COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL

(1) DEPARTMENT	(2) MEETING DATE	(3) CONTACT/PHONE
Planning and Building	June 27, 2006	Stephanie Fuhs (805) 781-5721

(4) SUBJECT
Submittal of a resolution approving an Agreement for Mitigations for Lot Line Adjustment COAL 04-0494 with Alfred L. Marks III, Supervisorial District 1

(5) SUMMARY OF REQUEST
Request the Board of Supervisors adopt the resolution accepting the Agreement for Mitigations for Lot Line Adjustment COAL 04-0494 with Alfred L. Marks III. The project is located at 8060 East Highway 41, approximately .5 miles east of Cripple Creek Road, 1.25 miles northwest of the community of Creston.

(6) RECOMMENDED ACTION
Adopt the resolution approving and accepting the Agreement for Mitigations for Lot Line Adjustment COAL 04-0494 with Alfred L. Marks III.

(7) FUNDING SOURCE(S)	(8) CURRENT YEAR COST	(9) ANNUAL COST	(10) BUDGETED?
Current Budget	n/a	n/a	☐ No ☒ Yes ☐ N/A

(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST):
County Counsel, County Public Works Department

(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? ☒ No ☐ Yes, How Many? _____
☐ Permanent _____ ☐ Limited Term _____ ☐ Contract _____ ☐ Temporary Help _____

(13) SUPERVISOR DISTRICT(S)
☒ 1st, ☐ 2nd, ☐ 3rd, ☐ 4th, ☐ 5th, ☐ All

(14) LOCATION MAP
☒ Attached ☐ N/A

(15) Maddy Act Appointments Signed-off by Clerk of the Board

(16) AGENDA PLACEMENT
☒ Consent ☐ Hearing (Time Est. _____)
☐ Presentation ☐ Board Business (Time Est._____)

(17) EXECUTED DOCUMENTS
☒ Resolutions (Orig + 4 copies) ☐ Contracts (Orig + 4 copies)
☐ Ordinances (Orig + 4 copies) ☐ N/A

(18) NEED EXTRA EXECUTED COPIES?
☐ Number: _____ ☐ Attached ☒ N/A

(19) APPROPRIATION TRANSFER REQUIRED?
☐ Submitted ☐ 4/5th's Vote Required ☒ N/A

(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)
_____

(21) W-9
☒ No ☐ Yes

(22) Agenda Item History
☒ N/A Date_____

(23) ADMINISTRATIVE OFFICE REVIEW
OK Leslie Brown

6-27-06
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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

TO: BOARD OF SUPERVISORS

FROM: STEPHANIE FUHS, CURRENT PLANNING

VIA: WARREN HOAG, DIVISION MANAGER, CURRENT PLANNING

DATE: JUNE 27, 2006

SUBJECT: SUBMITTAL OF A RESOLUTION APPROVING AN AGREEMENT FOR MITIGATIONS FOR LOT LINE ADJUSTMENT COAL 04-0494 WITH ALFRED L. MARKS III, SUPERVISORIAL DISTRICT #1

RECOMMENDATION

Adopt the resolution approving and accepting the Agreement for Mitigations for Lot Line Adjustment COAL 04-0494 with Alfred L. Marks III.

DISCUSSION

Attached is an agreement for mitigations which was required by conditions of approval for Lot Line Adjustment COAL 04-0494. The mitigation agreement was required in order to address impacts of the project in the areas of aesthetics, agricultural resources, and biological resources. The attached proposed mitigation agreement is found to be consistent with the County's general plan.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel prepared the agreements and approved the resolutions and documents as to form and legal effect. County Public Works reviewed and approved the legal description of the area subject to the provisions of the mitigation agreement.

FINANCIAL CONSIDERATIONS

None.

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COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600
EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: http://www.sloplanning.org

RESULTS

Approving and accepting the agreement for mitigations will require future development on the subject property to provide exterior elevations with color and material boards as well as visual treatment of water tanks. In addition, agricultural buffers will need to be shown on the project plans with residential development outside the buffer areas. Finally, mitigation measures to protect San Joaquin Kit Fox habitat from future development are included.

ATTACHMENTS

Resolution
Agreement
Vicinity Map
Site Plan

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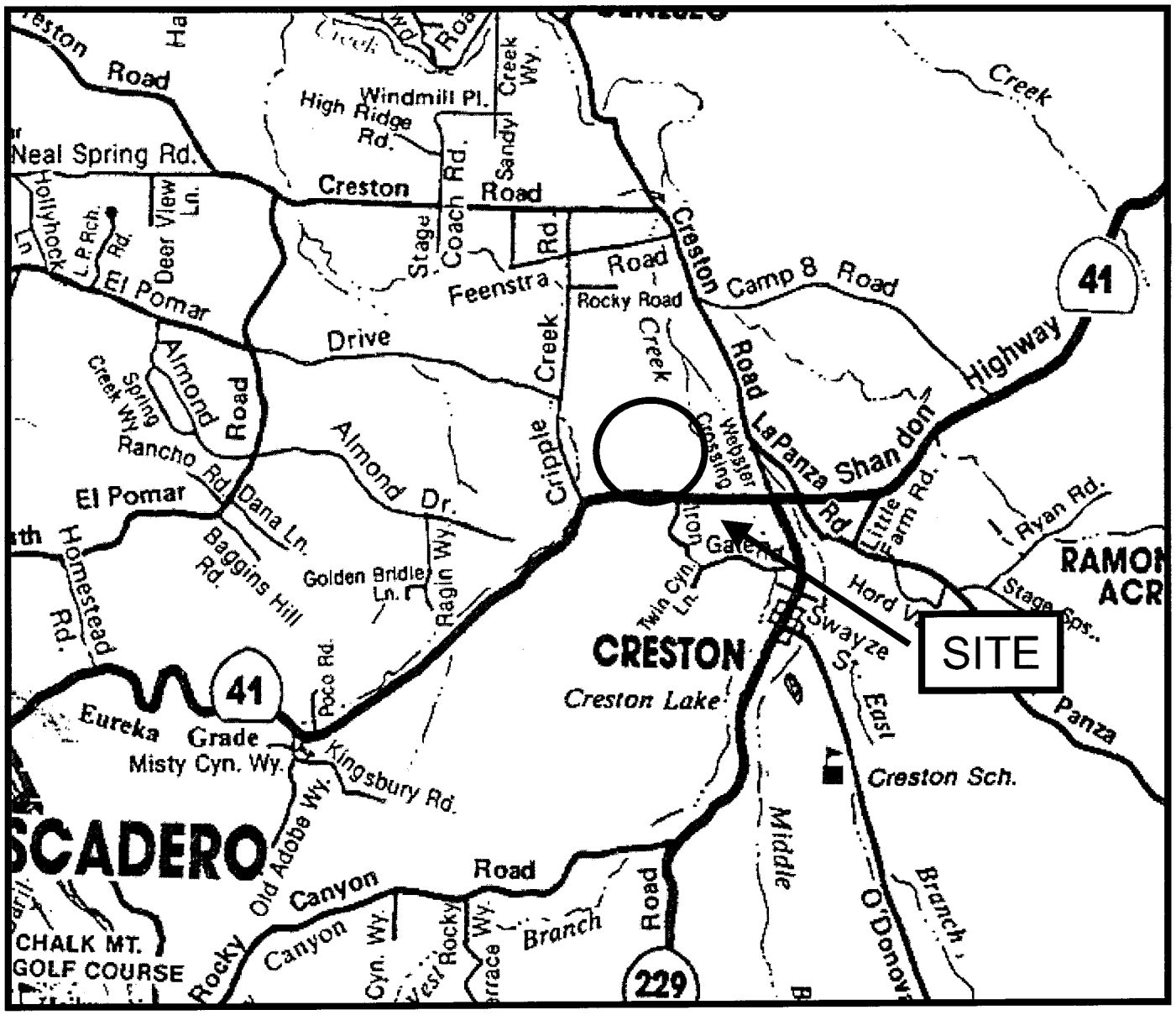

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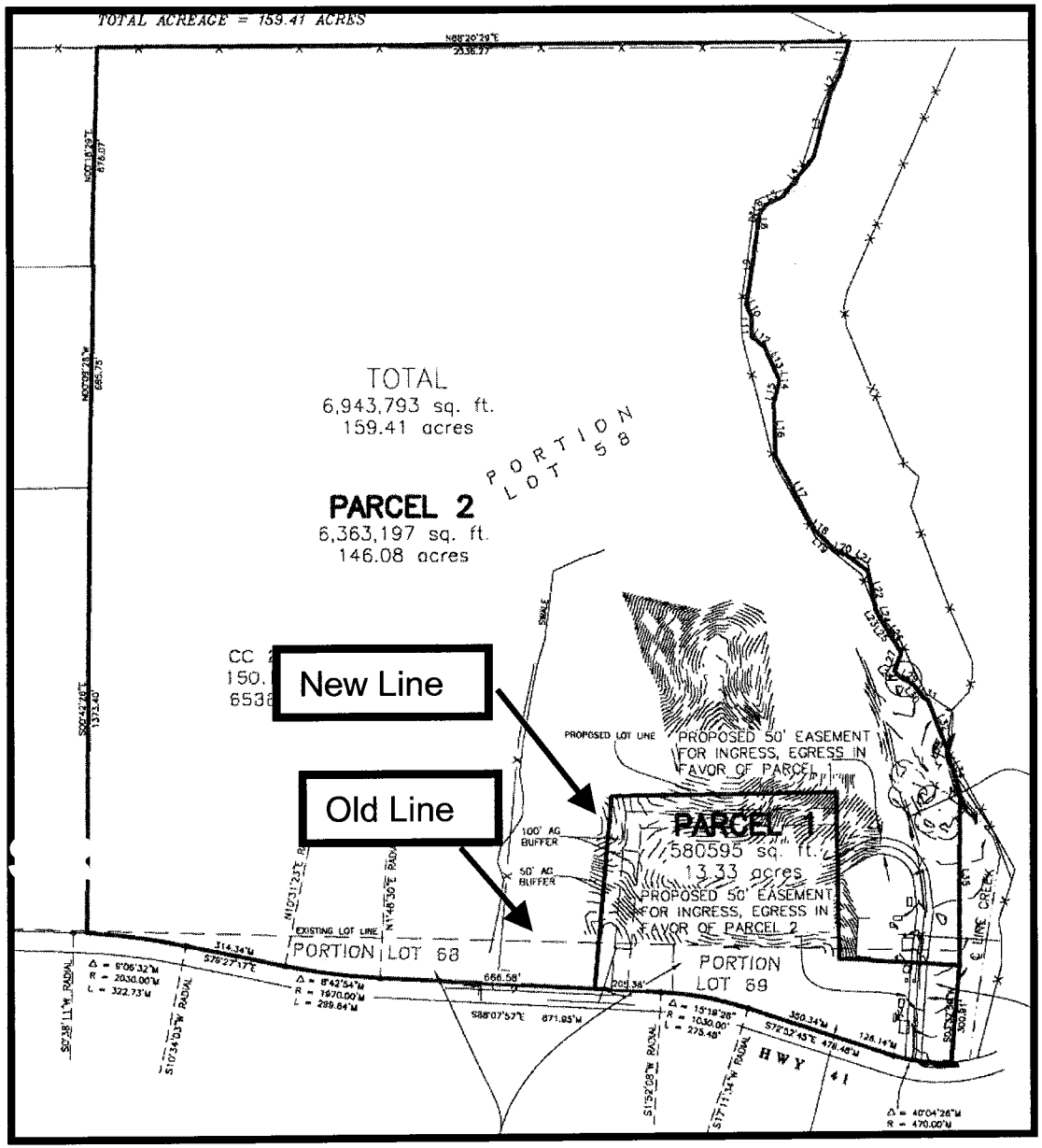
PROJECT

Marks Line Adjustment
SUB2004-00109

EXHIBIT B

Vicinity Map

SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Marks Line Adjustment
SUB2004-00109

EXHIBIT B

Site Plan #1

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20_____

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION APPROVING AGREEMENT FOR MITIGATIONS FOR LOT LINE ADJUSTMENT COAL 04-0494 WITH ALFRED L. MARKS III

The following Resolution is hereby offered and read:

WHEREAS, the Director of Planning and Building by letter dated June 27, 2006, 20__, has duly recommended that the Board of Supervisors enter into the above-mentioned agreement.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the Agreement for Mitigations for Lot Line Adjustment COAL 04-0494, a copy of which is attached hereto and incorporated by reference herein as though set forth in full, is hereby approved by the County of San Luis Obispo and the Chairperson of the Board of Supervisors is hereby authorized and directed to execute said agreement on behalf of the County of San Luis Obispo.

2. That the County Clerk is hereby authorized and directed to record this resolution and the above agreement in the office of the County Recorder of the County of San Luis Obispo.

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Upon motion of Supervisor _____, seconded by Supervisor _____,

and on the following roll call votes, to-wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

_____
Chairperson of the Board of Supervisors

ATTEST:

_____
County Clerk and Ex-Officio Clerk
of the Board of Supervisors, County
of San Luis Obispo, State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: _____
Deputy County Counsel

Dated: June 6, 2006

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RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 035-111-016
035-111-017

AGREEMENT FOR MITIGATIONS FOR LOT LINE ADJUSTMENT COAL 04-0494

THIS AGREEMENT is made and entered into this _____ day of _____, 20___, by and between ALFRED L. MARKS III, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is record owner of certain real property (hereinafter referred to as "Owner's Property") located in the unincorporated area of the County of San Luis Obispo described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, Owner has filed an application and a lot line adjustment map requesting approval of Lot Line Adjustment COAL 04-0494; and

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ck. title rpt./COAL 04-0494

WHEREAS, the California Environmental Quality Act (hereinafter referred to as "CEQA") is applicable to all discretionary projects including approval of lot line adjustments; and

WHEREAS, the initial study conducted by the County's Environmental Coordinator in accordance with CEQA identified some potentially significant effects from the project; and

WHEREAS, Owner's lot line adjustment qualified for a proposed negative declaration from the County's Environmental Coordinator based upon the agreement of the Owner to revise his project in order to mitigate the effects of the project to a point where clearly no significant effects would occur; and

WHEREAS, in order to complete the lot line adjustment, Owner has prepared and submitted for approval by County a parcel map or certificates of compliance for each of the parcels being created by approval of said lot line adjustment; and

WHEREAS, as agreed to by Owner and as a condition of approval of said lot line adjustment and as a condition precedent to the approval of said parcel map or certificates of compliance by County, Owner is required to enter into an agreement with the County to mitigate the effects of the project to a point where clearly no significant effects would occur; and

WHEREAS, by the execution of this agreement by Owner and County, and the subsequent performance of the obligations of this agreement by Owner and his successors in interest, Owner will have satisfied the mitigation requirements of condition 11 of the conditions of approval of the lot line adjustment; and

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WHEREAS, Owner has supplied County with a current title company preliminary title report, preliminary subdivision guarantee, or lot book guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on Owner's Property.

NOW, THEREFORE, in consideration of County approval of a parcel map or certificates of compliance to complete and finalize the above lot line adjustment and the benefits conferred thereby on Owner and Owner's Property, and in further consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. Restrictions and mitigations. In order to mitigate the potentially significant effects identified in the initial study for the project, Owner agrees to each of the following restrictions and mitigations:

(a) Aesthetics.

(1) VS-1. At the time of application for construction permits, the Owner shall clearly delineate on the project plans the location and visual treatment of any new water tank(s). All water tanks shall be located in the least visually prominent location feasible when viewed from key viewing area(s). Screening with topographic features, existing vegetation or existing structures shall be used as feasible. If the tank(s) cannot be fully screened with existing elements, then the tank(s) shall be a neutral or dark, non-contrasting color, and landscape screening shall be provided. The Owner shall provide evidence that the proposed tank(s) are as low profile as is possible, given the site conditions. Landscape material must be shown to do well in existing soils and conditions, be fast-growing, evergreen and drought tolerant. Shape and size of landscape material shall be in scale with proposed tank(s) and surrounding

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native vegetation. Plans shall show how plants will be watered and what watering schedule will be applied to ensure successful and vigorous growth.

(2) VS-2. At the time of application for construction permits, the Owner shall submit architectural elevations of all proposed structures to the Department of Planning and Building for review and approval in consultation with the Environmental Coordinator. The elevations shall show exterior finish materials, colors, and height above the existing natural ground surface. Colors shall minimize the structure massing of new development by reducing the contrast between the proposed development and the surrounding environment. Colors shall be compatible with the natural colors of the surrounding environment, including vegetation, rock outcrops, etc. Darker, non-reflective, earth tone colors shall be selected for walls, chimneys, etc. and darker green, grey, slate blue, or brown colors for the roof structures.

(b) Agricultural compatibility.

(1) AG-3. In order to minimize the potential for significant land use conflicts between future residential development on Owner's Property and adjacent agricultural operations to the north and west, the Owner agrees to establish the following agricultural buffer areas which are shown on Exhibit B attached hereto and incorporated by reference herein as though set forth in full: A horizontal setback buffer is hereby created one hundred (100) feet in width along the northern property line of Parcel 1 and one hundred (100) feet in width along the western property line of Parcel 1. No structures used for human habitation shall be constructed or placed within said buffer areas.

(2) AG-5. At the time of application for construction permits, the Owner shall clearly delineate the agricultural buffer areas on the project plans.

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(c) San Joaquin kit fox.

(1) BR-1. Future development on each parcel will be required to mitigate impacts to San Joaquin kit fox and San Joaquin kit fox habitat. Based on the results of previous Kit Fox Habitat Evaluations that have been conducted for the area, the standard mitigation ratio for projects has been established as of 1:1. This means that for every acre of disturbance resulting from project activities (e.g., pad for buildings, access roads, leach fields, etc.), the Owner would be required to mitigate a total of 1 acre of habitat. The Owner has the option of hiring a qualified biologist to conduct a Kit Fox Habitat Evaluation of the project site if the Owner believes that the evaluation would lower the score and reduce the required mitigation ratio. However, the Owner has chosen to accept the standard mitigation ratio of 1:1. The mitigation options identified in BR-1 through BR-12 listed below apply to the proposed project only. Should the project change, the mitigation obligation may also change, and a reevaluation of the mitigation measures would be required.

(2) BR-2. Prior to issuance of a grading or construction permit, the Owner shall submit evidence to the Environmental and Resource Management Division of the Department of Planning and Building (hereinafter referred to as the "Environmental Division") that states that one or a combination of one or more of the following four San Joaquin kit fox mitigation measures (alternatives) has been implemented:

(i) Provide for the protection in perpetuity, through acquisition of a fee interest or an open-space easement, suitable habitat in the kit fox corridor area (e.g., within the San Luis Obispo County kit fox habitat area, northwest of Highway 58), either on-site or offsite, and provide for a non-wasting endowment to

provide for management and monitoring of the property in perpetuity. Lands to be conserved shall be subject to the review and approval of the California Department of Fish and Game (hereinafter referred to as the "Department of Fish and Game") and the Environmental Division.

This mitigation alternative (i) requires that all aspects of this program must be in place before County permit issuance or initiation of any ground disturbing activities.

(ii) Deposit funds into an approved in-lieu fee program, which would provide for the protection in perpetuity of suitable habitat in the kit fox corridor area within San Luis Obispo County, and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.

This mitigation alternative (ii) can be completed by providing funds to The Nature Conservancy pursuant to the Voluntary Fee-Based Compensatory Mitigation Program (Program). The Program was established in an agreement between the Department of Fish and Game and The Nature Conservancy to preserve San Joaquin kit fox habitat, and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with the California Environmental Quality Act. The fee, payable to The Nature Conservancy, would be based on the total area of disturbance from project activities multiplied by $2,500.00 per acre. This fee must be paid after the Department of Fish and Game provides written notification to Owner about available mitigation options and prior to County permit issuance and initiation of any ground disturbing activities.

(iii) Purchase credits in a Department of Fish and Game-approved conservation bank, which would provide for the protection in perpetuity

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of suitable habitat in the kit fox corridor area and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.

At this time, there is no approved conservation bank that is operational in San Luis Obispo County. A conservation bank is expected to be operational in the near future. This mitigation alternative (iii) may not be utilized until after an approved conservation bank becomes operational in the County. If operational, a purchase of credits must be completed prior to County permit issuance and initiation of any ground disturbing activities.

(iv) If none of the above mitigation alternatives (i, ii, or iii) are available, the Owner may enter into a Mitigation Agreement with the Department of Fish and Game, including depositing of funds into an escrow account (or other means of securing funds acceptable to the Department of Fish and Game) which would ensure the protection in perpetuity of suitable habitat in the kit fox corridor area and provide for a non-wasting endowment for management and monitoring in perpetuity. The Department of Fish and Game can provide a draft agreement for review by Owner. An approved and executed Mitigation Agreement shall be submitted to the County prior to County permit issuance and initiation of any ground disturbing activities.

(3) BR-3. Prior to issuance of a grading or construction permit, the Owner shall provide evidence to the Environmental Division that he has retained a qualified biologist acceptable to the Environmental Division. The retained biologist shall perform the following monitoring activities:

(i) Prior to issuance of a grading or construction permit and within thirty (30) days prior to initiation of site disturbance and/or construction, the biologist shall conduct a pre-activity (i.e., pre-construction) survey for known or potential

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San Joaquin kit fox (hereinafter referred to as "kit fox") dens and shall submit a letter to the Environmental Division reporting the date the survey was conducted, the survey protocol, survey results, and what measures are necessary (and completed), as applicable, to address any kit fox activity within the project limits.

(ii) The qualified biologist shall conduct weekly site visits during site-disturbance activities (i.e., grading, disking, excavation, stock piling of dirt or gravel, etc.) that proceed longer than fourteen days, for the purpose of monitoring compliance with required Mitigation Measures BR-3 through BR-12. Site-disturbance activities lasting up to fourteen days do not require weekly monitoring by the biologist unless observations of kit fox or their dens are made on-site or the qualified biologist recommends monitoring for some other reason (see subparagraph (c)(4)(iii) below). When weekly monitoring is required, the biologist shall submit weekly monitoring reports to the County.

(iii) Prior to or during project activities, if any observations are made of San Joaquin kit fox, or any known or potential San Joaquin kit fox dens are discovered within the project limits, the qualified biologist shall re-assess the probability of incidental take (e.g., harm or death) to kit fox. At the time the kit fox den is discovered, the qualified biologist shall contact the U.S. Fish and Wildlife Service and the Department of Fish and Game for guidance on possible additional kit fox protection measures to implement and whether or not a federal and/or state incidental take permit is needed. If a potential den is encountered during construction, all work shall stop until such time the U.S. Fish and Wildlife Service and Department of Fish and Game determine that it is appropriate to resume work.

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(4) If incidental take of kit fox during project activities is possible, before project activities commence, the Owner must consult with the U.S. Fish and Wildlife Service and the Department of Fish and Game. The results of this consultation may require the Owner to obtain a federal and/or state permit for incidental take during project activities. The Owner should be aware that the presence of kit foxes or known or potential kit fox dens at the project site could result in further delays of project activities.

In addition, the qualified biologist shall require and Owner shall implement all of the following mitigation measures:

(i) Within thirty days prior to initiation of site disturbance or construction, fenced exclusion zones shall be established around all known and potential kit fox dens. Exclusion zone fencing shall consist of either large flagged stakes connected by rope or cord, or survey laths or wooden stakes prominently flagged with survey ribbon. Each exclusion zone shall be roughly circular in configuration with a radius of the following distance measured outward from the den or burrow entrances:

- Potential kit fox den: 50 feet
- Known or active kit fox den: 100 feet
- Kit fox pupping den: 150 feet

(ii) All foot and vehicle traffic, as well as all construction activities, including storage of supplies and equipment, shall remain outside of exclusion zones. Exclusion zones shall be maintained until all project-related disturbances have been terminated, and then shall be removed.

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(iii) If kit foxes or known or potential kit fox dens are found onsite, daily monitoring during ground disturbing activities shall be required by a qualified biologist.

(5) BR-4. Prior to the issuance of a grading or construction permit, or approval of any improvement plans related to parcel map/certificate of compliance recordation, the Owner shall clearly delineate as a note on the project plans, that: "Speed signs of 25 miles per hour maximum (or lower) shall be posted for all construction traffic, to minimize the probability of road mortality of the San Joaquin kit fox." All such speed limit signs shall be posted by Owner on the project site within thirty days prior to initiation of site disturbance or construction. In addition, prior to permit issuance and initiation of any ground disturbing activities or any grading associated with parcel map/certificate of compliance recordation, the requirements of conditions BR-3 through BR-12, inclusive, of the Conditions of Approval (on file with the Department of Planning and Building) shall be clearly delineated on project plans.

(6) BR-5. During the site disturbance and/or construction phase, grading and construction activities after dusk shall be prohibited unless coordinated through the Environmental Division, during which additional kit fox mitigation measures may be required.

(7) BR-6. Prior to issuance of a grading or construction permit, and within thirty days prior to initiation of site disturbance and/or construction, all personnel associated with the project shall attend a worker education training program, conducted by qualified biologist, to avoid or reduce impacts on sensitive biological resources (i.e., San Joaquin kit fox). At a minimum, as the program relates to the kit fox, the training shall include the kit fox's life history, all mitigation measures specified

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by the County, as well as any related biological report(s) prepared for the project. The Owner shall notify the County shortly prior to this meeting. A kit fox fact sheet shall also be developed and distributed to all contractors, employers, and other personnel involved with the construction of the project.

(8) BR-7. During the site disturbance and/or construction phase, to prevent entrapment of the San Joaquin kit fox, all excavation, steep-walled holes or trenches in excess of two feet in depth shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Trenches shall also be inspected for entrapped kit fox each morning prior to onset of field activities and immediately prior to covering with plywood at the end of each working day. Before such holes or trenches are filled, they shall be thoroughly inspected for entrapped kit fox. Any kit fox so discovered shall be allowed to escape before field activities resume, or removed from the trench or hole by a qualified biologist and allowed to escape unimpeded.

(9) BR-8. During the site disturbance and/or construction phase, any pipes, culverts, or similar structures with a diameter of four inches or greater, that are stored overnight at the project site, shall be thoroughly inspected for trapped San Joaquin kit foxes before the subject pipe is subsequently buried, capped, or otherwise used or moved in any way. If during the construction phase a kit fox is discovered inside a pipe, that section of pipe will not be moved, or if necessary, be moved only once to remove it from the path of activity, until the kit fox has escaped.

(10) BR-9. During the site disturbance and/or construction phase, all food-related trash items such as wrappers, cans, bottles, and food scraps generated shall be disposed of in closed containers only and regularly removed from the site.

Food items may attract San Joaquin kit foxes onto the project site, consequently exposing such animals to increased risk of injury or mortality. No deliberate feeding of wildlife shall be allowed.

(11) BR-10. Prior to, during, and after the site disturbance and/or construction phase, use of pesticides or herbicides shall be in compliance with all local, state and federal regulations. This is necessary to minimize the probability of primary or secondary poisoning of endangered species utilizing adjacent habitats, and the depletion of prey upon which San Joaquin kit foxes depend.

(12) BR-11. During the site disturbance and/or construction phase, any contractor or employee that inadvertently kills or injures a San Joaquin kit fox or who finds any such animal either dead, injured, or entrapped shall be required to report the incident immediately to the Owner and County. In the event that such observations are made of injured or dead kit fox, the Owner shall immediately notify the U.S. Fish and Wildlife Service and the Department of Fish and Game by telephone. In addition, formal notification shall be provided in writing within three working days of the finding of any such animal(s). Notification shall include the date, time, location and circumstances of the incident. Any threatened or endangered species found dead or injured shall be turned over immediately to the Department of Fish and Game for care, analysis, or disposition.

(13) BR-12. Prior to final inspection or occupancy, whichever occurs first, should any long internal or perimeter fencing be installed, the Owner shall do the following to provide for kit fox passage:

(i) If a wire strand/pole design is used, the lowest strand shall be no closer to the ground than 12 inches; and

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(ii) If a more solid wire mesh fence is used, 8 inch x 12 inch openings near the ground shall be provided every 100 yards.

Upon fence installation, the Owner shall notify the Environmental Division to verify proper installation. Any fencing constructed after final inspection or occupancy shall follow the above guidelines.

2. Indemnification. The Owner shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Owner or of agents, employees, or independent contractors directly responsible to the Owner; providing further that the foregoing obligation to defend, indemnify, and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed jointly or concurrently by the Owner, the Owner's agents, employees, or independent contractors and the County, its agents, employees or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Owner to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

3. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any conveyance, transfer, or sale made by Owner of said property or any portion thereof

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shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

4. Effect of waiver. County's waiver of breach of any one term, covenant, or provision of this agreement, shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

5. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

6. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created thereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

7. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

8. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center,

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Room 310, San Luis Obispo, California 93408. Notices required to be given to the Owner shall be addressed as follows: Alfred L. Marks III, Post Office Box 899, Templeton, California 93465.

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

9. Owner not agent of County. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of County in connection with the performance of Owner's obligations under this agreement.

10. Entire agreement and modifications. This agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding such matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this agreement shall be effective unless in writing and executed by the parties hereto or their assigns and successors in interest.

11. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Owner and the successors in interest to all or any portion of Owner's Property.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER

ALFRED L. MARKS III

COUNTY OF SAN LUIS OBISPO

By:_____
Chairman of the Board of Supervisors

ATTEST:

_____
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By:_____
Deputy County Counsel

Dated: June 6, 2006

APPROVED AS TO CONTENT:

VICTOR HOLANDA, AICP
Director of Planning and Building

By: Victor Holanda

Dated: 6-6-06

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LEGAL DESCRIPTION APPROVED AS TO FORM:

GLEN L. PRIDDY
County Surveyor

By: _____

Dated: 6/6/06

[NOTE: This Agreement For Mitigations will be recorded. All signatures to this agreement must be acknowledged by a notary.]

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

On _____, before me, _____, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-Recorder
and Ex-Officio Clerk of the
Board of Supervisors, County of
San Luis Obispo, State of California

By: _____
Deputy County Clerk-Recorder

[SEAL]

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Exhibit "A"

PARCEL 1

A portion of Lots 58, 68, and 69 of the Subdivision of the Rancho Huer Huero as surveyed by E. Vandemaillen in the year 1884, in the County of San Luis Obispo, State of California, according to the map filed in Book A, Page 110 of Maps, in the office of the County Recorder of said County and State; and more particularly, a portion of the parcel of land described in the Notice of Voluntary Merger recorded May 20, 2002 as Document No. 2002-041428 of Official Records in the office of said County Recorder *together with* a portion of the parcel of land described in the Certificate of Compliance recorded May 20, 2002 as Document No. 2002-041429 of Official Records in the office of said County Recorder, as described and bounded as follows:

Beginning at the southeast corner of said parcel of land described in said Voluntary Merger, said corner also being the southeast corner of the parcel of land described in the property conveyed to James B. and Ida V. Stahl per Deed recorded in Book 170, Page 207 of Deeds, said corner lying on the northerly right of way line of State Highway 41, and said corner marked upon the ground by a 1" iron pipe tagged "LS 5751" as per Record of Survey map filed in Book 80, Page 83 of Licensed Surveys in the office of said County Recorder; thence, leaving said northerly right of way line, N 5°04'54" E, 300.86 feet along the easterly line of the said property conveyed to James B. and Ida V. Stahl, said easterly line being also the easterly lines of both the parcel of land described in said Voluntary Merger *and* the parcel of land described in said Certificate of Compliance, to a 1" iron pipe tagged "LS 5751" marking an angle point on said easterly line of the property conveyed to James B. and Ida V. Stahl as per said Record of Survey; thence, leaving said easterly line, N 86°00'31" W, 374.09 feet to a 1" iron pipe tagged "LS 4845"; thence N 0°33'48" W, 515.85 feet to a 1" iron pipe tagged "LS 4845"; thence S 89°25'53" W, 697.46 feet to a 1" iron pipe tagged "LS 4845"; thence S 5°25'16" W, 597.71 feet to a 1" iron pipe tagged "LS 4845" set on the northerly right of way line of State Highway 41; thence, easterly along said right of way line, S 86°40'47" E, 205.32 feet to a 2½" iron pipe monument marking the beginning of a non-tangent right of way curve concave south having a radius of 1030.00 feet to which point of beginning a radial line bears N 3°18'50" E; thence easterly 275.45 feet along said right of way curve through an angle of 15°19'20" to a 2½" iron pipe monument marking the beginning of a non-tangent right of way line; thence S 71°25'38" E, 476.48 feet along said right of way line to the beginning of a non-tangent right of way curve concave north having a radius of 470.00 feet to which point of beginning a radial line bears S 18°36'13" W; thence easterly 181.94 feet along said non-tangent right of way curve through an angle of 22°10'47" to the point of beginning; containing 13.33 acres, more or less.

The parcel of land described herein above is also Parcel 1 of San Luis Obispo County Lot Line Adjustment COAL 04-0494.

PARCEL 2

A portion of Lots 58, 68, and 69 of the Subdivision of the Rancho Huer Huero as surveyed by E. Vandemaillen in the year 1884, in the County of San Luis Obispo, State of California, according to the map filed in Book A, Page 110 of Maps, in the office of the County Recorder of said County and

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State; and more particularly, all of the parcel of land as described in the Notice of Voluntary Merger recorded May 20, 2002 as Document No. 2002-041428 of Official Records in the office of said County Recorder *together with* all of the parcel of land described in the Certificate of Compliance recorded May 20, 2002 as Document No. 2002-041429 of Official Records in the office of said County Recorder, *EXCEPTING THEREFROM,* that portion described and bounded as follows:

Beginning at the southeast corner of said parcel of land described in said Voluntary Merger, said corner also being the southeast corner of the parcel of land described in the property conveyed to James B. and Ida V. Stahl per Deed recorded in Book 170, Page 207 of Deeds, said corner lying on the northerly right of way line of State Highway 41, and said corner marked upon the ground by a 1" iron pipe tagged "LS 5751" as per Record of Survey map filed in Book 80, Page 83 of Licensed Surveys in the office of said County Recorder; thence, leaving said northerly right of way line, N 5°04'54" E, 300.86 feet along the easterly line of the said property conveyed to James B. and Ida V. Stahl, said easterly line being also the easterly lines of both the parcel of land described in said Voluntary Merger *and* the parcel of land described in said Certificate of Compliance, to a 1" iron pipe tagged "LS 5751" marking an angle point on said easterly line of the property conveyed to James B. and Ida V. Stahl as per said Record of Survey; thence, leaving said easterly line, N 86°00'31" W, 374.09 feet to a 1" iron pipe tagged "LS 4845"; thence N 0°33'48" W, 515.85 feet to a 1" iron pipe tagged "LS 4845"; thence S 89°25'53" W, 697.46 feet to a 1" iron pipe tagged "LS 4845"; thence S 5°25'16" W, 597.71 feet to a 1" iron pipe tagged "LS 4845" set on the northerly right of way line of State Highway 41; thence, easterly along said right of way line, S 86°40'47" E, 205.32 feet to a 2½" iron pipe monument marking the beginning of a non-tangent right of way curve concave south having a radius of 1030.00 feet to which point of beginning a radial line bears N 3°18'50" E; thence easterly 275.45 feet along said right of way curve through an angle of 15°19'20" to a 2½" iron pipe monument marking the beginning of a non-tangent right of way line; thence S 71°25'38" E, 476.48 feet along said right of way line to the beginning of a non-tangent right of way curve concave north having a radius of 470.00 feet to which point of beginning a radial line bears S 18°36'13" W; thence easterly 181.94 feet along said non-tangent right of way curve through an angle of 22°10'47" to the point of beginning.

The parcel of land described herein above is also Parcel 2 of San Luis Obispo County Lot Line Adjustment COAL 04-0494.

END DESCRIPTION

SURVEYOR'S STATEMENT

This legal description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Wm. E. Touchon May 30, 2006

Wm. E. Touchon Date

L.S. 4845 Expires: 9/30/2006

LICENSED LAND SURVEYOR WM. EDWARD TOUCHON L.S. 4845 EXP. 9/30/06 STATE OF CALIFORNIA

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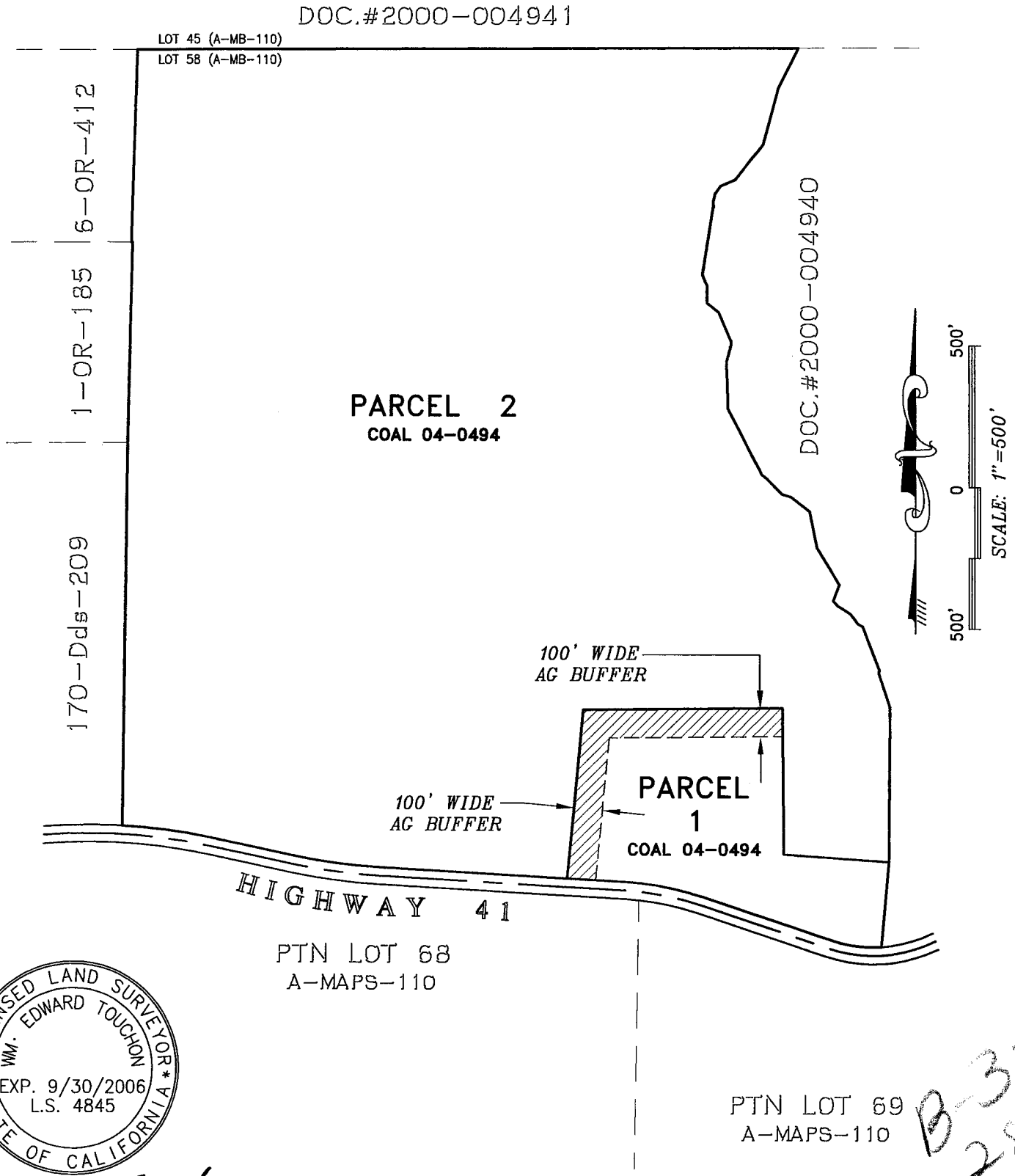
Exhibit "B"



LICENSED LAND SURVEYOR
WM. EDWARD TOUCHON
EXP. 9/30/2006
L.S. 4845
STATE OF CALIFORNIA

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Wm. E. Touchon 05-30-2006

WM. E. TOUCHON L.S. 4845 DATE
(LICENSE EXPIRES 09/30/2006)

TWIN CITIES SURVEYING INC.
TEMPLETON, CALIFORNIA JN 04039

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN LUIS OBISPO } ss.

On 5/31/06 (Date) before me, VALINDA ALLISON (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared ALFRED L MARKS III (Name(s) of Signer(s)),

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

VALINDA ALLISON
Commission # 1421412
Notary Public - California
San Luis Obispo County
My Comm. Expires May 31, 2007

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT FOR MITIGATION FOR LOT LINE ADJUSTMENT COAL 04-0494

Document Date: 05/31/06 Number of Pages: 20

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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