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Filed: 5/26/04
49th Day: Waived
Staff: TL-SF
Staff Report: 6/24/04
Hearing Date: 7/15/04

APPEAL STAFF REPORT – SUBTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT:	County of San Luis Obispo
DECISION:	Approval with Conditions
APPEAL NO.:	A-3-SLO-04-035
APPLICANT:	Pacific Gas and Electric Company (PG&E)
PROJECT LOCATION:	Diablo Canyon Nuclear Power Plant, P.O. Box 56, Avila Beach 93424, approximately 6 miles north of Avila Beach.
PROJECT DESCRIPTION:	Construct and operate a spent nuclear fuel storage facility (known as an Independent Spent Fuel Storage Installation (ISFSI)).
APPELLANTS:	Pacific Gas and Electric Company Mothers For Peace / Sierra Club, Santa Lucia Chapter Commissioners Pedro Nava and Sara Wan

SUMMARY OF APPEALS AND STAFF RECOMMENDATION

The proposed project is a facility to store spent nuclear fuel from the Diablo Canyon Nuclear Power Plant. On April 20, 2004, the San Luis Obispo County Board of Supervisors conditionally approved a Coastal Development Permit (CDP) for the proposed project. The Coastal Commission received three appeals of that decision, which contend that the proposed project, as approved by the County, does not conform to a number of provisions of the San Luis Obispo County Local Coastal Program (LCP), and additionally does not conform to Coastal Act public access policies.

Staff recommends that the Commission, after public hearing, determine that the appeals raise ***substantial issues*** regarding the proposed project's conformity to Coastal Act public access policies and to LCP provisions related to public access, geologic hazards, marine environment and water quality, sensitive habitat areas, and water and sewer services. Staff also recommends the Commission find the appeals raise ***no substantial issue*** regarding the proposed project's conformity to scenic and visual qualities and oil and hazardous substance spills.

SUBSTANTIVE FILE DOCUMENTS

- County of San Luis Obispo Coastal Development Permit (CDP) #D010153D (April 20, 2004), and associated file documents
- Final Environmental Impact Statement (January 2004)
- Certified County of San Luis Obispo Local Coastal Program
- Appeal Forms

EXHIBIT 1: Location map
EXHIBIT 2: County CDP Conditions of Approval
EXHIBIT 3: Applicable LUP Policies

RECOMMENDED MOTION AND RESOLUTION

Motion:

> *I move that the Commission determine that Appeal No. A-3-SLO-04-035 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

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

Recommended resolution to find substantial issue:

> *The Commission finds that Appeal No. A-3-SLO-04-035 presents a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency with the certified local coastal plan and/or the public access and recreation policies of the Coastal Act.*

APPEAL PROCEDURES

After certification of a LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects for which a local government has granted a CDP may be appealed if they either are located within an appealable area or fall within a category of appealable development, all as defined by Section 30603(a) of the Coastal Act. Pursuant to Section 30603(b) of the Coastal Act, the grounds for an appeal of a project for which a local government has granted a CDP are limited to the assertion that "development does not conform to the certified local coastal program or, where the project is located between the first public road and the sea, the public access policies set forth in the Coastal Act."

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program. In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process is the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

I. PROJECT DESCRIPTION AND PURPOSE

Project Description

If approved by the Commission, the proposed project would be carried out at the Diablo Canyon Nuclear Power Plant (DCNPP) located approximately six miles north of Avila Beach in San Luis Obispo County (see **Exhibit 1** for a location map). The project consists of construction and operation of a facility to store spent nuclear fuel from the DCNPP. The facility is known as an Independent Spent Fuel Storage Installation (ISFSI), and includes four main components – a dry cask storage system, a transport road, a Cask Transfer Facility, and concrete storage pads – along with other elements such as soil disposal areas, security fences, a temporary concrete batch plant, and other support facilities. The dry cask storage system consists of three integrated containers used to shield the spent fuel – a multi-purpose canister, a transfer cask, and an overpack – and has a design life of 40 years. The project would cover about 8.5 acres and would require grading about 150,000 cubic yards of soil.

The proposed project would involve several main steps – first, spent fuel would be removed from the existing wet pool storage system and placed into a multi-purpose canister. The canisters would then be placed into a transfer cask, which would be moved along the transport road to a Cask Transfer Facility several hundred yards away from the power plant. The transfer casks would then be placed inside the overpack, which would create concrete and metal cylinders about 20 feet high and eight feet in diameter that would be bolted to the storage pads. Two of

the total of seven separate storage pads would be built during the first phase of the project, with the rest to be constructed as additional spent fuel storage is needed. The complete storage pad area would be about 500 feet long by 105 feet wide. The complete proposed project would include about 140 storage casks.

Project Purpose

The facility would provide additional spent fuel storage at the DCNPP. The additional storage would allow uninterrupted power plant operations until its current operating licenses expire in approximately 20 years. The license for Unit 1 of the power plant expires in 2021, and Unit 2's license expires in 2025.

Currently, DCNPP's spent fuel is stored onsite in a wet pool system. This type of system is generally considered to be an interim storage system for spent nuclear fuel, and is considered to have a higher risk of release than the proposed ISFSI dry cask system. Spent fuel is kept in the pool to "cool" for at least five years, after which it can remain either in that storage system or be transferred to a different type of storage. Based on the rate of spent fuel generation under current operations, it is estimated that the current system has adequate storage until 2006. At that time, any of several events would have to occur – the pool would have to be reconfigured to allow denser storage of additional spent fuel, the new proposed ISFSI storage system would have to be available to receive spent fuel, some of the existing spent fuel would have to be moved to offsite storage, or the power plant would have to shut down.

The proposed ISFSI facility would be subject to approval and licensing by the Nuclear Regulatory Commission[1]. Licenses are issued for a twenty-year period, with an option to renew for an additional twenty years, and PG&E has applied for an initial twenty-year license. PG&E intends to store the fuel onsite until the federal government builds a permanent national storage facility and establishes a time to accept fuel from DCNPP. Given continuing uncertainties about where and when a permanent facility will be available, it is not possible to know exactly when the stored spent fuel will be moved, but PG&E estimates that the permanent facility will be built no sooner than 2010, and that it will accept spent fuel from DCNPP sometime after 2017. The delay between construction of the permanent facility and acceptance of spent fuel from DCNPP is due to a number of older nuclear facilities having priority for moving their spent fuel into permanent storage.

II. PERMIT HISTORY

On April 20, 2004, the County of San Luis Obispo Board of Supervisors conditionally approved CDP #D010153D for construction and operation of the proposed project (see **Exhibit 2** for the County's conditions of approval). Appeals were filed within the applicable appeal period.

[1] The NRC regulates storage of spent fuel pursuant to 10 CFR 72, which establishes the licensing requirements for siting, designing, and operating such facilities. PG&E applied for a site-specific license on December 21, 2001.

III. PERMIT AND APPEAL JURISDICTION

The proposed project is located within the Coastal Zone of the County of San Luis Obispo and is subject to the County's certified LCP, including its Land Use Plan (LUP, contained in Title 23 of the County Code). The proposed project is also within the Coastal Commission's appeal jurisdiction pursuant to Coastal Act Section 30603(a), which provides for appeals of actions taken by local governments with a certified LCP for developments between the sea and the first public road, within 300' of the mean high tideline, within 300' of a coastal bluff, within a sensitive coastal resource area, or that constitutes a major energy facility, all of which apply to this proposed project.

IV. STANDARD OF REVIEW

The standard of review for this appeal is consistency with the certified LCP of the County of San Luis Obispo and conformity to Coastal Act policies related to public access.

V. APPEAL ISSUES

The appellants contend that the proposed project does not conform to LCP provisions and Coastal Act policies related to public access, geologic hazards, marine environment and water quality, sensitive habitat areas, water and sewer service, scenic and visual resources, and oil and hazardous substance spills. The discussion below for each of these appeal contentions includes: first, a description of the County's action; then, the appellants' contentions; and finally, staff's analysis and recommendation as to whether the contentions raises a substantial issue of conformity to applicable provisions of the LCP and the Coastal Act. The cited LUP provisions are in **Exhibit 3** of this report.

Appeal Contention #1 – Public Access: Staff recommends the Commission find that a ***substantial issue*** exists with respect to this appeal contention.

<u>County's Action</u>: The County-approved CDP includes a condition requiring PG&E to provide public access by submitting an Offer To Dedicate (OTD) when the nuclear power plant is decommissioned (currently scheduled for approximately 2025). The access is to consist of:

- A lateral access easement from the mean high tide line to the toe of the coastal bluff between the property's southern boundary to its northern boundary (a distance of approximately twelve miles);
- A fifty-foot wide lateral access easement along the existing service road from the Avila Beach Drive plant entrance north to the boundary of Montana de Oro State Park (approximately twelve miles);
- A vertical accessway at every mile between these two lateral easements; and,
- Improved access to the nearby Port San Luis Lighthouse Road.

The CDP further requires that the OTD remain valid but not be accepted until the power plant's operational licenses have lapsed and radioactive components of the project site have been removed, and that the OTD not lapse before the year 2030.

Appellants' Contentions: All appellants contend the County's decision does not conform to the public access requirements of the LCP or the Coastal Act:

- Appellant PG&E contends that the County's public access requirement does not conform to the LCP for the following reasons:
  - The LUP includes four exemptions that allow developments to be approved without requiring public access if they meet any of several criteria related to public safety, protection of fragile coastal resources, the presence of other adequate access, or the effects of access on agriculture. Each of these exemptions applies to the proposed project; therefore, the County has no ability to require access.
  - The access required by the County is an unconstitutional "taking" of property without compensation and therefore violates provisions of both the LCP and the Coastal Act in two ways – first, there is no nexus between the project and the loss of public access; and second, the scope of the access required by the County is not proportional to any impact that may be caused by the proposed project.

- Appellants Mothers For Peace and Sierra Club contend that the proposed project, as approved by the County, does not conform to the Coastal Act Section 30211 that requires development to not interfere with access because the project would prevent access to the coast for an extensive and indefinite period of time.

- Appellants Nava and Wan contend that the proposed project, as approved by the County, is inconsistent with access provisions of the LCP for several reasons:
  - The LCP's access provisions are meant to ensure development does not restrict public access to the coast; however, the proposed project would extend by some period of time the loss of access in addition to the loss already caused by the presence of DCNPP.
  - The County's requirement that the applicant provide an OTD upon decommissioning of the power plant (in approximately 20 years, based on the current license) does not conform to LUP Section 23.04.420(5), which requires that such offers be made before construction permits are issued.
  - The County's requirement for future submittal of access plans does not conform to LUP Sections 23.04.420(8)-(11), which require specific and complete descriptions of access provisions be approved before issuance of construction permits and require accessway improvements be made concurrent with the permitted development.

Analysis: The proposed project is subject to several LUP and Coastal Act provisions related to public access. LUP Section 23.04.420 requires development such as this project, located between the sea and the first public road paralleling the sea, provide coastal access. Section 23.04.420(3) provides exemptions to the access requirements if access would be inconsistent with public safety, military security, protection of fragile coastal resources, if adequate access already exists, or where access would adversely affect agriculture. Section 23.04.420(4) describes types of public access that may be required. Section 23.04.420(5) requires that access be offered and dedicated before construction of the approved development. Sections 23.04.420(7)-(9) provide details about the required form of access (e.g., easements, deed restrictions, etc.), improvements that must be made, and necessary signage. Section 23.04.420(11) specifies considerations the review body is to evaluate to minimize the effects of access on agriculture, sensitive resources, safety, and other aspects present in coastal locations.

The proposed project would be located between the first public road and the sea, and is therefore subject to the requirements of LUP Section 23.04.420 and Coastal Act Section 30212 that such developments provide public access, unless the above-cited exemptions apply. These exemptions, however, are tempered by Section 23.04.420(11), which recognizes that the County may require access where feasible, even when it is subject to the concerns identified in the exemptions (e.g., safety, sensitive resources, effects on agriculture, etc.). Therefore, even with the safety and security concerns about DCNPP's existing and proposed facilities, the LUP provides for some level of public access to be required.

The County's record for this proposed project includes several markedly different conclusions about how much access is necessary. In its initial review, County staff analyzed the proposed project's effects on access, established a nexus between the project and public access, and determined what amount of access would be roughly proportional to the project's effects. This analysis concluded that access should consist of several elements, including an offer to dedicate accessways along the coast after facility decommissioning, funding to be used to construct and maintain the above accessways, additional funding of approximately $12 million to be used to establish off-site public access during the years until decommissioning, and improvements to existing access to the Port San Luis Lighthouse Road. Next, at a hearing on the proposed project, the County Planning Commission found that requiring access would constitute a "taking" of property and therefore approved the CDP without requiring any access. Finally, the Board of Supervisors, in its hearing of an appeal of that decision, removed the finding regarding access being a "taking", found that access was not necessary while DCNPP was operating, found also that the proposed development was exempt from access requirements due to its inconsistency with public safety and its effects on agriculture, but also required as a condition of approval that the applicant provide access through future dedication of the lateral and vertical accessways described above. Similar to the different conclusions in the County's record, the appellants' contentions differ significantly as to how much access is necessary for the proposed project to conform to the LCP and Coastal Act public access policies.

For several reasons, staff recommends the Commission find the appeal raises a ***substantial issue*** regarding the conformity of the proposed development to the public access policies of the certified LCP and the Coastal Act. The LUP requires access be provided for development in this type of location (between the first public road and the tidelands); however the County's decision does not make clear the basis for the type and amount of access it is requiring. The County also found that the exemptions for the access requirement (e.g., considerations of safety, effects on agriculture, etc.) applied to the proposed development; however, it did not recognize that the LCP also allows for feasible access to be required that reflects those considerations. Additionally, when the LUP requires access, it requires that it be dedicated before construction starts – the County, however, required the access to be dedicated upon decommissioning of the power plant, currently scheduled for about 2025. Further, the LUP requires that necessary improvements be identified as part of the land use permit review – the County, however, did not address in its decision the need for improvements to the accessways.

Appeal Contention #2 – Geologic Hazards, Erosion: Staff recommends the Commission find ***substantial issue*** exists.

County's Action: Two of the proposed project's components – a portion of the transport road and one of the soil disposal areas – are within one hundred feet of a landslide area that may be subject to sea cliff erosion and instability. The FEIR states that because sea cliff erosion rates have not been established, it is unclear whether this one hundred foot distance is sufficient to ensure long-term stability of these project elements. Condition #15 of the County-approved CDP requires the applicant determine, before issuance of a construction permit, the annual average sea cliff retreat rates in the area of the proposed transport route and one of the soil disposal areas. This information would then be used to determine necessary setbacks and buffers between these developments and the coastal bluffs.

Appellants' Contentions: One appeal contends the County's decision does not conform to LCP provisions regarding the prevention of erosion:

- Appellants Nava and Wan contend that the proposed project, as approved by the County, does not conform to LUP Section 23.04.118, which requires that development be located to ensure stability and structural integrity, and requires that bluff erosion reports be included with the land use permit application.

Analysis: LUP Section 23.04.118 requires that development incorporate setbacks from bluff areas subject to erosion. It further requires that development be set back from coastal bluffs to ensure stability for at least a seventy-five year period. This setback is to be based on a site stability evaluation report that evaluates site stability taking into account "historic, current, and foreseeable" cliff erosion based on numerous sources of information. Typically, such an analysis requires both a quantitative slope stability analysis and a determination of the long-term average bluff retreat rate. The appropriate setback can then be determined by ascertaining the necessary distance from the bluff edge development may be sited to achieve certain minimum stability standards over its expected economic life. This required information is to be submitted as part of the land use permit application.

The proposed project, as approved by the County, would require the applicant to submit the necessary erosion report prior to issuance of a construction permit, rather than prior to the granting of the land use permit (i.e., the CDP) as required by the LUP. The data, analyses, and conclusions of this future report could result in the need to redesign and/or relocate one or more significant elements of the proposed development. Staff therefore recommends the Commission find ***substantial issue*** exists regarding the conformity of the proposed development to the geologic hazard policies of the certified LCP.

Appeal Issue #3 – Geologic Hazards, Seismic: Staff recommends the Commission find ***substantial issue*** exists.

County's Action: The proposed project's design is based in part on analyses of seismic data contained in the applicant's Final Report of the Diablo Canyon Long Term Seismic Program (1988) and subsequent reports that refer to those data. Condition #18 of the County-approved CDP requires the applicant, prior to issuance of a construction permit, to incorporate more recent earthquake data (from 1986 to present) into the seismic analyses done in 1988, and to adjust the structural design for the facility as necessary based on these more recent data.

Appellants' Contentions: Two appeals contend the County's decision does not conform to LCP provisions related to seismic hazards:

- Appellants Mothers For Peace and Sierra Club contend the proposed project, as approved by the County, does not conform to LCP provisions related to seismic safety (which incorporate by reference Coastal Act section 30253 requiring minimization of adverse impacts due to seismic hazards). Appellants state that since 1986, new seismic data and new interpretations of that data may change the required design of the proposed project. The County's deferral of the updated seismic report and potential design changes results in nonconformity to the LCP requirement that development be designed to reflect the maximum credible earthquake.
- Appellants Nava and Wan contend the proposed project, as approved by the County, does not conform to LUP Section 23.04.118, which requires that the design and location of development ensure stability and structural integrity.

Analysis: The proposed project is subject to LUP Section 23.04.118, which requires the design and location of development reflect potential effects of seismic forces resulting from a maximum credible earthquake. Pursuant to the County's Land Use Plan, the proposed project is also within a Geologic Study Area (GSA) and is therefore subject to LUP Sections 23.07.080-086, which require, among other things, that a land use permit application for development in a GSA include submittal of a seismic report describing local and regional geologic and seismic conditions.

The County's review and approval of the proposed project is based primarily on analyses of seismic data from before 1986. Since that time, new geologic interpretations and new seismic data have been generated from several area earthquakes; however, these new data have not yet been incorporated into the design analyses. Without those data from the past eighteen years, the site's seismic characteristics are not adequately understood, and it cannot be determined that the design adequately reflects seismic hazards, as required by the LUP. Therefore, staff recommends the Commission find ***substantial issue*** regarding the conformity of the proposed development to the seismic policies of the certified LCP.

Appeal Issue #4 – Marine Environment and Water Quality: Staff recommends the Commission find ***substantial issue*** exists.

County's Action: The proposed project would result in runoff into Diablo Creek and the ocean. Conditions #9 and #11 of the County-approved CDP would require the applicant to submit for County approval a Drainage and Polluted Runoff Control Plan and a Sedimentation Inspection and Maintenance Plan before issuance of a construction permit.

Appellants' Contentions: Two appeals raise issues related to these aspects of the LCP:

- Appellants Mothers For Peace and Sierra Club contend that the proposed project, as approved by the County, will cause erosive storm water runoff, siltation, and turbidity in coastal waters due to the large size of the storage pads, and as a result, does not conform to the LCP's water quality protection requirements. The appellants also contend that the proposed project does not conform to LCP provisions related to Coastal Act Section 30236, which allows channelization, dams, or substantial alterations of rivers and streams for limited aspects of water supply projects, flood control, or fish and wildlife habitat improvements.

This appeal also contends that Condition #15 described in the section above on Geology – Erosion allowing the necessary bluff setbacks be determined after issuance of the CDP does not conform to the LCP's water quality provisions, since inadequate setbacks could lead to erosion and sedimentation into coastal waters.

- Appellants Nava and Wan contend that the proposed project, as approved by the County, does not conform to LUP Sections 23.05.040 and 23.05.042, which require that development minimize the harmful effects of stormwater runoff, inundation, and erosion, and that the County approve a proposed development's drainage plan before issuing an land use permit.

Analysis: LUP Section 23.05.040 requires developments to minimize harmful effects of storm water runoff pursuant to standards established in subsequent LUP sections. While LUP Section 23.05.036 allows the County to approve the necessary sedimentation plan before construction starts, LUP Section 23.05.042 requires that the County not issue land use permits for projects such as the proposed project until it approves a detailed drainage plan. The required drainage plan may need to include measures to address onsite flood and flow issues in Diablo Creek; however, without an approved plan in place, it is not possible to determine its effects on the creek. The County's approval of a CDP for this proposed project without an approved grading plan does not conform to the LCP; therefore, staff recommends the Commission find that, as approved by the County, the project raises a ***substantial issue*** with respect to conformity with the water quality provisions of the LCP.

However, the contention that the County's condition requiring future determination of adequate setbacks could lead to erosion and sedimentation into coastal waters does **not** raise a ***substantial issue*** with respect to conformity to the LCP's water quality provisions. Because the necessary setback would be established and would result in relocation of the project elements before construction starts, staff believes there would be adequate assurance of water quality protection related to setback provisions. However, staff also believes, as noted above in Appeal Issue #2, that the current lack of a properly established setback does not conform to the LCP's erosion-related policies.

Appeal Issue #5 – Sensitive Habitat Areas: Staff recommends the Commission find ***substantial issue*** exists.

County's Action: Conditions 19, 20, and 22 of the County-approved CDP requires the applicant to submit for County approval revegetation plans for the areas of the proposed project subject to temporary disturbance and for the soil stockpile areas. The plans are to provide for long-term stabilization and revegetation with native plants, and are to include measures for collecting seeds and reestablishing within those areas the affected population of the Nuttall's milk vetch (designated by the U.S. Fish and Wildlife Service as a "species of local concern or conservation importance"). The plans are to also identify the monitoring measures that will be implemented to evaluate the effectiveness of the revegetation.

Appellants' Contentions: One appeal raises issues related to this aspect of the LCP:

- Appellants Nava and Wan contend that the proposed project, as approved by the County, does not conform with provisions of the LUP that require biological continuance of Sensitive Resource Areas and require protection of those areas from development effects (Sections 23.07.170 *et. seq.*). They further contend that the County erred by allowing the applicant to submit a revegetation plan after CDP approval, which does not conform to LUP Section 23.07.170 that requires restoration measures be included as part of a permit application.

Analysis: The County's findings state that the "entire 12,000 acre PG&E property surrounding the power plant is within an ESHA designated as the Coastal Terrace of the Irish Hills SRA…" (April 20, 2004 Board of Supervisors Findings, page 3). The location of the proposed ISFSI within this area is described as disturbed habitat; however, it also includes areas of potential sensitive species habitat and contains hydrophytic vegetation.

LUP Section 23.07.170 requires that a land use application for development such as the proposed project include the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures. By deferring this requirement until after approval of the CDP, the County's decision does not conform to this LUP provision; therefore staff recommends the Commission find that, as approved by the County, the project raises a ***substantial issue*** with respect to conformity to the LCP's habitat protection policies.

Appeal Issue #6 – Water and Sewage Service: Staff recommends the Commission find ***substantial issue*** exists.

County's Action: Conditions 7 and 8 of the County-approved CDP require PG&E to submit evidence that there is adequate water and an adequate septic system to serve the proposed development.

Appellants' Contentions: One appeal raises issues related to this aspect of the LUP:

- Appellants Nava and Wan contend that the proposed project, as approved by the County, does not conform to LUP Section 23.04.430, which requires an applicant provide evidence of adequate water and sewage service prior to land use approval.

Analysis: LUP Section 23.04.430 requires that a land use permit for new development requiring water or disposal of sewage not be approved until the County determines that there is adequate water and sewage disposal capacity available for the proposed development. By issuing the CDP and deferring its determination, the County's action does not conform to this LUP requirement. Accordingly, staff recommends the Commission find that the project, as approved by the County, raises a ***substantial issue*** with respect to conformity with the water and sewer service provisions of the LUP portion of the County's LCP.

Appeal Issue #7 – Scenic and Visual Qualities: ***No substantial issue.***

County's Action: The County's CEQA findings state that the proposed project would not be visible from any public location, and its findings for the CDP state that the proposed project is located amidst a large industrial facility and will have minimal visual effect. The CDP does not include conditions related to scenic or visual provisions of the LCP.

Appellants' Contentions: One appeal raises issues related to this aspect of the LCP:

- Appellants Mothers for Peace and Sierra Club contend that the proposed project, as approved by the County, does not conform to LCP provisions related to scenic and visual resources. They state that the proposed project would be visible from coastal waters but does not minimize alteration of natural landforms, is not visually compatible with the character of surrounding areas, and does not restore and enhance visual quality of visually degraded areas.

Analysis: Chapter 10 of the LCP includes several policies related to scenic and visual resources that apply to this proposed project. Policy 10-1 requires that unique landscape features, including sensitive habitats, are to be preserved, protected, and in visually degraded areas, restored where feasible. Policy 10-2 requires that permitted development protect views to and along the ocean, and that where possible, new development not be visible from major public view corridors. Policy 10-5 requires that grading, earthmoving, major vegetation removal and other landform alternations within public view corridors be minimized.

The FEIR for the proposed project includes a visual resource analysis that indicates the coastal areas around the DCNPP are of high visual sensitivity and that the immediate project site is considered moderate to low. It further states that views of the proposed project would be limited by surrounding landforms and the security zone in the coastal waters offshore of the power plant, which restricts access within 2,000 yards of the power plant. The proposed project consists of relatively low-profile structures that are visually subservient to the existing development on the site. The FEIR includes simulated photos of the proposed project from various viewpoints and concludes that views of the proposed project from publicly accessible areas, including the ocean, would be minimal. Therefore, based on the visual representations in the FEIR, the project, as approved by the County, raises ***no substantial issue*** with respect to conformity with the visual resource elements of the LCP.

Appeal Issue #8 – Oil and Hazardous Substance Spills: ***No substantial issue*** exists.

County's Action: The County does not make findings, and the CDP does not include conditions related to this appeal issue.

Appellants' Contentions: One appeal raises issues related to this aspect of the LUP:

- Appellants Mothers for Peace and Sierra Club contend the proposed project's dry casks, which contain large amounts of lead, may be subject to accidental, seismic, or malicious spills when they are on the transport route or the storage pads. They state that this does not conform to LCP provisions related to Coastal Act Section 30232, which requires that development and transportation of hazardous materials include protection against spills.

Analysis: LUP Section 23.06.120 requires that the storage and use of poisonous, corrosive, explosive and other materials hazardous to life or property be subject to applicable state and federal standards. The design and use of the dry casks are to conform to federal Nuclear Regulatory Commission requirements. Accordingly, the project, as approved by the County, raises ***no substantial issue*** regarding conformity with the oil and hazardous substance spill provisions of the LCP.

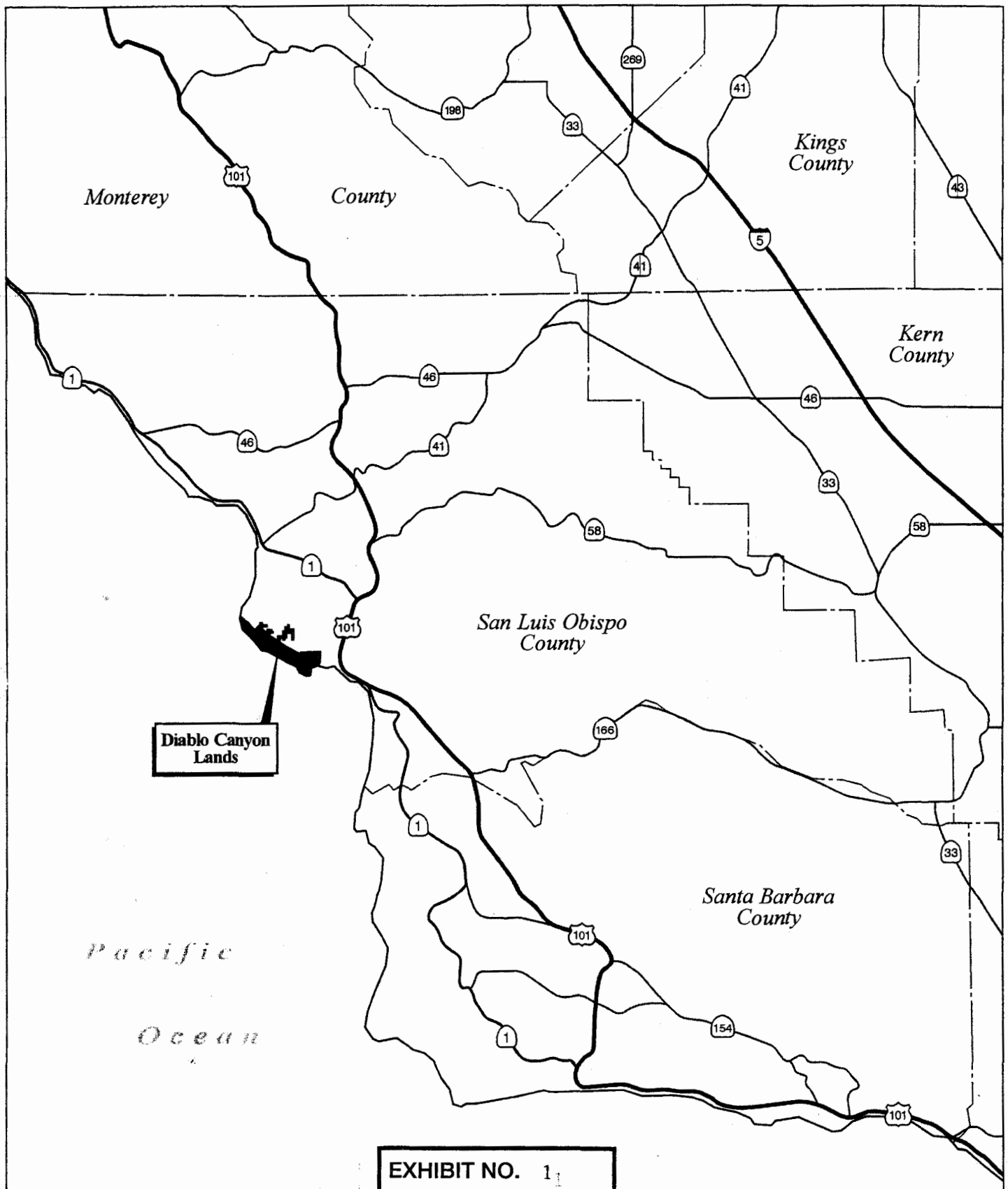

EXHIBIT NO. 11
APPLICATION NO.
A-3-SLO-04-035

Figure PRO-1

Proposed Diablo Canyon ISFSI

Regional Location

N 0 10 20 Miles

EXHIBIT NO. 2
APPLICATION NO.
A-3-SLO-04-035

EXHIBIT C
CONDITIONS OF APPROVAL
D010153D

Approved Development

1. This Development Plan authorizes the construction of an Independent Spent Fuel Storage Installation to store high level radioactive nuclear waste consisting of the following elements:

   a. Storage of fuel assemblies taken from the existing Spent Fuel Pools located at Units 1 and 2 of the Diablo Canyon Nuclear Power Plant (DCNPP).
   b. Construction of seven concrete cask storage pads each 68 feet wide by 105 feet long and 7.5 feet thick as shown on approved site plans.
   c. Storage of up to a maximum of 20 storage casks on each concrete pad. A maximum of 140 casks may be placed on the pads during the life of the project.
   d. Grading of up to 150,000 cubic yards of earth to create a level site for the seven storage pads as shown on approved grading plans.
   e. Construction of a Cask Transfer Facility (CTF) as shown on the approved site plans.
   f. Cask transport route as shown on the approved site plans.
   g. Security fencing as shown on the approved site plan.
   h. Relocation of existing facilities as shown on the approved site plans.
   i. Use of a temporary onsite concrete batch plant for the construction of the concrete pads.
   j. Construction and relocation of existing roads to bypass unstable areas at Patton Cove as shown on the approved site plans. Fill from the ISFSI excavation shall be used for the construction of the relocated road through Parking Lot 7.
   k. Excavated material shall be placed at one or more of three disposal sites:

      i. Existing storage yard located approximately 300 feet north of the proposed storage pads and 1,500 feet north of Units 1 and 2;
      ii. An existing parking lot located approximately 3,000 feet southeast of the proposed storage pads and 2,200 feet east on Units 1 and 2;
      iii. An existing parking area located approximately 2,200 feet southeast of the proposed pads and 1,800 feet east of Units 1 and 2.

      All as shown on the approved site plans.
   l. Decommissioning of the facility as described in Section 2 of the Final EIR dated January 2004 and on file with the Dept of Planning and Building.
   m. Use of Best Management Practices (BMPs) for all grading activities, construction of roads and pads and placement of spoils.
   n. Other construction and operational elements of the project as identified in the Final Environmental Impact Report (FEIR) dated January 22, 2004 and on file with the Dept of Planning and Building.

Phasing Plan

2. The project shall be constructed in two phases:

   a. Phase 1 shall consist of construction of two (2) concrete storage pads. Phase 1 must be completed within the time specified in Coastal Zone Land Use Ordinance Section 23.02.050.
   b. Phase 2 shall consist of construction of the remaining five (5) concrete pads.

Approved Plans

3. Construction of the project shall conform to the approved site plans, grading plans and other plans approved by state and local agencies. The applicant shall submit a construction permit application to the Dept of Planning and Building for review and approval for all elements of the project prior to commencement of any construction activities that are not directly regulated solely by the Nuclear Regulatory Commission.

Other Agency Approvals

4. **Prior to issuance of a construction permit**, the applicant shall submit evidence to the Dept of Planning and Building, to the satisfaction of the Director, that the applicant has secured necessary permits from the following agencies:

   a. California Dept of Forestry/County Fire Department
   b. California Regional Water Quality Control Board
   c. California Dept of Fish and Game
   d. Air Pollution Control District
   e. Environmental Health
   f. Other agencies that may have permitting authority for the project or at the site.

Fire Safety

5. **Prior to issuance of a construction permit**, the applicant shall submit evidence to the Dept of Planning and Building that it has complied with the following terms of the letter of February 26, 2004 from CDF/County Fire :

   Pages 2-3, Items b through e;
   Page 7, Items l, m and n.

6. **Prior to use of the storage pads**, the applicant shall obtain final inspection and approval from CDF of all required fire/life safety measures.

Services

7. **Prior to issuance of construction permit**, the applicant shall submit evidence that there is adequate water to serve the proposal on the site.

8. **Prior to issuance of construction permit**, the applicant shall submit evidence that a septic system, adequate to serve the proposal, can be installed on the site.

Drainage and Erosion Control

9. **Prior to issuance of a construction permit**, a **Drainage and Polluted Runoff Control Plan** shall be prepared by a registered civil engineer, or other qualified professional approved by the County Engineer, and submitted for review and approval by the County Department of Planning and Building. This plan shall address both temporary and final Best Management Practices (BMPs) and shall be prepared in accordance with the San Luis Obispo County Standard Improvement Specifications and Drawings. In addition to the above stated Applicant-proposed mitigation measures, the Drainage and Polluted Runoff Control Plan shall include:

   a. Earth or paved interceptors and diversions shall be installed at the top of cut or fill slopes where there is a potential for erosive surface runoff.
   b. Energy dissipaters shall be installed to reduce the velocity of runoff.
   c. Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
   d. Revegetation of all surfaces disturbed by vegetation removal, grading, haul roads, or other construction activity shall occur within 30 days after completion of grading, unless covered with impervious or other improved surfaces authorized by approved plans.
   e. Runoff from all roofs, parking areas, driveways and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media devices. The filter elements shall be designed to 1) trap sediment, particulates, and other solids, and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff in excess of this standard from the building site in a non-erosive manner.
   f. The plan shall include provisions for maintaining the drainage and infiltration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicant or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the

commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Department of Planning and Building to determine if an amendment or new Coastal Development Permit is required to authorize such work.

g. All provisions in the drainage and runoff control plan shall be consistent with other DCPP plans, such as the existing SWPPP.

10. Grading operations shall be conducted to prevent damaging effects of erosion, sediment production, and dust on the site and on adjacent areas.

11. Uncontrolled drainage at the proposed parking lot fill area (Soil Disposal Site 2) shall be remediated to reduce gully erosion, sedimentation into the Pacific Ocean, and potential seacliff slope instability. The brow berm along the seaward side of the disposal area shall be reinforced to increase the surface flow capacity and prevent overtopping onto the adjacent coastal bluff. Surface runoff from the southern portion of the disposal area, which currently flows into an armored overflow swale, shall either be diverted along the reinforced brow berm or transmitted through a corrugated metal pipe (CMP) downdrain to the base of the adjacent seacliff. A velocity dissipater shall be installed at the end of the downdrain to reduce beach erosion.

12. Sedimentation basins and traps installed by the Applicant as a BMP shall be inspected and cleaned. Silt fences shall be inspected monthly during dry periods, during heavy downpours, and immediately after each rainfall. Sediment must be removed when more than 1/3 filled, until vegetation is reestablished in the area of the disturbed soil. Straw bales shall similarly be inspected monthly during the rainy season, during heavy downpours, weekly, and after each rain. Sediment shall be removed when it reaches a depth of 6 inches, until vegetation is reestablished.

Prior to issuance of a construction permit, the applicant shall submit a proposed Sedimentation Inspection and Maintenance Plan to the Department of Planning and Building for review and approval. At a minimum, the Plan shall include the above listed tasks and the person responsible for the implementation of the Plan with contact information.

13. Although the Applicant has provided a preliminary drainage plan (Figure 3.1-4 of the FEIR), the following shall be included in the Drainage and Polluted Runoff Control Plan (referenced in condition above):

a. Flow lines of surface waters onto and off the site.
b. Existing and finished contours at two-foot intervals or other topographic information approved by the County Engineer.
c. Building pad and roadway elevations, both existing and proposed.
d. Existing and proposed drainage channels including drainage swales, ditches, and

berms.

e. Location and design of any proposed facilities for storage or for conveyance of runoff into indicated drainage channels, including sumps, basins, channels, culverts, ponds, storm drains, and drop inlets.

f. Estimates of existing and increased runoff resulting from the proposed improvements.

g. Proposed erosion and sedimentation control measures.

h. Proposed flood-proofing measures where determined to be necessary by the County Engineer.

i. Measures to minimize increased erosion to the coastal bluff as a result of development.

Geologic Resources

14. Proposed structural fill shall be tested for expansion potential, as defined in Table 18-1 B of the Uniform Building Code. Expansive soil shall not be used as structural fill, unless alternative foundation designs accommodate the use of such soils. Foundation design and structural backfilling shall be completed in accordance with recommendations by a registered geotechnical engineer.

15. **Prior to issuance of a construction permit**, annual average sea cliff retreat rates shall be determined along the headscarp of the Patton Cove Landslide to verify that Soil Disposal Site 2 and the Shore Cliff Road portion of the transport route (Soil Disposal Site 3) are beyond the anticipated sea cliff retreat limits, based on the expected lifespan of the project. Structural setbacks shall be established in accordance with criteria established by the California Coastal Commission (Johnson, in press), which includes a buffer factor added to the established bluff retreat setback. In the event that it is determined that project components would be adversely affected by further encroachment of the landslide, the limits of proposed fill and the road alignment shall be adjusted beyond the established structural setback.

16. Slope inclinometers or a time domain reflectometry (TDR) system shall be installed immediately upslope of the headscarp of the Patton Cove landslide, as well as between the Patton Cove landslide and proposed Soil Disposal Site 2 and Soil Disposal Site 3 (i.e., proposed realigned Shore Cliff Road) during project construction to monitor potential landslide movement during and subsequent to construction. In the event that continued headward migration (i.e., northward migration) of the landslide results in adverse effects to the integrity of Shore Cliff Road, radioactive waste transport shall cease until corrective action can be taken.

17. The large graded benches and culverts located above Reservoir Road shall be cleaned of debris during and following severe rainfall events to avoid a buildup of sediments.

18. **Prior to issuance of a construction permit**, logic tree analyses completed for the LTSP (PG&E 1988) shall be refined to incorporate earthquake data that has been derived since publication of that document. The Design Earthquake for the proposed ISFSI site shall be adjusted as necessary and incorporated into the structural design of the facility

Biological Resources

19. **Prior to issuance of a construction permit**, and in addition to Applicant proposed revegetation measures, the Applicant shall prepare and implement a revegetation plan approved by SLO County that will provide for long-term stabilization and revegetation of areas temporarily disturbed during construction but not developed as part of the ISFSI site. The plan shall provide for development of long-term native plant cover compatible with surrounding areas of undisturbed native vegetation and wildlife habitat. The plan shall specify use of local genetic sources of all native plant materials used to avoid genetic contamination of local plant populations. The plan shall include provisions for regular monitoring, maintenance including replacement of plants as needed, exotic species control, and performance assessment by a qualified independent third-party monitor.

20. In addition to Applicant-proposed revegetation measures (above), the Applicant shall prepare and implement a revegetation plan approved by SLO County that will provide for long-term stabilization and revegetation of the soil stockpile areas. The plan shall provide for development of long-term native plant cover compatible with surrounding areas of undisturbed native vegetation and wildlife habitat using local genetic sources of seed or cuttings for all native plant material. The plan shall include provisions for regular monitoring, maintenance including replacement of plants as needed, exotic species control, and performance assessment by a qualified independent third-party monitor.

21. Limits of construction shall be clearly marked with construction fencing and approved by the County prior to grading to ensure that there is no incursion of construction equipment or deposition of materials into habitats outside of the defined construction area. The construction fence shall remain in place for the duration of the construction phase.

22. The revegetation plan specified above shall include measures for collecting seed from the affected population of Nuttall's milk vetch prior to construction and include measures for reestablishing the species on the new cut slopes and the soil disposal areas for implementation after construction. These measures shall be submitted to San Luis Obispo County for review and approval. Reestablishment measures shall include a combination of direct seeding and transplantation of container plants grown from the seed. Seed may be collected from adjacent areas onsite if sufficient seed is not available from the plants that would be removed by construction. A quantity of seed shall be kept in reserve to grow plants for subsequent plantings, if necessary. Provisions for regular monitoring, performance assessment by a qualified independent third-party monitor and remedial action, if necessary, shall be included with the plan.

23. Potential impacts of pollutant runoff will be minimized further by implementation of the following BMPs in addition to the BMPs proposed by the Applicant for pollutant control. All BMPs shall be checked at least once daily during the rainy season and maintained immediately when function has become impaired. Inspections of BMP function shall include checks during rainfall events.

24. All chemicals, including fuel and lubricants, shall be stored in covered and contained areas. All spills shall be cleaned up immediately and reported in compliance with applicable regulation.

Noise

25. Provide advance notice about project construction to residents in sensitive receptor areas in Avila Beach by mail and newspaper. The announcements shall state when construction will be scheduled. It shall also provide tips on reducing noise intrusion (e.g. closing windows facing the travel routes).

Traffic/Circulation

26. All project-related traffic shall be restricted from travel on Avila Beach Drive during peak season (e.g., May–August) evening peak hours of between the peak 4:00 P.M.—7:00 P.M. In addition, all project-related traffic shall be restricted from travel during peak season (e.g., May–August) weekends between hours of 10:00 A.M. and 5:00 P.M.

27. **Prior to issuance of a construction permit**, a Traffic Control Plan shall be prepared to detail specific roadway construction information; road surface maintenance; pedestrian/bicycle circulation and traffic safety; parking limitations; road use restrictions; emergency response procedures; signing for closures; and public notification identifying location, scheduling and duration of construction spread. The management plan shall also include road repair measures to ensure restoration of all roads disturbed by construction activities. This management plan shall be finalized and approved by the appropriate agencies, as designated by the lead agencies. Notification that the traffic control plan is completed should be made to the Port of San Luis and to other interested neighbors.

28. Construction and delivery traffic shall be limited to the roadways and the DCPP location and shall not utilize other locations, such as the Port of San Luis parking lot, for temporary staging or waiting periods. Contracts with construction equipment and materials contractors shall include language to this extent.

29. When deciding on scheduling of construction, the Applicant shall coordinate with Applicants of other projects in the Avila Beach area and schedule construction in a way to avoid as much as feasible overlapping with other construction projects. **Prior to issuance of a construction permit**, the applicant shall submit evidence to the Department of

Planning and Building that the required coordination has been completed

30. Evaluate feasibility of scheduling Phase 2 construction (the remaining 5 ISFSI pads) as early as feasible to avoid cumulative traffic as the population and tourist visits of the area approaches buildout and therefore maximum traffic.

Air Quality

31. In coordination with the SLO APCD, the Applicant shall implement the following APCD standard dust reduction measures during construction where applicable:

    a. Reduce the amount of the disturbed area where possible.
    b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible.
    c. All dirt stock-pile areas should be sprayed daily as needed.
    d. Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities.
    e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast-germinating native grass seed or other applicable seed, and watered until vegetation is established.
    f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD.
    g. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders or other applicable methods of dust reduction are used.
    h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.
    i. All trucks hauling dirt, sand, soil, or other loose materials offsite or on public roadways are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114. This measure has the potential to reduce PM_{10} emissions by 7–14%.
    j. Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site and proceeding to a public roadway. This measure has the potential to reduce PM_{10} emissions by 40–70%.
    k. Keep streets swept at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible. This measure has the potential to reduce PM_{10} emissions by 25–60%. All

PM_{10} mitigation measures required should be shown on grading and building plans.

l. The contractor or Applicant should designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to land use clearance for finish grading of the structure.

32. **Prior to issuance of a construction permit**, the Applicant shall prepare a Diesel Combustion Emission Control Plan to ensure adequate control of the potential diesel emissions during project construction phase. The Plan shall be submitted to APCD for review and approval. The Plan shall include and identify specifics of implementation of the following standard NOx and ROC reduction measures:

a. Use of Caterpillar pre-chamber diesel engines (or equivalent) together with proper maintenance and operation to reduce emissions of NOx where feasible.
b. Electrify equipment where feasible.
c. Maintain all fossil-fueled equipment in tune per manufacturer's specifications.
d. Encourage use of catalytic converters on gasoline-powered equipment.
e. Substitute diesel-powered equipment with gasoline-powered equipment, where feasible.
f. Implement activity management techniques as described below.
g. Use compressed natural gas (CNG) or propane powered portable equipment (e.g., compressors, generators, etc.) on site instead of diesel-powered equipment, where feasible.
h. All off-road and portable diesel powered equipment, including but not limited to bulldozers, graders, cranes, loaders, scrapers, backhoes, generator sets, compressors, auxiliary power units, shall be fueled exclusively with CARB certified motor vehicle diesel fuel. Off-road equipment may use tax exempt motor vehicle fuel if not operated on public roads.
i. Maximize to the extent feasible, the use of diesel construction equipment meeting the CARB's 1996, or newer, certification standard for off-road heavy-duty diesel engines.

33. Because potential NOx emissions are over the lower quarterly threshold (over 2.5 tons), CBACT shall be used to mitigate combustion emissions from heavy-duty construction equipment such as but not limited to the following:

a. Install a minimum of five (5) diesel oxidation catalysts (DOC), or a minimum of one (1) catalyzed diesel particulate filter (CDPF) on the pieces of construction equipment of highest use at the site. The exact number of each of the CDPFs and DOCs, and the equipment on which they will be installed shall be determined in

coordination with the SLO APCD staff and listed in the Diesel Combustion Emission Control Plan. The Plan shall be developed as soon as practicable in order to place orders for the CDPFs and DOCs early to avoid any project delays.

34. The Applicant shall implement activity management techniques during construction, as presented below:

    a. The Construction Activity Management Plan shall be prepared and submitted to the APCD for approval designed to minimize the amount of large construction equipment operating during any given time period;
    b. Scheduling of construction truck trips during non-peak hours to reduce peak hour emissions;
    c. Limiting the length of the construction work-day period, if necessary;
    d. Phasing of construction activities, if appropriate.

35. **Prior to issuance of a construction permit**, the Applicant shall conduct a geological evaluation of the soils that would be disturbed during construction to determine if naturally occurring asbestos is present at the project site. The geologic evaluation shall be conducted as per SLO APCD requirements for such evaluations. If asbestos-containing rocks are present, then an Asbestos Dust Mitigation Plan shall be prepared and submitted to the APCD for review and approval. All construction work shall be conducted accordingly to this plan. Preparation and implementation of an Asbestos Health and Safety Program maybe required by the APCD.

Cultural Resources

36. **Prior to issuance of construction permits**, a Construction Treatment Plan shall be developed by a County-qualified archaeologist funded by the Applicant for review and approval by the County. The Plan shall be implemented to ensure that any new discoveries are adequately recorded, evaluated, and if significant, mitigated. The Plan minimally shall describe:

    a. Procedures for notifying the County and other involved or interested parties in the event of a new discovery;
    b. Procedures that would be used to record, evaluate, and mitigate new discoveries with a minimum of delay;
    c. Procedures that would be followed in the event of discovery of disturbed as well as intact human burials and burial-associated artifacts.

37. If unknown cultural resources are encountered during project construction activities, work shall be stopped immediately and temporarily redirected until a County-qualified archaeologist is retained to determine the potential significance of the find pursuant to a Phase 2 investigation, which shall be funded by the Applicant. If the remains are

prehistoric, a local Native American observer shall be retained by the Applicant to monitor the archaeological excavation. If the remains are found to be significant, they may be subject to a Phase 3 data recovery mitigation program that shall be funded by the Applicant. The County-qualified archaeologist shall evaluate the significance of all previously unknown cultural resources encountered during construction and determine appropriate mitigation.

Miscellaneous

38. **Prior to issuance of a construction permit**, the applicant shall pay all applicable school and public facilities fees.

39. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050.

Mitigation Monitoring

40. Prior to issuance of a construction permit for each phase, the applicant shall submit a monitoring program (or environmental quality assurance plan) subject to approval by the appropriate jurisdictional authorities (e.g. County of San Luis Obispo Department of Planning and Building; Air Pollution Control District). The monitoring plan shall include the following:

    - Designation of the Applicant's environmental monitor.
    - County, state and federal permit conditions and method of compliance.
    - Schedule of monitoring during construction.
    - Chain of command of the environmental monitoring.
    - Training program for all construction crew members.
    - Submittal of weekly monitoring reports (unless otherwise directed by the Department) during construction and preparation of a completion report after construction as well as other monitoring documentation requirements specified in the individual measures contained in the Final EIR.
    - County Environmental monitor has full authority to stop work in the event of non-compliance with the conditions of this approval.
    - Submittal of annual reports and completion report indicating compliance with conditions conducted following completion of construction activities.
    - Provisions for access to the site.

41. Prior to application for a construction permit, the applicant shall provide funding for retention of a County Environmental Monitor. This monitor shall be responsible for verifying that all Applicant-sponsored monitoring conforms to the requirements of the Final EIR and any other County Conditions of Approval. The County Environmental

Monitor will be the liaison between the County of San Luis Obispo Environmental Coordinator and the Applicant and the Applicant's environmental monitors.

Decommissioning

42. Subsequent to the lapse of the license for the facility, the project site will be decommissioned in compliance with federal, state and local law.

Public Shoreline Access

43. **At the decommissioning of the Plant,** the applicant shall offer for dedication to the public in a form approved by the Director of the Dept of Planning and Building and County Counsel:

    a. a public access easement on the existing Diablo Canyon access road from the Avila Beach Drive plant entrance, north to the boundary of the Montana de Oro State Park that shall be a minimum of 50 feet wide.
    b. a lateral access easement from the toe of the bluff to mean high tide line from the property's southern boundary line to the northern boundary.
    c. vertical access easements from the existing road to the toe of bluff at one mile intervals of coastline as approved by the Director of Planning and Building.

    The offers of dedication of public access shall remain valid but not be accepted until the license for the subject project has lapsed and other radioactive components on the project site have been removed or other operational licenses have lapsed. Because offers of dedication can expire, in no case shall the offer of dedication lapse prior to the year 2030.

EXHIBIT NO. 3
APPLICATION NO.
A-3-SLO-04-035

EXHIBIT 3 – CITED LUP POLICIES

APPEAL ISSUE #1 – PUBLIC ACCESS

Section 23.04.420 states, in part: "Development within the coastal zone between the first public road [and] the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act."

Section 23.04.420(3): "Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
(A) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
(B) The site already satisfies the provisions of subsection (4) of this section; or
(C) Agriculture would be adversely affected..."

Section 23.04.420(4), states, in part: "(A)(ii): In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, an accessway shall be provided for each mile of frontage...
(A)(iv): The applicable approval body may require accessways in addition to those required by this section where the approval body finds that a proposed development would, at the time of approval or at a future date, increase pedestrian use of any adjacent accessway beyond its capacity.
(B) Accessways shall be a minimum width of five feet in urban areas and ten feet in rural areas.
(C) All new development shall provide a lateral access dedication of twenty-five feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than twenty-five feet, lateral access shall extend from the mean high tide to the toe of the bluff."

Section 23.04.420(5): "The type and extent of access to be dedicated, and/or constructed and maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of land use permit approval, as provided by this section.
(A) Dedication: shall occur before issuance of construction permits or the start of any construction activity not requiring a permit;
(B) Construction of improvements: shall occur at the same time as construction of the approved development, unless another time is established through conditions of land use permit approval;
(C) Opening access for public use: no new coastal access required by this section shall be opened or otherwise made available for public use until a public agency or private association approved by the county agrees to accept responsibility for maintenance of the accessway and any liability resulting from public use of the accessway;
(D) Interference with public use prohibited: following an offer to dedicate public access pursuant to subsection (5)(A) of this section, the property owner shall not interfere with use by the public of the areas subject to the offer before acceptance by the responsible entity."

Section 23.04.420(7): "Where public coastal accessways are required by this section, approval of a land division, or land use permit for new development shall require guarantee of such access through deed restriction, or dedication of right-of-way or easement. Before approval of a land use permit or land division, the method and form of such access guarantee shall be approved by county counsel, and shall be recorded in the office of the county recorder, identifying the precise location and area to be set aside for public access. The method of access guarantee shall be chosen according to the following criteria:
(A) Deed restriction: shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the public access area, subject to approval by the planning director;
(B) Grant of fee interest or easement: shall be used when a public agency or private organization approved by the planning director is willing to assume ownership, maintenance and liability for the access;
(C) Offer of dedication: shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for accessway maintenance and liability. Such offers shall not be accepted until maintenance responsibility and liability is established;
(D) Procedures for open space easements and public access documents: pursuant to Section 13574 of Title 14 of the California Administrative Code, all land use permits and tentative subdivision maps subject to conditions of approval pertaining to public access, open space, agricultural or conservation easements shall be subject to the following procedures:
(i) All legal documents shall be forwarded to the executive director of the coastal commission for review and approval as to the legal adequacy and consistency with the requirements of potential accepting agencies,
(ii) The executive director of the coastal commission shall have fifteen working days from the receipt of the documents in which to complete the review and to notify the applicant and the county of recommended revisions, if any,
(iii) If the executive director of the coastal commission has recommended revisions to the applicant, the land use permit shall not become effective pursuant to Section 23.02.034(4) of this title until the deficiencies have been resolved to the satisfaction of the executive director,
(iv) The land use permit may become effective (Section 23.02.034(4)) upon expiration of the fifteen working day period if the coastal commission has not notified the applicant and the county that the documents are not acceptable."

Public Access (continued):

Section 23.04.420(8): "Coastal accessways required by this section or by planning area standards of the land use element shall be physically improved as provided by this subsection. The need for improvements to any accessway shall be considered as part of land use permit approval, and responsibility for constructing the improvement shall be borne by the developer or consenting public agency. After construction, maintenance and repair may be accomplished by a public agency or by a private entity approved by the applicable review body taking action on the project land use permit.
(A) Typical Improvements That May Be Required. The extent and type of improvements and support facilities that may be required may include but are not limited to drainage and erosion control measures, planting, surfacing, structures such as steps, stairways, handrails, barriers, fences or walls, benches, tables, lighting, parking spaces for the disabled, safety vehicles or general public use, as well as structures such as restrooms or overlooks.
(B) Type and Extent of Improvements -- Required Findings. The improvements described in subsection (8)(A) of this section shall be required to an extent where such improvements:
Are necessary to either assure reasonable public access, protect the health and safety of access users, assure and provide for proper long-term maintenance of the accessway, or protect the privacy of adjacent residents;
Are adequate to accommodate the expected level and intensity of public use that may occur;
Can be properly maintained by the approved maintenance entity;
Incorporate adequate measures to protect the privacy and property rights of adjoining property owners and residents."

Section 23.04.420(9): "Where required through land use permit or tentative subdivision map approval, signs installed in conjunction with accessways shall conform to the following standards:
(A) Sign Design. Accessway signs shall use white letters on a brown background. The number and dimensions of signs are to be determined through land use permit review.
(B) Identification Signs. Shall contain the words "COASTAL ACCESS" in three-inch letters at the top of the sign, as well as the name of the accessway, if any, and indicate if there are any hazards or rare or endangered species.
(C) No Trespass Signs. Shall contain the words "RESPECT PRIVATE PROPERTY - NO TRESPASSING."
(D) Hazard Signs. Shall be located at the tops of bluffs or cliffs.
(E) Parking Area Signing. Each parking area shall be posted in a location visible from the public road with a sign that is between two and four square feet in area, stating: "PARKING FOR PUBLIC COASTAL ACCESS." Lettering shall be a minimum of two inches high and clearly legible."

Section 23.04.420(11): "In reviewing a proposed accessway, the applicable review body shall consider the effects that a public accessway may have on adjoining land uses in the location and design of the accessway. When new development is proposed, it shall be located so as not to restrict access or to create possible privacy problems. Where feasible, the following general criteria shall be used in reviewing new access locations, or the location of new development where coastal access considerations are involved:
(A) Accessway locations and routes should avoid agricultural areas, sensitive habitats and existing or proposed residential areas by locating near the edge of project sites;
(B) The size and location of vertical accessways should be based upon the level and intensity of existing and proposed access;
(C) Review of the accessway shall consider: safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvements necessary to provide for access;
(D) Limiting access to pass and repass should be considered where there are nearby residences, where topographic constraints make the use of the beach dangerous, where there are habitat values that can be disturbed by active use. (Ord. 2715 § 70, 1995; Ord. 2344 § 1 (Exh. A) (part), 1988)"

APPEAL ISSUE #2 – GEOLOGIC HAZARDS, EROSION

Section 23.04.118: "New development or expansion of existing uses proposed to be located adjacent to a beach or coastal bluff shall be located in accordance with the setbacks provided by this section instead of those provided by Sections 23.04.110 or 23.04.112. The required setback shall be the larger of the two required by subsections (1) and (2) of this section.
(1) Stringline Setback Method. Where fifty percent of the lots adjacent to the coastline within three hundred feet of the site are developed at the time of application, no part of a proposed new structure, including decks, shall be located closer to the seaward property line of the site than the greatest distance determined by either of the following:
(A) A line between the most seaward portions of the structures on the adjacent lots; or
(B) Where there is substantial variation of land from between adjacent lots, the average setback of structures on the adjoining lots shall be used.
(2) Bluff Retreat Setback Method. New development or expansion of existing uses on blufftops shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of seventy-five years without construction of shoreline protection structures that would in the opinion of the planning director require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that

Geology, Erosion (continued):

indicates that the bluff setback is adequate to allow for bluff erosion over the seventy-five-year period. The report shall accompany the land use permit application, and shall contain the following information:
(A) Historic, current and foreseeable cliff erosion, including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs, where available, and possible changes in shore configuration and sand transport;
(B) Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site and the proposed development;
(C) Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features such as bedding, joints, and faults;
(D) Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
(E) Wave and tidal action, including effects of marine erosion on sea cliffs;;
(F) Ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of sewage effluent and irrigation water to the groundwater system; alterations in surface drainage);
(G) Potential effects of seismic forces resulting from a maximum credible earthquake;
(H) Effects of the proposed development including siting and design of structures, septic system, landscaping, drainage, and grading, and impacts of construction activity on the stability of the site and adjacent area;
(I) Potential erodibility of the site and mitigation measures proposed to minimize erosion problems during and after construction. Such measures may include but are not limited to landscaping and drainage design;
(J) The area of demonstration of stability shall include the base, face, and top of all bluffs and cliffs. The extent of the bluff top considered should include the area between the face of the bluff and a line described on the bluff top by the intersection of a plane inclined a 20-1/4 degree angle from the horizontal passing through the toe of the bluff or cliff, or fifty feet inland from the edge of the cliff or bluff, whichever is greater;
(K) Any other factors that may affect slope stability."

APPEAL ISSUE #3 – GEOLOGIC HAZARDS, SEISMIC

Section 23.07.084: "All land use permit applications for projects located within a geologic study area (except those exempted by Section 23.07.082) shall be accompanied by a report prepared by a certified engineering geologist and/or registered civil engineer (as to soils engineering), as appropriate. The report shall identify, describe and illustrate, where applicable, potential hazard of surface fault rupture, seismic shaking, liquefaction or landslide, as provided by this section. Provided, however, that no report is required for an application located in an area for which the county engineer determines that sufficient information exists because of previous geology or soils reports. Where required, a geology report shall include:
(1) A review of the local and regional seismic and other geological conditions that may significantly affect the proposed use;
(2) An assessment of conditions on or near the site that would contribute to the potential for the damage of a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk or liquefication potential;
(3) Conclusions and recommendations regarding the potential for, where applicable:
(A) Surface rupture or other secondary ground effects of seismic activity at the site,
(B) Active landsliding or slope failure,
(C) Adverse groundwater conditions,
(D) Liquefaction hazards;
(4) Recommended building techniques, site preparation measures, or setbacks necessary to reduce risks to life and property from seismic damage, landslide, groundwater and liquefaction to insignificant levels. (Ord. 2715 § 88, 1995; Ord. 2383 § 45, 1988: Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.086: "All uses within a geologic study area are to be established and maintained in accordance with the following, as applicable:
(1) Grading. Any grading not otherwise exempted from the permit requirements of Sections 23.05.020 et seq. is to be performed as engineered grading under the provisions of those sections.
(2) Seismic Hazard Areas. As required by California Public Resources Code Section 2621, et seq. and California Administrative Code Title 14, Sections 3600, et seq. no structure intended for human occupancy shall be located within fifty feet of an active fault trace within an earthquake fault zone.
(3) Erosion and Geologic Stability. New development shall insure structural stability while not creating or contributing to erosion, sedimentation or geologic instability. (Ord. 2742 § 12, 1995; Ord. 2344 § 1 (Exh. A) (part), 1988)"

APPEAL ISSUE #4 – MARINE ENVIRONMENT AND WATER QUALITY

Section 23.05.036 states, in part: "(a) Sedimentation and Erosion Control Plan Required. Submittal of a sedimentation and erosion control plan for review and approval by the county engineer is required when:
(1) Grading requiring a permit is proposed to be conducted or left in an unfinished state during the period from October 15th through April 15th;
(2) Land disturbance activities, including the removal of more than one-half acre of native vegetation are conducted in geologically unstable areas, on slopes in excess of thirty percent on soils rated as having severe erosion hazard, or within one hundred feet of any watercourse shown on the most current seven and a half minute USGS quadrangle map;
(3) The placing or disposal of soil, silt, bark, slash, sawdust or other organic or earthen materials from logging, construction and other soil disturbance activities above or below the anticipated high water line of a watercourse where they may be carried into such waters by rainfall or runoff in quantities deleterious to fish, wildlife or other beneficial uses.
When a sedimentation and erosion control plan is required, none of the activities described in subsection (a) (1) through (3) above shall be commenced until such plan is approved by the county engineer pursuant to this section.
(b) Sedimentation and Erosion Control Plan Preparation and Processing. Sedimentation and erosion control plans shall address both temporary and final measures and shall be submitted to the county engineer for review and approval. When such plans are required, they shall be prepared by a registered civil engineer or other qualified professional approved by the county engineer. Such plans shall be prepared in accordance with the San Luis Obispo County Standard Improvement Specifications and Drawings. Sedimentation and erosion control plans may be incorporated into and approved as part of a grading, drainage or other improvement plan, but must be clearly identified as a sedimentation and erosion control plan. Selection of appropriate control measures shall be based upon evaluation of project design, site conditions, pre-development erosion rates and the environmental sensitivity of adjacent areas.
(c) Plan Check, Inspection, and Completion. Where required by the county engineer, the applicant is to execute a plan check and inspection agreement with the county and the sedimentation and erosion control facilities inspected and approved before a certificate of occupancy is issued..."

Section 23.05.040 states: "Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff and resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development. The standards of Sections 23.05.042 through 23.05.050 are applicable to projects and activities required to have land use permit approval. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.05.042 states: "No land use or construction permit (as applicable) shall be issued for a project where a drainage plan is required, unless a drainage plan is first approved pursuant to Section 23.05.046. Drainage plans shall be submitted with or be made part of any land use, building or grading permit application for a project that:
(1) Involves a land disturbance (grading, or removal of vegetation down to duff or bare soil, by any method) of more than forty thousand square feet; or
(2) Will result in an impervious surface of more than twenty thousand square feet; or
(3) Is subject to local ponding due to soil conditions and lack of identified drainage channels; or
(4) Is located in an area identified by the county engineer as having a history of flooding or erosion that may be further aggravated by or have a harmful effect on the project; or
(5) Is located within a flood hazard (FH) combining designation; or
(6) Involves land disturbance or placement of structures within fifty feet of any watercourse shown on the most current USGS seven and a half minute quadrangle map; or
(7) Involves hillside development on slopes steeper than ten percent; or
(8) May, by altering existing drainage, cause an on-site erosion or inundation hazard, or change the off-site drainage pattern, including but not limited to any change in the direction, velocity or volume of flow, or
(9) Involves development on a site adjacent to any coastal bluff. (Ord. 2715 § 71, 1995; Ord. 2344 § 1 (Exh. A) (part), 1988)"

APPEAL ISSUE #5 – SENSITIVE HABITAT AREAS

Section 23.07.160: "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. The requirements of this title for sensitive resource areas are organized into the following:
23.07.162 Applicability of standards;
23.07.164 SRA permit and processing requirements;
23.07.166 Minimum site design and development standards;
23.07.170 Environmentally sensitive habitats;
23.07.172 Wetlands;
23.07.174 Streams and riparian vegetation;
23.07.176 Terrestrial habitat protection;
23.07.178 Marine habitats.
(Ord. 2344 § 1 (Exh. A) (part), 1988)"

Sensitive Habitat Areas (continued):

Section 23.07.162: "The standards of Sections 23.07.160 through 23.07.166 apply to all uses requiring a land use permit that are located within a sensitive resource area combining designation. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.164: "The land use permit requirements established by Chapters 23.03 and 23.08, are modified for the SRA combining designation as follows:
(1) Initial Submittal. The type of land use permit application to be submitted is to be as required by Chapter 23.03 (permit requirements), Chapter 23.08 (special uses), or by planning area standards. That application will be used as the basis for an environmental determination as set forth in subsection (3) of this section, and depending on the result of the environmental determination, the applicant may be required to amend the application to a development plan application as a condition of further processing of the request (see subsection (4) of this section).
(2) Application Content. Land use permit applications for projects within a sensitive resource area shall include a description of measures proposed to protect the resource identified by the land use element (Part II) area plan.
(3) Environmental Determination.
(A) When a land use permit application has been accepted for processing as set forth in Section 23.02.022, it shall be transmitted to the environmental coordinator for completion of an environmental determination pursuant to the California Environmental Quality Act (CEQA).
(B) The initial study of the environmental determination is to evaluate the potential effect of the proposed project upon the particular features of the site or vicinity that are identified by the land use element as the reason for the sensitive resource designation.
(C) Following transmittal of an application to the environmental coordinator, the planning department shall not further process the application until it is:
(i) Returned with a statement by the environmental coordinator that the project is exempt from the provisions of CEQA; or
(ii) Returned to the planning department accompanied by a duly issued and effective negative declaration which finds that the proposed project will create no significant effect upon the identified sensitive resource; or
(iii) Returned to the planning department accompanied by a final environmental impact report approved by the environmental coordinator.
(4) Final Permit Requirement and Processing.
(A) If an environmental determination results in the issuance of a proposed negative declaration, the land use permit requirement shall remain as established for the initial submittal;
(B) If an environmental impact report is required, the project shall be processed and authorized only through development plan approval.
(5) Required Findings. Any land use permit application within a sensitive resource area shall be approved only where the review authority can make the following required findings:
(A) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the sensitive resource area designation, and will preserve and protect such features through the site design;
(B) Natural features and topography have been considered in the design and siting of all proposed physical improvements;
(C) Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource;
(D) The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff. (Ord. 2715 §§ 91, 92, 1995; Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.166: "All uses within a sensitive resource area shall conform to the following standards:
(1) Surfacing mining is not permitted except in areas also included in an energy and extractive resource area combining designation by the land use element. Where the dual designation exists, surface mining is allowed only after approval of surface mining permit and reclamation plan, approved in accordance with Section 23.08.180.
(2) Shoreline areas shall not be altered by grading, paving, or other development of impervious surfaces for a distance of one hundred feet from the mean high tide line, seventy-five feet from any lakeshore, or fifty feet from any streambank, except where authorized through development plan approval. Where the requirements of the California Department of Fish and Game or other public agency having jurisdiction are different, the more restrictive regulations shall apply. Special requirements for setbacks from wetlands, streams, and the coastline are established by Sections 23.07.172 through 23.07.178.
(3) Construction and landscaping activities shall be conducted to not degrade lakes, ponds, wetlands, or perennial watercourses within an SRA through filling, sedimentation, erosion, increased turbidity, or other contamination.
(4) Where an SRA is applied because of prominent geological features visible from off-site (such as rock outcrops), those features are to be protected and remain undisturbed by grading or development activities.
(5) Where an SRA is applied because of specified species of trees, plants or other vegetation, such species shall not be disturbed by construction activities or subsequent operation of the use, except where authorized by development plan approval. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Sensitive Habitat Areas (continued):

Section 23.07.170: "The provisions of this section apply to development proposed within or adjacent to (within one hundred feet of the boundary of) an environmentally sensitive habitat as defined by Chapter 23.11 of this title, and as mapped by the land use element combining designation maps.
(1) 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:
(A) 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;
(B) Recommends conditions of approval for the restoration of damaged habitats, where feasible;
(C) 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;
(D) 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.
(2) Required Findings. Approval of a land use permit for a project within or adjacent to an evironmentally sensitive habitat shall not occur unless the applicable review body first finds that:
(A) 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;
(B) The proposed use will not significantly disrupt the habitat.
(3) Land Divisions. No division of a parcel containing an environmentally sensitive habitat shall be 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.
(4) Development Standards for Environmentally Sensitive Habitats.
(A) New development within or adjacent to the habitat shall not significantly disrupt the resource.
(B) New development within the habitat shall be limited to those uses that are dependent upon the resource.
(C) Where feasible, damaged habitats shall be restored as condition of development approval.
(D) Development shall be consistent with the biological continuance of the habitat.
(E) Grading adjacent to environmentally sensitive habitats shall conform the provisions of Section 23.05.034 (3). (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.172: "Development proposed within or adjacent to (within one hundred feet of the upland extent of) a wetland area shown on the environmentally sensitive habitat maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.
(1) Location of Development. Development shall be located as far away from the wetland as feasible; provided, that other habitat values on the site are not thereby more adversely affected.
(2) Principal Permitted Uses in Wetlands. Hunting, fishing, wildlife management, education and research projects.
(3) Department of Fish and Game Review. The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design.
(4) Wetland Setbacks. New development shall be located a minimum of one hundred feet from the upland extent of all wetlands, except as provided by subsection (4)(B) of this section. If the biological report required by Section 23.07.170 determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by subsection (b) of this section, then a greater setback may be required.
(A) Permitted Uses Within Wetland Setbacks. Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing nonstructural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that:
(i) Alternative routes are infeasible or more environmentally damaging;
(ii) Adverse environmental effects are mitigated to the maximum extent feasible.
(B) Wetland Setback Adjustment. The minimum wetland setback may be adjusted through minor use permit approval, but in no case shall be less than twenty-five feet; provided, that the following findings can be made:
(i) The site would be physically unusable for the principal permitted use unless the setback is reduced;
(ii) The reduction is the minimum that would enable a principal permitted use to be established on the site after all practical design modifications have been considered;
(iii) That the adjustment would not allow the proposed development to locate closer to the wetland than allowed by using the stringline setback method pursuant to Section 23.04.118(1) of this title.
(C) Requirements for Wetland Setback Adjustment. Setbacks established that are less than one hundred feet consistent with this section shall include mitigation measures to ensure wetland protection. Where applicable, they shall include landscaping, screening with native vegetation and drainage controls. The adjustment shall not be approved until the approval body considers the following:
(i) Site soil types and their susceptibility to erosion;
(ii) A review of the topographic features of the site to determine if the project design and site location has taken full advantage of natural terrain features to minimize impacts on the wetland;

Sensitive Habitat Areas (continued):

(iii) The biologists report required by Section 23.07.170 shall evaluate the setback reduction request and identify the types and amount of vegetation on the site and its value as wildlife habitat in maintaining the functional capacity of the wetland;
(iv) Type and intensity of proposed development;
(v) Lot size and configuration and location of existing development.
(5) Site Development Standards.
(A) Diking, Dredging or Filling of Wetlands. Diking, dredging or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 11 of the local coastal plan and shall not be conducted without the property owner first securing approval of all permits required by this title.
(B) Vehicle Traffic. Vehicle traffic from public roads shall be prevented from entering wetlands by vehicular barriers, except where a coastal accessway is constructed and designated parking and travel lanes are provided consistent with this title. The type of barrier and its proposed location shall be identified in the materials accompanying an application for a land use permit and must be approved by the planning director before permit issuance to insure that it will not restrict local and state agencies or the property owner from completing the options necessary to accomplish a permitted use within the wetland.
(C) Open Space Easement Required. A land use or construction permit for a structure larger than one thousand square feet in floor area shall not be approved on a parcel of one acre or larger that contains a wetland, unless the property owner first grants the county or an approved land trust an open space easement or fee title dedication of all portions of the site not proposed for development, as well as the entire wetland. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.174: "Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.
(1) Development Adjacent to a Coastal Stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.
(2) Limitation on Streambed Alteration. Channelization, dams or other substantial alteration of stream channels are limited to:
(A) Water supply projects; provided, that quantity and quality of water from streams shall be maintained at levels necessary to sustain functional capacity of streams, wetlands, estuaries and lakes;
(B) Flood control projects, where such protection is necessary for public safety or to protect existing commercial or residential structures, when no feasible alternative to streambed alteration is available;
(C) Construction of improvements to fish and wild life habitat;
(D) Maintenance of existing flood control channels. Streambed alterations shall not be conducted unless all applicable provisions of this title are met and if applicable, permit approval from the California Department of Fish and Game, the U.S. Army Corps of Engineers, and California State Water Resources Control Board.
(3) Stream Diversion Structures. Structures that divert all or a portion of streamflow for any purpose, except for agricultural stock ponds with a capacity less than ten acre-feet, shall be designed and located to not impede the movement of native fish or to reduce streamflow to a level that would significantly affect the production of fish and other stream organisms.
(4) Riparian Setbacks. New development shall be setback from the upland edge of riparian vegetation a minimum of fifty feet within urban areas (inside the USL) and one hundred feet in rural areas (outside the USL), except as provided in subsection (2) of this section, and as follows:
(A) Permitted Uses Within the Setback. Permitted uses are limited to those specified in Section 23.07.172 (4)(A) (for wetland setbacks); provided, that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and nonstructural agricultural uses.
(B) Riparian Habitat Setback Adjustment. The minimum riparian setback may be adjusted through minor use permit approval, but in no case shall structures be allowed closer than ten feet from a stream bank, and provided the following findings can first be made:
Alternative locations and routes are infeasible or more environmentally damaging; and
Adverse environmental effects are mitigated to maximum extent feasible; and
The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and
The adjustment is the minimum that would allow for the establishment of a principal permitted use.
(5) Alteration of Riparian Vegetation. Cutting or alteration of natural vegetation that protects a riparian habitat shall not be permitted except:
(A) For streambed alterations allowed by subsections (1) and (2) above;
(B) Where no feasible alternative exists;
(C) Where an issue of public safety exists;
(D) Where expanding vegetation is encroaching on established agricultural uses;
(E) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the planning director determines no feasible alternative exists;
(F) To increase agricultural acreage; provided, that such vegetation clearance will:
(i) Not impair the functional capacity of the habitat,
(ii) Not cause significant streambank erosion,
(iii) Not have a detrimental effect on water quality or quantity,
(iv) Be in accordance with applicable permits required by the Department of Fish and Game;
(G) To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of subsection (2) of this section can be made. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Sensitive Habitat Areas (continued):

Section 23.07.176: "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.
(1) 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.
(2) Terrestrial Habitat Development Standards.
(A) Revegetation. Native plants shall be used where vegetation is removed.
(B) 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.
(C) 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 23.07.170(1) shall also include a review of impacts on the habitat that may be associated with trails. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

Section 23.07.178: "The provisions of this section are intended to preserve and protect habitats for marine fish, mammals and birds. Development within or adjacent to marine habitats is subject to the provisions of this section.
(1) Protection of Kelp Beds, Offshore Rocks, Reefs and Intertidal Areas. Development shall be sited and designed to mitigate impacts that may have adverse effects upon the habitat, or that would be incompatible with the continuance of such habitat areas.
(2) Siting of Shoreline Structures. Shoreline structures, including piers, groins, breakwaters, seawalls and pipelines shall be designed or sited to avoid and to minimize impacts on marine habitats.
(3) Coastal Access. Coastal access shall be monitored and regulated to minimize impacts on marine resources. If negative impacts are demonstrated, then the appropriate agency shall take steps to mitigate these impacts, including limitations of the use of the coastal access. (Ord. 2344 § 1(Exh. A) (part), 1988)"

APPEAL ISSUE #6 – WATER AND SEWAGE SERVICE

Section 23.04.430: "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 (1) and (2) of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by resource management system alert levels II or III:
(1) A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line.
(2) Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension. (Ord. 2344 § 1 (Exh. A) (part), 1988)"

APPEAL ISSUE #7 – SCENIC AND VISUAL QUALITIES

LCP Policy 10-1: "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.]"

LCP Policy 10-2: "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.]"

LCP Policy 10-5: "Grading, earthmoving, major vegetation removal and other landform alternations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve consistent grade and natural appearance [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO CHAPTER 23.11 (DEFINITIONS) OF THE CZLUO.]

APPEAL ISSUE #8 – OIL AND HAZARDOUS SUBSTANCE SPILLS

Section 23.06.120: "The storage and use of poisonous, corrosive, explosive and other materials hazardous to life or property are subject to the following standards, where applicable. The standards of these sections are in addition to all applicable state and federal standards, including but not limited to any regulations administered by the county health department, fire department, sheriff's office, agricultural commissioner and air pollution control district. In the event any standards of this chapter conflict with regulations administered by other federal, state, or county agencies, the most restrictive standards apply. (Ord. 2344 § 1 (Exh. A) (part), 1988)