

CALIFORNIA COASTAL COMMISSION

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W7a

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COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-02-114

Applicant.....Richard Kelley and Carmen Green

Project location.....537 Honolulu Ave., Oceano, San Luis Obispo County (APN 061-081-016).

Project descriptionConstruct a duplex consisting of two 2,309 square foot residential units with associated grading and landscaping.

File documents.....Coastal Act; San Luis Obispo County Permit #D000338P; Biological and Botanical Survey (Terrence Lilley, 2001); Wetland Delineation (Althouse and Meade, Inc., 2003).

Staff recommendation ...Approval with Conditions

Summary: The applicant proposes to construct a duplex consisting of two 2,309 square foot residential units (including living areas, garage, and decking) and ornamental landscaping on a 6,000 square foot parcel. The project is located in the community of Oceano in south San Luis Obispo County. The site is within the Coastal Commission’s 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.

The Applicant has submitted a wetland delineation for the property, which delineates the entire 6,000 square foot parcel as a wetland under the Coastal Act. Wetland indicators including hydrophytic plants, hydric soils, and hydrology were identified on the parcel. In addition, the property contains suitable habitat for sensitive wetland plant and animal species. Therefore, under the Coastal Act the project is analyzed as the review of new development entirely within a wetland.

The project would result in direct, indirect, and cumulative impacts to wetland habitats that are considered significant and unavoidable. The structures, paving, and ornamental landscaping proposed on the site are inconsistent with Coastal Act Section 30233 because the entire site is considered to be a wetland and residential use is not allowed in wetlands. Although residential development in wetlands is not consistent with the policies of Chapter 3 of the Coastal Act, some development of the site must be



California Coastal Commission
August 2005 Meeting in Costa Mesa

Staff: J.Bishop Approved by: *C.F.L. 7/21/05*

allowed in order to avoid a taking of the property without just compensation, as provided under Coastal Act Section 30010.

In light of constitutional takings issue associated with the proposed development, staff recommends the project be modified to maximize wetland habitat protection consistent with private property rights. Therefore, staff recommends that the Commission **approve** the proposed development subject to a number of conditions in order to maximize consistency with the Chapter 3 policies of the Coastal Act. These conditions include the following requirements:

- Submittal of revised project plans showing a smaller development footprint;
- Placement of an open space deed restriction on all undeveloped wetland habitat areas;
- Submittal of a revised landscaping plan using only native non-invasive plants;
- Submittal of an offsite wetland mitigation plan;
- Submittal of drainage and erosion control plans;
- Environmental monitoring during construction;
- Assumption of Risk, Waiver of Liability and Indemnity;
- Implementation of specific measures to minimize temporary construction and cumulative impacts on wetland plants and animals.

As conditioned by this permit, the project will be consistent with Coastal Act Section 30010 and will adequately mitigate for unavoidable impacts to wetland habitat. The project is also consistent with Coastal Act policies regarding water quality, archaeology, hazards, and public access.

Staff Note

By mutual agreement between Commission staff and the applicant, the decision deadline under the Permit Streamlining Act for this application was extended until August 23, 2005.

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I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-02-114 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, is consistent with the requirements of the California Coastal Act of 1976 (Coastal Act). Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the development on the environment.

II. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Plans for the Executive Director's review and approval. The Final Plans shall demonstrate the following changes to the project:
 - (a) **Development Envelope.** All development shall be confined to areas within the revised 2,400 square foot development envelope, as shown in Exhibit E, except for the minimum necessary to provide access, utility connections, and drainage facilities within the public right-of-way of Honolulu Avenue.
 - (b) **Open Space Area.** All areas outside of the development envelope, as shown in Exhibit E, shall remain in open space. Disturbed open space areas shall be restored. The open space area shall be clearly identified on the Final Project Plans.

The Permittee shall undertake development in accordance with the approved Final Plans. Any proposed changes to the approved Final Plans shall be reported to the Executive Director. No changes to the approved Final Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.



2. Open Space Restriction.

A. No development, as defined in section 30106 of the Coastal Act shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive director issues for this permit except for:

1. Landscaping and restoration activities conducted in accordance with the approved Landscape Plan prepared for the subject property as required by Special Condition 3.
2. Minor drainage improvements consistent with the objectives of the approved Wetland Habitat Restoration Landscaping Plan. "Soft" drainage improvements (e.g. earthen berms and/or vegetated swales) shall be favored and implemented where feasible.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT, the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described and shown on Exhibit E attached to this staff report.

3. Revised Landscape Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of Revised Landscape Plans. The Landscape Plan shall be prepared by a qualified expert using California native wetland plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific condition of the site including but not limited to soil types, exposure, temperature, moisture, and wind. At a minimum, the plan shall demonstrate that:

- (a) All vegetation planted on the site will consist of wetland plants native to California and the Oceano Lagoon area,
- (b) All landscaping shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and

The plans shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be used, the irrigation system (if any), and all other landscape features, and
- (b) A schedule for installation of plants within the first growing season after completion of construction.

Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter from the project biologist, for review and approval of the Executive Director, indicating that plant installation has taken place in accord with the approved Landscape Plan.

4. Offsite Restoration and Monitoring Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for Executive Director review and approval, an Offsite Restoration and Monitoring Plan for offsetting the permanent loss of wetland area and the unavoidable adverse wetland impacts attributable to the project. The plan shall be submitted in

coordination with the County of San Luis Obispo and the California Department of Fish and Game. The plan shall identify an offsite mitigation site in the coastal zone and within the Oceano Lagoon wetland complex on which 18,000 square feet of wetland habitat will be restored and permanently protected. The applicant shall submit with the Offsite Restoration and Monitoring Plan a copy of a deed restriction, conservation easement, or other instrument acceptable to the Executive Director restricting the use of the 18,000 square foot area for wetland habitat mitigation purposes. The Restoration and Monitoring Plan shall be prepared by a qualified restoration ecologist and shall at a minimum include the following:

- 1) A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, as appropriate, a wetland delineation conducted according to the definitions in the Coastal Act and the Commission's Regulations, a description and map showing the area and distribution of species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
- 2) A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
- 3) A description of planned site preparation and invasive plant removal;
- 4) A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
- 5) A plan for interim monitoring and maintenance, including:
 - a. A schedule;
 - b. Interim performance standards;
 - c. A description of field activities;
 - d. The monitoring period. Typically 5 years;
 - e. Provision for submission of annual reports for monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the "as-built" report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.
- 6) Final Success Criteria for each habitat type, including, as appropriate:
 - a. Species diversity;



- b. Total ground cover of vegetation;
 - c. Vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers "50/20" rule, enumeration, species with greater than a threshold of abundance, etc.);
 - d. Wildlife usage;
 - e. Hydrology;
 - f. Presence and abundance of sensitive species or other individual "target" species.
- 7) The method by which "success" will be judged, including:
- a. Type of comparison. Possibilities include comparing a census of the restoration site to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration site to a sample from a reference site, comparing a sample from the restoration site to a fixed standard, or comparing a sample from the restoration site to a sample from a reference site;
 - b. Identification and description, including photographs, of any reference sites that will be used;
 - c. Test of similarity. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, it will entail a one-or two-sample t-test;
 - d. The field sampling design to be employed, including description of the randomized placement of sampling units and the planned sample size;
 - e. Detailed field methods. Do not simply cite a publication or "standard" methods;
 - f. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion;
 - g. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with $\alpha=0.10$ to detect the maximum allowable difference. This analysis will require an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the world wide web (e.g., <http://www.stat.uiowa.edu/~rlenth/Power/index.html>);
 - h. A statement that final monitoring for success will occur after at least 3 years with no remediation or maintenance activities other than weeding.
- 8) Provision for submission of a final monitoring report to the Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site conforms to a goals and success criteria set forth in the approved final restoration program.
- 9) Provision for possible further action. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the

applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised restoration program shall be processed as an amendment to the coastal development permit unless the Executive Director determines that no permit is required.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a letter from the project biologist, for review and approval of the Executive Director, indicating that the restoration and monitoring has been implemented in accord with the approved Plan.

5. Water Quality

Drainage, and Erosion Control Plans. PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit for Executive Director review and approval, two sets of Drainage and Erosion Control Plans that incorporate the following provisions:

Implementation of Best Management Practices During Construction. The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas; and provide for the restoration of disturbed areas immediately upon conclusion of construction activities in that area. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; any the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

Post Construction Drainage. All runoff from the roof, driveway, decks, and other impervious surfaces shall be retained onsite to the greatest degree feasible. Runoff shall be captured and directed into designated pervious areas, percolation pits or appropriate storm drain systems. The drainage plan shall demonstrate that the pervious areas, percolation pits, or drainage systems are sized and designed appropriately to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85% storm) excess runoff shall be conveyed off-site in a non-erosive manner and consistent with the objectives of the approved Wetland Habitat Restoration and Landscaping Plan.

The permittee shall undertake development in accordance with the approved Drainage and Erosion Control Plans. No changes to the approved Drainage and Erosion Control Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director



determines that no amendment is required.

6. **Environmental Monitoring During Construction.** Permittee shall employ a project biologist/environmental monitor approved by the Executive Director to ensure compliance with all permit conditions and mitigation requirements during the construction phase. Evidence of compliance shall be submitted by the project monitor to the Executive Director each month while construction is proceeding, and upon completion of construction.
7. **Hazards - Airport Review Area.** The Permittee hereby agrees to San Luis Obispo County conditions 9 through 15 regarding Airport Review Area requirements (see Exhibit D).
8. **Hazards – Flood Hazard (FH) Area Combining Designation.** In addition to the requirements of the Drainage and Erosion Control Plans (Special Condition 5), the Plan shall include base flood elevations, hazard areas, and floodway locations in the vicinity of the project in accordance with CZLUO Section 23.07.064. On the basis of the structural plans and depth analysis, the ground floor of all structures is to be constructed at a minimum of one-foot above the 100-year storm flood profile level. If no flood depth number is available, all structures shall be elevated a minimum of two feet above adjacent natural grade in accordance with CZLUO Section 23.07.066.
9. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from heavy storm damage, flooding, earth movement, and its location within the sphere of influence of the Oceano Airport Review Area; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
10. **Compliance with Local Conditions of Approval.** All conditions of approval adopted by the County of San Luis Obispo Zoning Administrator on September 20, 2002 (attached as Exhibit D) pursuant to an authority other than the Coastal Act continue to apply to the project (e.g., local conditions 5, 6, 7, 8, 16, 17 and 18).
11. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use

and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The proposed development is located at 537 Honolulu Avenue, approximately 450 feet west of Aloha Place, in the community of Oceano, San Luis Obispo County (see Exhibits A and B). The property is 6,000 square feet (60 ft. x 100 ft.) fronting Honolulu Avenue. Honolulu Avenue is a 60 foot wide public right-of-way, of which 20 feet is presently paved. The remainder of the road, from the asphalt edge to the property line, is dense with willows. On the other side of the parcel, dense vegetation continues north beyond the parcel boundary to the next street, Lakeside Avenue. Beyond Lakeside Avenue is the Oceano Airport.

The property is zoned Residential Multi-Family while the current surrounding land uses are primarily single-family residences and vacant lots. There are existing houses on two sides of the property. Across Honolulu Avenue to the southwest are eight undeveloped lots. The property is approximately 150 feet east of the Arroyo Grande Creek/Meadow Creek marsh system.

2. Project Description

The Applicant proposes to construct a duplex consisting of two approximate 2,309 square foot residential units (including living areas, garage, and decking). Both units are two stories with attached garages. Separate driveways serve the units, each located on opposite ends of property. The height of the duplex is roughly 23 feet. The project would disturb 100% of the site, including the residential units, concrete driveways, covered porches, and ornamental landscaping.

3. Standard of Review/Basis of Decision

Jurisdiction

The site is within the Coastal Commission's 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. Relevant Coastal Act policies include Section 30233, which limits the fill of wetlands and prohibits residential use within wetlands. In this case, the entire site of the proposed development is a wetland (see finding B (1) below for details). Accordingly, because the proposed development is construction of two residential units (which are not an exception under Section 30233) and will result in significant habitat disruption, the proposed residential development cannot be found consistent with Section 30233. Therefore, absent other considerations, this project would have to be recommended for denial.

However, Coastal Act Section 30010 states:



The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

The Coastal Commission is not organized or authorized to compensate landowners denied reasonable economic use of their otherwise developable residential property. Therefore, to preclude claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows for the construction of a residential development to provide a reasonable economic use of this property. This determination is based on the Commission's finding in B (1) of this staff report, below, that the privately-owned parcel was purchased with the expectation of residential use, that such expectation is reasonable, that the investment was significant, and that the proposed development is commensurate with such investment-backed expectations for the site.

B. Issue Analysis

1. Marine Resources

a. Applicable Policies

Article 4 of Chapter 3 of the Coastal Act describes protective policies for the marine environment 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. ...

In sum, the Coastal Act requires protection and preservation wetland resources such as exist at the project site. Non-resource development within wetlands is prohibited, and only a very limited subset of development is allowed within wetlands (residential development is not one of the allowed types of development), and any development authorized must be mindful of the policies protecting the general wetland environs and its inhabitants.

While Coastal Act policies are the standard of review for 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.

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.*

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. Description of Wetlands

The proposed development site is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. This geographical area is known for the occurrence of native plant and animal species restricted to wetland systems, including those listed as endangered or threatened under Federal and/or State regulations. Sensitive habitats are defined by local, State, or Federal agencies as those habitats that support special status species, provide important habitat values for wildlife, represent areas of unusual or regionally restricted habitat types, and/or provide high biological diversity. Because the wetland habitat ecosystem in general is a rapidly diminishing resource and is so easily disturbed, it is an acknowledged environmentally sensitive area. These coastal wetlands are communities designated as high priority in the California Department of Fish and Game (CDFG) Inventory. Coastal wetlands, like the Oceano Lagoon complex, are also recognized as environmentally sensitive habitat areas (ESHA) in the San Luis Obispo County's LCP.

The property lies in close proximity to the Oceano Lagoon wetland complex. Oceano Lagoon 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 are wetland habitat, or wetlands in various stages of disruption or recovery. Clear evidence of the original wetland still exists at Oceano Lagoon, a wetland environmentally sensitive habitat area (ESHA) about 150 feet west of the project site. While these areas are representative of the larger Oceano wetland complex that once existed, the extent of the wetland habitat in some areas is more difficult to determine due to the historic filling of the area. The remnant wetland habitat areas have suffered severe impacts and in some areas are heavily developed. Potential wetland development in this area and the loss of habitat values in Oceano is a

significant issue.

A search of the California Natural Diversity Data Base (CNDDDB) for the Oceano quadrangle found twenty-three special status species, including eleven threatened or endangered species. According to the biological studies prepared for the project, two of these species, California red-legged frog (*Rana aurora drytonii*) and Southwestern pond turtle (*Clemmys marmorata pallida*), occasionally could be found on the property. California red-legged frog could occur on the property as a transient, moving inland from the nearby Oceano Lagoon and marsh areas of Arroyo Grande and Meadow Creeks. It is unlikely that nesting southwestern pond turtle would be found on the property. Neither of these sensitive species were identified on the property during site studies, however, the onsite wetland does have the potential to support such sensitive animal species.

According to the project wetland delineation¹ the entire 6,000 square foot site is a wetland. The delineation documented the presence of three primary wetland indicators on the site including: 1) hydrophytic plants; 2) hydric soils; and 3) hydrology. According to the report, hydrophytic vegetation occurs over 100% of the site. Three plant species are dominant on the property: Red Willow (*Salix laevigata*), California blackberry (*Rubus ursinus*), and Periwinkle (*Vinca major*). Other plant species on the site include a lawn area of kikuyu grass near the property fringe, ditch beard grass, and a few rip-gut brome plants near the paved surface of Honolulu Avenue. Hydric soil indicators were present at all three locations studied. Finally, the wetland delineation notes that the property is at a lower elevation than surrounding areas and appears to flood periodically. Thus, the entire project area constitutes a wetland within the meaning of the Coastal Act.

c. Wetland Impact Analysis

The proposed development includes filling of wetlands for the construction of a residential duplex, paved driveways, turf grass and ornamental landscaping. The proposed development would permanently occupy wetlands and will have on-going direct and indirect impacts to the ecological functioning of the Oceano Lagoon wetland complex. Such ongoing impacts include covering and fragmentation of habitat, interference with and prevention of hydrological dynamics, shading of wetland plants, and the continuation of residential 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

As proposed, the project would permanently displace 100% of the onsite wetlands. The applicant has proposed to construct a residential duplex, two separate concrete driveways, with the remainder of the site planted with invasive turf grass and ornamental landscaping. In other words, all of the 6,000 square feet of onsite wetland areas would be displaced to allow for residential development. As described previously, there is also roughly 1,200 additional square feet of wetland between the edge of pavement on Honolulu Avenue and the property line that would be permanently lost with development of a driveway, utilities, or installation of curbs, gutters, and sidewalks. Moreover, drainage improvements are likely to permanently occupy some area of onsite wetlands. The proposed duplex is not a type of use allowed in wetlands and thus such permanent development in wetlands is inconsistent with Coastal Act Section 30233.

¹ Wetland Delineation for Lot 42APN 061-081-016 by Althouse and Meade, Inc. dated August 14, 2003.



Proposed Project Results in Adverse Temporary Wetlands and Other Impacts

In addition to the permanent loss of wetlands, the proposed project would result in temporary negative impacts to surrounding wetlands 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.

The applicant submitted a landscape plan with a plant palette containing a number of invasive non-native species. Non-native invasive plants invade native habitat areas and vastly alter the ecological landscape by outcompeting and excluding native plants and animals; altering nutrient cycles and hydrology; and hybridizing. Rare species are particularly vulnerable to the changes brought about by non-native invaders.

Furthermore, any residential development brings with it noise, lights, pets, and general activity that is not conducive to fostering habitat values. Domestic animals and other activities normally associated with residential use can interfere with or result in on-going disruption of habitat and sensitive species. The lights that would be visible from the proposed residence at night might also have some impact on nighttime foraging and movement of species. Such impacts more than likely exist already due to the site's close proximity to adjacent residences and the Oceano airport. In this case, it is difficult to measure the extent of habitat disruptions from such activities. However, given the fact that the entire site is a wetland, a precautionary approach is warranted.

Cumulative Impacts

In conjunction with existing and potential development in the lagoon 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 Ocean Lagoon area. The concern is that these individual, undeveloped wetland parcels will be developed in the future for additional residential units. These residential units, when taken together, result in additional fragmentation and disturbance to the larger wetland habitat system.

In addition to this permit application, there are currently at least five other such individual residential and commercial projects pending at the Commission at this time in this general area.² In any case, any such future development proposals would be subject to the same standards as this proposal, dictating maximum wetland protection in light of Constitutional issues. Even though mitigation measures would be required for each new development, impacts will be significant both on an individual and cumulative basis.

d. Implementing Sections 30010 and 30233 of the Coastal Act

As described above, the entire area of the proposed project sites is a wetland. The proposed development as submitted includes a duplex consisting of two residential units with associated infrastructure improvements and landscaping. In addition to the permanent loss of wetlands described

² Bachman (3-01-121); Heron Crest (3-03-072); Pismo Coast Village (3-04-077); HMW Coastal Ventures (3-04-042).

above, ongoing disruptions will result from residential development and subsequent use of the site. Such activities may include: installation of a storm drainage system, utility trenching, exterior lighting and, over the long run, ordinary residential activities on the premises such as allowing dogs or other activity in the habitat area. Also, there is no buffer proposed between the development and the surrounding wetlands. None of the development activity described is dependent on a location within the wetland resource area. In addition, this development and its associated activities, individually and collectively, will result in a significant disruption of the wetland area onsite as well as surrounding the proposed project. Therefore, this project cannot be found consistent with Coastal Act Section 30233.

Coastal Act Section 30233, however, must be applied in the context of other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation." Thus, if strict construction of the restrictions in Section 30233 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will cause a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2886; also see *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495, citing *Agins v. Tiburon* (1980) 447 U.S. 255, 260.) Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (*Keystone Bituminous Coal Assn. v. DeBenedictis*, supra, 480 U.S. 470, 495, citing *Kaiser Aetna v. United States* (1979) 444 U.S. 164, 175.)

In addition, in order to avoid allegations of a taking, certain types of mitigation measures, such as exactions requiring the dedication of a fee interest in property, must be "roughly proportional" to the impact remediated. (*Dolan v. City of Tigard* (1994) 114 S. Ct. 2309.)

Finally, in still other individual cases it may be necessary to consider whether the property proposed for development by the applicant is subject to existing limitations on the owner's title, such as prescriptive rights, that might preclude the applied for use, or that the proposed use would be a nuisance. The question as to whether the any portion of the development is subject to prescriptive rights does not apply in this case. Furthermore, development of the parcel with residential units in the configuration proposed by the applicant would not constitute a nuisance.

The Applicant(s) (Richard Kelley and Carmen Green) submitted adequate financial information to demonstrate a sufficient real property interest in the privately held property to allow some development. Staff has determined that the Applicant bought the property in 2001, but for well below fair market value for lots not located within a wetland. During the period when the Applicant purchased the property, these parcels and other parcels in the Tract were designated in the LCP and zoned for multi-family residential use, although the Coastal Act and the LCP also includes policies that would severely limit development on this site as well. Continued residential development on similar lots within the Oceano airport area over the intervening years has also occurred. Thus, in the year that the parcels were



purchased, the Applicant could have legitimately assumed that limited development of residential homes on these lots was a reasonable expectation. Therefore, in view of the other residential uses in the vicinity of the privately held parcels, the Commission finds that the proposed residential use is a reasonable economic use, and also that the uses allowed by Coastal Act Section 30233 would not provide an economic use (i.e. the site is too small for a port, energy, or industrial facility; and restoration or nature study would not be an economic use).

In view of the findings that (1) none of the uses provided for in Section 30233 would provide an economic use, (2) residential use of the property would provide an economic use and (3) the applicant had a reasonable investment backed expectation that although the site was constrained, thus the low purchase price, some residential use would be allowed on the property. The Commission further finds that denial of a residential use, based on the inconsistency of this use with Section 30233 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that full implementation of Section 30233 to prevent residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30233, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications.

Moreover, while the applicant may have reasonably anticipated that residential use of the subject properties might be allowed, the Coastal Act and the County LCP provided notice that such residential use would be contingent on the implementation of measures necessary to minimize the impacts of development on wetlands. Thus, the Commission must still comply with the requirements of Section 30233 by protecting against the significant disruption of wetland values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of residences and associated infrastructure.

e. Maximizing Wetland Protection

The project site is a wetland as that term is defined in section 30121 of the Coastal Act and section 13577(b) of the Commission's regulations, and thus is subject to the regulatory requirements of Section 30233 of the Coastal Act. This section of the Coastal Act requires that such habitat areas be protected against significant disruption or degradation. Strict application of this section is not authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the California and United States Constitutions. Therefore, the Applicant may be permitted to develop a portion of the property, subject to Special Conditions that will reduce or mitigate the impact on wetland habitat to the maximum extent possible consistent with section 30010.

The Applicant has submitted materials to Commission staff stating that any reduction in the size and scope of the proposed development would not provide for an economically feasible project, and thus would constitute a taking of property. The Applicant also contends that because the project site includes two contiguous lots (Lots 41 and 42 in Block 1 of Lakeside Park), a minimum of two residential units must be allowed. In addition, the Applicant asserts that the construction and subsequent sale of a project within a smaller development envelope will not result in economic profit (see Exhibit F for applicant correspondence and Commission staff response).

Before a taking claim can be analyzed it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be treated as a single parcel for takings purposes. In determining whether lots should be so treated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318; *Forest Properties Inc. v. Big Bear Municipal Water District*, (Fed. Cir. 1999) 177 F. 3rd 1360).

Applying these factors, the Commission concludes that the two lots on which the project is proposed can and should be analyzed for takings purposes as a single parcel. There are many reasons to support this. First, both lots are owned by the Applicant and were acquired at the same time in 2001. Second, both lots share a common assessors parcel number (APN 061-081-016). Third, the Applicant purchased the lots for a single purchase price, and the parties to the sale did not assign separate values or purchase prices to the two lots. Fourth, the two lots are contiguous, and are subject to the same local land use zoning of multi-family residential (MFR). Fifth, the Applicant has treated the two lots as a single unit. This is evidenced by the fact that the project includes a duplex with each unit covering a portion of both lots, and common landscaping. Finally, a review of the chain of title for the property shows that these lots have been conveyed over time as a single unit and never in divided ownership. In summary on this point, the takings doctrine treats APN 061-081-016 as a single parcel for the purpose of determining whether a taking occurred.

In addition, Commission staff analyzed the modified development envelope to be sure that the reduced size would still provide for a reasonable economic use of the site. After evaluating a number of possible design alternatives, Staff concluded that the reduced development envelope does provide for a reasonable economic residential use, while at the same time maximizes resource protection. For example, the approved envelope could allow for a single residential unit of approximately 2,400 s.f.; two smaller units oriented towards the front of the parcel of approximately 1,200 s.f. each; or a two-unit condominium/duplex of approximately 1,400 s.f. each (with shared parking garage, driveways, and walls). Based on data provided by the Applicant, even the smallest project assumed (a 15 x 50 foot building envelope providing a single unit with a living area of 1,200 s.f. including a single car garage and a small yard) would be worth between \$500,000 and \$550,000.

In order to maximize protection of the wetland habitat in light of constitutional takings issues, the project must be reduced in scope from that proposed, and conditioned as necessary to minimize disruption to sensitive habitat that would accompany any development of this property. Therefore, Special Condition 1 requires that the entire development envelope be reduced in size. Reducing the size of the development envelope would minimize site disturbance and have the effect of retaining a larger amount of wetland habitat area. Special Condition 1 requires a modified development envelope, reducing the development envelope of the overall project to 2,400 square feet (40% lot coverage) while at the same time orienting structures toward the fronting street (Honolulu Ave.), further from undisturbed wetland habitat and drainage areas which provide greater connectivity to surrounding wetland areas. As described, the neighboring lawn has encroached onto the front and side of the property. Locating the development envelope towards Honolulu Avenue utilizes this already disturbed



area and will reduce overall wetland habitat losses. The remainder of the property (60%) is required to remain in open space. This percentage of allowed lot coverage is consistent with previous Commission action taken on residential use in wetlands in this same general area of Oceano (see Bachman SFD, CDP #3-01-121).

In addition to the reduced size of the development envelope, appropriate mitigation for the impact to wetland habitat in Oceano includes the preservation of open space/habitat areas and restoration and long-term maintenance of these areas. Special Condition 2 requires that the undeveloped area on the property shall be preserved in open space, subject to a deed restriction that prohibits uses that are inconsistent with habitat restoration and preservation (Special Condition 11).

In conjunction with this requirement, Special Condition 3 requires that the applicant to submit a revised landscape plan using exclusively native wetland vegetation appropriate to the Oceano area. Landscaping shall include, but is not limited to, the development envelope and the area of turf grass encroaching on the property fringe from the neighbors yard. The most effective and efficient way to deal with weedy species is to prevent invasions. Preventing invasion is of greater conservation benefit in the long run than the far more costly and difficult efforts to control a widespread pest species. Therefore, Special Condition 3 will reduce the potential for invasive plant species to adversely impact the surrounding wetland habitat in the immediate project area as well as to minimize disruption to adjacent wetland habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site.

Mitigation is also required to offset the unavoidable impacts of the proposed project. This includes both the permanent loss of 2,400 square feet of wetlands attributable to the project's development envelope, the ongoing disruptions to the value of surrounding wetlands, and the cumulative impacts of residential development on the Oceano Lagoon wetland complex. Initially, Staff believed that the most appropriate mitigation for these impacts would be achieved through retirement of a wetland parcel of equal size and/or value within the same wetland area. However, within the context of the local approval and the recommendations of the Department of Fish and Game, it was determined that offsite restoration was adequate. Thus, Special Condition 4 requires mitigation in the form of an offsite wetland mitigation plan that would require the applicant to identify, in coordination with the County and the Department of Fish and Game, an offsite mitigation area within Oceano on which 18,000 square feet of wetland habitat will be restored and permanently protected. The condition is designed for establishment of replacement wetland habitat at a ratio of 3:1 (3 x 6,000 square feet of impacted wetlands (2,400 s.f. directly affected + 3,600 s.f. indirectly affected due to lack of buffering = 18,000 square feet of mitigation). It is also important to consider the roughly 1,200 s.f of wetland lost within the street right-of-way. A greater than 1:1 mitigation ratio is appropriate given the uncertain success rate for any offsite habitat restoration effort. A larger restoration area also mitigates for the ongoing and cumulative wetland disturbances attributable to residential development. The County and the Department of Fish and Game have also required a mitigation ratio of 3:1. This mitigation is proportional to the impact caused by the development.

To avoid potential impacts to sensitive species during construction and to assure that the permit conditions and mitigations are being implemented, Special Condition 6 requires an environmental monitor, approved by the Executive Director, to be present during construction activities.

Although the entire lot is considered to be a wetland, to prevent takings, some development of the parcel

must be allowed. However, Coastal Act standards require that permitted development be limited to the constitutionally mandated minimum level of intensity. Thus, only as conditioned does the project maximize the protection of coastal wetlands, and satisfy Constitutional issues.

2. Water Quality

a. Applicable Water Quality Policies

Coastal Act Sections 30230, 30231, and 30232 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.

Section 30232. Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

b. Consistency Analysis

The proposed project has the potential to degrade wetland habitat through the proposed construction of residential units, altering natural drainage patterns, and contributing sediments and pollutants to coastal wetlands. Construction activities can adversely impact coastal water quality by causing erosion and sedimentation through the removal of vegetation and the movement of dirt. The increase in impervious surfaces that will result from the project will also impact water quality by altering natural drainage patterns and providing areas for the accumulation of pollutants that will eventually be carried into wetland areas by storm water. The proposed project would significantly increase the amount of impervious surface at the site due to the construction of a roof, driveway, and other hard improvements. The driveway, in particular, can accumulate automobile by-products contributing to polluted runoff (e.g., petroleum hydrocarbons, heavy metals such as lead, copper, zinc and cadmium, etc.).

Minimizing sedimentation and impervious surfaces resulting from new development is one way to reduce nonpoint source runoff. The primary mechanisms for minimizing impervious surfaces, in this case, are to require construction best management practices (BMP's) and limit the development to a single shared driveway. With less impervious area for pollutants to collect upon, there is a reduction in polluted runoff ultimately flushed off site. This can be accomplished by reducing the size of impervious surfaces and implementing erosion control BMP's during and after construction. Special Conditions 1



and 5 implement these requirements.

As conditioned, the Commission finds that the proposed project would maintain marine resource water quality; would not adversely impact wetland habitats; and, as such, is consistent with Coastal Act Sections 30230, 30231, and 30232.

3. Hazards

a. Applicable Hazard Policies

The following policies apply to the project due to the fact that it is located within an LCP designated Flood Hazard (FH) Area.

Section 30253 of the Coastal Act states:

New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

In addition to the above referenced Coastal Act section, the County's Coastal Zone Land use Ordinance (CZLUO) also provides standards for development that is located within a designated Flood Hazard (FH) Area.

CZLUO 23.07.064- Flood Hazard Area Permit and Processing Requirements: *Drainage plan approval is required where any portion of the proposed site is located within a Flood Hazard combining designation, in addition to all other permits required by this title, state and federal law. In addition to the information called for in Section 23.05.042 (drainage plan required) the drainage plan shall include:*

a. Federal Insurance Administration flood data, including base flood elevation, flood hazard area and floodway locations.

b. In areas where weather service elevation data has no been provided by the Federal Insurance Administration, a normal depth analysis or other equivalent engineering analysis that identifies the location of the floodway and demonstrates to the satisfaction of the County Engineer that the structure will not be located within the floodway or be subject to inundation by a 100-year storm. The following information is required to determine the location of flood elevation and the floodway, except where waived or modified by the County Engineer: ...

CZLUO 23.07.066 – Construction Standards: *New structures or an increase in 65 percent in the square footage of any existing structures (including manufactured homes) or other construction activities within a Flood Hazard Area combining designation are subject to the following:*

a. Construction, general:

(10) *On the basis of structural plans and the depth analysis, the ground floor of all structures is to be constructed at a minimum of one-foot above the 100-year storm flood profile level. Within any AO zone on the Flood Insurance Rate maps, this elevation shall be determined by adding on foot to the depth number specified. If no depth is specified, structures shall*

be elevated a minimum of two feet above adjacent natural grade.

b. Consistency Analysis

Airport Hazards

Coastal Act Section 30253 requires that new development shall minimize the risks to life and property. The proposed development falls within the sphere of influence of the Oceano Airport Review Area. Therefore, the applicant is required to grant/update an Avigation Easement to the County of San Luis Obispo via an avigation easement document prepared by the County. The avigation easement document shall be reviewed and approved by the County Counsel prior to final approval. The County conditioned its approval to provide such an avigation easement (see Exhibit D, County Conditions 9-15). In addition, the county conditions require the use of non-reflective building materials and limits noise and light levels to avoid interference with airport operations. Special Condition 7 of this project approval retains these County required measures. Thus, this aspect of the proposed development is consistent with the hazard policies of the Coastal Act.

Flood Hazards

Coastal Act Section 30253 requires that new development shall minimize the risks to life and property in areas of high geologic, flood, and fire hazard. In terms of coastal hazards, the project is located within the Flood Hazard (FH) Area delineated by the San Luis Bay Coastal Area Plan, which generally corresponds to the area that is subject to flooding under a 100-year storm. In accordance with CZLUO Section 23.07.064, this coastal development permit requires the applicant to submit a drainage plan for Executive director review and approval (see Special Condition 5). In addition, Special Condition 8 requires that all CZLUO Flood Hazard (FH) Area permit processing requirements and construction standards be shown on project plans and implemented during construction.

The experience of the Commission in evaluating the consistency of proposed developments with Coastal Act policies regarding development in areas subject to problems associated with geologic instability, flood, wave, river, and/or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, flooding, landslides, or other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden on the people of the State for damages, applicants are regularly required to acknowledge site geologic risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Special Condition 9 requires the Applicant to recognize and assume the risk of building within an LCP designated Flood Hazard (FH) Area.

With these conditions, the project is consistent with Coastal Act Section 30253(1), which requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard.

4. Archaeology

a. Applicable Archaeology Policies

Coastal Act Section 30244. Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation



measures shall be required.

LCP Archaeology Policy 6 also provides guidance and states: *Where substantial archaeological resources are discovered during construction of new development...all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resource and submit alternative mitigation measures.*

b. Consistency Analysis

The Oceano community is an area of identified archaeological significance in the LCP due to the fact that the Obispeno Chumash historically occupied the Oceano area. However, the project is not located in an area that would be considered culturally sensitive due to lack of physical features typically associated with prehistoric occupation. A Phase I archaeological surface survey was conducted on March 11, 2001, by a qualified professional archaeologist (Parker and Associates). According to the archaeological report, no evidence of cultural materials was noted on-site. In addition, the report states that the property is located in low-lying and perennially flooded area of the once larger Cienega Bay. As part of the historic Cienega Bay, it is highly unlikely that cultural resources would be located in what would have been the mudflats of this bay. Moreover, the properties location within a flood plain requires substantial fill (2-3 feet) to be imported and placed over the existing ground surface prior to construction. This fill will reduce the likelihood of cultural resource disturbance even more. The archaeologist does not recommend any further site inspection.

Thus, the project is consistent with Coastal Act Section 30244.

5. Public Access

a. Applicable Public Access Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

b. Consistency Analysis

The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. The project site is about one-quarter mile from the beach. Oceano Lagoon, Oceano Airport, and residential development lie between the project site and the beach. No access exists or is possible from the site to the beach. However, access is available less than one-quarter mile of the site via Pier Avenue. At the seaward end of Pier Avenue is a public parking lot and direct beach access for public use. Therefore, no access is required to be provided by the current project. The Commission finds that the project is consistent with the public access requirements of the Coastal Act Sections 30211, 30212, and 30223.

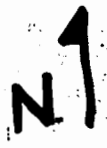
IV. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. 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.

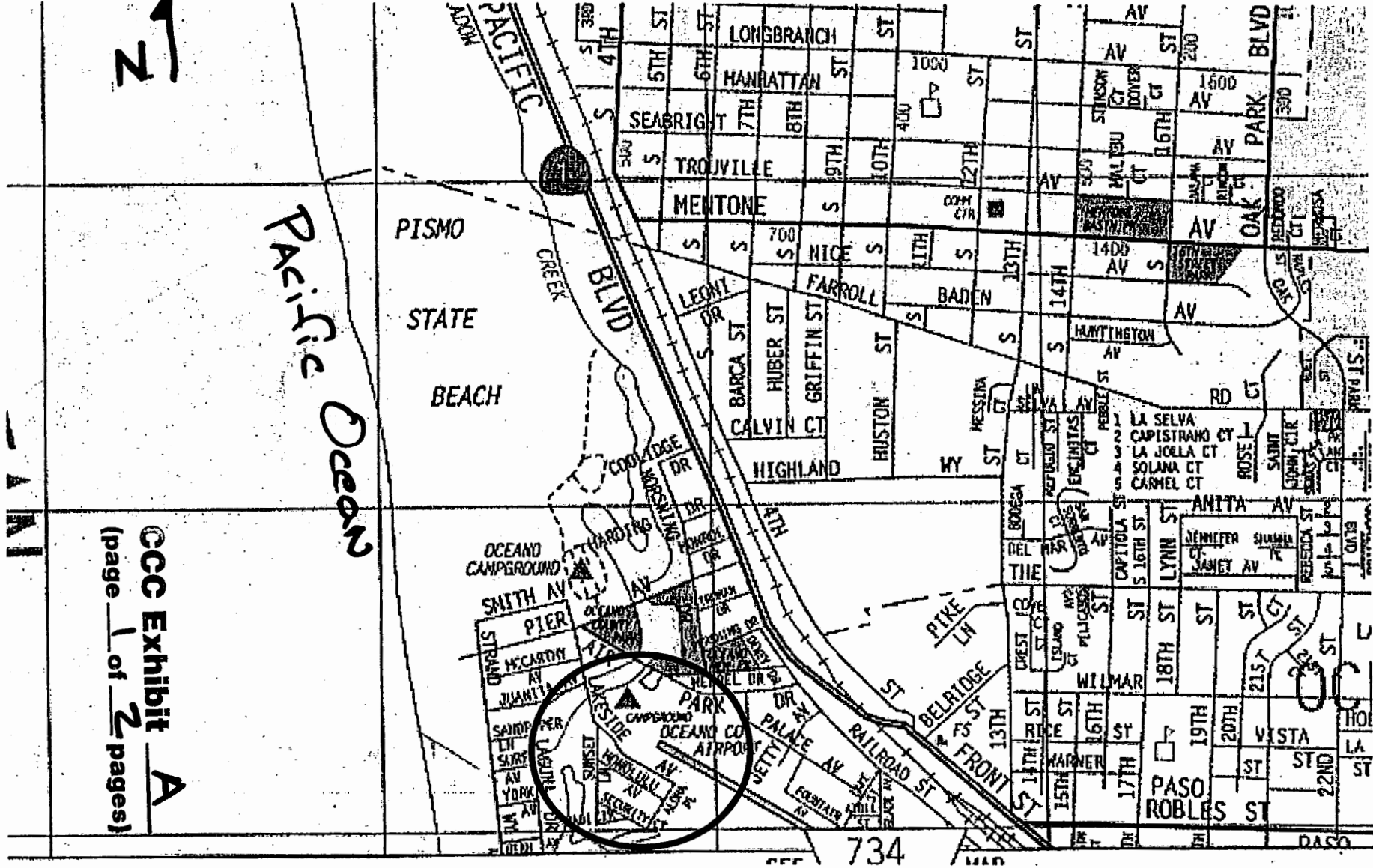
The environmental review of the project conducted by Commission staff involved the evaluation of potential impacts to relevant coastal resource issues, including wetland habitat, water quality, archaeology, hazards, and public access. This analysis is reflected in the findings that are incorporated into this CEQA finding.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant constitutional coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.





Pacific Ocean



CCC Exhibit A
(page 1 of 2 pages)

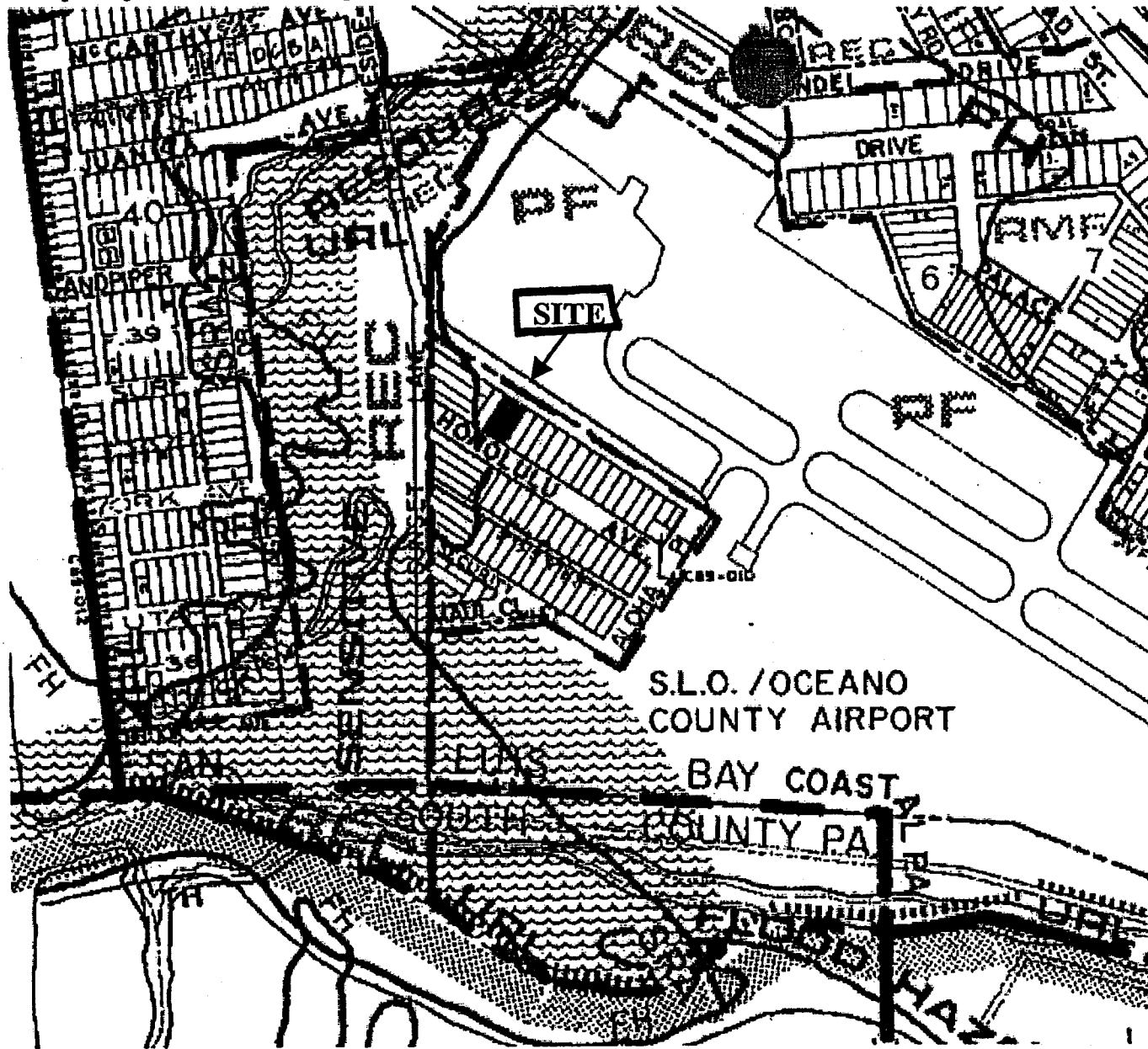
Project

Kelley D000338P/ED01-175



Exhibit

VICINITY MAP



CCC Exhibit A
(page 2 of 2 pages)

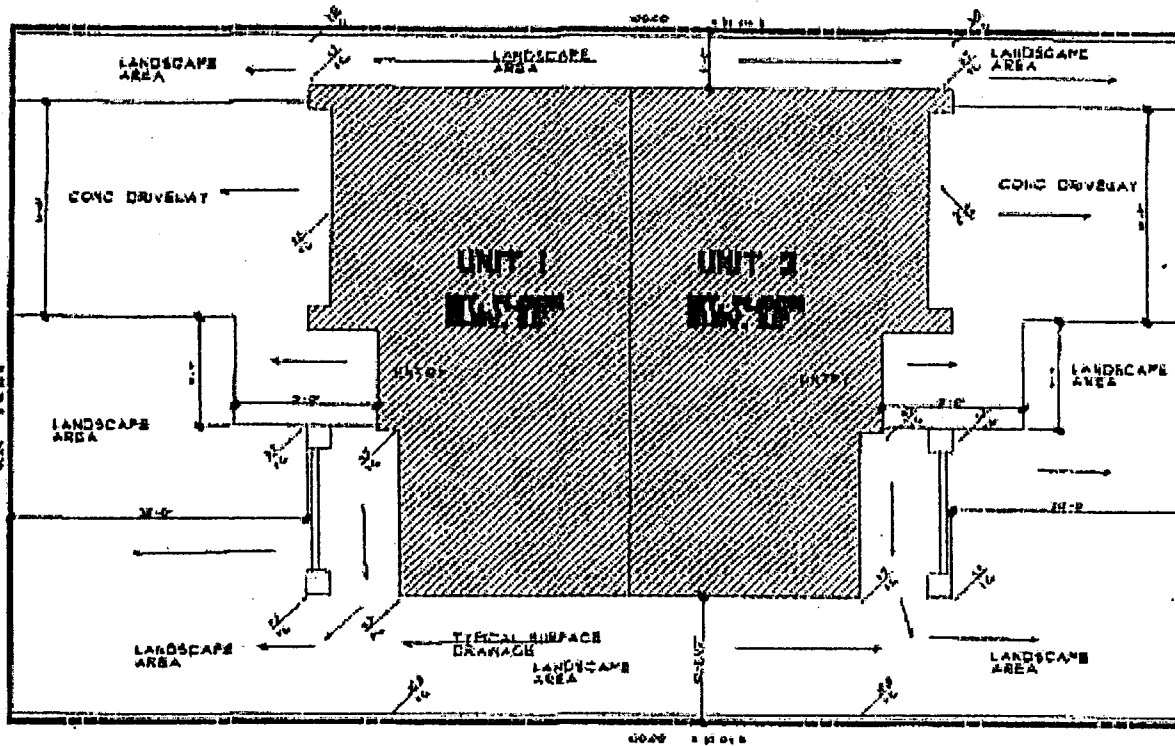
Project

Kelley D000338P/ED01-175



Exhibit

LAND USE CATEGORY



NOTE:
100 YEAR FLOOD ELEVATION = 10.8

SITE AND PRELIMINARY GRADING PLAN

SCALE = 1" = 1'-0"



CCC Exhibit **B**
(page 1 of 2 pages)

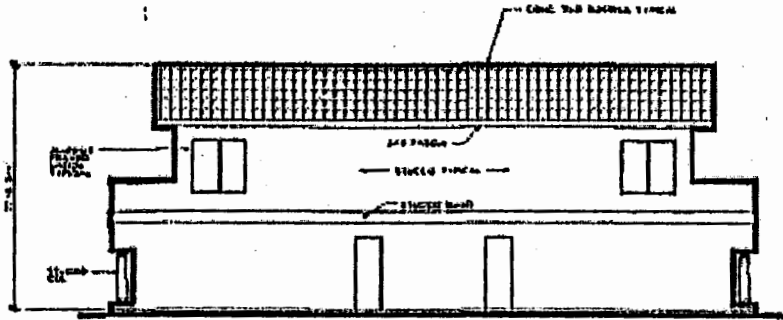
Project

Kelley D000338P/ED01-175

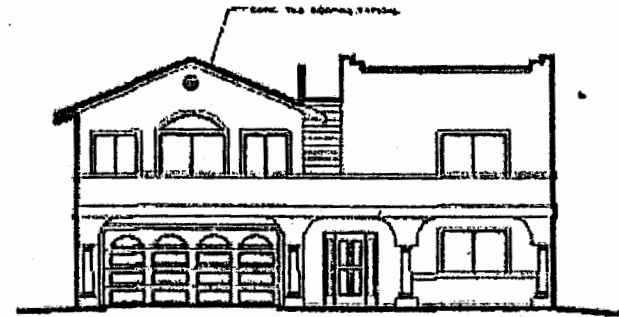


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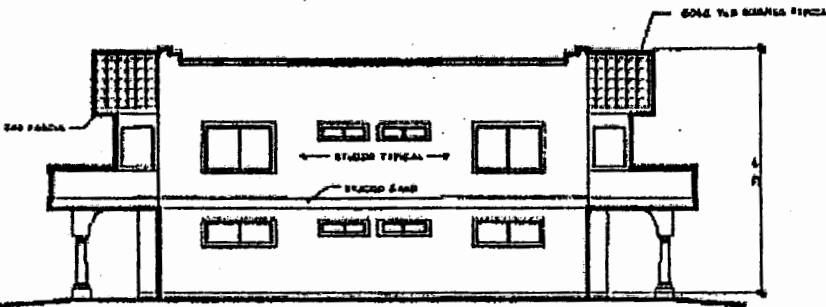
SITE PLAN



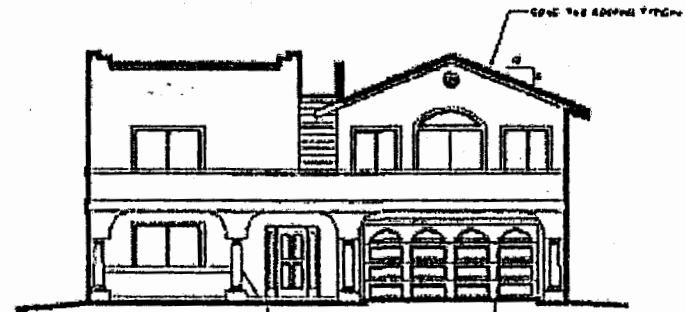
EAST ELEVATION
SCALE = 1/8" = 1'-0"



SOUTH ELEVATION
SCALE = 1/4" = 1'-0"



WEST ELEVATION
SCALE = 1/8" = 1'-0"



NORTH ELEVATION
SCALE = 1/8" = 1'-0"

CCC Exhibit **B**
(page 1 of 2 pages)

Project

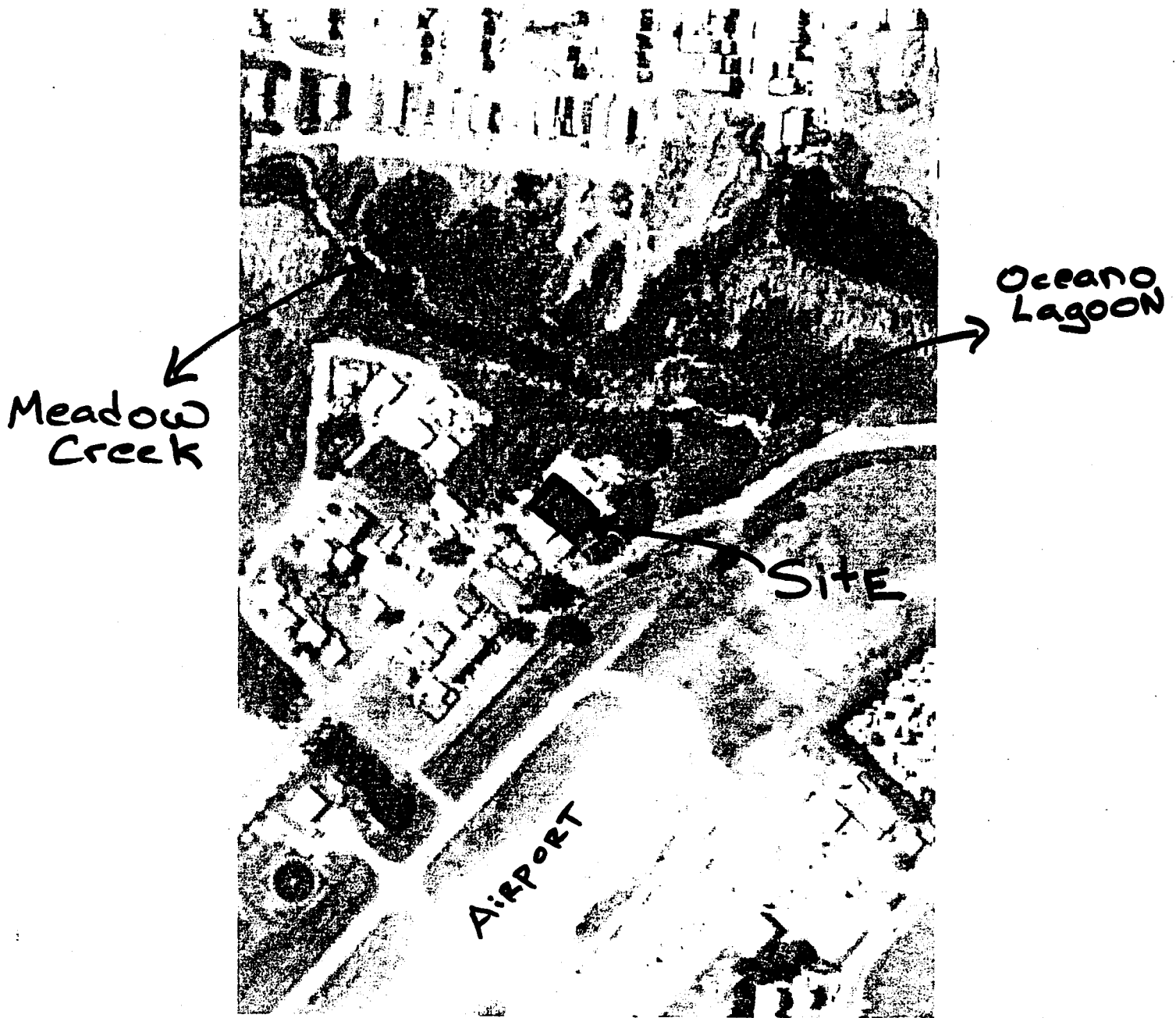
Kelley D000338P/ED01-175



Exhibit

ELEVATIONS

Pacific Ocean



Aerial Photo

EXHIBIT A - FINDINGS

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on July 16, 2002 for this project. Mitigation measures are proposed to address biological resources, geology and soils, and public services/utilities and are included as conditions of approval.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the grading and construction of two approximate 1,425 square foot multi family units will not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will be consistent with the character of the immediate neighborhood or contrary to its orderly development because the grading and construction of two approximate 1,425 square foot multi family units are similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Honolulu Avenue, a local road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project is not adjacent to the coast and the project will not inhibit access to the coastal waters and recreation areas.

Streams and Riparian Vegetation

- H. The alternative locations and routes are infeasible or more environmentally damaging because the site contains no alternative locations that would not disturb resources.
- I. Adverse environmental effects are mitigated to the maximum extent feasible because the applicant agreed to off-site mitigation consistent with the Fish and Game requirements.
- J. The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks because the proposed project is a principally permitted use in the residential multi family land use category. Additionally, because majority of the site is wooded with riparian vegetation re-designing the project would still create riparian vegetation impacts.

- K. The adjustment is the minimum that would allow for the establishment of a principal permitted use because the applicant is proposing two multi-family dwellings and not utilizing full density, which would potentially allow four units to be constructed.

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes:
 - a. the construction of two 1,425 multi family dwelling units, each totaling 2,309 square feet (including living areas, garage and decking).
 - b. maximum height is 25 from finish floor elevation.
2. All development shall be consistent with the approved site plan, floor plan, architectural elevations and landscape plan.
3. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before final building inspection.
4. **At the time of application for construction permits**, the applicant shall provide details on any proposed exterior lighting, if applicable. The details shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface is visible from adjacent properties. Light hoods shall be dark colored.

Fire Safety

5. **Prior to issuance of a construction permit**, the applicant shall provide the county Department of Planning and Building with a fire safety plan approved by the Oceano Community Service District (OSCD). The fire safety plan shall include, but not be limited to all requirements as specified in the letter from OSCD dated July 26, 2001.
6. **Prior to occupancy or final inspection**, whichever occurs first, the applicant shall obtain final inspection and approval from CDF of all required fire/life safety measures.

Services

7. **Prior to issuance of a construction permit**, the applicant shall provide a letter from Oceano Community Services District stating they are willing and able to service the property.
8. **Prior to issuance of a construction permit**, the applicant shall submit evidence that a septic system, adequate to serve the proposal, can be installed on the site.

Airport Compatibility

9. **Prior to building permit issuance**, the applicant shall demonstrate full compliance with Federal Aviation Regulation part 77, "Objects Effecting Navigable Airspace" including filing of FAA Form 7460-1, "Notice of Proposed Construction or Alteration" as instructed by FAA Advisory Circular No. 70/7460.2K.
10. **Prior to building permit issuance**, maximum interior noise levels in structures shall be limited to 45 dBA or less and that other provisions of the California Noise Installation Standards are met with respect to aircraft and/or airport noise.
11. **Prior to building permit issuance**, an aviation easement must be granted or update to the County in a form acceptable to County Counsel.
12. **Prior to building permit issuance**, is shall be demonstrated that non-reflective materials have been used

EXHIBIT D
(page 3 of 5 pages)

for buildings and signs.

- 13. **Prior to building permit issuance**, it shall be demonstrated that no light emissions that would interfere with aircraft operations have been incorporated into project.
- 14. **Prior to building permit issuance**, it shall be demonstrated that no electronic transmissions that would interfere with aircraft operations have been incorporated into the project.
- 15. **Prior to building permit issuance**, all owners, potential purchasers, occupants (whether as owners or renters) shall receive full and accurate disclosure concerning the presence and operations of the Oceano Airport and any noise, safety, or over-flight impacts associated with airport operations prior to entering any contractual obligation to purchase, lease, rent, or otherwise occupy any property or properties.

Miscellaneous

- 16. **Prior to issuance of a construction permit**, the applicant shall pay all applicable school and public facilities fees.
- 17. **Prior to occupancy of any structure associated with this approval**, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
- 18. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 22.02.050.

Biological Resources

- 19. **Prior to issuance of a building/grading permit**, the "Project Limits" shall be clearly delineated on all construction plans. Prior to any construction work beginning, including any vegetation clearing, sturdy high-visibility fencing shall be installed to protect any on or off-site habitat not designated for removal. This fencing shall be placed as far away as possible from the edge of existing riparian vegetation. No construction work (including storage of materials) shall occur outside of the "Project Limits." Any required fencing shall remain in place during the entire construction period and checked as needed by the environmental monitor.
- 20. All vegetation planted within the buffer zone shall be native and compatible with the adjacent riparian habitat.
- 21. To minimize impacts to the riparian habitat, the applicant agrees to the following during construction and for the life of the project:
 - a. All riparian vegetation removal shall be shown on all applicable grading/ construction plans, and reviewed/approved by the County Planning and Building Dept. before any work begins.
 - b. Vegetation removal of riparian habitat shall be limited to what is shown on the county-approved grading/ construction plans.
- 22. Any disturbed areas shall be restored as soon as possible. A compatible native seed mix shall be used to revegetate the restored area (see following list). The same revegetation treatment shall apply for any areas to be left undisturbed for more than 30 days.

"RIPARIAN" SEED MIX

<u>Species</u>	<u># plants/ac</u>	<u>Source</u>
<i>Cornus stolonifera</i> (redtwig dogwood)	10	seeds, mostly cuttings
<i>Heteromeles arbutifolia</i> (toyon)	5	seeds, cuttings

OCG Exhibit D
 (page 4 of 5 pages)

<i>Lonicera involucrata</i> (honeysuckle)	10	seeds, mostly cuttings
<i>Mimulus guttatus</i> (common monkeyflower)	10	seeds, mostly cuttings
<i>Myrica californica</i> (Pacific wax myrtle)	5	seeds, mostly cuttings
<i>Platanus racemosa</i> (California sycamore)	10	seeds, mostly cuttings
<i>Populus trichocarpa</i> (black cottonwood)	10	seeds, mostly cuttings
<i>Pteridium aquilinum</i> (bracken fern)	10	cuttings
<i>Quercus agrifolia</i> (coast live oak)	5	seeds, cuttings
<i>Ribes menziesii</i> (canyon gooseberry)	6	seeds, mostly cuttings
<i>Rosa californica</i> (California rose)	6	seeds, cuttings
<i>Rubus ursinus</i> (California blackberry)	15	seeds, cuttings
<i>Salix lasiolepis</i> (arroyo willow)	20	mostly cuttings
<i>Salvia spathocæa</i> (pitcher sage)	12	seeds
<i>Sambucus mexicana</i> (blue elderberry)	5	seeds, mostly cuttings

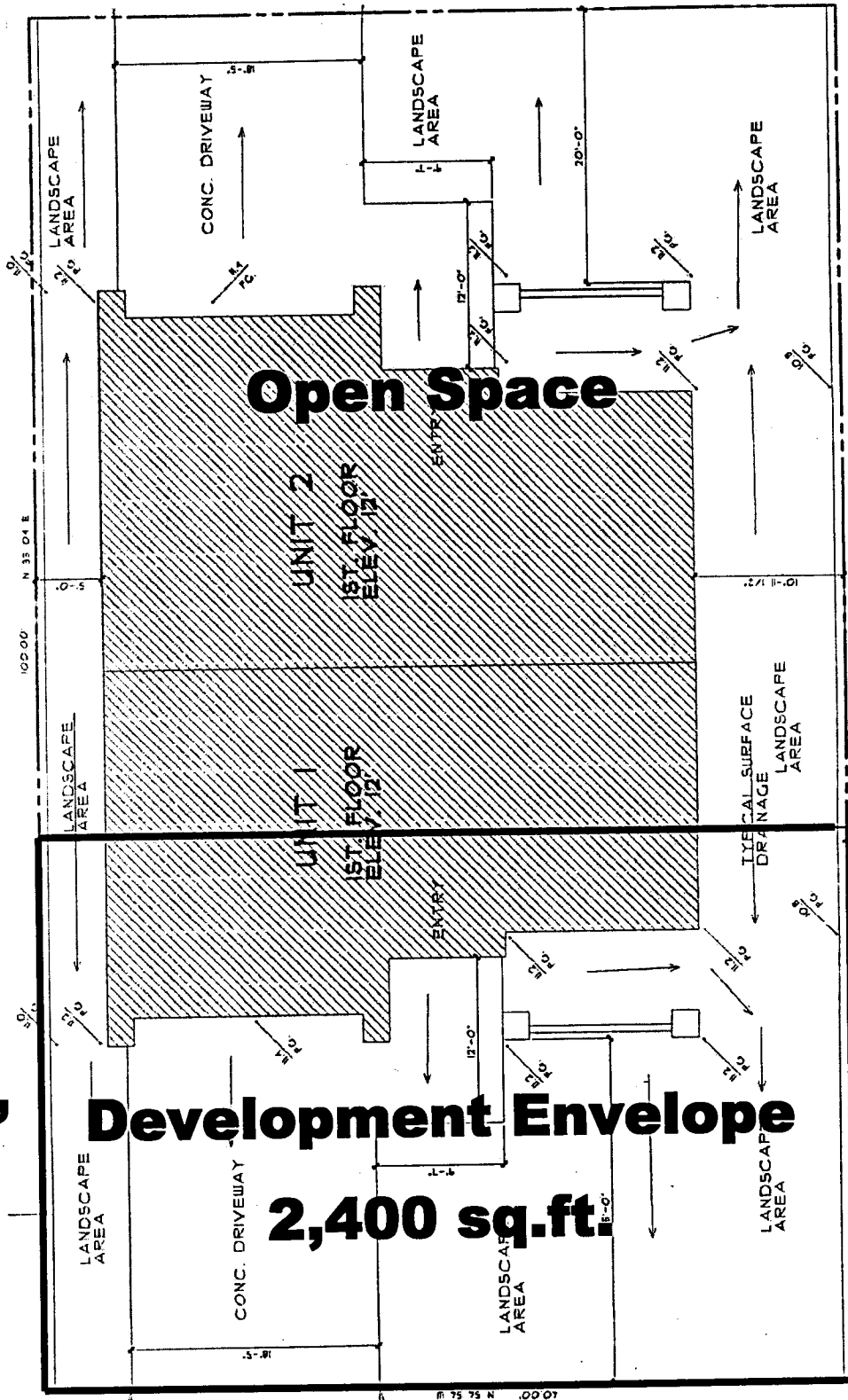
23. Equipment refueling shall be done in non-sensitive areas and such that any spills can be easily and quickly contained and cleaned up without entering the creek. Any necessary remedial work shall be done immediately to avoid surface or ground water contamination.
24. All plant restoration work shall be completed and verified by the county prior to final permit approval.
25. The applicant understands that any removal of riparian vegetation outside of the area authorized by this Minor Use Permit, is subject to Sections 23.03.040 and 23.07.174 of the Coastal Zone Land Use Ordinance. These sections require Minor Use Permit approval prior to the removal/ disturbance of riparian vegetation.
26. To comply with the California Department of Fish and Game's Wetland Resource Policy that there shall be no net loss of wetland/riparian habitat from any projects or development impacting this habitat, the applicant agrees to the following mitigation measures:
- Prior to building permit issuance**, the applicant agrees to demonstrate that the appropriate moneys have been deposited into a fund established by Central Coast Salmon Enhancement Inc. for revegetation of Arroyo Grande Creek. A letter from the Central Coast Salmon Enhancement Inc. shall be provided to the Environmental Division of the Department of Planning and Building verifying that the deposited funds are adequate to revegetate 18,000 square feet of the Arroyo Grande Creek.
- If the program with Central Coast Salmon Enhancement Inc. for restoration of the Arroyo Grande Creek is no longer available, the applicant shall submit an alternative program to the Environmental Division of the Department of Planning and Building to be concurrently reviewed and approved with the California Department of Fish and Game.
- The off-site planting shall be done along Arroyo Grande Creek, in the community of Oceano, unless an alternative location is authorized by the California Department of Fish and Game and the Department of Planning and Building. At least 18,000 square feet shall be planted and maintained with riparian vegetation.
 - The existing and off-site riparian areas shall remain for the life of the respective developments.
27. **Prior to building permit issuance**, the applicant shall submit a survey which properly locates property boundaries.
28. **Prior to building permit issuance**, the applicant shall demonstrate whether there are any valid easements and observe them.

40'

Development Envelope

2,400 sq.ft.

60'



KELLEY CONSTRUCTION P.O.BOX 178, ARROYO GRANDE, CA 93421

FAX #: 805-481-2468

OFFICE #: 805-481-2468

Cell Phone #: 805-440-2321

DATE: 06/09/05

RECEIVED

JUN 13 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

TO: California Coastal Commission
Central Coast District Office
725 Front St., Suite 300
Santa Cruz, CA 95060
Attention: Diane Landry

Subject: 537 Honolulu Ave., Oceano, CA
Comments on Coastal Application 3-02-114

Dear,

Thank you for agreeing to review our application. We received notification for a Coastal Commission hearing on February 25, 2005. We provided a brief response to the Coastal Commission Conditions and forwarded them to Jonathan Bishop. He was not in agreement with our conclusions, so we have compiled factual data to back up our conclusions.

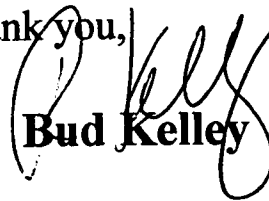
Attached for your information, please find a discussion of the information we have to date. It is clear that the project would not be economically feasible, nor provide dwellings for two parcels under the Conditions provided by the Coastal Commission. The only option which provides economic viability is a complete project as originally opposed. If this cannot be accomodated with additional mitigation funds as suggested, I can not see how this project will not be a Takings.

After reviewing the attachments, please feel free to contact me. I would appreciate any guidance you can provide as to how we should proceed.

CCC Exhibit F
(page 1 of 19 pages)

If you have any questions, please feel free to give me a call at your convenience. My phone numbers are listed above.

Thank you,



Bud Kelley

cc:

Carmen Green

William Walters

RECEIVED

JUN 13 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

537 HONOLULU
Application No. 3-02-114
RESPONSE TO COASTAL COMMISSION CONDITIONS

BACKGROUND

The two parcels, APN # 061-081-016, Lots 41 and 42, (See Attachment I) were purchased on January 3, 2001. The property is zoned for Residential Multi Family Use, and as such provides for a minimum of two and a maximum of four residences for the two properties. We met with the County prior to purchasing the property, and purchased the land, with project viability based upon two units on the existing property. Our proposed project was for a two unit duplex, minimum use for this property (See Attachments II and III). Anticipated sales cost was from \$ 1,000,000 to \$ 1,200,000 for the project. This information is outlined in the attached Takings Report. (Attachment IV).

A Minor Use Permit application was filed for and we received County Final Approval for the project on September 20, 2002. Numerous biological and archaeological studies were conducted at the County's request for this application. Preliminary arrangements and agreements were made for mitigation requirements. On May 15, 2002, the Fish and Game Commission and the County agreed upon a mitigation program using a 3:1 ratio for the affected areas of the property only. (See Attachment V) On August 26, 2004, the Army Corps of Engineers reviewed the mitigation program.

The Coastal Permit was applied for on December 15, 2002. Preliminary review comments from the Coastal Commission were received on January 17, 2003. Additional biological information was requested. After submittal of the requested information, the Coastal Commission requested we perform a Takings Study on the property on 8/14/2004. The Takings response was provided on Oct. 17, 2004 and is attached for your information (See Attachment IV). Please note that this Takings report only covers costs through Oct 17, 2004.

On February 25, 2005 we received notification of our Coastal Commission hearing with the conditions of approval from the Coastal Commission. (See Attachment VI) We prepared a brief response to the Conditions of Approval and FAXed them to Mr. J. Bishop (See Attachment VII). Our preliminary conclusions were that the project was not feasible due to insufficient building envelope, and was not economically feasible. After some discussions with Mr. Bishop, it was clear that he was not completely aware of the County's setback requirements and what is involved in attempting to modify them. He also was skeptical of our monetary concerns for the project.

In subsequent conversations with our Biologists, County Planners, and William Walters, we concluded that additional backup information was needed to support our claims. The following is a summary of that response.

CCC Exhibit F
(page 3 of 19 pages)

RESPONSES TO COASTAL COMMISSION Conditions of Approval

The conditions imposed by the Coastal Commission do not allow for feasibility of this project. The finished cost of the project exceeds the market value, and it provides for only one residential unit, instead of two units (keeping in mind that we own two separate lots). The cost feasibility of the project is impacted by the cost of previous studies conducted as well as the additional studies and mitigation requested. More importantly, the cost feasibility is impacted by the reduction of Building Envelope proposed. Construction in this envelope would allow for only one unit and on a parcel of 2400 sq ft. The total project value is reduced from \$ 1 - 1.2 million to \$ 500,000 to 550,000.

CONSTRUCTION ENVELOPE REVISION TO 2400 SQ FT

The Coastal Commission Conditions provided for usage of 40 ft x 60 ft wide of the existing parcels. As discussed in our FAX to Mr. Bishop, the County setback requirements limit construction in this area to a 15 by 50 foot building envelope, due to the County front and side setback requirements. No structure greater than 3 feet in height can be built within these setbacks. Mr. Bishop believes one half of our project could be placed within the 40 by 60 foot envelope provided in the Coastal Commission conditions. I explained to Mr. Bishop that the County setbacks would not allow this to occur, he stated that he felt we could have them changed. I reviewed that with Stephanie Fuhs and Matt Jansen from County planning. They indicated that modification of the setbacks would require a Use Permit with Public Hearings and Board Of Supervisors approval. They indicated that this would take up to one year, and may result in no change.

Even if we could obtain a variance to allow construction as recommended by Mr. Bishop, this would still allow only one dwelling for the two properties. Additionally the project would not be economically feasible. This is discussed further herein.

MITIGATION REQUIREMENTS

The Coastal Commission requested a 3:1 mitigation for the entire 6000 sq ft property, even though only 2400 square feet would be developed. The County requested 3:1 mitigation based on impacted area only, and the Army Corp further stated that they felt this was excessive. In any event, the additional cost of mitigation and monitoring of 18,000 sq ft is estimated by Althouse and Meade to be \$ 81,422, allowing for 10 % contingency and inflation. (See Attachment VIII)

ARCHITECTURAL SURVEY

The Coastal Commission requested continuous monitoring for all construction activities. The cost of this monitoring was estimated by our Archaeologist to be \$ 2,880.

I discussed this with our Archaeologist, John Parker. He indicated that this location was at the bottom of an inland Bay of water during the Chumash era, and that the likelihood of finding any artifacts was minimal. This is clearly pointed out on page 1 of the Archaeological survey (See Attachment IX). Also, we will be cleaning off the lot and filling it approximately 3 feet of fill material for flood requirements. As no construction will be built into the native soil, he felt that a surface survey prior to importing fill would be perfectly acceptable.

PROJECT COST PERFORMANCE

2400 SQUARE FOOT LOT (40 FT X 60 FT)

In order to obtain a reasonable value for the project as suggested by the Coastal Commission, we had an appraisal performed by Central Coast Appraisal and Realty. This appraisal was performed for the maximum sized dwelling which could be constructed on this 2400 sq ft lot, complying with County setbacks. This is a very substandard lot size and with a small dwelling, greatly reduces project value. The estimated market value of the project is \$ 500,000 to 550,000.. (See Attachment X) This value seems quite reasonable, since our expectation in the Taking Study was for a project with two units and the entire property at a value of \$ 1.2 million.

A Cost Estimate of the completed project has been prepared and is attached for your information (See Attachment XI). The completed cost of the entire project is \$ 628,392.69 . The attached comparables and the appraisal clearly show that the proposed project is not economically viable. The estimated project cost exceeds the market value by \$ 128,392.69, due primarily due to reduction in project size and value, and to some degree by the additional costs of studies and mitigation. (See Attachment XII)

3150 SQUARE FOOT LOT (52.5 FT X 60 FT)

A minimum lot size of 52.5 ft in depth would be required in order to construct one half of the proposed project, as suggested by Mr. Bishop. This would allow compliance with County setback requirements. A cost estimate for construction of this project has been prepared and is provided as Attachment XIII. Estimated construction cost is \$ 676,825.89.

Finally a revised project value and performance has been prepared for this project and is provided on Attachment XIV. Revised project value is estimated to be \$ 600,000.00 . This seems reasonable since it is one half of our original proposed project which had a predicted value of \$ 1,200,000. We can now see that construction of one half of the original project results in a project loss of \$ 76,825.89

FULL PROJECT DEVELOPMENT

The project continues at a loss due to the impact of previous studies and future mitigation costs. Construction of an additional unit would allow these costs to be absorbed into the project, since these costs incurred to date will not change.

A cost estimate has been prepared for a fully developed project as per our original submittal. We have increased the mitigation costs by \$ 50,000 for estimation purposes. Final project cost is estimated at \$ 1,067,756.00. (See Attachment XV). Project value and performance has been estimated and is provided as Attachment XVI. We can now see that the project proceeds are positive in the amount of \$ 132,244.00.

SUMMARY

The Coastal Commission proposal to construct one unit on a 2400 sq ft is not acceptable for the following reasons:

- Construction is not possible with County setback requirements
- This only allows for one dwelling unit for two properties
- The project is not economically feasible

The minimum lot size to accommodate one half of our project and meet County setback requirements would be 52 ½ ft deep by 60 feet wide. Although this would allow construction within setback requirements, the project is still not economically feasible. This also only allows construction of one unit.

Summarizing the project performance estimates provides the following:

Coastal Commission Scenario 40 x 60 foot lot	Project Loss (\$ 128,392.69)
Revise lot size to 52.5 x 60 to allow ½ of our original project	Project Loss (\$ 76,825.89)
Develop Entire Lot and Increase mitigation funds	Project Profit \$ 132,244.00

With the mitigation costs required and the costs incurred to date, it is clear that two units must be constructed and be of sufficient size to provide an economically viable project. We could perform project performance iterations to arrive at a project size which would allow the construction of two units and prove to be economically feasible with the mitigation measures requested. Clearly this will be well in excess of 50 % of the subject property, and would likely require use of 60 to 80 % of the property. Dedication of a 60 wide by 20 to 40 foot remaining open space with improvements on all sides would be of questionable value.

With the current future estimated mitigation costs estimated at \$ 81,422, it would seem to make more sense to allow development of the entire project, and to increase the funds dedicated to mitigation and monitoring. We believe this amount could be increased substantially if we were allowed to develop the entire property.

PROJECT OPTIONS

The following options appear to be available for this project:

1. The Project, as proposed under the Coastal Commission Conditions, is not economically feasible, and is clearly a Takings. This is due to construction and economic feasibility and only providing one dwelling unit.
2. Modify the Development Envelope to a feasible size to allow the project to be economically feasible and to allow constructing two units. Mitigation measures to be provided for 18,000 sq ft. Further evaluation would be required to determine the exact size but approximately 60 to 80 % of the lot would be required to be developed.
3. Allow development of the entire parcel, and increase the mitigation funds provided by the developer. This would allow enhancement of more valuable natural resource properties rather a piecemeal approach to improving this small piece of land which is an artificial habitat surrounded by improvements on all sides and applying less money to valuable resources.

In any of the above scenarios, Archaeological monitoring should be limited to a survey of the subgrade only prior to placing fill dirt, as previously described.



Central Coast Appraisal and Realty
P.O. Box 118, Pismo Beach, CA 93448
(805)481-7139

ATTACHMENT X

To Whom it may concern:

The property located at 537 Honolulu Street, Oceano, California was purchased in 2001 for the purpose of development as multi-unit residential. The zoning for the address above is for a maximum of four units for the 6,000SqFt lot. According to the minor use permit granted by SLO County(D000338P) in July 2002, the two unit project, as proposed, would have no negative ecological or health/safety impact on the immediate area. The permit also indicates that the proposed two units was not a full utilization of the property which was acknowledged to potentially accomodate four units. The minor use permit called for the standard 3:1 mitigation agreement with the applicant agreeing to mitigate 18,000SqFt of land in the vicinity to offset any riparian vegetative impacts the development might affect. The back to back placement of the units was approved as planned. Building plans, investments and financing wer all put in order to pursue this county approved plan.

Coastal Commission changes add significant restrictions to the issuance of a permit which appear to negate any possible profit or break even point if construction could meet all of the proposed criteria. The Commission allows for 40% of the 6,000SqFt lot to be used for a building footprint. They have prescribed that the units must face the street and be at the front of the lot. That 2,400SqFt footprint is then further reduced by accomodating the County's setback which must allow 25' from the street and 5' on sides. The remaining footprint is 15' X 50' for a total of 750SqFt for each of two floors(there is a 25' height restriction). The views, privacy and appeal of the structure would be greatly reduced to accomodate these restrictions and add cost to the project.

The Commission suggests that a single unit be placed on the site. Assuming a single car garage on the first floor, the living area of a single unit structure would be approximately 1,200SqFt with a small amount of yard and driveway between the structure and the street it would face. Comparable sales of similar sized homes in the strand area of Oceano include 706 Airpark Drive which sold for \$560,000 though it has 25% more living area and almost 50% larger lot than the subject would have, the sale at 365 McCarthy Avenue for \$500,000 has a slightly smaller sized home on a similar sized lot in a superior location one block from ocean, 616 Airpark Drive sold for \$389,000 with a 25% smaller living area and similar sized lot. It is the appraiser's opinion that a single family home of maximum size allowable by coastal commission would have a market value of between \$500,000 and \$550,000 at this time.

If the landowners decided to pursue that two units on the subject site facing Honolulu Street with the footprint as identified in the preceeding paragraph. Two units with single car garage each would have approximately 450SqFt of living space for each unit. The appraiser does not find any current sales of attached units of similar SqFt. The appraiser does not know of any new units being constructed with such a limited living space as it does not generally conform to the expected needs of the average occupant. Due to this lack of conformity to the average dwelling and very small amount of living area many conventional lenders will not lend on units 600SqFt or under. There is a group of 600SqFt attached units on Pier Avenue in Oceano with time-share type contract which have sold for \$200,000 to \$209,000 for the past two years with no current sales. Even though the market has appreciated greatly for all other type properties, these units still sell for essentially th!

same price. This appraiser notes that each time he has been asked to appraise a sale in that project, it has fallen out of conventional financing and had to be purchased for cash. The appraiser finds no other units under 800SqFt in any adjacent towns for comparison purposes. This combination of circumstances leads the appraiser to believe that it would not be feaseble to build attached units of under 500SqFt as their market value could be less than the single unit discussed above, and possibly even have such little appeal to the market as to not be saleable at all.

The total projected cost as broken down by Kelley Construction comes to a total of \$674,000 to complete the project in accordance with Coastal Commission rulings. A significant loss of capital on even the single unit project. It would not seem reasonable for investors to proceed with a project that could not be profitable. It appears that the conditions placed on the project; primarily the percentage of lot allowable to use as a footprint will prohibit the landowner from using the land in the manner it was zoned, sold and County approved for.

Ede Moody A 2024951

CCC Exhibit F
(page 8 of 19 pages)

ATTACHMENT XI

537 HONOLULU PROJECT

TOTAL ESTIMATED PROJECT COST UNDER COASTAL COMM. SCENARIO 40 x 60 FT LOT

Note: This evaluation assumes a 15 x 50 foot structure on a 40 x 60 foot lot. This is the largest structure which could be placed on this size lot and meet County setback requirements. The structure is 1200 sq ft with a single car garage.

COST THROUGH Oct. 17, 2004 (Takings Analysis)	\$ 212,997.28
COST SINCE Oct. 17, 2004 to Present	\$ 2,237.41
ESTIMATED MITIGATION COSTS (Althouse and Meade Estimate June 10, 2004)	\$ 74,020.00
INFLATION / CONTINGENCY (10%)	\$ 7,402.00
ARCHAEOLOGICAL MONITORING (4 Days @ \$ 90 / hr.)	\$ 2,880.00
REDESIGN / ENGINEERING (1425.5 Sq Ft x \$ 14 / sq ft)	\$ 19,957.00
PERMIT FEES	\$ 5389.00
SCHOOL FEES (1200 x \$ 2.20 / sq ft)	\$ 2400.00
SITE IMPROVEMENTS	
Clearing and Grading	\$ 6100.00
Fill Material (415 YDS @ \$ 10 / yd)	\$ 4150.00
Engineering soil tests	\$ 1100.00
Retaining Walls (130 ft x \$ 40 / ft)	\$ 5200.00
Utilities	\$ 18,000.00

Utility Hookup Fees (OCSD water/ sewer and PG & E)	\$ 7400.00
Landscaping	\$ 2400.00
Curb Gutter and Sidewalk (60 ft x \$ 50 / ft)	\$ 3,000.00
Paving (1200 sq ft x \$ 1.80 / sq ft)	<u>\$ 2,160.00</u>
SUBTOTAL	\$ 376,792.69
CONSTRUCTION COSTS	
DWELLING CONSTRUCTION (1200 sq ft / \$ 170 / sq ft)	\$ 204,000.00
FINANCING COSTS (\$ 452,000 x 8 % x .5 x .75 yr + 2 points)	\$ 22,600.00
SELLING COST (Assuming \$ 500,000 Sale Price and 5 % Cost)	<u>\$ 25,000.00</u>
SUBTOTAL CONSTRUCTION/SALE	\$ 251,600.00
TOTAL PROJECT COST	\$ 628,392.69

ATTACHMENT XII

537 HONOLULU PROJECT

**ESTIMATED PROJECT PERFORMANCE
UNDER COASTAL COMM. SCENARIO
40 x 60 FT LOT**

PROJECT MARKET VALUE **\$ 500,000.00**
PER ATTACHMENT X

PROJECT COST PER ATTACHMENT XI **\$ 628,392.69**

TOTAL PROJECT LOSS **\$ 128,392.69**

ATTACHMENT XIII

537 HONOLULU PROJECT

TOTAL ESTIMATED PROJECT COST 52 ½ FT X 60 FT LOT

Note: This evaluation assumes one half of the original two unit structure on a 52 ½ x 60 foot lot, which is the smallest lot size to accommodate the County setback requirements for this size structure.

COST THROUGH Oct. 17, 2004 (Takings Analysis)	\$ 212,997.28
COST SINCE Oct. 17, 2004 to Present	\$ 2,237.41
ESTIMATED MITIGATION COSTS (Althouse and Meade Estimate June 10, 2004)	\$ 74,020.00
INFLATION / CONTINGENCY (10%)	\$ 7,402.00
ARCHAEOLOGICAL MONITORING (4 Days @ \$ 90 / hr.)	\$ 2,880.00
REDESIGN / ENGINEERING (1425.5 Sq Ft x \$ 14 / sq ft)	\$ 19,957.00
PERMIT FEES	\$ 6400.00
SCHOOL FEES (1426 x \$ 2.20 / sq ft)	\$ 3137.20
SITE IMPROVEMENTS	
Clearing and Grading	\$ 6600.00
Fill Material (444 YDS @ \$ 10 / yd)	\$ 4400.00
Engineering soil tests	\$ 1100.00
Retaining Walls (160 ft x \$ 40 / ft)	\$ 6400.00
Utilities	\$ 18,000.00
Utility Hookup Fees (OCSD water/ sewer and PG & E)	\$ 7400.00

Curb Gutter and Sidewalk (60 ft x \$ 50 / ft)	\$ 3,000.00
Landsaping	\$ 2400.00
Paving (1200 sq ft x \$ 1.80 / sq ft)	\$ <u>2,160.00</u>
SUBTOTAL CONSTRUCTION COSTS	\$ 380,490.89
DWELLING CONSTRUCTION (1425.5 sq ft / \$ 170 / sq ft)	\$ 242,335.00
FINANCING COSTS (\$ 480,000 x 8 % x .5 x .75 yr + 2 points.)	\$ 24,000.00
SELLING COST (Assuming \$ 600,000 Sale Price and 5 % Cost)	\$ <u>30,000.00</u>
SUBTOTAL CONSTRUCTION/SALE	\$ 296,335.00
TOTAL PROJECT COST	\$ 676,825.89

ATTACHMENT XIV

537 HONOLULU PROJECT

**ESTIMATED PROJECT PERFORMANCE
ONE HALF OF ORIGINAL STRUCTURE
52 ½ X 60 FT LOT**

PROJECT MARKET VALUE PER ATTACHMENT X	\$ 500,000.00
ADJUSTMENT FOR ADDITIONAL 225 SQ FT AND TWO CAR GARAGE	<u>\$ 100,000.00</u>
TOTAL VALUE	\$ 600,000.00
PROJECT COST PER ATTACHMENT XIII	<u>\$ 676,825.89</u>
TOTAL PROJECT LOSS	\$ 76,825.89

ATTACHMENT XV

537 HONOLULU PROJECT

TOTAL ESTIMATED PROJECT COST COMPLETE PROJECT AS PROPOSED

Note: This evaluation that the entire lot is developed as originally proposed. An additional \$ 50,000 has been added to the project cost to compensate for the loss of this portion of the lot, in addition to mitigation monies already estimated.

COST THROUGH Oct. 17, 2004 (Takings Analysis)	\$ 212,997.28
COST SINCE Oct. 17, 2004 to Present	\$ 2,237.41
ESTIMATED MITIGATION COSTS (Althouse and Meade Estimate June 10, 2004)	\$ 74,020.00
INFLATION / CONTINGENCY (10%)	\$ 7,402.00
ADDITIONAL MITIGATION MONIES	\$ 50,000.00
ARCHAEOLOGICAL MONITORING (4 Days @ \$ 90 / hr.)	\$ 2,880.00
COMPLETE ENGINEERING (2851 Sq Ft x \$ 5 / sq ft)	\$ 14,255.00
PERMIT FEES	\$ 12,800.00
SCHOOL FEES (1200 x \$ 2.20 / sq ft)	\$ 6274.40
SITE IMPROVEMENTS	
Clearing and Grading	\$ 13,200.00
Fill Material (880 YDS @ \$ 10 / yd)	\$ 8800.00
Engineering soil tests	\$ 2200.00
Retaining Walls (200 ft x \$ \$ 40 / ft)	\$ 8000.00

Utilities	\$ 36,000.00
Utility Hookup Fees (OCSD water/ sewer and PG & E)	\$ 14,800.00
Landscaping	\$ 4,800.00
Curb Gutter and Sidewalk (120 ft x \$ 50 / ft)	\$ 6,000.00
Paving (2400 sq ft x \$ 1.80 / sq ft)	<u>\$ 4320.00</u>
SUBTOTAL	\$ 480,986.09
CONSTRUCTION COSTS	
DWELLING CONSTRUCTION (2851 sq ft / \$ 170 / sq ft)	\$ 484,670.00
FINANCING COSTS (\$ 841,999 x 8 % x .5 x .75 yr + 2 points)	\$ 42,099.95
SELLING COST (Assuming \$ 1,200,000 Sale Price and 5 % Cost)	<u>\$ 60,000.00</u>
SUBTOTAL CONSTRUCTION/SALE	\$ 586,769.95
TOTAL PROJECT COST	\$ 1,067,756.00

ATTACHMENT XVI

537 HONOLULU PROJECT

**ESTIMATED PROJECT PERFORMANCE
COMPLETE PROJECT BUILDOUT
ENTIRE LOT**

PROJECT MARKET VALUE **\$ 1,200,000.00**
TWICE THE VALUE OF ATTACH XIV

PROJECT COST PER ATTACHMENT XV **\$ 1,067,756.00**

TOTAL PROJECT PROFIT **\$ 132,244.00**

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877



June 22, 2005

Richard Kelley
P.O. Box 178
Arroyo Grande, CA 93421

Subject: *Coastal Development Permit Application Number 3-02-114 (Kelley/Green)*

Dear Mr. Kelley:

I am writing in response to the letter and package of materials received June 13, 2005. The Coastal Commission staff does not agree with your assertion that a reduced development envelope results in a "taking" of property. As described in our original staff report, we believe that a 2,400 square foot development envelope on a 6,000 square foot wetland parcel provides for a reasonable economic use of the site. The purpose of this letter is to address the assertions made in your letter and to notify you that we will not be changing our recommendation to the Commission on the size of the development envelope.

The information that you provide shows that you project that the finished costs of a reduced project would exceed its market value. It is clear from the information you supplied that you purchased a very constrained lot at a price well below the market value of an unconstrained lot. It is very likely that the price of the lot was discounted because development of it would likely incur significant mitigation costs and present design and siting problems not associated with a lot that is not taken up entirely by a wetland. It is always a business judgment as to whether developing such a constrained site will generate enough profit for the lot owner. It should be noted that reducing the size of the development envelope through special conditions and thus potentially reducing the profitability of the investment is only in the realm of a taking if you are deprived all economic value. Takings jurisprudence does not guarantee that every real estate investment will be profitable but rather requires that an economic use be allowed on private property. A single family home or a duplex on the site is certainly an economic use and thus the constitutional requirements are met. Whether the construction of the house generates an immediate profit is not a constitutional issue as there is no constitutional "right" to make a profit off of every real estate investment. Courts have consistently rejected the assertion that a landowner's profit expectations are protected by the takings provisions of the U.S. or State Constitutions. See, e.g., *Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1079-1081, cert. den. 516 U.S. 823 (rejecting claim that "reasonable project expectations...are protected against governmental destruction by the...just compensation clause."). See generally 4 Manaster & Selmi, *California Environmental Law and Land Use Practice*, Sec. 65.20[4][c], nn. 140-143 and accompanying text. Based on the data you provide, even the smallest project assumed (a 15 x 50 foot building envelope providing a single unit with a living area of 1,200 s.f. including a single car garage and a small yard) would be worth between \$500,000 and \$550,000.

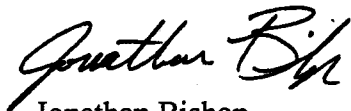
CCC Exhibit F
(page 18 of 19 pages)

Even if we were to accept your profitability arguments (which we do not), the assertions and underlying assumptions made in your letter are erroneous and the financial information cannot be verified. You suggest that residential multi-family (RMF) zoning in Oceano "provides for a minimum of two and a maximum of four residences" for the property. In this case, the standard of review for this project is the Coastal Act. Under the Coastal Act, there is no minimum density requirement. There is also no minimum density requirement in the certified LCP. As guidance, the Oceano Specific Plan of the certified LCP allows for a maximum of 15 units per acre. It should be noted that a single-family residence is also a principally-permitted use for this area under the LCP. In addition, you suggest that the County setback requirements would "limit construction on your property to a 15 by 50 foot building envelope." Under the Coastal Act there are no specific setback requirements. For guidance, the LCP does allow for some variance to the alleged 25-foot front setback requirement. CZLUO Section 23.04.108 provides for a reduced front setback requirement under certain conditions, to a minimum of 10 feet. In this case, a minimal/reduced front setback is warranted in order to maximize preservation of wetland ESHA. As detailed in the staff report, we feel that a minimal front setback can easily be accomplished within the recommended development envelope and still provide room for some residential use.

For these reasons, we feel the original staff recommendation should be maintained and that the recommended reduction in the size of the development envelope does not constitute a taking of property, as it provides for a reasonable economic use of the site.

If you have any questions please contact me at the address and phone number listed above.

Sincerely,



Jonathan Bishop
Coastal Program Analyst
Central Coast District Office