

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE July 18, 2006		(3) CONTACT/PHONE Stephanie Fuhs (805) 781-5721	
(4) SUBJECT Submittal of a resolution approving an Open Space Agreement for Development Plan D940214D, with Monastery of the Risen Christ, a non-profit corporation, Supervisorial District #2					
(5) SUMMARY OF REQUEST Request the Board of Supervisors adopt the resolution accepting the Open Space Agreement for Development Plan D940214D, with Monastery of the Risen Christ. The project is located at 2308 O'Connor Way, on the east side of O'Connor Way approximately 2,000 feet south of Sutter Avenue, west of the City of San Luis Obispo.					
(6) RECOMMENDED ACTION Adopt the resolution approving and accepting the Open Space Agreement for Development Plan D940214D, with Monastery of the Risen Christ.					
(7) FUNDING SOURCE(S) Current Budget		(8) CURRENT YEAR COST n/a		(9) ANNUAL COST n/a	
(10) BUDGETED? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel, County Public Works Department					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input checked="" type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW <p align="center"><i>OK Leslie Brown</i></p>					

*7-18-06
13-29*



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 *WH*

DATE: JULY 18, 2006

SUBJECT: SUBMITTAL OF A RESOLUTION APPROVING AN OPEN SPACE AGREEMENT FOR DEVELOPMENT PLAN D940214D, WITH MONASTERY OF THE RISEN CHRIST, A NON-PROFIT CORPORATION, SUPERVISORIAL DISTRICT #2

RECOMMENDATION

Adopt the resolution approving and accepting the Open Space Agreement for Development Plan D940214D, with Monastery of the Risen Christ, a non-profit corporation.

DISCUSSION

Attached is an open space agreement which was required by conditions of approval for Development Plan D940214D. The open space agreement was required in order to comply with Sensitive Resource Area (SRA) standards contained in the San Luis Obispo Planning Area to protect visual resources.

The area within the open space easement is approximately 9.7 acres. The total project site is 40 acres.

The attached proposed open space 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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RESULTS

Approving and accepting the open space agreement will limit development to the portions of the site that are below the 450 foot contour line in order to protect visual resources along O'Connor Way and Los Osos Valley Road.

ATTACHMENTS

Resolution
Agreement
Vicinity Map
Site Plan

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

_____ day _____, 20____

PRESENT: Supervisors

ABSENT:

RESOLUTION NO.

**RESOLUTION APPROVING AND ACCEPTING AN OPEN-SPACE AGREEMENT
GRANTING AN OPEN-SPACE EASEMENT TO THE
COUNTY OF SAN LUIS OBISPO BY MONASTERY OF THE RISEN CHRIST, A NON-PROFIT
CORPORATION**

The following resolution is now offered and read:

WHEREAS, the County of San Luis Obispo has been duly requested to approve and accept a certain grant and offer to dedicate to the County of San Luis Obispo as open-space that certain real property described in the open-space agreement attached hereto and made a part hereof; and

WHEREAS, the Director of Planning and Building by letter dated July 18, 2020, has duly recommended that the Board of Supervisors approve and accept such offer of dedication to the County of San Luis Obispo, and has further recommended that such action is consistent with the County's general plan.

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

1. The Board of Supervisors finds and determines that the preservation of land offered for dedication to the County of San Luis Obispo as open-space in the attached agreement is consistent with the County's general plan; that the land is essentially unimproved and if retained in its natural state has scenic value to the public and is valuable as a watershed, and the offer of dedication contained in said agreement contains appropriate covenants to that end; that it is in the public interest that the land be retained as open-space because such land will add to the amenities of living in neighboring urbanized areas; and that approval of the above agreement is categorically exempt from the requirements of the California Environmental Quality Act.

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2. The Open-Space Agreement Granting An Open-Space Easement To The County of San Luis Obispo, a copy of which is attached hereto and is incorporated by reference herein as though set forth in full, is hereby approved and the dedication contained therein is hereby accepted 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.

3. The County Clerk is hereby authorized and directed to record the above agreement and a certified copy of this resolution in the office of the County Recorder of the County of San Luis Obispo, and file a copy of said agreement and resolution with the County Assessor of the County of San Luis Obispo.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote,

to-wit:

AYES:

NOES:

ABSENT

ABSTAINING:

the foregoing resolution is hereby adopted.

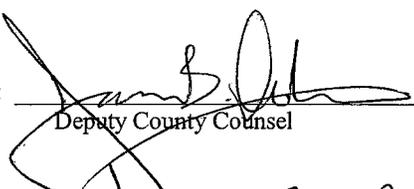
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors
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 27, 2006

[SEAL]

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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 067-051-020

OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT
TO THE COUNTY OF SAN LUIS OBISPO

THIS AGREEMENT is made and entered into this ____ day of _____,
20____, by and between MONASTERY OF THE RISEN CHRIST, a Non-Profit
Corporation, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS
OBISPO, a political subdivision of the State of California, hereinafter referred to as
"County."

WITNESSETH:

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

WHEREAS, as a condition of approval of Development Plan D940214D by
County for Owner's Property, Owner is required by the County's general plan and land

ck. title rpt./Development Plan D940214D
Prepared March 21, 2006

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use regulations to enter into an agreement with the County, on behalf of himself and his successors in interest, to maintain portions of the site in open-space use; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property") which is more particularly described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and subsequent performance of its obligations by Owner and his successors in interest, will satisfy the requirement for dedication of an open space easement imposed by the County's general plan and land use regulations and made a condition of approval (condition 11) of the development plan referred to above; and

WHEREAS, the Subject Property has certain natural scenic beauty and existing openness, and both Owner and County desire to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition and present state of use of said property of the Owner; and

WHEREAS, Owner is willing to grant to County the scenic use, as hereinafter expressed, of the land and thereby protect the present scenic beauty and existing openness of the Subject Property by the restricted use of said property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, both Owner and County intend that the terms, conditions, and restrictions of the open-space easement granted in this agreement are in compliance with Government Code sections 51070 through 51097, inclusive, hereinafter referred to as the "Open-Space Easement Act of 1974," so as to be an enforceable restriction under the provisions of Revenue and Taxation Code section 422; and

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

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 51070 through 51097, inclusive, and in further consideration of the mutual promises, covenants, and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Grant of open-space easement. Owner hereby grants to County, for the term specified in paragraph 8 below, an open-space easement in and to the Subject Property described above. The open-space easement granted herein conveys to County an estate and interest in the real property of the nature and character specified in the Open-Space Easement Act of 1974, which is subject to the express conditions and restrictions imposed herein upon the use of the property by Owner. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts which Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

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(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property except as otherwise authorized by the approved development plan referred to above.

(b) No advertising of any kind or nature shall be located on or within the Subject Property.

(c) Owner shall not plant nor permit to be planted any vegetation upon the Subject Property except for range land grasses, natural landscaping, and as otherwise authorized by the approved development plan referred to above, and as necessary for erosion control.

(d) The general topography of the landscape shall be maintained in its present condition and no grading, excavation, or topographic changes shall be made.

(e) No use of the Subject Property which will or does materially alter the landscape or other attractive scenic features of the property, other than those specified herein, shall be done or suffered.

(f) Owner shall not extract natural resources from the Subject Property, except for development of Owner's underlying water rights at a location approved by the Environmental Coordinator of the County.

(g) Owner shall not cut timber, trees, or other natural growth, except as may be required for livestock grazing on the Subject Property and for fire protection, thinning, elimination of diseased growth, and similar protective measures.

(h) Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property.

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(i) Owner shall not cover or cause the Subject Property to be covered in whole or in part with any asphalt, stone, concrete, or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land unless otherwise authorized by the provisions of this agreement.

(j) No land division of Owner's Property shall occur except after obtaining all necessary approvals required by Title 21 and Title 22 of the San Luis Obispo County Code, nor shall Owner or his successors in interest otherwise convey (other than under threat of condemnation) the Subject Property or a portion thereof to one or more parties or convey Owner's Property to two or more parties each of whom acquire title to less than the whole of said parcel without obtaining the necessary approvals required by Title 21 and Title 22 of the San Luis Obispo County Code. Any such conveyance or transfer of Owner's Property, the Subject Property, or a portion thereof by Owner or his successors in interest shall be considered null and void.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from this grant and are expressly reserved to Owner:

(a) The right to maintain the existing water well/spring, two water tanks, private roads, trails, and other improvements lawfully constructed upon the Subject Property.

(b) The right to construct, develop, and maintain all improvements authorized by the approved development plan referred to above, and any amendments or modifications thereto which may be approved by the County.

(c) The right to construct, develop, and maintain private water sources and water systems within the Subject Property at a location approved by the

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Environmental Coordinator of the County for the use and benefit of the Subject Property and that portion of Owner's Property which is located outside the Subject Property.

(d) The right to use the Subject Property for livestock grazing, subject to the conditions and restrictions imposed in this agreement.

4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all applicable County ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein or as authorized in the Open-Space Easement Act of 1974. Provided, however, nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County or the Public Utilities Commission.

6. No authorization for public trespass. The grant of easement contained herein and its acceptance by the County of San Luis Obispo does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put so that the property may be kept as near as possible in its natural condition for the benefit of the public.

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of easement. The grant of easement to County contained in this agreement shall be effective when it has been approved and accepted by resolution of the Board of Supervisors in the manner required by law, and it shall remain in effect in perpetuity unless abandoned or otherwise terminated by the Board of Supervisors in accordance with the provisions of the Open-Space Easement Act of 1974. Provided, however, no easement shall be abandoned or otherwise terminated without first obtaining approval of an amendment to Development Plan D940214D authorizing such abandonment or termination.

9. Enforceable restriction. Upon acceptance of the open-space easement granted herein, the Subject Property shall be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code and section 8 of Article XIII of the Constitution of the State of California.

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

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

term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

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

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

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

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to Owner shall be addressed as follows: Monastery of the Risen Christ, Attention: Father Ray Roh, Post Office Box 3931, San Luis Obispo, California 93406.

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

16. 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.

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

OWNER

MONASTERY OF THE RISEN CHRIST,
a Non-Profit Corporation

By: David G. Geracts
its President

By: Raymond V. Rob
its Chief Financial Officer

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

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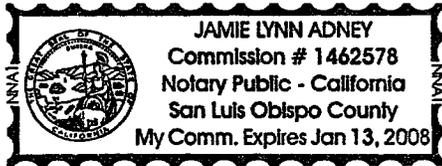
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Luis Obispo } ss.

On 5-17-06 before me, Jamie Lynn Adney, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Raymond V. Ron, David N. Geraets,
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Jamie Lynn Adney
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: Open Space Agreement Granting Easement

Document Date: Not dated at time of notarization Number of Pages: 13

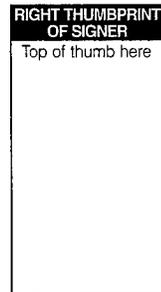
Signer(s) Other Than Named Above: James B. Lindholm Jr., Glen L. Driddy

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

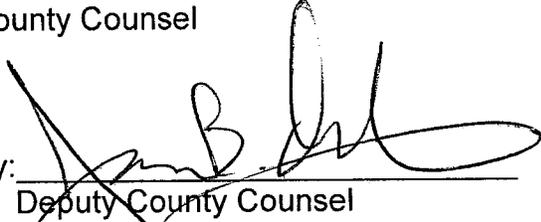
Signer Is Representing: _____



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APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: 
Deputy County Counsel

Dated: June 27, 2006

LEGAL DESCRIPTION APPROVED AS TO FORM:

GLEN L. PRIDDY
County Surveyor

By: 

Dated: 6/27/06



11328ktagr.doc

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

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STATE OF CALIFORNIA

)

COUNTY OF SAN LUIS OBISPO

)

ss.

)

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 C of Parcel Map No. CO-75-133, in the County of San Luis Obispo, State of California, according to map recorded September 19, 1977 in Book 23, Page 85 of Parcel Maps, in the office of the County Recorder of said County.

Excepting therefrom that portion of Parcel C conveyed to the County of San Luis Obispo, in deed recorded January 19, 1978 in Book 2040, Page 277 of Official Records.

Together with a non-exclusive easement for the use and maintenance of a concrete water tank situated on the property line between Parcels B and C as designated on said Parcel Map CO-75-133. Said easement is to be 10 feet wide around the existing water tank and is to be appurtenant to Parcel C of said Parcel Map CO-75-133.

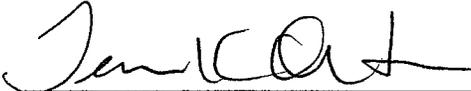
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EXHIBIT B

**LEGAL DESCRIPTION
OPEN SPACE EASEMENT**

All that real property in the County of San Luis Obispo, State of California being a portion of Parcel C of Parcel Map CO 75-0133, a map of said Parcel Map being recorded in Book 23 of Parcel Maps at page 85 in the office of the County Recorder of said County; said portion of said Parcel C being more particularly described as follows:

Beginning at the corner common to Parcel A, Parcel B, and Parcel C of said Parcel Map; thence, along the line common to said Parcels B and C, North 69° 09' 18" West 704.27 feet; thence, leaving said common line along the following courses: South 13° 43' 23" West 151.43 feet; South 27° 43' 22" West 130.30 feet; South 20° 59' 21" West 115.50 feet; South 5° 22' 31" East 74.43 feet; South 26° 39' 59" East 51.01 feet; South 20° 50' 16" East 87.33 feet; South 37° 00' 40" East 31.28 feet; South 7° 09' 39" East 87.98 feet to a point on the line common to said Parcel C, and Parcel D of said Parcel Map; thence, along said line common to said Parcels C and D, South 74° 27' 36" East 507.19 feet to the corner common to said Parcels A, C, and D; thence, along the line common to said Parcels A and C, North 20° 50' 42" East 609.00 feet to the point of beginning. Containing 9.7 acres more or less.

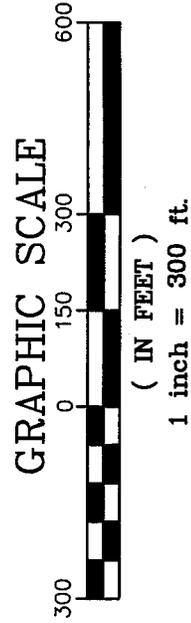
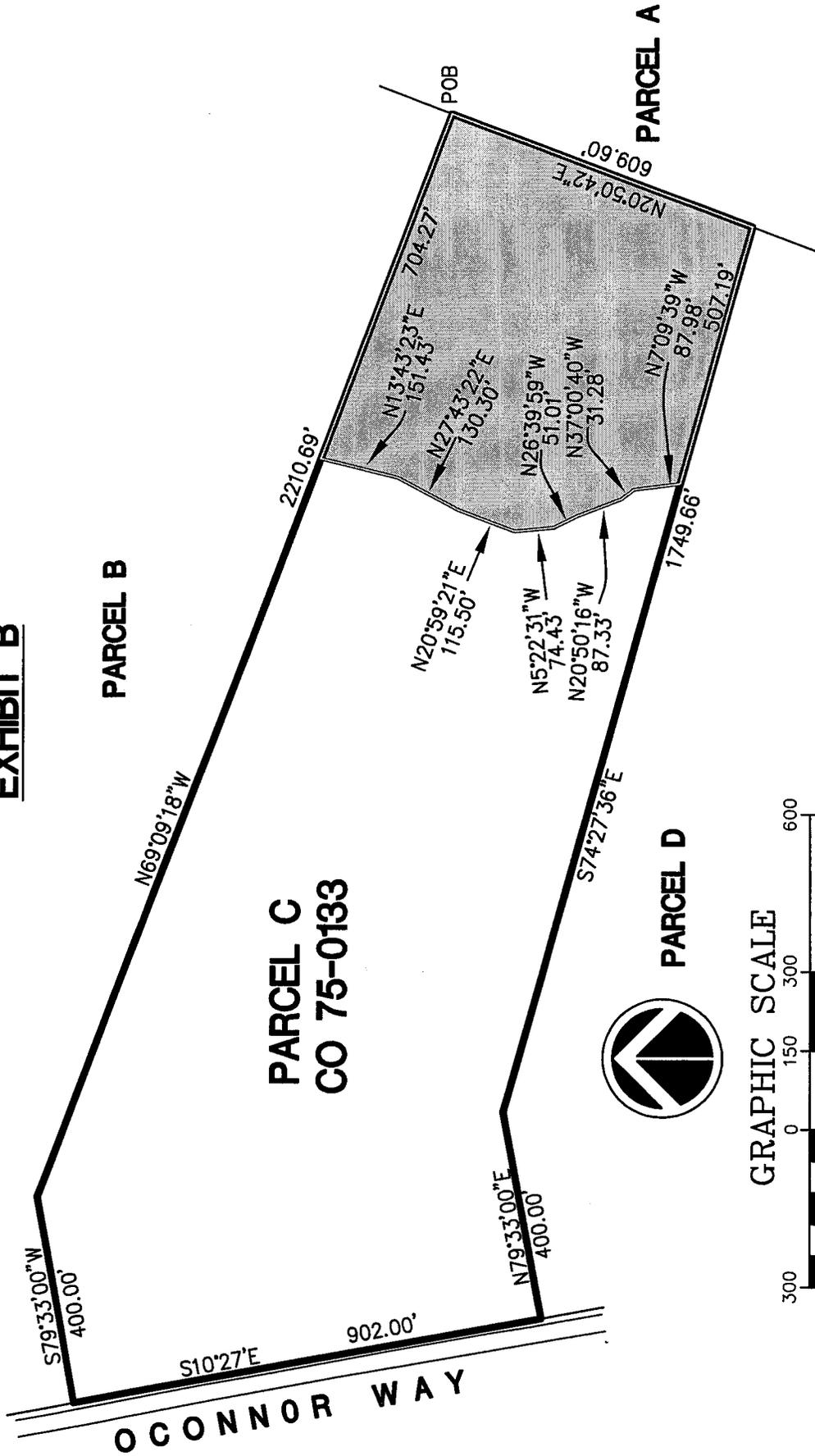

Terence K. Orton P.E. 21807



Sheet 1 of 2

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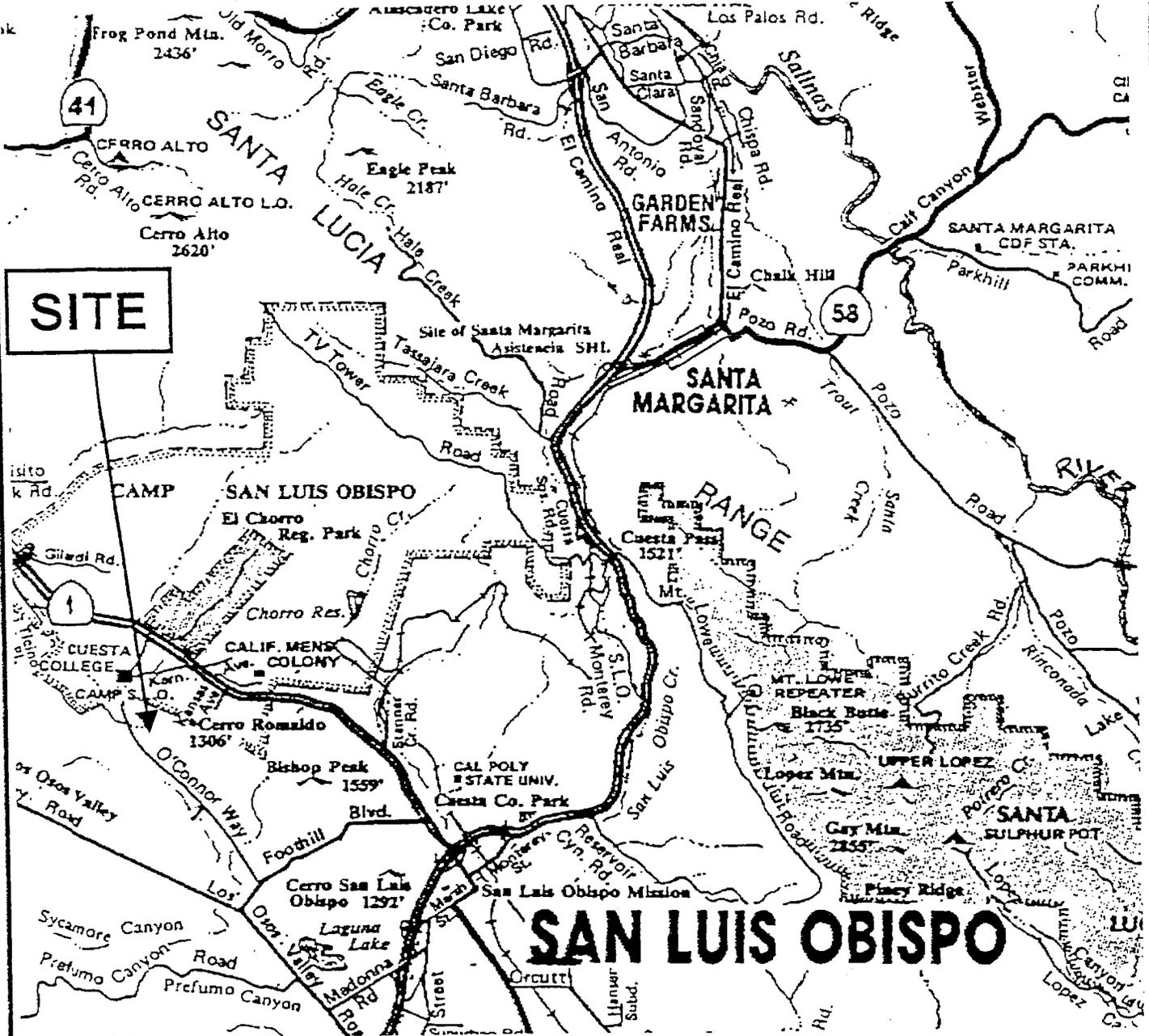
EXHIBIT B



WESTLAND ENGINEERING, INC.
CIVIL ENGINEERING · SURVEYING · PLANNING
3480 SO. HIGUERA, SUITE 130, SAN LUIS OBISPO, CA 95401
TELEPHONE: (805) 541-2394 · FAX: (805) 541-2439

PORTION OF PARCEL C OF
PARCEL MAP CO 75-0133

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SITE

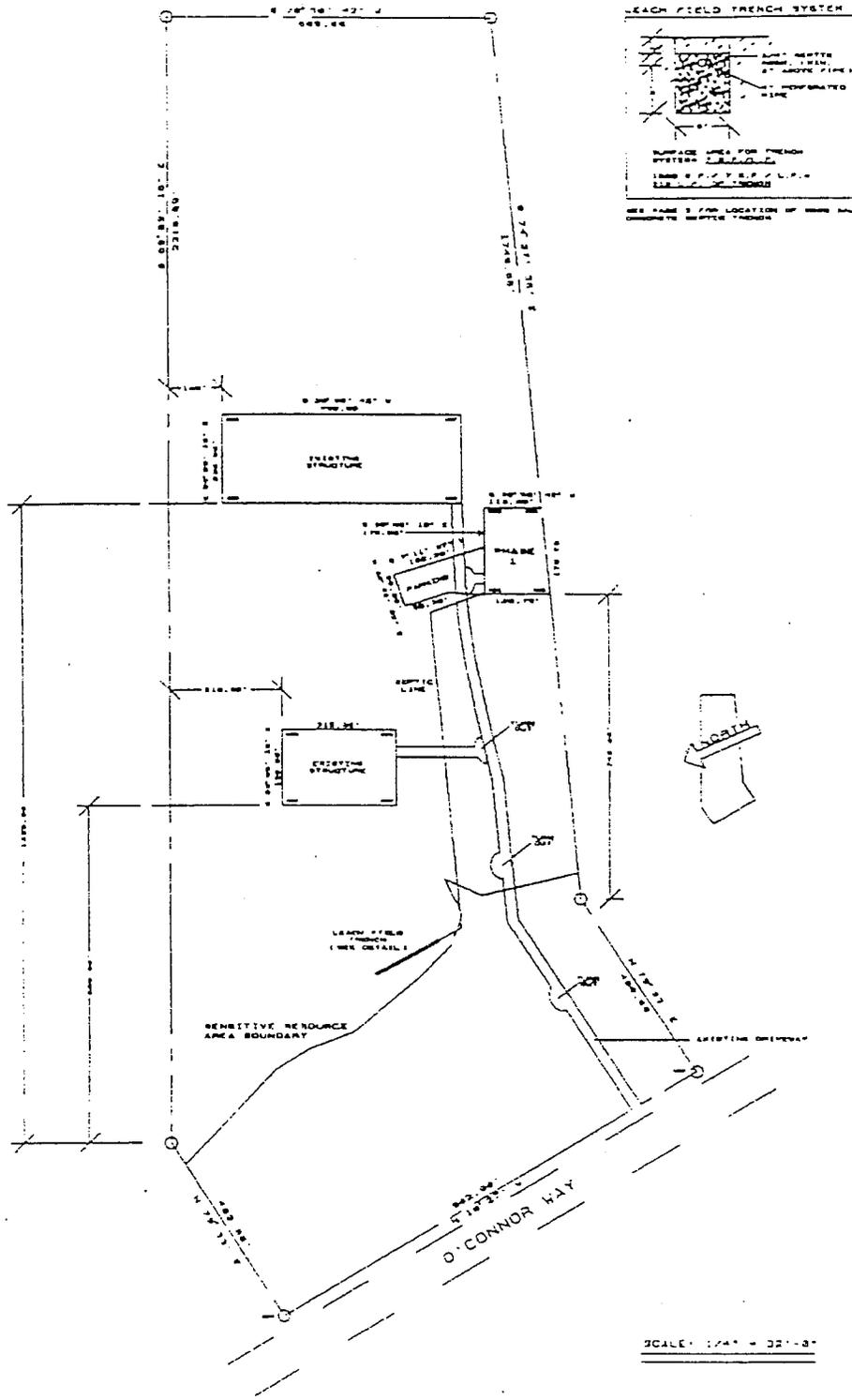
SAN LUIS OBISPO

PROJECT
 Development Plan
 Monastery of the Risen Christ
 (D940214D)



EXHIBIT
 Vicinity Map

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SCALE: 1/4" = 32'-0"

PROJECT

Development Plan
Monastery of the Risen Christ
(D940214D)



EXHIBIT

Site Plan

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