

**MINUTE ITEM:**  
This Calendar Item No. C14  
was approved as Minute Item  
No. 14 by the State Lands  
Commission by a vote of 3  
to 0 at its 4/26/89  
meeting.

CALENDAR ITEM

C 14

A 29, 35

S 14, 18

04/26/89  
PRC 7229  
W 24047  
Fong

AMENDMENT OF CONSTRUCTION START DATE  
GENERAL LEASE - RIGHT-OF-WAY USE

LESSEE: Abalone Unlimited, Inc.  
P.O. Box 730  
Guadalupe, California 93434

AREA, TYPE LAND AND LOCATION:  
A 0.867-acre parcel of tide and submerged land  
in the Pacific Ocean near Santa Maria River,  
San Luis Obispo County.

LAND USE: One intake pipeline and one discharge pipeline  
for the mariculture facility.

TERMS OF CURRENT LEASE:  
Initial period: 25 years beginning January 1,  
1989.  
Surety bond: \$2,000.  
Public liability insurance: Combined single  
limit coverage of \$500,000.  
Consideration: \$2,400 per annum; five-year  
rent review.

BASIS FOR CONSIDERATION:  
Pursuant to 2 Cal. Code Regs. 2003.

STATUTORY AND OTHER REFERENCES:  
A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.  
B. Cal. Code Regs.: Title 2, Div. 3;  
Title 14, Div. 6.

AB 884: N/A.

CALENDAR ITEM NO. C 14 (CONT'D)

OTHER PERTINENT INFORMATION:

1. An EIR was prepared and adopted for this project by the County of San Luis Obispo. The State Lands Commission's staff has reviewed the document and have identified three significant environmental effects which result from that part of the project that the Commission will be considering for approval. These are:
  1. Impact: Planktonic organisms could suffer mortality due to reduction in water quality during construction activities.
  2. Impact: Potentially significant long-term impacts to the Pismo clam population may occur from construction of the intake system; however, probability of occurrence is low due to population depletion.
  3. Impact: Potential erosion of the sandy intertidal habitat from the jetting action of the discharge of 20,000 gpm of seawater.
2. On August 10, 1988, the State Lands Commission authorized the issuance of a General Lease - Right-of-Way Use to Abalone Unlimited, Inc. to construct an intake pipeline and a discharge pipeline for a mariculture facility. The lease provides that construction commence on July 1, 1989.
3. The Lessee, Abalone Unlimited, Inc., has requested that the start-of-construction date of July 1, 1989, be changed to October 1, 1989, in order to comply with its San Luis Obispo County Land Use Permit. The County Land Use Permit prohibits construction during the months of June and July due to the nesting season of the California Least Tern, an endangered bird species.

CALENDAR ITEM NO. C 14 (CONT'D)

EXHIBITS:

- A. Land Description.
- B. Location Map.
- C. EIR Summary.
- D. CEQA Findings/and Statement of Overriding Considerations Adopted by Lead Agency, San Luis Obispo County.
- E. CEQA Findings by State Lands Commission.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN EIR WAS PREPARED AND ADOPTED FOR THIS PROJECT BY THE COUNTY OF SAN LUIS OBISPO AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
2. AUTHORIZE THE AMENDMENT OF GENERAL LEASE - RIGHT-OF-WAY USE, PRC 7229, TO ABALONE UNLIMITED, INC., TO CHANGE THE START-OF-CONSTRUCTION DATE FROM JULY 1, 1989 TO OCTOBER 1, 1989; ALL OTHER TERMS AND CONDITIONS TO REMAIN UNCHANGED; ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

EXHIBIT "A"

LAND DESCRIPTION

W 24047

A strip of tide and submerged land 20 feet wide in San Luis Obispo and Santa Barbara Counties, California, the centerline of said strip being described as follows:

COMMENCING at a point where the County line between San Luis Obispo and Santa Barbara Counties intersects the southerly line of Lot 162 of Rancho Guadalupe as shown on the Record of Survey Map recorded in Book 87 at Page 86, records of Santa Barbara County, said point bears N 55°11'24" W, 829.26 feet from a 2 inch Brass Cap Monument marked "#602, RE 2928 located on said southerly line at the intersection with the easterly line of Lot 161 as shown on said map; thence along said common County line N 37°40'54" W, 3821.16 feet; thence N 52°19'06" E, 545.78 feet to the TRUE POINT OF BEGINNING; thence N 31°17'20" W, 201.14 feet; thence N 53°10'47" W, 499.97 feet; thence N 73°10'47" W, 2399.84 feet to the end of the herein described line.

EXCEPTING THEREFROM any portion thereof lying landward of the ordinary high water mark of the Pacific Ocean.

This description is based on the California Coordinate System of 1927, Zone 5.

END OF DESCRIPTION

PREPARED APRIL 18, 1988 BY BIU 1.

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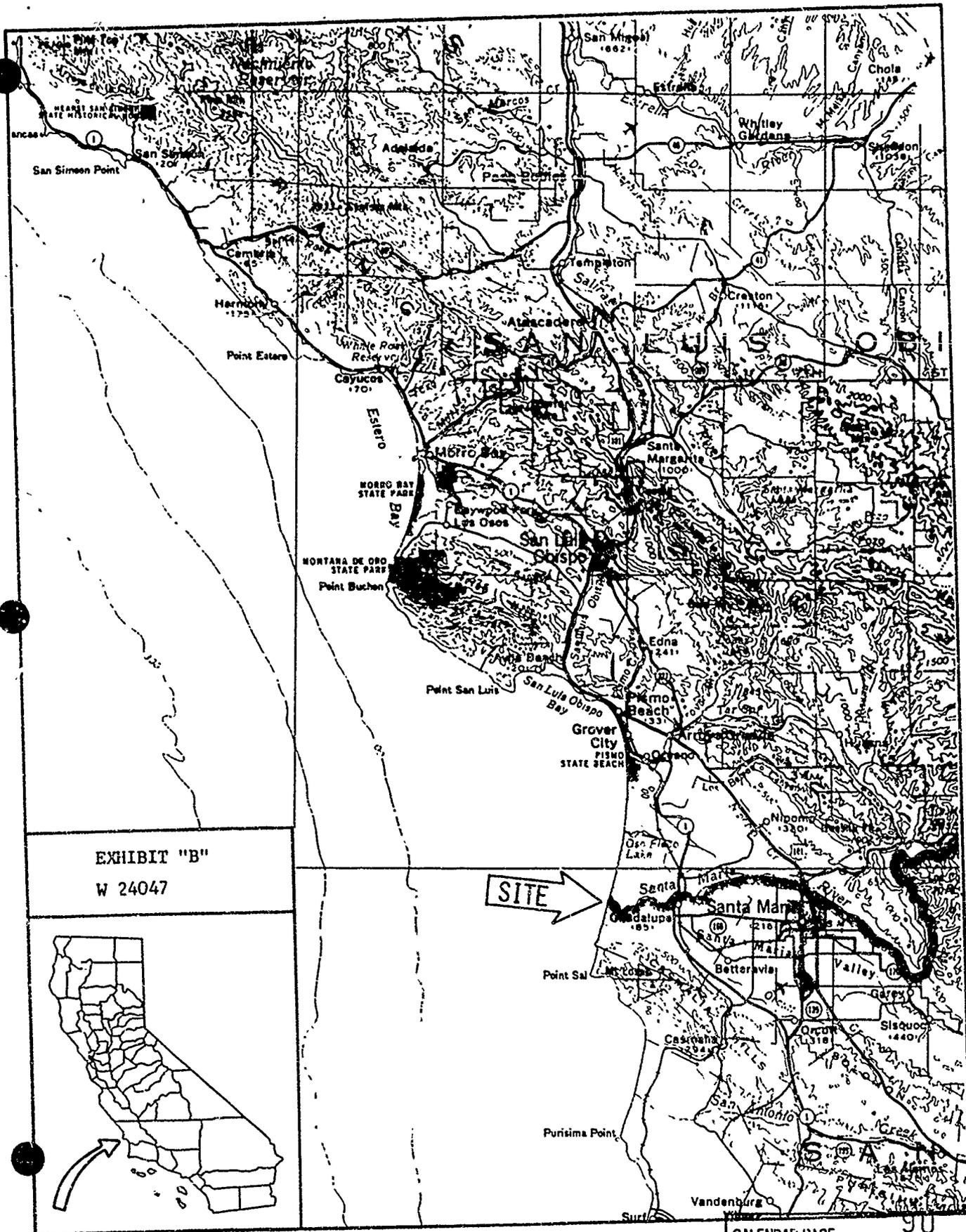


EXHIBIT "B"  
W 24047



SITE →

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## EXHIBIT "C"

### EIR SUMMARY

This section is divided into two components: the first summarizes characteristics of the project site and the proposed development concept, and the second summarizes environmental impacts and recommended mitigation measures for the proposed project.

#### A. PROJECT SYNOPSIS

- o Project Title - Guadalupe Abalone Culture Facility.
- o File Reference - Conditional Use Permit 85-CP-80 CZ  
DER Log # 4869
- o Discretionary Action Requested - Approval of a Conditional Use Permit by the Santa Barbara County Planning Commission for the major portion of the project in Santa Barbara County. Approval of a Development Plan from San Luis Obispo County for the intake structure, reservoir, and access roads. Approval of a Coastal Development Permit and State tide-lands entitlements are also required from the California Coastal Commission and State Lands Commission; from the California Department of Fish and Game for stream alteration and aquaculture permits; and the Regional Water Quality Control Board for discharge permits. A "404" Permit will also be required from the U.S. Army Corps of Engineers for any work in a wetland.
- o Proposed Use - Construction of an abalone culture facility as a commercial venture to satisfy the increasing demand in the seafood industry. The 15.2 acre graded site would include 7.1 acres of abalone growing tanks and raceways, two buildings (14,500 sq ft) for a hatchery and nursery, and a salt water intake and discharge system. The total lease area is 60 acres and includes portions in both Santa Barbara and San Luis Obispo County.
- o Location - At the northern boundary of Santa Barbara County, on the north bank of the Santa Maria River at its mouth.
- o Assessor's Parcel No. - Santa Barbara County portion of the property: 113-020-01 and 113-020-19. San Luis Obispo County portion of the property is within APN 92-041-01.
- o Applicant/Landowner - Applicant: Abalone Unlimited, Inc., c/o Hugh Staton. Landowner: LeRoy Trust, Agri-Comm Management and Marette and Minetti Ranch Company, c/o Clarence Minetti.
- o Project Engineer and Architect - Welch Surveys, Inc.
- o Current Use - Vacant open space used for grazing and natural habitats.
- o Coastal Plan Designation - Open Lands with Environmentally Sensitive Habitat Area overlay.
- o Existing Zoning - RES (Resource Management).

B. SUMMARY OF ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, ALTERNATIVES, AND GENERAL PLAN CONSISTENCY

In accordance with Santa Barbara County's guidelines for implementing CEQA, the summary included in Table 1, on page II-4, identifies significant impacts of the Guadalupe Abalone Culture Facility project for which the County must issue a "statement of overriding considerations." These impacts are significant unavoidable adverse impacts and are identified as being Class I impacts. Section 15093(b) of the State CEQA Guidelines states that:

- "(a) CEQA requires the decision-maker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
- (b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091(a)(2) or (a)(3).
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the Notice of Determination."

This section also identifies Class II impacts as those significant impacts that can be mitigated to insignificant levels; Class III impacts are all impacts found to be insignificant; and Class IV impacts are beneficial impacts of the proposed project.

Class II impacts require the decision makers to make findings under Section 15091 of the State CEQA Guidelines if the project is approved. Section 15091(a) of the Guidelines prohibits decision makers from approving a project for which one or more Class II impacts have been identified unless:

"The public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- (3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subsection (a) shall be supported by substantial evidence in the record.
- (c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives."

The summary table also identifies alternatives to the proposed project. Table 4 in Section V summarizes the consistency of the proposed development concept with adopted County plans and policies. Section VII of this document describes in detail each alternative considered.

Table 1. Summary of Environmental Impacts, Mitigation Measures

Issue	Mitigation Measures	Unavoidable Adverse Impact (Residual Impact)
<p><b>A. CLASS 1 - SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS of the project for which the decision maker must issue a "statement of overriding considerations" under Section 15093 of the State CEQA Guidelines (as amended) if the project is approved.</b></p> <p><u>Terrestrial Biology</u></p>	<p>a. Planting of willows along proposed levee would maintain some forested wetland. Purchase and set aside of equivalent wetland acreage or contribution to a wetlands fund. Development of a restoration plan and bonding to provide for its implementation. Funding of an environmental monitor during construction.</p> <p>b. Transplanting of La Graciosa thistle to another area. Revegetation of disturbed areas with native plants including propagated rare plants and/or their seed. Designation of construction haul road along levee axis.</p> <p>c. None</p>	<p>a. Unavoidable loss of 15.2 acres of wetland at the Santa Maria Rivermouth.</p> <p>b. Loss of habitat for the La Graciosa thistle due to main facilities, but replacement in another area.</p> <p>c. Unavoidable loss of one acre of coastal dune habitat.</p>
<p>c. The reservoir is located in the dunes and will result in the loss of one acre of this rare habitat.</p>	<p>Use of native plants for landscaping. Planting facility to blend in with natural landscape. Use of gravel for parking areas to blend with landscape. Undergrounding of utility lines. Relocation of buildings to a site outside the river plain.</p>	<p>Degradation of natural landscape by intrusion of facility.</p>
<p><u>Visual Resources</u></p>	<p>Intrusion of project into an area of high natural scenic quality with prominent views of ocean, wetlands, and coastal dunes.</p>	

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Table 1. (Continued)

Issue	Mitigation Measures	Unavoidable Adverse Impact (Residual Impact)
<p><b>B. CLASS II - SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS THAT CAN BE FEASIBLY MITIGATED OR AVOIDED, for which the decision maker must make "findings" under Section 15091.</b></p>		
<p><u>Terrestrial Biology</u></p>		
<p>a. Potential excess turbidity in lagoon containing tidewater goby.</p>	<p>a. Construction during low water elevation when flats are exposed.</p>	<p>a. Insignificant.</p>
<p>b. Salt water spillage into freshwater marsh due to accidental pipeline failure.</p>	<p>b. Emergency power cut-off switches for pumps.</p>	<p>b. Insignificant.</p>
<p>c. Impact to nesting of Snow Plover - a candidate species.</p>	<p>c. Time construction to avoid nesting season.</p>	<p>c. Insignificant.</p>
<p>d. Removal of vegetation along pipeline corridors.</p>	<p>d. Reseeding and revegetation, pipeline corridors with native plants.</p>	<p>d. Insignificant.</p>
<p><u>Oceanographic/Marine Biology</u></p>		
<p>a. Planktonic organisms could suffer mortality due to reduction in water quality during construction activities.</p>	<p>a. Construction activities shall avoid peak phytoplankton and zooplankton production periods (June-July and January-February).</p>	<p>a. Insignificant.</p>
<p>b. Potentially significant long-term impacts to the Pismo clam population may occur from construction of the intake system; however, probability of occurrence is low due to population depletion.</p>	<p>b. Bottom survey to determine whether Pismo clam present. Construction of the intake structure should not be during spawning periods (late June to early August); if Pismo clam in area.</p>	<p>b. Insignificant.</p>
<p>c. Potential erosion of the sandy intertidal habitat from the jetting action of the discharge of 20,000 gpm of seawater.</p>	<p>c. Discharge pipeline to be fitted with appropriate diffuser head to minimize both erosion from discharge water and sanding in of discharge piping.</p>	<p>c. Insignificant.</p>

Table 1. (Continued)

Unavoidable Adverse  
Impact  
(Residual Impact)

Mitigation Measures

Issue

B. CLASS II (Continued)

Geologic Hazards/Constraints

a. Potential project impacts may result from slope instability in the planned reservoir area, soil erodibility, potential bearing capacity limitations for structures in the saturated floodplain soils, liquefaction and migration of dune sand in the project area. the regulations of counties of Santa Barbara and San Luis Obispo regulations.

b. The proposed earth levee designed to protect the project from flood inundation may alter stream morphology causing long-term changes in erosion and deposition patterns in the vicinity of the project.

c. Sewage disposal on-site would be limited by shallow groundwater and could adversely impact groundwater quality.

Water Resources

a. Potential groundwater and surface water contamination could occur from leaks or rupture along the seawater intake or return pipelines.

b. Improper screen sizing could cause sand entrainment, leading to abrasion damage to the project pump system.

a. Insignificant.

a. The applicant should prepare a study of slope stability, soil erodibility, bearing capacity and liquefaction potential of the project site, prior to final approval of development plans, and apply appropriate mitigation measures. All grading should be conducted according to

b. The applicant should fund a study of the potential for adverse impacts to the west river bank and potential undercutting of the levee to determine appropriate mitigation measures to protect the bank from erosion.

b. Insignificant.

c. The applicant proposes to construct an on-site sewage disposal system in elevated sand dune deposits near the proposed reservoir site. Site conditions are adequate to accommodate sewage disposal requirements of the project.

c. Insignificant.

a. The applicant should prepare procedures to limit the likelihood of pipeline leak or rupture in addition to clean-up plans in the event a spill or leak of seawater occurs.

a. Insignificant.

b. The applicant should prepare engineering studies of sediment at the intake location to determine proper screen size to prevent pump damage.

b. Insignificant.

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Table 1. (Continued)

Mitigation Measures

Issue

C. CLASS III - IMPACTS FOUND NOT BE SIGNIFICANT.

Marine Biology

a. Marine mammals and shore birds would be precluded from use of the nearshore and intertidal areas during project construction. This would not be a significant impact due to similar suitable habitats present in the region.

b. Planktonic organisms would be entrained in the intake system during operation of the intake pumps. This would not be a significant impact due to the relatively low volume of seawater intake and the planktonic organisms' ability to survive transit through the system.

Archaeology

No potentially significant cultural resources were encountered on-site during an intensive survey. However, alluvium and active sand dunes on site can indicate possible buried cultural resources.

Construction personnel should be alerted to the possibility of encountering cultural resources, and if encountered, work should be halted immediately and a professional archaeologist consulted. Compliance with such measures would be ensured if an environmental compliance coordinator is retained to oversee all initial construction phases.

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Table 1. (Continued)

Issue	Mitigation Measures
<p>C. CLASS III - IMPACTS FOUND NOT BE SIGNIFICANT.</p>	
<p><u>Traffic/Circulation</u></p>	
<p>a. Insignificant project traffic generation and low traffic volumes in the area would not change the current adequate levels of service on the existing road network.</p>	<p>a. The applicant should pay a peak hour trip mitigation fee.</p>
<p>b. Lack of left-turn channelization from Highway 1 onto Thornberry Place would not result in significant project impacts, due to low existing traffic volumes and acceptable sight distances.</p>	<p>b. While not required at this time, left-turn channelization on Highway 1 at Thornberry Place should be discussed with Caltrans for possible future needs.</p>
<p>c. Internal circulation conflicts through the Union Oil Field would be minimal with adequate negotiation with landowners.</p>	<p>c. Bus/vanpool of employees from project entrance to site to reduce traffic volumes on the Union Oil property. Shared road maintenance to be negotiated with Union Oil. County Transportation Department approval of project access plans.</p>
<p><u>Energy</u></p>	
<p>a. Project energy demands of 6.0 to 6.5 million kwh/year would be adequately served by Pacific Gas and Electric.</p>	<p>a. Project should use energy efficient electric pumps for intake system.</p>
<p><u>Housing/Employment/Growth Inducement</u></p>	
<p>a. Project employment is expected to draw from the local labor supply with less than 10% (3.5 persons) likely to come from outside the area. Existing housing in the general vicinity is expected to be adequate to house the employees new to the area. High vacancy rates in south San Luis Obispo would offset lower vacancy rates in Santa Maria area. Area population growth projections would not be significantly affected.</p>	<p>a. County efforts to provide affordable housing in the communities surrounding the project are recommended to reduce the shortage of housing affordable to all area residents.</p>

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Table i. (Continued)

Mitigation Measures

Issue

D. CLASS IV - BENEFICIAL PROJECT IMPACTS

Commercial Abalone Raising

The project would satisfy demands in the seafood industry.

Natural Replenishment

The project would satisfy demands for seed animals for replenishment programs to reestablish the existence of wild, offshore populations.

Employment

The project would create 30-35 new jobs.

E. CONSISTENCY WITH PLANS AND POLICIES

Conflicts with several LCP policies due to intrusion into environmentally sensitive habitat area, and with intent of National Natural Landmark status. Inability to make findings of "no impact" required by RES zone to grant CUP.

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Table 1. (Continued)

II. PROJECT ALTERNATIVES

Alternative	Effect
A. No Project	Elimination of all project related impacts Conforms with land use policies for area. Does not achieve applicant's objectives.
B. Changes in Project Design	
1. Relocation of major facilities within lease area.	1. Current site design minimizes impact on La Graciosa thistle and avoids grading central dune. Other configurations would cause greater effect.
2. Relocate reservoir	2. No change in loss of coastal dune habitat area. Decrease in visual scarring of hillside. Eliminates potential impacts on willows at base of hill. Decreases effort needed to prevent excessive erosion. Increase in elevation may exceed applicant's criteria for pumping height.
C. Alternative Locations	
1. Site A - north of river in San Luis Obispo County. (Application has also been submitted for this site.)	1. Not located in wetlands. Economically feasible (has been proposed by applicant to San Luis Obispo County). Greater disturbance of coastal dune scrub vegetation, which is a significant but mitigatable impact. Unknown impact on cultural resources but high potential for sites. Conforms with land use policies for area. Greater costs due to longer pipelines. Visually screened by existing river vegetation. Fewer geologic constraints than project site.
2. Site B - to the east of project site in similar habitats.	2. Potentially similar wetland habitat as project site, lower population of thistle. Visually screened by existing vegetation. Low potential for cultural resource sites.

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Table 1. (Continued)

II. PROJECT ALTERNATIVES

Alternative	Effect
3. Sites C and D - south and east of river, outside dune systems.	3. Currently in agricultural use, both sites visible from access road to County Park, but not in a significant view area. This impact is mitigable by landscape screening. Unknown effect on cultural resources. Fewer geologic constraints than project site and other alternatives. Requires river crossing of salt water pipelines which may not be feasible. Economic feasibility unknown. Conforms with land use policies for area.

Environmentally Superior Alternative. An alternative location for the main facilities site is the environmentally preferred alternative. Sites A, C, and D are suitable, with Sites C and D slightly preferred, but are potentially not economically feasible. Site A is probably both environmentally and economically feasible.

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EXHIBIT "D"

STATEMENT OF FINDINGS  
ABALONE UNLTD. DEVELOPMENT PLAN  
ED86-154 (D860425:1)

I. THE RECORD

For the purposes of CEQA and the findings identified in Section III, the record of the Board of Supervisors relating to the application includes:

- A. Documentary and oral evidence received and reviewed by the Planning Commission during the public hearing on the project, in addition to that received and reviewed by the Board of Supervisors.
- B. The Final Environmental Impact Report and Supplement prepared for Abalone Unlimited Development Plan which is comprised of the full Environmental Impact Report prepared and circulated in 1986, and the Supplement EIR prepared and circulated in 1987, and all appendices for the above.
- C. Matters of common knowledge to the Commission which it considers, such as:
  - a. The County General Plan, including the Land Use Maps and elements thereof;
  - b. The text of the Land Use Element.
  - c. The County Land Use Ordinance.
  - d. The County Code of San Luis Obispo County.
  - e. The County Environmental Quality Act Guidelines.
  - f. Other formally adopted policies and ordinances.
- D. The Planning Department staff reports, including all attachments, prepared for the September 10, 1987 Planning Commission Hearing and the January 12, 1988 Board of Supervisors Hearing.

II. CERTIFICATION OF THE FINAL EIR AND SUPPLEMENT

The Board of Supervisors makes the following finding with respect to the Abalone Development Plan Final EIR and Supplement.

- A. The Final EIR and Supplement for the Abalone Unlimited Development Plan has been completed in compliance with CEQA and the CEQA Guidelines.
- B. The Final EIR and Supplement and all related public comments and responses have been presented to the Board of Supervisors and the Board of Supervisors has considered the information contained in the Final EIR and Supplement and presented at the public hearings prior to approving the project.

### III. FINDINGS

The Planning Department staff reports (and attachments) dated September 10, 1987 and January 12, 1988 are hereby incorporated by reference into these findings.

#### A. Unavoidable Significant Adverse Impacts

1. Impacts to Vegetation - During grading and construction activities candidate rare and endangered La Graciosa thistle and its habitat would be affected. Development of the project site, especially the ten-foot wide construction corridor for the pipelines, would disturb dense concentrations of the La Graciosa thistle west of the raceway. (La Graciosa thistle is not present at the main building facility site.)

Development of the main building facility would result in the unavoidable loss of approximately 25,000 square feet of coastal dune habitat until the end of the useful life of the project.

The impacts to La Graciosa thistle have been partially mitigated through several Conditions of Approval which have been incorporated into the project. Condition 5 requires that all pipeline routes shall be staked in the field and surveyed by the environmental monitor for rare plants. In addition, this condition requires that the pipeline corridor shall be rerouted around concentrations of such plants. Condition 12 establishes the requirement for the applicant to submit a revegetation plan addressing construction impacts. The plan is to include a propagation program for the La Graciosa thistle. Condition 13 requires that all La Graciosa thistle in danger of being disturbed by development of the project shall be removed and replanted in a similar habitat onsite. This may be only a partial mitigation measure due to the fact that the Supplement points out that replanting is not a proven technology.

The unavoidable loss of approximately 25,000 square feet of coastal dune habitat has been partially mitigated through project revisions and Conditions of Approval. The applicant has eliminated the proposed reservoir from the project description. The reservoir would have disturbed approximately one acre of well developed coastal dune shrub.

The impacts to vegetation are considered acceptable because the project has been revised and all feasible mitigation measures have been required.

B. Adverse Impacts Which Can Be Mitigated to Insignificance

1. Impacts to Wetland Habitat - The raceways are located partially in a transitional wetland habitat of approximately 33 acres. There is disagreement among experts regarding the wetland status of the raceway site. During the public review period of the EIR Supplement, we received letters from both the U.S. Fish and Wildlife Service and the State Department of Fish and Game (see Appendix B).

According to the letter of comment from the Fish and Wildlife Service, (see Appendix B, Final EIR Supplement), the presence of wetland indicator species and seasonally ponded water leads the service to conclude that the raceway area is a wetland. The service further believes that the mitigation proposals for the loss of habitat at the raceway site, conversion of uplands to wetlands, is inappropriate.

Contrary to the opinion of the Fish and Wildlife Service, the Department of Fish and Game indicates that the development of the raceway site will affect less than one acre of ephemeral freshwater wetland habitat. (See Appendix B, Final EIR Supplement). It is the opinion of the Department of Fish and Game that the applicant's proposal to create approximately two acres of additional wetland will adequately mitigate the impact associated with development of the raceway site.

It is clear that there is a disagreement between experts regarding the wetland impacts associated with the project. The California Environmental Quality Act (CEQA) states that disagreement among experts does not render an EIR adequate. Rather, the direction provided by CEQA is that the main points of disagreement should be included in the EIR and that appropriate findings be made.

According to the Final EIR Supplement, the raceway site is an area which is transitional between wetland and upland habitats. The proposed raceway site is at the margin of the description (San Luis Obispo County Land Use Element, Coastal Plan Policies) between a wetland and upland vegetation and contains examples of both. The Final EIR Supplement states that the raceways are to be located partially in a transitional wetland habitat of about 33 acres. The Supplement further states that impacts can be mitigated.

Condition of Approval Number 3 requires that the applicant shall submit an additional detailed wetland study to provide a site specific characterization of the wetland or upland nature of the raceway site. The study and the qualifications of the consultant preparing the study shall be reviewed and approved by the Environmental Coordinator's Office in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service. If the study is determined

to be inadequate, the applicant shall be required to amend the study appropriately. Submittal of the Wetlands Determination required for the Army Corps of Engineers Section 404 permit may be substituted for the above-mentioned study.

Based on the information provided in the Final EIR and Supplement (including letters of comment) it is clear that mitigation of potential wetland impacts will be necessary. These mitigations include replacement by the applicant of acreage of wetland defined by the study that is required by Condition 3; or the applicant shall be required to redesign the raceway site to provide 100 foot setbacks from identified wetland areas. Implementation of these mitigations will reduce the potentially significant impacts to a level of insignificance. In addition to Condition 3, please see conditions 2, 12, 13, and 31.

2. Saltwater Spillage - There is the potential for salt water spillage into the freshwater marsh area due to accidental pipeline failure. The potential occurrence will be adequately mitigated to insignificant levels by installation of emergency power cut-off switches for pumps. Please see Condition 18.
3. Snowy Plover - There is the potential for construction activities to impact the nesting of Snowy Plover, a candidate species. Condition 7 will require that construction activities shall not occur during this nesting period. The suspension of construction activities during this period will adequately mitigate impacts to the nesting Snowy Plover.
4. Dune and Wetland Vegetation - The removal of dune (2.2 acres) and wetland (1.7 acres) vegetation along pipeline corridors has been identified in the Final EIR Supplement as a significant impact. The applicant has agreed to reseed and revegetation of pipeline corridors with native plants. The site specific location of the pipeline alignment will be examined by the Environmental Monitor. Alignment of the pipeline corridor shall be rerouted around rare and wetland species, as to be discussed in the revegetation plan. These measures will mitigate the impact of pipeline construction to insignificant levels. Please see conditions 5, 6, 12, 13, 14, and 30.
5. Pismo Clam Population - Potentially significant long-term impacts to the Pismo Clam population may occur from construction of the intake system. The probability of this occurrence is low due to population depletion. The applicant has agreed to provide a bottom survey which will indicate the presence of Pismo Clams. If present, construction shall not be conducted during the Pismo Clam spawning periods (late July to early August). Please see Condition 7.

3. Planktonic Organisms - Construction activities could result in temporary interference with phytoplankton productivity and zooplankton feeding. This is largely caused by decreased light transparency of water due to suspended sediment. However, the extent of this impact is limited and the distribution of phytoplankton is so highly variable in time and space that this effect is considered insignificant. It should be noted that this assessment is echoed in the environmental analysis for the San Miguel Project, in which pipeline construction in this area was considered an insignificant effect to plankton. Planktonic organisms would be entrained in the intake system during operation of the intake pumps. This would not be a significant impact due to the relatively low volume of seawater intake and the planktonic organisms' ability to survive transit through the system.
4. Other Marine Organisms - Small fish, such as anchovy, surf perch, and various juvenile commercial flatfish, will be entrained through the 1-inch by 2-inch openings in intake. Because of the low numbers of these fish expected to be entrained, this is not considered significant.
5. Traffic/Circulation - Insignificant project traffic generation and low traffic volumes in the area would not change the current adequate levels of service on the existing road network. Vanpooling of employees from the project site will reduce traffic volumes on the Union Oil property.
6. Energy - Project energy demands of 6.0 to 6.5 million kwh/year would be adequately served by Pacific Gas and Electric.
7. Housing/Employment/Growth Inducement - Project employment is expected to draw from the local labor supply with less than 10% (3.5 persons) likely to come from outside the area. Existing housing in the general vicinity is expected to be adequate to house the employees new to the area. High vacancy rates in south San Luis Obispo would offset lower vacancy rates in the Santa Maria area. Area population growth projections would not be significantly affected.

#### IV. ALTERNATIVES

The Final EIR and Supplement studied four project location alternatives. The proposed project is considered to be one of the three environmentally superior alternatives as compared to that originally proposed in Santa Barbara County. The alternative of no reservoir will result in fewer environmental impacts and is the environmentally superior project alternative.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

The unavoidable significant impacts of the project are found to be acceptable due to overriding considerations. It is recognized that the project may result in unavoidable environmental impacts to biological resources. The potential for these impacts to occur is substantially reduced through the redesign of the project and mitigation measures to be included in the project. Specifically, the impact resulting from the loss of coastal dune habitat has been substantially reduced by elimination of the originally proposed reservoir. The reservoir would have resulted in the unavoidable loss of one acre of well-developed coastal dune scrub. Potential impacts to the La Graciosa thistle have been lessened by incorporating into the project a thistle propagation program, flagging of the thistle populations along the pipeline route, and rerouting of the pipeline route in order to avoid dense thistle concentrations.

The project is considered to be one of the three environmentally superior project locations as compared to that originally proposed in Santa Barbara County. The alternative of no reservoir will result in fewer environmental impacts and is the environmentally superior project alternative. This alternative comes closest to meeting the applicant's objectives while minimizing environmental impacts.

In balancing the project benefits against the unavoidable environmental impacts, the Board reaches the following conclusions:

1. Impacts to biological resources have been substantially reduced.
2. The project is considered to be the environmentally preferred alternative as discussed in the Final EIR and Supplement.
3. The project comes closest to meeting the applicants objectives while minimizing environmental impacts.
4. The project could satisfy demands for seed animals for replenishment programs to reestablish the existence of wild, offshore populations of abalone.
5. The project will create 30-35 new jobs.

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EXHIBIT D860425:1A  
CONDITIONS OF APPROVAL

AUTHORIZED USE

1. This approval authorizes establishment of an aquaculture facility. This facility includes a 18,000 square foot main building not to exceed 20 feet in height; a 33-acre raceway; a six-foot high impervious core levee of approximately 2,260 feet in length; and intake and discharge pipelines for saltwater circulation. The use shall be reviewed 20 years from the date of approval to evaluate the compatibility of the project with surrounding uses. Thereafter, the use shall be reviewed at five-year intervals to evaluate compatibility. In the event that the oil facility is no longer operating at the time of project review, the use shall be deemed to be no longer appropriate for the site and shall have six months in which to remove all improvements and begin site restoration.

ENVIRONMENTAL MONITOR

2. The county shall hire a qualified environmental monitor at the applicant's expense to oversee construction activities and mitigation measure implementation. The monitor shall submit a work program to the Planning Department for review and approval prior to issuance of grading/building permits. The work program shall include timing of proposed activities, methods used to monitor activities, criteria for evaluation, and timing of reports to the county Planning Department. The reports shall detail the applicants compliance with conditions of approval and the mitigation measures outlined in the project EIR and supplement. In the event that field conditions warrant changes in design, the environmental monitor shall have the authority to stop work on the project until the re-design has been reviewed and approved by the Planning Department.

CREATION OF WETLAND

3. The applicant shall submit an additional detailed wetland study to provide a site-specific characterization of the wetland or upland nature of the soils and vegetation throughout the raceway site. The study and the qualifications of the consultant preparing the study shall be reviewed and approved by the Environmental Coordinator's Office in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service. If the study is determined to be inadequate, the applicant shall be required to amend the study appropriately. Submittal of the Wetlands Determination required for the Army Corps of Engineers Section 404 Permit may be substituted for the above mentioned study. The applicant shall either replace the acreage of wetland, defined by the additional detailed wetland study,

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at a ratio identified by the State Department of Fish and Game, or the applicant shall redesign the raceway site to provide 100 foot setbacks from areas identified as wetlands (as defined by the additionally required detailed wetland study). The final design of the raceway shall be subject to review and approval by the Planning Department prior to issuance of grading/building permits.

#### CONSTRUCTION

4. The environmental monitor shall oversee all initial grading. If archaeological resources are discovered, a qualified archaeologist shall be contacted and all activity shall cease until further authorized.
5. Pipeline routes shall be staked in the field and surveyed by the environmental monitor for rare plant and wetland species. The pipeline corridor shall be rerouted around concentrations of such plants. Specific location of the pipeline should avoid willow areas as much as feasible.
6. Pipeline construction shall utilize existing roads for access. The construction width shall not exceed ten feet from the side of existing roads, with the exception of an interval along the oil road adjacent to the fresh water ponds where the lines will be buried under the existing road. Pipelines shall be buried three feet deep.
7. Construction activities shall not occur during spring months (May 1 - July 31). If a bottom survey indicates the presence of Pismo Clams, construction shall not be conducted during Pismo Clam spawning periods (late July to early August).
8. Excavation for burial of the pipelines at the foot of dune slopes shall not disturb the dune slopes. - The environmental monitor shall oversee all excavation.
9. No borrow areas for "extra fill" shall be permitted without review and approval by the Planning Department of precise plans depicting the exact location and extent of excavation.
10. The main building site shall be graded first and shall serve as a staging area for equipment, pipes, and other materials.
11. The Division of Oil and Gas (DOG) shall be consulted prior to issuance of grading permits. The applicant shall submit detailed plans and shall work with DOG to locate any wells within areas proposed for construction or grading. If necessary, the wells shall be reabandoned in accordance with state guidelines.

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NATIVE PLANTS/REVEGETATION

12. The applicant shall submit a revegetation plan to address construction impacts for review and approval by the Planning Department and the Environmental Coordinator's Office prior to issuance of grading/building permits. The plan shall include the following:
  - a. Revegetation and stabilization of disturbed areas.
  - b. Propagation program for La Graciosa Thistle.
13. All La Graciosa thistle in danger of being disturbed by the development shall be removed and replanted in a similar habitat immediately adjacent to the raceway site, within a site downstream, or replanted along the pipeline corridor. The Environmental Monitor shall oversee this activity.
14. Pipeline right-of-way and levee banks shall be re-seeded and re-planted with appropriate mixes of wetland and coastal dune plants propagated from local native plants. Willows shall be re-planted in locations where disturbed by construction. No non-native species shall be used in this area. The Environmental Monitor shall oversee this activity.

INTAKE/DISCHARGE STRUCTURES

15. Engineering studies shall be performed on the sediment at the location of the proposed sea water intake structures to determine the intake screen size needed to prevent sand damage to the pump works. Discharge pipeline shall be fitted with a diffuser head to minimize erosion from discharge water and discharge head shall be tilted at least 20 degrees above horizontal.
16. The sump for saltwater intake shall be buried as much as feasible, with not more than three feet to extend above ground level.
17. Energy-efficient electric pumps shall be used for the intake system.
18. Procedures shall be developed and submitted for review and approval to the Planning Department, to limit the likelihood of a spill from the proposed pipelines. These procedures may include the periodic inspection of pipelines and shall include plans to facilitate cleanup of the site in the event of spillage or leakage from the pipeline. Emergency cut-off switches to turn off the saltwater pumps shall be located at the intake and main facilities.

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ARCHAEOLOGY

19. The proposed construction area shall be flagged in the field within 100 feet of the Sensitive Archaeological Area outlined on Map 3 of the Spanne Report (1986). A Phase II program of archaeological testing shall be conducted by qualified archaeologist to determine if the site boundary extends into the construction zone. If necessary, a data recovery program shall be implemented. In the event that archaeological resources are discovered, construction activities shall cease until further authorized by the Planning Department.

UTILITIES

20. All utility lines shall be underground, except where crossing the Santa Maria River or where existing poles and lines provide access to the site.

FIRE PROTECTION

21. The applicant shall install required fire improvements prior to final inspection of the main building. The probable fire improvements are listed in the attached letter from the county Fire Captain.

SEWAGE DISPOSAL

22. The applicant shall submit plans for the proposed septic system designed by a registered engineer for review and approval prior to issuance of permits. Such plans shall certify that proper separation be maintained between groundwater and leach lines at all times. Low water-using fixtures shall be used for onsite bathrooms.

LEVEE DESIGN

23. Final design plans for the proposed earth levee shall demonstrate protection for the southerly river bank and the wetlands downstream. The design of levee shall be such that no other erosion control structures will be necessary downstream, upstream or along the southerly river bank. The intent of this condition is to protect the river and riverbanks and the habitat values they provide. Plans shall ensure protection of the site and stability of the proposed 1:1 slope. These plans shall be reviewed and approved by the Building Division and by the Department of Fish and Game prior to issuance of grading and building permits.
24. The applicant shall submit permits, or submit evidence that none are required, from the Army Corps of Engineers and the California Department of Fish and Game, to the Planning Department prior to issuance of grading and building permits.

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COASTAL APPROVAL

25. Submit a copy of a valid "Coastal Development Permit" from the California Coastal Commission, with any special conditions of approval and any project revisions in compliance with that permit, to the Development Review Section of the Planning Department before issuance of building and grading permits. Provide a notice of exemption if no coastal permit is required.

If the California Coastal Commission has not approved the project upon transfer of coastal development review authority to the county, the applicant shall apply for and receive approval of a coastal development permit from the county prior to issuance of building or grading permits.

OPERATION

26. The applicant shall provide bus or van pooling to the site once the number of employees exceeds ten. Planning staff shall perform site visits after the first year of operation and periodically thereafter to ensure compliance with this condition.

DRAINAGE AND EROSION CONTROL

27. Submit grading, sedimentation and erosion control, and drainage plans prepared in accordance with the requirements of Section 22.05.024, 22.05.028, 22.05.036 and 22.05.044 of the county Land Use Ordinance to the Planning Department for review and approval before issuance of grading and building permits. If so required, review of the plan shall be subject to an inspection and checking agreement with the Engineering Department and/or the plan shall be prepared by a registered civil engineer.
28. The grading and/or drainage plans required by the Land Use Condition No. 26 shall demonstrate to the County Engineering Department that the following factors have been evaluated and incorporated into the final design:
- a. Flood hazard information as required by LUO Sections 22.07.064 and 22.07.066.
  - b. Slope stability and soil erodibility.
  - c. Bearing capacity.
  - d. Seismic loads.
  - e. Liquefaction potential and soil strength.
  - f. Wind and run-off erosion.

~~29. Drainage and erosion control plans shall also be submitted for review and approval for pipeline corridor areas that exceed 15 percent slope prior to issuance of grading and building permits.~~

30. For construction in vegetated dune areas, the erosion control plan shall include the following:

- a. Stockpiling of topsoil/topsand for respreading in construction-scarred areas.
- b. Prior to construction, remove seeds from plants that will be lost to construction.
- c. Transplant seedlings of endemic plants to other locations for use in revegetation.
- d. Conduct floral recovery program and invite representatives of botanical organizations and other conservation groups to remove plants to gardens or herbarium.

#### RECLAMATION

31. A reclamation plan shall be submitted to the Planning Department for review and approval prior to issuance of grading/building permits. The plan shall include the following:

- a. Restoration of all disturbed wetlands to previous condition taking into account the clay content of soils supporting the wetland plants.
- b. Buried pipelines to be drained and abandoned in place. Exposed pipelines to be removed.
- c. Pumps to be removed from inlet facility and sump reduced to one foot below the ground surface and buried.
- d. Metal sheds, concrete pads, and concrete raceways to be removed from the site.
- e. Major building site to be scarified to two-foot depth and revegetated with a mix of native dune plant seeds collected from the project vicinity.
- f. Removal of levee.

32. Applicant shall enter into a performance agreement in a form acceptable to County Counsel and submit a bond to ensure compliance with restoration/reclamation plan.

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EXHIBIT "E"

The following potentially significant environmental effects have been identified in the final EIR for that part of the project under the jurisdiction of the Commission.

1. Oceanographic/Marine Biology

a. Impact: Planktonic organisms could suffer mortality due to reduction in water quality during construction activities.

Mitigation: Construction activities shall avoid peak phytoplankton and zooplankton production periods (June-July and January-February)

Finding: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

The proposed lease requires the Applicant to schedule and conduct construction activities outside the identified peak phytoplankton and zooplankton production periods.