

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



Th7a

Filed:	5/11/05
180 th day extended to:	2/5/06
Staff:	JB-SC
Staff report prepared:	11/23/05
Hearing date:	12/15/05
Hearing item number	Th7a

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-04-077

Applicant.....Pismo Coast Village, Inc.

Project location.....Fountain Ave., Oceano, San Luis Obispo County (APN(s) 061-131-001, 005, 012, 013).

Project descriptionConstruct a recreational vehicle storage facility consisting of approximately 3.8 acres of gravel surfacing and associated landscaping and perimeter fencing.

File documents.....California Coastal Act; San Luis Obispo County Permit #D020321D; Geotechnical Investigation (GeoSource, Inc, 2000); Biological Assessment (Mike McGovern, Ph.D., 2003); Hydric Soils Determination (Lynn E. Moody, Ph.D., 2003); Wetland Delineation (Rincon Consultants, Inc., 2005).

Staff recommendation ...**Denial**

Summary: The applicant proposes to construct a recreational vehicle (RV) storage facility consisting of approximately 3.8 acres of gravel surfacing with associated landscaping and perimeter fencing. The project is located in the community of Oceano in San Luis Obispo County. The site is within the Coastal Commission's original permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. The Coastal Act is therefore the standard of review. The County's LCP, however, may be used for guidance.

Staff has analyzed the project for consistency with the complete range of Chapter 3 Coastal Act resource protection policies and recommends **denial** of the requested permit based on the project's inconsistencies with wetland protection requirements. Except for a narrow strip of land immediately adjacent to Fountain Avenue (ranging 10 to 40 feet wide and totaling approximately 0.5 acres), the entire 4.7-acre parcel is a wetland as defined by the Coastal Act and the Commission's Administrative Regulations. Coastal Act Section 30233 requires protection and preservation of wetland resources such as those that exist on the project site. The large amounts of gravel surfacing, ornamental landscaping, and perimeter fencing will have significant direct, indirect, and cumulative impacts to wetland resources that conflict with this requirement. In addition, Coastal Act Section 30233 limits development in wetlands to a few limited categories where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse



California Coastal Commission
December 2005 Meeting in San Francisco

Staff: J.Bishop Approved by:

C:\coastweb\packet\2005\12\Th7a-12-2005.doc

environmental effects. The type of commercial use proposed (RV storage) is not one of the uses allowed in wetlands and feasible project alternatives exist that would lessen adverse wetland impacts. Thus, the project is inconsistent with the Coastal Act.

As detailed by the findings of this report, alternative uses of the land are available that would have a much smaller development footprint and thereby avoid or significantly reduce wetland loss, as necessary to maximize consistency with Coastal Act Section 30233 and accommodate a reasonable economic use of the site. Such alternatives involve fundamental changes to the type and design of development proposed by the current application, and therefore must be pursued in the context of a subsequent application. In order to provide direction to the applicant and potential future owners of the site regarding such alternatives, the findings for denial identify the specific parameters that need to be addressed by future development proposals in order to address Coastal Act wetland protection requirements.

Staff Report Contents

- 1. Staff Recommendation on Coastal Permit.....3
- 2. Recommended Findings and Declarations.....3
 - A. Project Description.....3
 - 1. Project Location3
 - 2. Project Description.....3
 - B. Coastal Act Consistency Analysis4
 - 1. Wetlands and Marine Resources.....4
 - a. Applicable Policies4
 - b. Analysis of Consistency with Applicable Policies7
 - c. Marine Resource Conclusion and Project Alternatives9
- 3. California Environmental Quality Act (CEQA)11
- 4. Exhibits
 - A. Project Vicinity and Locations Maps
 - B. Project Site Plans
 - C. Wetland Delineation Graphic
 - D. Correspondence



1. Staff Recommendation on Coastal Permit

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

***Motion.** I move that the Commission approve Coastal Development Permit Number 3-04-077 pursuant to the staff recommendation.*

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

***Resolution To Deny The Permit.** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the California Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

2. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The proposed project is located on the north side of Fountain Avenue, approximately 120 feet northeast of the Oceano Airport (see Exhibits A and B). The site is at an elevation of approximately 10 feet above sea level and occurs within the historic floodplain of Arroyo Grande Creek. The property is primarily level and undeveloped. The site has been disked approximately three times a year for at least the past 10 years. The 4.7-acre property is bordered to the north and northeast by residential and industrial development. Fountain Avenue forms the property's southern boundary and single-family residences and open space are adjacent to the western property boundary. Oceano Ice Company is located immediately adjacent and to the east of the property. As previously noted, the site is within the Coastal Commission's original permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. The Coastal Act is therefore the standard of review. The County's LCP, however, may be used for guidance, and designates the property as being within the Industrial (IND) land use category.

2. Project Description

The proposed project is for a RV storage facility. The project would cover approximately 3.8 acres of the 4.7-acre project site with gravel surfacing upon which recreational vehicles would be parked. Ornamental landscaping is proposed to screen the development from adjacent areas, and perimeter fencing would be installed. Driveways located on Ocean Street and Fountain Ave would access the facility. No structures or lighting are proposed. The proposed project includes a 30-foot setback from

an active drainage channel located on the northern property boundary. This area would be restored with riparian vegetation. The project also includes drainage and erosion control provisions and, according to the County's conditions of approval, may require the construction of curbs, gutters, and sidewalks along the fronting Fountain Avenue right-of-way.

B. Coastal Act Consistency Analysis

1. Wetlands and Marine Resources

a. Applicable Policies

Section 30121 of the Coastal Act defines wetlands as follows:

30121. *“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*

Section 13577(b) of the California Code of Regulations defines wetlands as follows:

13577(b)(1)...*Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:*

- (A) *the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
 - (B) *the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or*
 - (C) *in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.*
- (2) *For the purposes of this section, the term “wetland” shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:*
- (A) *the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and*
 - (B) *there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.*



Article 4 of Chapter 3 of the Coastal Act describes protective policies for the marine environment, including water quality, and specifically calls out wetland resources. Coastal Act Sections 30230 and 30231 provide:

Section 30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, Coastal Act Section 30233(a), 30233(c) and 30233(d) specifically address protection of wetland resources. In particular, Coastal Act Section 30233 limits development in wetlands to a few limited categories where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:

Section 30233(a). *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or*

inspection of piers and maintenance of existing intake and outfall lines.

- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30233(c). *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division....*

While Coastal Act policies are the standard of review for this particular coastal development, San Luis Obispo County's LCP also provides guidance to the Commission as it considers proposals for development in wetlands. With regards to wetland areas, the LUP contains the following relevant policies:

Policy 1 for Environmentally Sensitive Habitats: *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 5 for Environmentally Sensitive Habitats: *Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:

d. Development standards for environmentally sensitive habitats:

- 1) *New development within or adjacent to the habitat shall not significantly disrupt the resource.*
- 2) *New development with the habitat shall be limited to those uses that are dependent upon the resource.*
- 3) *Where feasible, damaged habitats shall be restored as a condition of development approval.*
- 4) *Development shall be consistent with the biological continuance of the habitat.*



5) *Grading adjacent to Environmentally Sensitive Habitats shall conform to the provision of Section 23.05.034c (Grading Standards).*

b. Analysis of Consistency with Applicable Policies

The Coastal Act and the San Luis Obispo County certified LCP require protection and preservation of wetland resources such as exist on the project site. In particular, Coastal Act Section 30233 limits development in wetlands to a few limited categories (commercial development is not one of the allowed types of development) where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. As shown in the findings below, the proposed project does not meet these requirements and therefore the project is inconsistent with the Coastal Act.

Oceano Wetland Complex

The project site is part of the larger Oceano Lagoon wetland complex. Oceano Lagoon proper is largely protected as part of Pismo State Beach and Oceano Lagoon County Park. Some parts of this area were previously filled in order to build the Oceano Airport and the surrounding neighborhood. Most substantial undeveloped areas within this historically filled area retain wetland characteristics, and are in various stages of disruption or recovery. A small portion of the historically much larger wetland complex exists at Oceano Lagoon, an LCP designated environmentally sensitive habitat area (ESHA) approximately one-half mile west of the project site. Other remnants of wetland habitat are more difficult to determine due to the historic filling and development of the area.

Project Site Wetlands

The project site is indicative of a wetland in some stage of disruption or recovery. Urban development has hemmed in the property on most sides and significant disruption has occurred due to historic attempts to farm the site. The site has been disked approximately three times a year for at least the past 10 years. Even with the ongoing disking and soil manipulation that has occurred in the past, all three wetland indicators (hydric soils, hydrophytic vegetation, and hydrology) were identified during field investigations.

There has been some question throughout the permit review process about the spatial extent of wetlands onsite. The first biological study¹ identified only a small area of wetlands corresponding to a drainage channel on the north side of the property. The studies concluded that the water in the drainage channel was largely a result of discharge from the nearby Oceano Ice Company and that the limits of wetlands, including the location of obligate wetland plants, were confined to the top of the narrow drainage channel (no more than 1.5 meters at its widest point and less than 50 centimeters from the center of the channel).

However, a more recent wetland delineation² shows that the spatial extent of wetlands is actually much greater than originally thought. According to the delineation, 4.24 acres of the 4.70-acre parcel constitute wetlands as defined in Section 30121 of the Coastal Act and Section 13577(b) of the California Code of Regulations. The report notes hydrophytic vegetation present in and adjacent to the drainage channel from its origin in the southeast corner of the site to its terminus at the northwestern

¹ *Biological Assessment* by Mike McGovern, Ph.D, 2003.

² *Delineation of Waters of the U.S. and State of California on the Fountain Avenue Property (Assessors Parcel Numbers 061-131-001, 005, 012, 013), Oceano, California* by Rincon Consultants, Inc., dated November 15, 2005.

corner of the property. Moreover, direct observation of wetland vegetation onsite was possible. Wetland vegetation observed include: lady's thumb (*Polygonum persicaria*), big bulrush (*Scirpus robustus*), common tule (*Scirpus acutus* var. *acutus*), scouring rush (*Equisetum hyemale* ssp. *Arvense*), curly dock (*Rumex crispus*), and common nutsedge (*Cyperus eragrostis*). The study also found that the majority of the site contains hydric soil indicators and confirms that hydrologic conditions other than those contributed by the regular discharge of water from the ice company are present.

Although there has been significant disturbance to onsite wetlands due to repeated disking and soil manipulation, the wetland continues to provide a valuable drainage function. The channel in the rear of the site collects drainage and storm runoff from surrounding areas, and feeds other nearby wetlands. According to the report, "the site drains to the northwest through a large rectangular property dominated by wetland habitat that eventually connects to the Oceano Lagoon of Meadow Creak via a culvert located under Airpark Drive."

The Project Does Not Protect Wetland Habitat

Having established that the vast majority of the site qualifies as a wetland under the Coastal Act, the Commission must find that the wetlands are protected, maintained, and where feasible restored. If development is allowed in wetlands under Coastal Act Section 30233(a)(1)-(8) (which this project is not) there must be no feasible less environmentally damaging alternative, and feasible mitigation measures must be provided to minimize adverse environmental effects.

The proposed development would permanently occupy wetlands and will have on-going direct and indirect impacts to the ecological functioning and biological productivity of the Oceano Lagoon wetland complex. Such ongoing impacts include covering and fragmentation of habitat, modification of hydrological dynamics, and the continuation of commercial uses, which are inconsistent with protection of wetland habitat. In conjunction with other existing and potential development in the area, the cumulative impacts of the development on the wetland complex are significant.

Proposed Project Results in Permanent Wetland Loss

The proposed project includes the placement of gravel road base over wetlands for the development of a RV storage facility. As proposed, the project would permanently remove roughly 4 acres of wetlands from the Oceano wetland complex. In other words, the vast majority the onsite wetland areas would be permanently displaced to allow for commercial development. The project would cover areas of the site showing signs of new vegetative growth and recovery. The proposed RV storage facility is not a type of use allowed in wetlands and thus such permanent commercial development in wetlands is inconsistent with Coastal Act Section 30233(a)(1)-(8).

The applicants propose to mitigate for this impact by restoring a 30-foot wide wetland/riparian corridor corresponding to the drainage channel on the northern property boundary. In light of new information regarding the spatial extent of the wetland onsite, this effort is not sufficient to adequately protect the resource. In addition, no specific mitigation or compensation for the loss of this resource, such as the protection of an equivalent or greater amount of offsite wetland habitat, has been provided. Although the provision of off-site mitigation does in and of itself not provide an appropriate avenue for achieving compliance with Section 30233, it can provide a means of minimizing conflicts with Section 30233 in instances where it is not possible to accommodate a reasonable economic use and avoid wetland impacts.



Proposed Project Results in Other Adverse Wetland Impacts

In addition to the permanent loss of wetlands, the proposed project would result in other adverse wetland impacts. One concern is that the proposed project will change the hydrological dynamics of the site. The project will require 8" to 10" of decomposed granite fill to raise the site above flood elevations and provide a stable parking area for RV's. As a result, drainage will leave the site in an unnatural manner, possibly directing drainage to the fronting street rather than allowing it to runoff into the active wetland drainage channel. Even though the project will use semi-permeable gravel surfacing, which allows for some runoff infiltration, this type of surfacing may not be preferred in this particular setting because vehicle-related polluted runoff constituents can percolate directly into underlying soils (then into groundwater and ultimately to the ocean). In this case, the RV parking area would be subject to heavy levels of vehicular use, particularly in popular summer months, causing adverse impacts to water quality. The placement of large amounts of gravel fill within and adjacent to wetlands could cause significant sedimentation impacts in the drainage channel on the north side of the property.

Temporary negative impacts to surrounding wetlands can also occur during construction. The staging of construction equipment onsite, site preparation, and overall construction activities and human presence are expected to adversely affect species and their habitat outside of the construction zone. Although direct construction impacts are expected to be temporary, such construction can have significant wetland impacts on the short-term productivity of the affected habitat. Furthermore, any commercial development brings with it noise, and general activity that is not conducive to fostering habitat values. Activities normally associated with this type of commercial use can interfere with or result in on-going disruption of habitat and sensitive species.

Cumulative Impacts

In conjunction with existing and potential development in this area, the cumulative impacts of the project are significant. As discussed in the findings above, the proposed project by itself results in adverse wetland impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future in the general area. The concern is that these individual, undeveloped wetland parcels will be developed in the future for additional non-resource dependent uses. These developments, when taken together, result in additional fragmentation and disturbance to the larger wetland habitat system. In addition to this permit application, there have been at least three other such individual residential and commercial projects proposed in this general area.³ Avoidance and minimization of wetland loss is essential to prevent individual and cumulative impacts to coastal resources that would adversely affect coastal water quality, aquatic habitats, and marine resources, in accordance with the Coastal Act sections cited above.

c. Marine Resource Conclusion and Project Alternatives

The proposed project is not consistent with the Coastal Act requirement to protect wetlands and associated habitat resources. Wetland resources have not been avoided, adequately buffered, and the development has not been sited and designed to ensure habitat resources and water quality are not adversely affected. Alternative projects are available that would avoid or minimize these impacts and provide a reasonable economic use of the site. While restoring the entire site to wetland habitat may be the most protective of the resource, some limited development must be allowed to provide a reasonable

³ Bachman (3-01-121); Heron Crest (3-03-072); HMW Coastal Ventures (3-04-042).

use of the site. In order to maximize protection of the wetland habitat, any alternative project must be reduced in scale from that proposed, and accompanied by mitigation measures that would effectively offset any unavoidable impacts.

For example, reducing the size of the development envelope and shifting development to the south of the site along Fountain Avenue would minimize site disturbance and have the effect of retaining a larger amount of wetland habitat area and focus development within the non-wetland area along Fountain Avenue. As described, this linear strip of land varies in width from 10-40 feet for a total of approximately 0.5 acres along the fronting street. Among the available uses for the non-wetland area, Staff identified small roadside stands, passive recreation trails, or perhaps even a single row of RV parking spaces. However, it is recognized that the application of a minimal front setback and/or a small wetland buffer poses significant constraints to such development opportunities. With the exception of restoration and nature study, none of the allowable uses listed in Coastal Act Section 30233(a) appear feasible for this site.

Nevertheless, there are a wide range of alternative uses and projects that would minimize wetland loss and impacts in comparison to the proposed project and still provide a reasonable use of the site. To get a sense of other feasible alternatives, Commission Staff sampled a number of other industrial/commercial projects recently approved in the immediate vicinity⁴. In permit D020263P (Later), the County approved an industrial storage building and caretaker's residence on a one-acre parcel with a 4,800 square foot development footprint (includes structures and paving). In permit D020156P (Shostack), the County approved a commercial storage warehouse, offices, and a caretaker's unit on an approximately 15,000 square foot parcel with a 11,200 square foot development footprint. On a larger 18.84-acre parcel, the County approved a 22,682 square foot office/warehouse (D990374P – Bejo Seeds, Inc.). Such uses could be accommodated on this site with a much smaller development footprint and less wetland impacts than that of the proposed project.

In addition to minimizing wetland loss by limiting the extent of land disturbance and carefully siting and designing development, other mitigations are necessary to resolve the Coastal Act inconsistencies described above. Examples of such measures include the protection and restoration of wetland habitats; landscaping to buffer wetland resources; advanced water quality filtration and treatment devices to protect water quality; drainage plans that improve wetland hydrological dynamics and function; and, if necessary, compensation for unavoidable wetland loss through the protection and restoration of other wetland areas in Oceano. The lesser scale and intensity of use that would respond to these parameters would also help to mitigate cumulative impacts. Many details, such as drainage requirements, would be dependent on the exact size and nature of the use proposed. Setback variances to Fountain Avenue could also be considered to maximize wetland protection.

Leaving open space to the center and rear of the site will also be essential to maintain adequate habitat corridor connectivity and enhancements (i.e. recontouring the site, opening up the existing drainage channel for improved drainage, and vegetating the area to foster wetland habitat and species movement). Locating development towards Fountain Avenue would utilize the only area of the site that has not been delineated as wetland and will reduce overall wetland habitat loss in potential habitat corridor areas. This approach is consistent with the Commission's practice with respect to new development along

⁴ All of the recent projects approved in the vicinity do not fall within Coastal Commission's original permit jurisdiction. These projects are subject to County approval and in some cases may be appealable to the Coastal Commission.



Fountain Avenue that has been required to move development as close to the street as possible. For example, in the Bachman residential project (3-01-121), residential use was allowed to encroach 73 feet north beyond Fountain Avenue. Even though the underlying zoning was different in this case and the residential site was much smaller in terms of overall area, the result if this condition was maintenance of a 50-foot buffer from the rear of the residence to the undisturbed wetland habitat in the rear of the property. This is the same wetland area recognized in the wetland delineation as providing a hydrological link to other protected wetland areas within the Oceano wetland complex.

As described above, the proposed project does not address these Coastal Act requirements due to the land consuming nature of the use. Because of the degree to which the proposed project would need to be modified, it is inappropriate to attempt to craft mitigating conditions that would resolve the Coastal Act inconsistencies associated with the proposed project. Rather, it is incumbent on the Applicant or future property owner to propose an alternate project that is mindful of onsite wetland constraints and employs the measures necessary to protect wetland resources. Therefore, because the proposed project is inconsistent with the Coastal Act as described in the above findings, the proposed project must be denied. Such denial is without prejudice inasmuch as there are feasible project alternatives that could be pursued on this site that would minimize and mitigate wetland impacts as necessary to maximize consistency with the Coastal Act.

3. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

Public Resources Code (CEQA) Section 21080.5(d)(2)(A). *Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above Coastal Act conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed and is necessary because there are feasible alternatives and mitigation measures available which would substantially lessen any significant adverse effect the project may have on the environment. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

