, and an Alert Level III for sewage treatment. The Framework Fork Planning, on Page 3-21, describes Level II for a Water System as the beginning of the time needed to design, fund and construct system improvements necessary to avoid a situation where water demand equals or exceeds available capacities. Level III for sewage occurs when peak daily flow exceeds the capacity of a sewage system.

Relevant LCP Policies, Ordinances, and Standards regarding public service capacity issues are cited below.

2. LCP Requirements:

Public Works Policy 1 states:

> *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the new development. Priority shall be given to infilling 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 services line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the USL shall be allowed only if it can be serviced by adequate private on-site water and waste disposal systems. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.430 OF THE CZLUO.]*
>
> *The applicant shall assume the responsibility in accordance with County ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources.*

Public Works Policy 6 provides:

> *The County will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the biological productivity of coastal waters. In the interim, where they [sic] are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Public Works Policy 8 requires:

Where existing or planned public works facilities can accommodate only a limited amount of new development, the following land uses shall have priority for services in accordance with the Coastal Act and be provided for in the allocation of services in proportion to their recommended land use within the service area.

a. Uses which require a location adjacent to the coast (coastal-dependent uses).
b. Essential public services and basic industries vital to the economic health of the region, state or nation including agriculture, visitor-serving facilities and recreation.

Priority for development of such uses shall be given to lands within the USL that are already subdivided with services available and then to unsubdivided parcels within the USL with services available. [THIS POLICY SHALL BE IMPLEMENTEDAS A STANDARD.]

Coastal Watershed Policy 1 states:

The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted.

South Bay Urban Area Planning Standard 1 states:

New development shall meet the septic tank requirements of the Regional Water Quality Control Board. Current WQCB standards specify that depth to bedrock or other impervious material should be greater than eight feet and depth to groundwater should be greater than 10 feet at all times. Separation between the bottom of the disposal field and the groundwater level shall be a minimum of five feet. In those areas of the community with known high water levels, a piezometer reading should be completed indicating that an adequate separation between the bottom of the disposal field excavation and the groundwater will be maintained at all times.

South Bay Urban Area Planning Standard 2 requires:

Prior to the 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. Extended 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 areas outside the urban services line and not specifically covered elsewhere in the South Bay standards, shall not be less than two and one-half acres.*

Section 23.04.021(c) of the CZLUO provides, in part, the following applicable "overriding land division requirements":

All applications for land divisions within the Coastal Zone (except condominium conversions) shall satisfy the following requirements, as applicable, in addition to all applicable provisions of Sections 23.04.024 through 23.04.036 [regarding minimum lot size]. In the event of any conflict between the provisions of this section and those of Section 23.04.024 through 23.03.036, this section shall prevail.

(1) Water and sewer capacities – urban areas: In communities with limited water or sewer service capacity, as defined by Resource Management System alert level II or III[14]*:*

(i) *Within an urban services line, new land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.*

(ii) *A proposed land division between an urban services line and urban reserve line shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development within the urban services line and development that would be allowed on presently vacant parcels within the urban services line.*

CZLUO Section 23.04.430 reads, in relevant part:

[14] As previously noted, the 1999 Annual Resource Summary Report adopted by the San Luis Obispo County Board of Supervisors on December 7, 1999, County staff has recommended Alert Level II for the Los Osos water supply, and an Alert Level III for sewage treatment.

> *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. Subsections a. and b. of this section give priority to infilling development within the urban services line over development proposed between the USL and URL [urban reserve line]. …*

3. Analysis:

The proposed project involves the creation of 41 new lots, for the intended purpose of future residential development. According to page V-60 of the Final EIR, the project will result in the demand for 20.5 acre-feet per year (AFY) [15], 65.4% of which will be used inside the home, and 34.6% of which will be used outside of the home. Municipal water from the California Cities Water Company is proposed to serve the project.[16] Wastewater treatment and disposal is proposed to occur via on-site septic systems.

The Project Site is not Eligible to Receive Public Water Service

There are two significant problems with the proposal to provide municipal water service to the project site. The first is that areas outside of the Urban Services Line (USL) and within the Urban Reserve Line (URL), such as the project site, are not eligible to be served by municipal water. Such service can only be provided when the area is amended into the USL, and a finding is made that there are adequate public water capacities available to serve existing areas within the USL.[17]

Limiting public services to areas within the USL is a critical component to effectively maintaining the Urban-Rural boundary established by the LCP. Maintaining such boundaries is an essential mechanism for protecting important coastal resources, including, but not limited to coastal agriculture, scenic open space, and environmentally sensitive habitats.

In this case, the project site has not been amended into the USL, nor has a finding been made that there are adequate water service capacities to serve existing undeveloped lots within the USL. In fact, there is substantial evidence indicating that there is inadequate water available to serve existing lots within the USL, as detailed in subsequent sections of this finding. Thus, the project is inconsistent with Public Works Policies 1 and 8, South Bay Planning Area Standard 2, and Sections 23.04.021 and 23.04.430 of the CZLUO.

Evidence of Adequate Public Services to Accommodate the Development has not been Provided

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[15] The Final EIR states on page V-60, that 15.8 acre-of this water will be returned to the groundwater basin, therefore resulting in the project having a consumptive use of 4.7 acre-feet per year. The proposed swimming pool would increase the projects consumptive use to approximately 5.2 acre-feet per year.
[16] Final EIR, page V-57
[17] Framework for Planning, page 4-4

The second significant problem with the proposed water supply is that no evidence that such water is available has been provided; Condition 30 of the County's approval requires the applicant to obtain a final will serve letter from a community wide water purveyor prior to recordation of the subdivision. This approach is inconsistent with Public Works Policy 1, which requires the demonstration of adequate public services *prior to* permitting new development. As stated by this policy, lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. Approval of the project prior to the demonstration of available water is also inconsistent with Sections 23.04.021(c) and 23.04.430, which specifically require that evidence of adequate water be provided prior to the approval of new development.

Similar problems exist for the project's proposed disposal of wastewater via on-site wastewater systems. There are significant unresolved questions and concerns regarding the feasibility and impacts of this proposal. For example, the Final EIR states on page V-51 that the presence of bedrock on the site may prevent portions of some lots from being suitable for effluent disposal. The EIR also states, on the same page, that there may be a significant potential for effluent from septic tank leach fields on some lots to daylight on nearby slopes. To address these issues, the EIR suggests the following mitigation measure on page V-53:

> The [County] Engineering Department, in their review of the draft EIR, has indicated that the percolation tests are not current and that more recent tests will be required. Also, while the site is outside the Prohibition Zone for discharge from on-site systems, review and approval of the use of on-site systems by the Regional Water Quality Control Board [RWQCB] will be required. …

As noted on page V-53 of the Final EIR, the RWQCB has indicated that:

> While new septic systems should generally be limited to new divisions of land having a minimum parcel size of one acre, where soil and other physical constraints are particularly favorable, parcel size shall not be less than on half acre. … Los Osos is not considered particularly favorable.

Based on the RWQCB's input, the Final EIR recognizes that the RWQCB may require that minimum lot size be increased to one acre and/or that a Wastewater Management District be established for the project.[18] Thus, as approved by the County, the project is inconsistent with South Bay Planning Area Standard 1. Compounding this problem, neither the local conditions of approval nor the adopted CEQA Findings identify the need to obtain RWQCB approval for the proposed wastewater disposal system/lot sizes. Resolution of the wastewater system feasibility and design issues, and confirmation that the proposed lot sizes and system comply with RWQCB requirements must occur prior to the approval of a Coastal Development Permit for the project

[18] Final EIR, page V-53

pursuant to Public Works Policy 1, South Bay Planning Area Standard 1, and Sections 23.04.021 and 23.04.430 of the CZLUO.

There is Inadequate Water Available to Accommodate the Development

The best available data regarding the safe yield of the Los Osos Groundwater Basin indicates that there is an inadequate water supply to accommodate any new development in the Los Osos area. The Los Osos groundwater basin, on which all development in this area relies, is severely overdrafted as described in the certified Estero Area Plan (adopted in 1988):

> Net urban demand added to net agricultural demand has already exceeded the lower safe yield of 1300 AFY cited in the Brown and Caldwell study. The maximum safe yield of 1800 AFY will be attained when the population reaches 12,600 assuming only modest increases in agricultural uses. Continued irrigation is realistic since Coastal Act policies require protection of agricultural uses.

According to the most current population figures for the area given in the Draft Update to the Estero Area Plan (1999), the population of urban Los Osos is 14,568. Thus, it appears that the safe yield figures given in the currently certified Estero Plan (dated 1988) have been exceeded.

The discussion of the Los Osos water supply contained in the Draft Update concludes that there is an existing overdraft of approximately 1,250 acre feet a year based on the State Department of Water Resource's 1989 safe yield estimate of 2,200 acre feet a year. The Draft Update notes, however, "that DWR's [Department of Water Resources] estimate of the long term sustainable yield of the Los Osos groundwater basin is being questioned, and further study is needed to arrive at a more definitive figure".[19] The draft update also states that "the estimate of future supply remains uncertain, pending resolution of issues surrounding construction of a sewage collection and treatment system for Los Osos".[20]

There are efforts currently underway to update previous scientific studies and develop a more accurate model of the Los Osos Groundwater Basin and its safe yield. The Los Osos Community Services District (LOCSD) has taken the lead in this effort, and expects an updated model to be released within the next few months.[21] The Commission will be considering this information in conjunction with the Estero Update currently being developed by the County, the Periodic Review of the San Luis Obispo County LCP that is currently underway, and forthcoming information for the LOCSD regarding a community-wide wastewater treatment system. In the interim, the Commission must take a precautionary approach, and apply the best available information regarding the groundwater basin, which, as described above, indicate that there is inadequate water supplies to accommodate this project.

The Final EIR for the project, which also applies the DWR study referenced in the Draft Update as well as a 1988 report by the U.S. Geological Survey, also states that the basin is in overdraft. Table V-2 on page V-58 indicates that the total demand for water from the Los Osos

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[19] Estero Area Plan Update, Public Hearing Draft, February 1999, page 3-19
[20] ibid, page 3-20
[21] Personal communications with Bob Semmenson and Frank Freiler

Groundwater Basin in 1986 was 3,400 acre-feet per year. The EIR estimates that 2,280 acre-feet of this water is returned to the groundwater basin. The table concludes that total consumptive use (i.e., water that is not returned to the groundwater basin) exceeds the recharge of the groundwater basin by 210 acre-feet per year.

Notwithstanding these estimates, the Final EIR states on page V-61:

> In most areas, development tends to reduce infiltration and recharge of the groundwater basin. However in Los Osos, the conditions are such that development increases recharge, and the factors involved in this increased recharge have been evaluated by the U.S. Geological Survey (1988) in their study of the local groundwater basin.
>
> The numerical relationships involved, as evaluated in Appendix C, indicate that the average increased recharge resulting from development in the South Bay area is approximately 125% of the consumptive use of that development. Based on this average value, the increased recharge resulting from the project is estimated at 6.5 AFY. This value is probably conservative, as the evapo-transpiration of the eucalyptus groves on the site [to be removed by the project] are probably higher that that of the typical natural vegetation in the area.
>
> The Engineering Department in its review of the draft has indicated that it would be better said that: "In the worst-case scenario, the project would increase the overdraft by 2.5%; in the best case, the project would reduce the overdraft by less than 1%

Based on the assumed increase in recharge that would result from the project, and the expectation that this recharge will exceed the consumptive water use of the project, the EIR concludes that the project will result in a net increase of available water resources, and no significant impacts to water resources will occur.[22]

The Commission can not agree with this assumption, based upon the highly speculative nature of the amount of recharge being assumed by the EIR. It appears scientifically unfounded that the proposed development, which will cover open space areas comprised of sandy soils and drought tolerant vegetation with impervious surfaces, will increase the amount of groundwater recharge that is currently occurring on the site. Appendix C of the Final EIR does not provide the data necessary to support this questionable assumption.

Moreover, even if such an assumption could be supported, an increase in groundwater supplies of 1.3 AFY (based on the EIR's estimated 6.5 AFY recharge minus 5.2 AFY consumptive use), would not nearly make up for the current overdraft of approximately 1,250 acre feet a year.

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[22] Final EIR, page V-62

Given these facts, the project is clearly inconsistent with the LCP Policies, Standards, and Ordinances cited above that prohibit new development unless it can be shown that there is adequate water to accommodate it. In particular, the project is inconsistent with Coastal Watersheds Policy 1, as its demand for water exceeds the safe-yield of the groundwater basin.

The Project Will Consume Water Needed to Accommodate Priority Uses

As detailed above, the existing demand on water from the Los Osos Groundwater Basin appears to be exceeding the safe yield of this basin based upon the best available scientific information. Thus, there does not appear to be adequate water available to support the development of Coastal Act priority uses or existing undeveloped lots within the USL, let alone new subdivisions outside the USL.[23] As a result, approval of a 41-lot subdivision outside of the USL would be clearly inconsistent with the priorities for water service established by Public Works Policies1, 6, and 8, South Bay Planning Area Standard 2, and Sections 23.04.021(c) and 23.04.430 of the CZLUO.

4. Conclusion:

The project is inconsistent with LCP provisions that prohibit subdivisions unless there are adequate public services to accommodate the new lots, after priority uses such as agriculture and the infill of existing lots within the urban area have been accommodated. Because there are significant unresolved issues with respect to the availability of such services, particularly water and sewage treatment, the project can not be found to be consistent with these LCP requirements and therefore must be denied.

E. Visual Resources

1. LCP Requirements:

Policy 1: Protection of Visual and Scenic Resources

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 2: Site Selection for New Development

Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

[23] On January 12, 2000, the Commission denied the subdivision of a single lot within the Los Osos USL into three lots, largely based upon this concern.

Policy 5: Landform Alterations

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

Policy 7: Preservation of Trees and Native Vegetation

The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]

South Bay Combining Designation Standards for Morro Bay Kangaroo Rat Habitat (SRA):

8. Site Selection and Clustering. *Wherever new development should be clustered and located as far from the identified habitat area as feasible. [sic]*

Vegetation Preservation. *Significant vegetation that is a habitat erosion retardant or adds to the visual integrity of the areas shall be protected. This vegetation includes but is not limited to pygmy oaks, scrub oaks, Morro Bay Manzanita, Bishop pine, large areas of sage brush, and large stands of introduced trees such as eucalyptus and cypress. Removal of hazardous trees will be permitted in accordance with the Land Use Ordinance.*

South Bay Residential Suburban Standard 13:

Highland Area –Design*. The following shall apply to development within this area: (This does not include the Morro Palisades property.)*[24]

a. Site selection shall be such as to preserve significant areas of ecological or public visual importance. All development shall be clustered to preserve a maximum of 60 percent of each parcel in undeveloped open space.

b. No development shall be permitted on slopes exceeding 20%.

c. Building Exteriors shall be principally composed of native materials and textures (such as wood siding and shingles). Extensions, including roofs, shall be of subdued natural hues and tones harmonizing with the colors of the natural environment.

[24] The Morro Palisades property is adjacent to the project site.

2. Analysis:

As exhibited by the policies above, the San Luis Obispo County LCP requires the protection of scenic vistas; the siting of development to avoid impacts to scenic views; the minimization of landform alteration in public view corridors; the protection of special communities, including natural features that add to the overall attractiveness of the area; and the minimization of tree removal.

The proposed project would result in residential development on steep slopes that are within a significant public viewshed of the Estero Area. The southern hillsides of Los Osos, also referred to as the Irish Hills, have long been appreciated for their scenic and natural character. This area provides an open space backdrop to the more developed portion of the community on the valley floor, and is visually connected with the adjacent open space areas of Montaña de Oro State Park. As described on page V-27 of the EIR:

> The ridge itself is visually defined by its vegetation; in this case mostly dense manzanita interspersed with some oaks and chaparral varying from 6 to 15 feet in height. This vegetative cover forms a continuum with vegetation to the east, west, and south back into the Montana de Oro State Park. The project site also has several groups of mature eucalyptus trees.
>
> At present, there are no structures on the project site. It is, however, adjacent and above the existing Cabrillo Estates residential area and forms the boundary for that neighborhood. The only visible sign of human activity in the project area is an occasional view of the original dirt roads constructed in the late 1970's.
>
> In conclusion, the subject property is relatively natural and densely vegetated. It is considered to have a relatively high visual quality given its vegetated character and natural land form.

Quoting from page V-28 of the Final EIR:

> … the project site is visually accessible to tens of thousands of motorists, cyclists, and pedestrians using public roads and/or pedestrian access routes daily. The beauty of Baywood /Los Osos and the accessibility to Montana de Oro State Park is one of the primary reasons for living in and visiting the area.

As noted by the EIR, the one exception to the open space visual character of this scenic hillside area is the Cabrillo Estates development adjacent to and below the project site, which represents the southern extent of the LCP's Urban Services Line. The Cabrillo Estates development is highly visible from many public areas throughout the Morro Bay region. This is true not only during the day, but on clear nights when the lights from the residences can be seen as far north as Cayucos by travelers going south on Highway One.

The Project Does Not Protect Significant Visual and Scenic Resources

The proposed project would lead to development up to the 800-foot contour below Montaña de Oro State Park and thereby extend the limit of existing urban development up the scenic hillside. As described above, and as shown in the photographs contained in the EIR and attached as Exhibit 11, the development would be visible from any number of locations around the Morro Bay region. The EIR concludes that this will have the effect of visually doubling the apparent Cabrillo Estates neighborhood as seen from key viewing locations analyzed in the EIR.[25] As stated on page V-35 of the Final EIR:

> The proposed tract will move the upper edge of visual urbanization to a point near the ridgeline thereby removing an additional [i.e., in addition to Cabrillo Estates] 80 acres of uninterrupted existing vegetation which forms the visual character of the ridge and replacing it with a mixture of housing and vegetation.

Page 17 of the CEQA findings adopted by the County acknowledge that the significant change in land use above the envelope of existing development will have significant visual impacts that can not be mitigated to a level of insignificance. The EIR also concludes there is great potential for the units on the upper portions of the project to penetrate the visual plane of the ridgeline.[26] This too is identified as an unavoidable significant visual impact on pages 17 – 18 of the County adopted CEQA findings. Given these significant impacts, the project can not be found to be consistent with Visual Policy 1.

The Project Has Not Been Sited and Designed to Minimize Visual Impacts and Vegetation Removal

According to the County's analysis of visual resource impacts, the proposed project would result in impact to visual resources of primary and secondary sensitivity (see Exhibit 5). However, alternatives exist that would minimize impacts to visual and scenic resources. For example, the alternative project approved by the San Luis Obispo Planning Commission limited development to an area below the 600-foot contour, which is the same elevation as the existing Cabrillo Estate homes adjacent to the site (please see Exhibit 7). This alternative would not only minimize the visual intrusion of future development on areas of significant visual quality and prominence, but would reduce the extent of vegetation removal. As previously described, the densely vegetated character of the site is an important element of its scenic quality of the site.

Because the project has not incorporated the full range of measures available to shield development and minimize visual intrusion, achieve a consistent grade and natural appearance, minimize the need for tree removal, and preserve vegetation that adds to the visual integrity of the area, it is inconsistent with Visual Policies 2, 5, 7, and 8, as well as with South Bay residential

[25] Final EIR, page V-28
[26] Final EIR, page V-29 and V-41

Suburban Standard 13. The project is further inconsistent with South Bay Residential Suburban Standard 13 in that it involves grading on slopes greater than 20%.

3. Conclusion:

As detailed above, the proposed project will have significant adverse impacts on an area of high visual importance. Alternatives that would minimize such impacts, such as those that would concentrate development in the less visually sensitive areas of the site and minimize vegetation removal, are available, but have not been effectively incorporated into the proposed project. As a result the project is not consistent with the LCP Policies and Standards cited above.

F. Hazards/Grading

1. LCP Requirements:

Hazards Policy 2 states:

> *New development shall ensure structural stability while not creating or contributing to erosion or geologic instability. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.086 OF THE CZLUO.[27]]*

CZLUO 23.05.034 states, in relevant part:

> *All excavations and fills, whether or not subject to the requirements of this title, hall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building Code, and the following standards:*
>
> …
>
> *b. Grading for siting of new development. Grading for the purposes of creating a site for a structure or other development shall be limited to slopes less than 20% except:*
>
> *(1) Existing lots in the Residential Single-Family category, if a residence cannot feasibly be sited on a slope less than 20%; and*
>
> *(2) When grading of an access road or driveway is necessary to provide access to building site with less than 20% slope, and where there is no less environmentally damaging alternative; and*
>
> *(3) Grading Adjustment. Grading on slopes between 20% and 30% may occur by Minor Use Permit or Development Plan approval subject to the following:*

[27] CZLUO Section 23.07.086 applies to designated Geologic Study Areas, which the project site is not. Hazards Policy 2 is still applicable, however, as it is identified as a Standard, the application of which is not limited to Geologic Study Areas.

(i) The applicable review body has considered the specific characteristics of the site and surrounding area including: the proximity of nearby streams or wetlands, erosion potential, slope stability, amount of grading necessary, neighborhood drainage characteristics, and measures proposed by the applicant to reduce potential erosion and sedimentation.

(ii) Grading and erosion control plans have been prepared by a registered civil engineer and accompany the request to allow the grading adjustment.

(iii) It has been demonstrated that the proposed grading is sensitive to the natural landform and surrounding area.

(iv) It has been found that there is no feasible method of establishing an allowable use of the site without grading on slopes between 20% and 30%.

c. Grading adjacent to Environmentally Sensitive Habitats. Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat as shown in the Land Use Element except:

(1) Where a setback adjustment has been granted as set forth in Sections 23.07.172d(2) (Wetlands) or 23.07.174d(2) (Streams and Riparian Vegetation) of this title; or

(2) Within an urban services line when grading is necessary to locate a principally permitted use and where the approval body can find that the application of the 100-foot setback would render the site physically unsuitable for a principally permitted use. …

…..

South Bay Planning Area Combining Designation Standard 8 requires:

Vegetation Preservation. Significant vegetation that is a habitat erosion retardant or adds to the visual integrity of the areas shall be protected. This vegetation includes but is not limited to pygmy oaks, scrub oaks, Morro Bay Manzanita, Bishop pine, large areas of sage brush, and large stands of introduced trees such as eucalyptus and cypress. Removal of Hazardous trees will be permitted in accordance with the Land Use Ordinance.

2. Analysis:

The above provisions of the San Luis Obispo County LCP are intended, in part, to carry out Section 30253 of the Coastal Act, which requires that new development assure structural stability and not contribute to erosion, geologic instability, or destruction of the site or surrounding area.

One of the primary constraints to development on the project site is the presence of steep slopes and highly erodable soft sand soils. Currently, the high permeability of the soils, and dense vegetation on the site, help prevent significant erosion. According to page V-54 of the Final EIR

for the project, an exception to this is where trails have been cut and intercept sheet flows, increasing erosion.

New roads and other impervious surfaces that concentrate runoff can cause similar impacts. The vegetation removal associated with the project, and the proposed grading of steep slopes, also raise significant risks of erosion. While the proposed lots have been identified as containing areas of less than 20% slope that could accommodate future residential development, some sections of the proposed roads will require grading in excess of 30%. Construction of the roadways, drainage and recreation facilities proposed by the project involve significant amounts of vegetation removal. In addition, the proposed removal of approximately 6.8 acres of eucalyptus forest will involve site disturbance that has the potential to cause slope instability and increase erosion.

Very little information has been provided as part of the local record to address the impact that roadway/infrastructure construction and eucalyptus removal will have on slope stability and erosion. Contrary to the LCP requirement that grading on slopes greater than 20% be accompanied by a grading and erosion control plan prepared by a civil engineer *as part of the application* (CZLUO Section 23.05.034b(3)), such plans have yet to be prepared or reviewed and approved by the County. Similarly, page V-18 of the Final EIR suggests that sedimentation/erosion control plans for eucalyptus removal should be prepared prior to tree removal. The details of such a plan, or an evaluation of its effectiveness, has not been provided. The only two specific measures that have been incorporated into the project to minimize erosion during construction are the avoidance of grading during the rainy season, and immediate revegetation of disturbed areas.

Post-construction, runoff from the proposed roadways and future residential development will be directed to on-site detention basins and/ or expand existing detention basins down hill of the site. Runoff from roofs driveways, patios, and other impervious surfaces on individual lots are proposed to be conveyed to the streets by gutters and drains, thence to the detention basins, as gravity allows. However, approximately 12 of the proposed lots would involve the construction of driveways and residences below the lowest point of the roadway.[28] To address runoff from these lots, the Final EIR includes a mitigation measure requiring the applicant to install collection systems that convey runoff to a street in the tract. These collection systems must be included in future plans that will be subject to the review of the County Engineering Department.

The above approaches to addressing slope stability and erosion hazards during and after project construction are clearly inconsistent with LCP requirements. First, and foremost, resolution of this significant issue has been postponed to later reviews. As a result, it is impossible to conclude that the project is consistent with LCP Hazards Policy 2, which requires new development to ensure structural stability while not creating or contributing to erosion or geologic instability. Moreover, it prohibits consideration of a full range of project alternatives that would minimize the disturbance of steep slopes the removal of vegetation, inconsistent with CZLUO Section 23.05.034b.

[28] Final EIR, page V-55

The project is also clearly inconsistent with part c of CZLUO Section 23.05.034, as well as with South Bay Combining Designation Standard 8, because it involves grading within ESHA and will remove significant amounts of Eucalyptus that currently help prevent erosion. While there may be ecological benefits to Eucalyptus removal, a more through analysis of this issue is needed. If shown to be beneficial, the removal of Eucalyptus may be appropriate if it is accompanied by a detailed plan that specifies the manner in which erosion will be prevented.

Finally, the project is inconsistent with CZLUO Section 23.05.034b(3)(iv), because it involves an excessive amount of grading on steep slopes. There are alternatives available that would allow for residential use of the site and significantly minimize the amount of grading on steep slopes. Such alternatives involve a reduction in the number and/or extent of residential units.

3. Conclusion:

The proposed project is inconsistent with LCP grading and erosion control requirements because there has not been adequate consideration of alternatives that would minimize the disturbance of steep slopes and the removal of vegetation. It is also inconsistent with LCP requirements because it has not been accompanied by the detailed drainage and erosion control plans necessary to ensure the structural and geologic stability of the site and surrounding area.

G. Water Quality/Marine Resources

1. LCP Requirements:

Coastal Watershed Policy 1 states:

> *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted.*

South Bay Planning Area Standards 1 requires:

> *New development shall meet the septic tank requirements of the Regional Water Quality Control Board. Current WQCB standards specify that depth to bedrock or other impervious material should be greater than eight feet and depth to groundwater should be greater than 10 feet at all times. Separation between the bottom of the disposal field and the groundwater level shall be a minimum of five feet. In those areas of the community with known high water levels, a piezometer reading should be completed indicating that an adequate separation between the bottom of the disposal field excavation and the groundwater will be maintained at all times.*

2. Analysis:

The proposed project will adversely impact the Los Osos Groundwater Basin by exacerbating the existing over-drafted condition of this aquifer, and potentially by contributing pollutants through the use of on-site septic systems. These issues are discussed in detail in the findings of the report regarding public services, which conclude that the project is inconsistent with the LCP provisions cited above.

The project may also adversely effect aquatic habitats by causing an increase in erosion and sedimentation, as discussed in the findings regarding hazards/grading. Increased erosion rates on the project site, and the potential for sediments to be carried to bay waters through improper control of stormwater, would have numerous deleterious on marine habitats and resources of the Morro Bay National Estuary. Sediments contained in stormwater runoff can result in the direct loss of aquatic habitats by smothering such habitat. The sediments can also contain nutrients that contribute to the growth of algae, which, in turn, decreases the amount of available oxygen needed by marine resources to survive. In addition, sediments contained in stormwater runoff increase the turbidity of coastal waters, which reduces the penetration of light to intertidal and benthic habitats that are dependent on sunlight for survival.

3. Conclusion:

The proposed project is inconsistent with provisions of the San Luis Obispo County LCP protecting coastal watersheds and aquatic habitats because it will add to the demand for groundwater that already exceeds safe-yield, and because it will contribute pollutants that will adversely impact marine resources.

III. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

San Luis Obispo County certified an Environmental Impact Report (EIR) for the project on September 1, 1998. However, as detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that were not effectively addressed by the certified EIR. In particular, there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment. As a result, approval of the project would have a significant adverse affect on the environment within the meaning of the California Environmental Quality Act.