

CALIFORNIA COASTAL COMMISSION

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W11b

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APPEAL STAFF: REPORT

SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application numberA-3-SLO-07-024 (SLO Land Corporation)

Applicant.....SLO Land Corporation

AppellantsCalifornia Coastal Commission, Commissioners Mike Reilly and Sara J. Wan.

Local governmentSan Luis Obispo County

Local decisionApproved with Conditions: Minor Use Permit/ Coastal Development Permit (CDP) County File Number: D020030P.

Project locationBirch Avenue & “E” Street, Estero Planning Area, Cayucos, San Luis Obispo County (APN (s) 064-112-022, 064-112-023)

Project description.....Construction of three new 2-story single family residences on four lots adjacent to Little Cayucos Creek including merger of two lots, a 2,656 sq ft SFD with a 550 sq ft garage, a 2,965 sq ft SFD with a 528 sq ft garage, a 3,102 sq ft SFD with a 540 sq ft garage, access improvements, grading with a total disturbance area of 15,691 sq ft and an additional 7,100 sq ft of disturbance offsite, and the placement of 15,610 sq ft of the property into an open space conservation easement.

File documents.....County Final Local Action Notice (File Number D020030P); Coastal Commission appeal A-3-SLO-07-024; San Luis Obispo County Certified Local Coastal Plan (LCP), including Coastal Plan Policies, Coastal Zone Land Use Ordinance and the Estero Area Plan.

Staff recommendation ...**Substantial Issue; Approve with Conditions**

Summary: San Luis Obispo County approved a Minor Use Permit/Coastal Development Permit (CDP) to allow the construction of three new 2-story single family residences, including access improvements, on four parcels adjacent to Little Cayucos Creek. The County also adopted the Mitigated Negative Declaration prepared in accordance with CEQA for this project. The project is located in the Estero planning area, on the northwest corner of Birch Avenue and “E” Street and south of Little Cayucos Creek on four commonly owned parcels with a combined area of 31,301 square feet.

Staff recommends that the Commission find that the project raises substantial issues as to conformity



California Coastal Commission
July 2007 Meeting in San Luis Obispo

Staff: Allison Kelly Approved by:

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with SLO County LCP policies and standards that require the protection of environmentally sensitive habitat areas (ESHA) including riparian resources. First, the project is sited within 10 feet of Little Cayucos Creek. This is inconsistent with the minimum 20 foot setback that is required for this urban creek. The project does not qualify for an exemption from or adjustment to this mandatory setback requirement because there are feasible, less environmentally damaging alternative project designs that will enable compliance with the setback requirement to be achieved. Second, the project site is also located immediately adjacent to a significant Monarch Butterfly roosting area, and does not provide an adequate buffer for this ESHA.

Staff further recommends that the Commission approve the project subject to conditions to protect creek resources, Monarch Butterfly habitat, water quality, and address construction-related impacts. As conditioned, the approval would provide for a building envelope of approximately 6,500 square feet that would allow for up to three residential units in the existing multi-family (MFR) zoning. Special conditions also require that an open space deed restriction be recorded over the habitat/riparian buffer area, and that native landscaping and restoration occur within this area.

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I. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

On April 7, 2007, San Luis Obispo County Department of Planning and Building approved a Minor Use Permit / CDP for three new 2-story residences on four lots subject to conditions (See Exhibit F for the County's Findings and Conditions). This approval also adopted the Mitigated Negative Declaration document prepared by the County pursuant to CEQA requirements. Notice of the County's action on the project was received in the Coastal Commission's Central Coast District Office on April 26, 2007. The Commission's ten-working day appeal period began on April, 27, 2007 and concluded at 5pm on May 10, 2007. One valid appeal was made during the appeal period, by Commissioners Sara J. Wan and Mike Reilly, on May 10, 2007.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is: (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean



high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 100 feet of a coastal stream.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the nearest public road and the sea and thus, this additional finding need not be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

C. 49 Day Hearing Requirement

Pursuant to Section 30621 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. For this appeal the 49th day from the appeal filing date was June 28, 2007. On May 16, 2007 the applicants waived the right for a hearing to be set within the 49-day period, to allow Commission staff sufficient time to review the project information and the appellants’ contentions.

D. Summary of Appeal Contentions

The appellants have appealed the final action taken by the County on the grounds that the project as planned is inconsistent with the San Luis Obispo Local Coastal Plan. The main contentions concern the setbacks from riparian habitat and Monarch butterfly habitat. The appellants contend that the policies of the LCP intended to protect ESHA were not adequately considered in the County’s approval of the project and the project could result in the degradation and disturbance of these areas (see Exhibit G for complete appeal text).



II. Staff Recommendations on Substantial Issue

Motion. *I move that the Commission determine that Appeal No. A-3-SLO-07-024 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation of Substantial Issue. Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find Substantial Issue. *The Commission hereby finds that Appeal No. A-3-SLO-07-024 presents a substantial issue with respect to some of the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

III. Staff Recommendations on De Novo Permit

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 A-3-SLO-07-024 pursuant to the staff recommendation.*

Staff Recommendation of Approval with Conditions. 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 the Permit. *The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.*

IV. 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. **Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Applicant shall submit two copies of the following revised plans for review and approval by the Executive Director:

a. **Site plans** for a re-designed project of up to 3 residential units, showing site access through the alley and adhering to the setbacks required in part e below and the development envelope specified in Exhibit H. No fireplaces shall be permitted anywhere on the properties.

b. **Architectural elevations and floor plans** that demonstrate compliance with LCP requirements for front, rear and side structural setbacks and height limits including a front setback of 25 feet, side setbacks of 10% of the lot width; back setbacks of 10 feet and a height limit of 35 feet.

c. A Drainage, Erosion, and Sedimentation Control Plan.

Implementation of Best Management Practices During Construction. The Drainage, Erosion and Sedimentation 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 and the criteria established by the San Luis Obispo County Resource Conservation District. 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 hydro seeding 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; and 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.

Permanent Drainage and Erosion Control Plan. The plans shall include a drainage and erosion control plan that shall clearly identify all permanent measures to be taken to control and direct all site runoff, and that shall clearly identify a drainage system designed to collect all on-site drainage (in gutters, pipes, drainage ditches, swales, etc.) for use in on-site irrigation/infiltration and/or to be directed to off-site storm drain systems. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site. The plan shall include all supporting calculations. Such drainage and erosion control plan shall at a minimum provide for:

1. The drainage system shall be designed to filter and treat (to remove typical urban runoff pollutants) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation and/or discharge offsite. All filtering and treating mechanisms shall be clearly identified, and supporting technical information (e.g., brochures, technical specifications, etc.) shall be provided;
2. Runoff from the roof, driveway, parking lot, and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site;
3. Post-development peak runoff rates and volumes shall be maintained at levels similar to, or less than, pre-development conditions;
4. All drainage system elements shall be permanently operated and maintained.



d. Landscape Restoration plans, prepared in consultation with a qualified biologist with Monarch specialization (selected from the County approved list) as follows:

1. These plans shall show the proposed landscaping and vegetation management methods to protect and enhance Monarch butterfly and riparian habitat, including but not limited to removal of non-native invasive species in the understory and landscape restoration in the designated riparian buffer, including provision of fall and winter-flowering nectar sources and other elements as recommended by the biologist. Non-native plants are prohibited within the buffer area. No modification of existing vegetation within the riparian corridor shall be permitted except as authorized pursuant to the landscape restoration plan. The use of pesticides on the project site is strictly prohibited due to Monarch sensitivity to pesticide use.
2. The landscape plan shall be implemented during construction as directed by the biologist and completed prior to the occupancy of the units. To the maximum extent possible, landscaping shall not be performed while Monarchs are present at the site; a biologist shall affirm this prior to landscaping activities.
3. Maintenance and monitoring of the plan shall continue for the life of the project. A monitoring report evaluating plan implementation shall be provided to the Executive Director within 3 years of construction, subject to review for any changes necessary to fully address the objectives of the approved plan.
4. Other landscaped areas within the development envelope shall consist only of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be used within the property.

e. Monarch Butterfly and Riparian Habitat Protection and Enhancement Area. All plans shall clearly mark the setback lines for both the Monarch habitat and the riparian habitat consistent with Exhibit H. These setbacks shall be the boundary of the **Monarch Butterfly and Riparian Habitat Protection and Enhancement Area**. No development or vegetation modification other than that approved through the landscape restoration plan shall occur at any time within this area. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), 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 in Special Condition 1a and Exhibit H of this permit.

2. Exterior Lighting Plan. All proposed exterior lighting shall be subject to review and approval by the Executive Director prior to construction. Lighting shall be shielded to the maximum extent possible and of the lowest intensity feasible in order to avoid artificial light pollution of the riparian area.



Exterior lighting elements on the north and northwest sides of the project (bordering the creek) shall be avoided where possible and be the minimum necessary to meet safety requirements.

3. Site Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit for the Executive Director's approval, site plans approved by the Cayucos Fire Chief that demonstrates that the alley access way, as depicted in the revised site plans produced for **Special Condition 1a**, is adequate to satisfy fire safety regulations. The plan shall address the following requirements:

- a. 20-foot width minimum
- b. "Fire Lane – No Parking" signs posted on both sides of the alley
- c. A maintenance plan and recorded CC&R to ensure that the alley is maintained to:
 - i. Support 20 tons at 25 mph
 - ii. Provide all weather driving capabilities and
 - iii. Maintains 90% compaction.
- d. A turn around point for fire equipment if the access way through the alley exceeds 150 feet in length.

4. Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit legal documentation of an access easement obtained from the Cayucos School District, for use and development of a roadway through the existing alley that extends in width onto the District's Lots 7, 8 and 9.

5. Construction Requirements. The Applicant shall abide by the following conditions of construction:

- a. **Timing.** Construction shall only occur during the dry season and Monarch roosting off season, between April 15 and Oct 1. No construction shall be permitted during any other month to ensure Monarch habitat protection and reduce harmful run-off.
- b. **Prior to the commencement of construction,** the Applicant shall provide evidence to the Executive Director that a licensed surveyor has identified and delineated the setback areas required by **Special Condition 1** and as approved on the site plans. Temporary fencing shall be erected one foot outside of the setback area to delineate it clearly for the construction phase. No disturbance shall occur within the setback area during construction or following completion of the project, except as otherwise authorized under the approved landscape restoration plan.
- c. **Archeology.** During construction archeological requirements outlined in County Conditions 22, 23, 24, 35, and 37 shall be followed (For details refer to Exhibit F and Exhibit J).
- d. **Traffic.** All traffic shall be restricted to the southeastern corner of the combined parcel area, (the corner nearest to the intersection of the alley way and "E" Street). Under no circumstances shall any vehicles be allowed within the established setback area.

6. 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. 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 of the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. Incorporation of County Conditions. San Luis Obispo County Conditions 4, 7, 14, 15, 33, and 22, 23, 24, 35, and 37 are incorporated as conditions of this permit. All County conditions imposed pursuant to land use authorities other than the Coastal Act remain unaffected by this action (See Exhibit F for the full text of all County conditions.)

V. Substantial Issue Findings and Declarations

As discussed below, the Commission finds that the project as approved by the County raises substantial issues of conformity with the San Luis Obispo County LCP. Section VI of this report, De Novo Hearing Findings and Declarations, provides further details concerning these findings which are incorporated in full to these findings by reference.

A. Environmentally Sensitive Habitat (ESHA)

1. Applicable Policies & Standards

Appellants contend that the project approved by San Luis Obispo County is inconsistent with the ESHA policies with respect to riparian and Monarch butterfly habitat on the site. The San Luis Obispo County LCP includes general policies, Area Plan standards, and implementing ordinances that protect Environmentally Sensitive Habitat (ESHA).

The San Luis Obispo County Coastal Plan Policy 1 requires that “*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.*” Policy 20 specifically defines “*coastal streams and adjoining riparian vegetation*” as “*environmentally sensitive habitat areas.*” Policy 21 goes on to require that development “*shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.*” Policy 28 requires setbacks from riparian vegetation, defining the “*minimum standard*” for urban areas as 50 feet “*except where a lesser buffer is specifically permitted.*”

In this case, the Estero Area Plan establishes specific setbacks for the area creeks. For Little Cayucos Creek, which is at issue here, the required minimum setback is 20 feet. The plan specifies that setbacks



be measured from “*the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists.*”

The Coastal Zone Land Use Ordinance (CZLUO) in Section 23.07.174.d.2 (i-iv) outlines the necessary process and findings to adjust an otherwise required setback. A Minor Use Permit approval and the following findings are required:

- (i) *Alternative locations and routes are infeasible or more environmentally damaging; and*
- (ii) *Adverse environmental effects are mitigated to the maximum extent feasible; and*
- (iii) *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; and*
- (iv) *The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

Finally, San Luis Obispo Coastal Plan Policy 29 states that “[d]esignated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community.” Additionally, Policy 35 requires that “[v]egetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.” Section 23.07.176 of the San Luis Obispo County CZLUO, titled Terrestrial Habitat Protection reiterates these policies and establishes that the intent of the policies is “*to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats.*”

2. Substantial Issue Analysis

Riparian Resources

The proposed project site is located adjacent to Little Cayucos Creek. As approved by the County, the project’s riparian setback would be reduced from the required minimum riparian setback of 20 feet to 10 feet for the access road, although the approved plans actually show road development as close as 5 feet to the riparian zone. New buildings would be generally located more than 25 feet from the edge of the riparian area (see Exhibit E). According to the biological report for the project, Little Cayucos Creek provides potential habitat for four listed species known to occur in the watershed or surrounding area (steelhead, tidewater goby, the southwestern pond turtle, and the California Red Legged Frog) although the degradation of the creek make it unlikely that they would persist there. It also provides foraging area for nectar and water for Monarchs during their winter migration and habitat for several other species, including several species of songbirds (common yellowthroat, plain titmouse and song sparrow), the Pacific chorus frog, western fence lizard red tailed hawks and red shouldered hawks. Given the resource values of the creek, the reduction of the minimum setback for Little Cayucos Creek raises a substantial issue with respect to LCP Policy 1 and 20 concerning the protection of riparian ESHAs.

In addition, although the County made findings to adjust the riparian setback down to 10 feet, it did not find that alternative locations or routes were infeasible or more environmentally damaging, as required



by CZLUO 23.07.174.d.2 (i); or that the adjustment is necessary to allow a principal permitted use of the property CZLUO 23.07.174.d.2 (iii). Therefore, a substantial issue is raised with respect to conformance with the CZLUO riparian setback adjustment requirements. Finally, as discussed in more detail in the de novo findings (incorporated herein by reference), it appears that there are alternative routes and project designs that would provide for a principally permitted use and that would better protect riparian ESHA on the site. Therefore, the project raises substantial issues with respect to LCP policies and standards that protect riparian ESHAs.

Monarch Butterfly Habitat

Monarch butterfly habitat is located on Lots 3 & 4 of the site and directly adjacent to the project site. It is comprised of several large eucalyptus and cypress trees that are a component of the riparian habitat discussed above. Although Monarchs are not globally threatened their range is restricted in California. Monarch overwintering habitat is listed at a G4S3 level in the California Natural Diversity Database (CNDDDB) maintained by the Department of Fish and Game. The S3 designation is defined as “restricted range, rare” habitat area statewide; further defined as 3,000 – 10,000 individuals or 10,000 – 50,000 acres of occupied habitat (DFG, 2006). Further, in 1984, the International Union for Conservation of Nature and Natural Resources classified the Monarch migration and the overwintering behavior of the Monarch butterfly a “threatened phenomenon.”

Monarch experts are increasingly concerned about the impacts of development and changing ecosystem dynamics on historic overwintering sites. Many formally large sites have slowly deteriorated due to a lack of protection from human influences. Monarchs have highly specific habitat requirements that include the need for wind-protection, buffered temperatures, high humidity, filtered sunlight, proximity to water and nectar sources and habitat heterogeneity (Bell, 2002). These specific requirements make Monarch habitat extremely sensitive to human induced habitat alterations.

Monarch butterfly overwintering habitat in California is listed as “rare” by the CNDDDB and it is important to the ecosystem because it provides important feeding and resting opportunities for butterflies during a migratory stage of their life cycle. In addition, the habitat is documented to be extremely sensitive to disturbance or degradation caused by human activities and development. Monarch habitat meets the general LCP definition of ESHA. The Commission also has generally protected significant Monarch sites as ESHA. Further discussion of Monarch habitat as ESHA can be found in the de novo findings below (incorporated herein by reference).

The historic overwintering site adjacent to the proposed project site has been subject to the pressures of development and, because of inadequate protection for the habitat in the past, is degraded. In past years new residential developments have removed trees from along the outer grove boundary, altering the wind dynamics and thus disturbing the microclimate that the overwintering Monarchs had previously relied on. Before these developments, populations ranged from 20,000 to 60,000 butterflies per season, placing the site among the largest in California. The population has significantly declined due to these human activities. In 2002, Dr. Kingston Leong, a Monarch specialist and professor of biology at California Polytechnic, State University, conducted a study of the site and obtained data that showed



that the site, while no longer suitable as an overwintering site, was still a valuable site for autumnal Monarch roosting. Richard Little, a consulting project biologist and Monarch expert, reviewed Dr. Leong's study and concurred that "the site is still used by Monarchs and should be protected (Little, 2003)."

Based on biologist recommendations a sufficient setback that protects the driplines of the habitat trees and the surrounding ecosystem is necessary for Monarch protection. The approved project allows development within 10 ft of the dripline of the largest eucalyptus tree, based on an adjustment of the minimum setback of 20 feet for this riparian area. This minimal setback endangers the ESHA and is inconsistent with LCP policies that are intended to protect terrestrial habitat and therefore raises a substantial issue.

3. Substantial Issue Conclusion

As discussed above, the project as proposed raises substantial issue concerning compliance with the LCP policies and standards to protect riparian and other ESHA resources. As approved, it allows a riparian setback adjustment without the proper findings and lacks adequate protection of Monarch habitat by allowing insufficient buffers. The Commission finds that the proposed project **raises substantial issue** because it lacks provisions to ensure there will be no significant impact on ESHA at the project site. Further, as detailed above, the project as approved lacks adequate protection measures for the ESHA located on and adjacent to the project site and is inconsistent with the specific policies applicable to these areas requiring setbacks. Lack of adequate setbacks could result in the further degradation and disturbance of the site.

VI. De Novo Findings and Declarations

Because the Commission has found that the project raises a substantial issue with respect to conformance with the certified LCP, the California Coastal Commission takes jurisdiction over the coastal development permit for the proposed project. The standard of review remains the certified LCP and the public access policies of the Coastal Act.

A. Project Location and Description

SLO Land Corporation applied to the County for a Minor Use Permit/Coastal Development Permit to allow the construction of three new two-story single family residences on four legal parcels (APN(s) 064-112-020 & 064-112-021). The project site is located in the town of Cayucos, west of Highway 1 in San Luis Obispo County, adjacent to and south of Little Cayucos Creek. The project included: a 2,656 sq ft single family residence with a 550 sq ft garage on merged Lots 3 & 4¹; a 2965 sq ft single family residence with a 528 sq ft garage on Lot 5; a 3102 sq ft single family residence with a 540 sq ft garage on Lot 6; access improvements on Birch Ave; grading with a total disturbance area of 15,691 sq ft and

¹ Lots 3 & 4 were merged by a voluntary merger document on March 5, 2005 (Exhibit N).



an additional 7,100 sq ft of disturbance offsite; and the placement of 15,610 sq ft of the property into an open space conservation easement.

The lots approved for development contain Monarch butterfly habitat and riparian habitat associated with Little Cayucos Creek. Their combined area is 15,937 square feet. Lots 5 & 6 are east of Lots 3 & 4 and south of Little Cayucos Creek and contain riparian vegetation associated with the creek, Lot 5 is 7,827 square feet and Lot 6 is 7,537 square feet. Lot 3 is zoned recreational and lots 4-6 are zoned multi-family residential. Lots 7 – 9 border the project site and are Cayucos School District properties; Lots 12-17 are across a narrow (12 foot-wide) alley from the project site, and contain privately owned single family residences. Little Cayucos Creek runs adjacent to the lots and out to the Pacific Ocean. There are several large eucalyptus trees on lot 3 with driplines extending into Lot 4. They are located within and adjacent to the riparian vegetation and are part of a larger grove of trees that comprise the Monarch habitat.

As initially proposed, the project required an easement from the Cayucos School District to create an access road through the alley between Birch Ave and Ash Ave at “E” Street. A private settlement (Exhibit K) between neighboring property owners required that the Applicant use an alternate route for access to Lots 3 – 6. Thus, the project was amended to use the undeveloped Birch Ave access route. This alternative necessitated an adjustment of the riparian setback from 20 feet to 10 feet, and reoriented the dwellings to face the creek, as opposed to the alley as originally planned (see Exhibits D and E for original plans and County approved plans, respectively.) As approved, road development would actually encroach as close as 5 feet of the riparian area in at least one location.

Additionally, the project as approved encroaches into historic Monarch butterfly overwintering habitat. Biological reports conducted for this project (Exhibit L) have documented the gradual decline of this habitat as urban development has removed trees and encroached into the riparian habitat. Due to the declining quality of the habitat, some setback recommendations have been less than those recommended for healthier habitat areas. The initial setback recommendations from the Department of Fish and Game, state that “a 50 ft setback from the largest eucalyptus tree will be needed. (Exhibit I)” This recommendation was subsequently reduced to 30 feet but without a clear indication of why this reduction was warranted. Following the three biological reports prepared for the project the Environmental Division of the Department of Planning and Building wrote a memorandum (Exhibit M) approving “a 20 ft setback from the edge of the riparian vegetation” and “a 20 foot setback from the edge of the eucalyptus/ cypress tree canopy.” On a site visit to the properties, the tree trunk was the reference point used for measurement of setbacks; this further diminished the effectiveness of the setbacks. The final approved project required 30 foot setbacks from the trunk of eucalyptus trees and 20 feet from the edge of riparian habitat and 10 feet for the access road.

B. County Approved Project



The County approved the project pursuant to several conditions and made certain findings to support the approval. There are 43 conditions attached to the approved development, the full text of which is provided in Exhibit F. The most relevant conditions to the appeal contentions include requirements for: an open space easement for creek habitat protection; an erosion and sedimentation control and drainage plan approved by Public Works and the Dept. of Planning and Building; a biological consultant to monitor adherence to biological mitigation measures; and setbacks according to Condition 18. The setback condition reads as follows:

18. The structures shall be setback a minimum of 20 feet from the edge of riparian vegetation and 30 feet from the trunk of the eucalyptus tree along the south bank of Little Cayucos Creek and Birch Avenue extension driveway along the northern boundary of the property shall be setback 10 feet from the dripline of the riparian vegetation. No disturbance shall occur within the setback areas.

County conditions also require a landscaping plan including native and butterfly friendly elements, to be maintained in perpetuity; limitations of traffic near the creek during construction; restrictions on construction timing (only during the dry season (April 15 – October 15)); and a report to the Environmental Coordinator verifying field work and monitoring..

C. Coastal Development Permit Findings

1. ESHA

There are two main categories of ESHA present on and adjacent to the subject project location; riparian habitat and Monarch butterfly habitat within the riparian area. As discussed below, the project as approved does not comply with LCP policies created for the protection of ESHA and therefore does not ensure the protection of ESHA. Special conditions are needed to bring the project into conformance with the LCP.

A. Applicable Policies

County of San Luis Obispo, Coastal Plan Policies, Chapter 6:

Policy 1: Land Uses Within or Adjacent to 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 resources shall be allowed within the area.

Policy 2: Permit Requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation



measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate.

Policy 20: Coastal Streams and Riparian Vegetation

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.

Policy 21: Development in or Adjacent to a Coastal Stream

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns.

Policy 28: Buffer Zone for Riparian Habitats

In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated.

Policy 29: Protection of Terrestrial Habitats

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

Policy 35: Protection of Vegetation



Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.

County of San Luis Obispo, Coastal Zone Land Use Ordinance (CZLUO):

Chapter 5: Site Development Standards:

23.05.034 - Grading Standards:

All excavations and fills, whether or not subject to the permit requirements of this title, shall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building Code, and the following standards:

...

c. Grading adjacent to Environmentally Sensitive Habitats. *Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat as shown in the Land Use Element except:*

(1) Where a setback adjustment has been granted as set forth in Sections 23.07.172d (2) (Wetlands) or 23.07.174d (2) (Streams and Riparian Vegetation) of this title; or

(2) Within an urban service line when grading is necessary to locate a principally permitted use and where the approval body can find that the application of the 100-foot setback would render the site physically unsuitable for a principally permitted use. In such cases, the 100-foot setback shall only be reduced to a point where the principally-permitted use, as modified as much as practical from a design standpoint, can be located on the site. In no case shall grading occur closer than 50 feet from the Environmentally Sensitive Habitat or as allowed by planning area standard, whichever is greater.

Chapter 7: Combining Designation Standards:

23.07.160 - Sensitive Resource Area (SRA):

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:

23.07.162 Applicability of Standards

23.07.164 SRA Permit and Processing Requirements

23.07.166 Minimum Site Design and Development Standards

23.07.170 Environmentally Sensitive Habitats

23.07.172 Wetlands



23.07.174 Streams and Riparian Vegetation

23.07.176 Terrestrial Habitat Protection

23.07.178 Marine Habitats

[Amended 2004, ord. 3001]

23.07.174 - Streams and Riparian Vegetation:

Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.

a. Development adjacent to a coastal stream.

Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.

...

d. Riparian setbacks: *New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet....A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration.*

(1) Permitted uses within the setback: *Permitted uses are limited to those specified in Section 23.07.172d (1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.*

All permitted development in or adjacent to streams, wetlands, and other aquatic habitats shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures to be provided include, but are not limited to:

- (i) Flood control and other necessary instream work should be implemented in a manner than minimizes disturbance of natural drainage courses and vegetation.*
- (ii) Drainage control methods should be incorporated into projects in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction.*

[Section 23.07.172d (1)]

d. Wetland setbacks: ...

(1) Permitted uses within wetland setbacks: *Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines,*



pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that:

- (i) Alternative routes are infeasible or more environmentally damaging.*
- (ii) Adverse environmental effects are mitigated to the maximum extent feasible.]*

(2) *Riparian habitat setback adjustment:* *The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:*

- (i) Alternative locations and routes are infeasible or more environmentally damaging; and*
- (ii) Adverse environmental effects are mitigated to the maximum extent feasible; and*
- (iii) 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; and*
- (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

e. *Alteration of riparian vegetation:* *Cutting or alteration of natural riparian vegetation that functions as a portion of or protects a riparian habitat shall not be permitted except:*

- (1) For streambed alterations allowed by subsections a and b above;*
- (2) Where an issue of public safety exists;*
- (3) Where expanding vegetation is encroaching on established agricultural uses;*
- (4) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the Planning Director determines no feasible alternative exists;*
- (5) To increase agricultural acreage provided that such vegetation clearance will:*
 - (i) Not impair the functional capacity of the habitat;*
 - (ii) Not cause significant streambank erosion;*
 - (iii) Not have a detrimental effect on water quality or quantity;*
 - (iv) Be in accordance with applicable permits required by the Department of Fish and Game.*
- (6) To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174d (2) can be made. [Amended 2004, Ord.2999]*

23.07.176 - Terrestrial Habitat Protection:



The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

- a. **Protection of vegetation.** Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*
- b. **Terrestrial habitat development standards:***
 - (1) **Revegetation.** Native plants shall be used where vegetation is removed.*
 - (2) **Area of disturbance.** The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas....*

San Luis Obispo County, Estero Area Plan

Sensitive Resource Area (SRA)

*1. **Setbacks - Coastal Streams.** Development shall be setback from the following coastal streams the minimum distance established below. Such setbacks shall be measured from the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists. This may be adjusted through the procedure provided in the Coastal Zone Land Use Ordinance.*

<i>Cayucos Creek:</i>	<i>25 feet from either bank</i>
<i>Little Cayucos Creek:</i>	<i>20 feet from either bank</i>
<i>Old Creek:</i>	<i>50 feet from either bank</i>
<i>Willow Creek:</i>	<i>20 feet from either bank north of Ocean Avenue</i>

(emphasis added)

B. Background & Site Description

The project site is bordered by Little Cayucos Creek to the north, northeast and northwest. Biologists who visited the site noted two types of habitat; Central Arroyo Willow Riparian Forest and disturbed annual grassland. They also noted several large blue gum eucalyptus (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*), which provide roosting and feeding areas for Monarch butterflies, and comprise a portion of the riparian area.

i. Riparian Habitat

The riparian habitat is comprised of mostly native trees and shrubs, including Coast Live Oak and Toyon. The understory is a mixture of native and non-native invasive plants, but is dominated by non-native species. Along the creek and wetland area native hydrophytic vegetation was noted to occur. The riparian area contains habitat suitable for many bird species and the site is potentially a movement corridor for steelhead, tidewater goby, the southwestern pond turtle, and the California Red Legged Frog, each of which are considered special status species (Rincon, 2002; Exhibit L). Although none of these species were observed during subsequent surveys they are recorded as occurring within the watershed. Downstream and to the northwest of the project site large eucalyptus and cypress trees



comprise a portion of the riparian habitat area. The riparian corridor also provides habitat for a variety of bird species, including common yellowthroat, plain titmouse, song sparrow, red tailed hawks and red shouldered hawks. Reptile and amphibian species noted to occur included the Pacific chorus frog and western fence lizard.

ii. Monarch Habitat in the Riparian zone

The project site contains and is adjacent to a historic Monarch butterfly overwintering site. For several decades it has carried between 20,000 and 60,000 butterflies through the winter portion of their life-cycle (Little, 2002; Exhibit L). Today, due to anthropogenic impacts, such as tree removal and nearby development projects, the site has been degraded in quality to an autumnal feeding and resting site, carrying about 250 butterflies through the early winter in recent years. Although Monarchs themselves are abundant, Monarch winter habitat is increasingly threatened. As previously mentioned in the substantial issue findings of this report, incorporated here by reference, Monarch winter habitat is listed at a G4S3 level by the CNDDB, which means that statewide the habitat has a restricted range and is considered rare. Monarch winter habitat has also been classified by the International Union for Conservation of Nature and Natural Resources, as a “threatened phenomenon.”

Natural History – Winter Migration²

Monarch butterflies rely on several hundred acres of habitat during the winter months—as compared to the more than 200 million acres used during the summer months—confining them to a small habitat area. In early fall, the Monarch populations migrate from the Western states and southwest Canada to the California coast for the winter months. As they arrive at the coast, starting as early as September, the Monarchs gravitate toward groves of trees, often composed of Monterey Cypress and non-native blue gum Eucalyptus trees. While the weather remains mild, these groves of trees provide a resting area and give the Monarchs the opportunity to forage for nectar nearby and replenish fat reserves diminished by the long migration. Most groves only support a few dozen butterflies during these milder months.

As winter approaches, the weather gets more severe, the temperatures get colder and the first winter storms occur. At this time Monarchs begin to move from “poorer” quality sites to “better” quality sites. The factors that determine the quality of a site can be dynamic from year to year. They vary with changing weather patterns and different age-compositions of the tree groves, among many other variables. The variable nature of Monarch winter habitat makes it impossible to distinguish definitively between an overwintering site and an autumnal site. According to Mr. Sakai, “in some years, an autumnal site may persist through the winter to be a permanent site.”

Sensitivity to Human Impacts

Similar to many butterfly species, Monarch butterflies are highly sensitive to change and extremely particular when choosing roosting areas. They can be flushed from tree groves by people coming too near their clusters. They are highly sensitive to pesticides, both airborne and on the ground varieties and

² As described by Walter Sakai, Professor of Biology, Santa Monica College, in an email to staff dated June 8, 2007 and on his website (http://homepage.smc.edu/sakai_walter/Monarch%20Butterfly/nathis.htm).



will abandon a site due to smoke from fire places.³ In addition to these direct human impacts on Monarch habitat, they require extremely specific habitat conditions. They can only persist in wind protected groves (a maximum speed of 2 meters per second), with buffered temperatures, high humidity levels, filtered sunlight and high habitat heterogeneity (Bell, 2001)⁴. Trees surrounding habitat locations strongly influence wind protection and the microclimate near the core of the grove (Leong, 1991). Tree trimming and limb removal performed on perimeter trees can severely degrade Monarch habitat because of microclimatic alterations. The sensitivity of this site in particular, has been demonstrated by its declining quality in direct correlation to increasing surrounding development and tree removal on the outer edges of the grove site.

Defining of Monarch Habitat as ESHA

As described in the substantial issue findings of this report, Monarch winter habitat constitutes environmentally sensitive habitat area based on the LCP's general text definition. The LCP states that ESHA is:

A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations. (emphasis added)

Although the Monarch trees in this case are not specifically mapped as butterfly habitat, they are mapped as part of the designated riparian ESHA of Little Cayucos Creek. Monarch habitat is restricted in California and considered rare (CNDDB). It is considered a "threatened phenomenon" and is especially valuable because of the important role it plays in supporting Monarch populations through the winter months. The LCP also defines ESHA as a habitat "easily disturbed or degraded by human activities and development." As discussed above, in the background and site description, Monarchs are highly sensitive to human activity both through direct impacts and indirect consequences. Their habitat can be significantly degraded by human activity. As documented by Mr. Little in his 2002 report, the project site has experienced a population decline from over 60,000 in some winter to only 250 in recent years. The time frame of Monarch use has also changed, from full overwintering to autumnal and early winter use. As discussed above, although there are no definitive criteria to distinguish between autumnal and permanent (overwintering) sites, the documented and marked change at this site clearly demonstrates its degraded quality which is directly linked to increased development in the surrounding area (Little, 2002). Based on the life history of the Monarch migration and the specific circumstances of the grove at the project site, it meets the general definition of ESHA, and should be protected accordingly. As noted in the Substantial Issue Finding, a consulting project biologist and Monarch

³ Noted impacts according to the report on "Habitat Utilization and Assessment of Impacts from Development Proposed by Beardslee Development Association" prepared by Dr. Elizabeth A. Bell for the Rispin Mansion Project, June 2003 EIR.

⁴ Dr. Elizabeth Bell studied the Lighthouse Field Monarch Habitat in Santa Cruz, Ca and supplied a letter of review for the 2001 Appeal of the Oblates of St Joseph Parking Lot (A-3-STC-01-045). In her letter she discusses the general requirements for and the nature of Monarch habitat.



expert concluded that “the site is still used by Monarchs and should be protected (Little, 2003).” It should also be protected as riparian ESHA.

Finally, Commission actions also support the conclusion that Monarch autumnal sites are generally ESHA. For example, in the City of Morro Bay LCP Major Amendment 1-99, the Commission found that although the site in question was an autumn monarch roosting site and not an overwintering site, and despite that it was not mapped as ESHA and was degraded, it did meet the definition of ESHA. The Commission also found that this conclusion was “consistent with past Commission practice and application of ESHA policies with respect to protection of the sensitive Monarch Butterfly species.”⁵ In addition, the Arco Dos Pueblos Golf Links decision in 2002, determined that “[a]utumnal sites are considered important to aggregation phenomena and are protected as [ESHA].”⁶

C. Analysis of Impacts and LCP Consistency

i. Riparian Habitat

Little Cayucos Creek and its surrounding riparian vegetation, which runs adjacent to the project site, is ESHA as defined in Policy 20 of the County Coastal Plan Policies and as mapped in the LCP. As required by Policy 21, new development on the subject property should be designed to prevent impacts to and ensure the continuance of this habitat area. Additionally, buffers are required by Policy 28 and CZLUO 23.07.174 to be a minimum of 50 feet, although the Estero Land Use Plan Chapter 8 Section B SRA 1 requires that they be a minimum of 20 feet from the edge of riparian vegetation. The LCP states that this conflict shall be resolved in favor of the area plan standard.⁷

The County LCP has provisions to allow the reduction of riparian buffers to not less than 10 feet. In order to allow this buffer reduction, though, several findings must be made and a Minor Use Permit must be approved (CZLUO Section 23.07.174 (d (2))). The project has been granted a Minor Use Permit by the County but the findings to support this decision are not adequate. More important, as approved the project could result in the degradation of the sensitive riparian habitat. Allowing the reduction also is inconsistent with the County’s Environmental Division memo that recommends a 20 foot setback from the edge of the riparian vegetation (Exhibit M).

Based on the resources present and potential impacts from the proposed residential use, the Commission’s staff ecologist has generally recommended a minimum riparian ESHA setback of 20 feet “from the furthest extent of the riparian vegetation,” in her letter dated June 15, 2007. She goes on, though, to recommend that this setback be increased to 30 feet on Lots 5 & 6 in order to provide increased protection for the riparian habitat from the proposed development at these locations. As discussed below, coupled with the recommended 50 foot buffer for the Monarch trees, this should result

⁵ Adopted Findings for the City of Morro Bay Local Coastal Program Major Amendment Number 1-99 Revised Findings & Time Extension, dated January 24, 2001.

⁶ Staff Report: Changed Circumstances and Project Amendments for A-4-STB-93-154-CC and –A2 (Arco Dos Pueblos Golf Links), dated November 22, 2002.

⁷ According to CZ Framework for Planning; pg 8-3, numbers 5 and 6.



in adequate protection of the ESHAs over time while still providing for a reasonable principally-permitted use on the site.

Generally speaking, larger setbacks are more protective of riparian habitats. Although the literature cannot determine a “standard” riparian setback, a recent staff review of the current trends in peer reviewed sources indicates evidence that effective buffers for the protection of various values of riparian habitat may range from 97.5 to 195 feet.⁸ In this case the LCP establishes a minimum setback of 20 feet for Little Cayucos Creek, which is substantially less than what might generally be considered adequate protection for a relatively healthy riparian resource such as is found here. Moreover, it is important to recognize the site’s proximity to Monarch butterfly EHSA area (which, as discussed below requires a minimum setback of 50 feet) and the connectivity of the two ESHAs, which suggests that Monarchs and other species will move freely within them as a whole ecosystem. Given the sensitivity of the resources here, the Commission finds that the riparian setback on Lots 5 & 6 should be increased from the minimum 20 feet to at least 30 feet. At the same time, however, given the character of the resources here, including the width and species composition of the riparian zone, and considering the substantial urban development already existing along the urban reach of this creek, this smaller buffer of 30 feet would be appropriate and adequate for protecting the resources present. In particular, it is not clear that increasing the riparian buffer beyond 30 feet on lots 5 and 6 would result in any significant increase in resource protection. This setback increase ensures the habitats and ecosystem as a whole will be protected as required by CZLUO 23.07.176. It is also noted, though, that increasing the buffer beyond 30 feet would begin to diminish the possibility of providing for a principally-permitted use on the development site.

With respect to reducing buffers, the LCP clearly contemplates the ability to reduce minimum buffers where necessary to provide for a principally-permitted use. In order to reduce a minimum buffer, as the County did in this case, Section (i) of CZLUO Section 23.07.174 d (2) requires that alternative locations and routes be found to be either infeasible or “more environmentally damaging.” In this case, there are alternatives to the County approval, including feasible alternatives with the minimum 30 foot setback found necessary here. First, the alternative route for this project is an alley on the opposite side of the project site (shown in Exhibit C), located away from the creek. As mentioned earlier in this report, this alley was originally intended as the access for this project but due to a private settlement agreement (Exhibit K), the access was relocated to its current location (shown in Exhibit E). However, the private agreement does not preclude the option of locating the access away from the creek if the Commission finds that this is necessary to protect coastal resources (see Exhibit K). In addition, as shown in Exhibit H, and as further discussed below, there is adequate room to provide for site access in the alley location, and provide for principally-permitted use on the site. In addition, locating the access as currently planned does not provide any additional creek setback for structures, as argued by the County because structures would be outside a 20 foot setback (Estero Land Use Plan Chap 8 Section B SRA 1) regardless of the access location. Conversely, locating the road at a 10 foot setback from the creek does

⁸ See Appendix C: Peer Reviewed Buffer Research of *Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas* January 2007. Performed Under Section 309 (Coastal Zone Enhancement Grant Program) of the Coastal Zone Management Act



raise significant water quality and erosion controls concerns, as well as habitat protection and continuance concerns due to the proximity of development to the riparian zone.

The County findings also state in Section O that “the adjustment is the minimum that would allow for the establishment of the new residences.” The development site is zoned Residential Multi-family. While the proposed single family residences are one of the principally-permitted uses in this zone, so are multi-family dwellings.⁹ As shown in Exhibit H, adhering to the buffers of this permit will still result in a development envelope of approximately 6,500 square feet, which is a significant development area to provide for a multi-family residential development of up to 3 units. The Commission finds, therefore, that the adjustment is not necessary to allow a principal permitted use; and the Commission further finds that a redesign of the proposed project would allow a residential use within the required setbacks. The alternative access way through the alley does not raise significant environmental concerns and is therefore less environmentally damaging than the County approved access road. Additionally, this location supports the “*protection and preservation*” of the creek as required by Policy 21. The Commission finds that access through the alley is both less environmentally damaging and feasible as a project access way with respect to fire safety codes and despite the private settlement.

ii. Monarch Butterfly Habitat

The project as sited and designed in the approved plans does not adequately protect the Monarch habitat as required by the LCP policies above. As approved by the County the project is required to meet 30 foot setbacks as measured from the tree trunk of the large eucalyptus (County Findings K; Exhibit F). The initial recommendation from the DFG required 50 ft setbacks measured from the edge of the tree driplines. Over the course of the review process negotiations concerning this setback placed it at the County approved 30 feet from the tree trunk, allowing development within 10 ft of the dripline and potentially even closer. This setback is inadequate to preserve the habitat and may result in significant impacts on its quality; especially given its high sensitivity to human activities. Additionally, it conflicts with the recommendations of the biologist hired by the Applicant to satisfy the requirements of Coastal Plan Policy 2. Mr. Richard Little made specific mitigation findings in his report on pages 5 -7 (Exhibit L) concerning the preservation of the habitat including prohibiting any development on Lot 3 and conditioning the development of Lot 4 to not impact the existing canopy. On a site visit to the project location by the County, the canopies of the trees on Lot 4 were noted to extend from between 30 and 40 feet out from the trunk. The County-approved setback of 30 feet as measured from the trunk is clearly insufficient based on these observations and could potentially allow development within the tree canopy. Finally, the Commission’s staff ecologist, Dr. Jonna Engel, recommends a minimum 50 foot setback from the edge of tree canopies. Allowing a smaller setback from the Monarch’s roosting area could result in the abandonment of the site completely. As described above, human activities near roosting sites have been known to disrupt the specific microclimate that Monarchs rely on. Dr. Engel notes that the degree of disturbance at this site creates the need for appropriate protection measures. To ensure the continuance of both the sensitive habitats she also recommends that restoration measures be included in the conditions of the permit which will include invasive vegetation removal and a specific landscape plan.

⁹ In addition to single and multi-family residences, accessways and passive recreation are principally-permitted in the RMF zone.



iii. Grading within 100 feet of ESHA

A setback of 50 feet is adequate to comply with ESHA policies under CZLUO section 23.07.160; however, section 23.05.034 generally requires that grading shall not occur within 100 feet of ESHA. An adjustment can be made to the grading setback (CZLUO 23.05.034) under sections c (1) and c (2) of that section; either pursuant to CZLUO 23.07.174d (2) for riparian ESHA; or for other ESHAs provided that the buffer is not reduced below 50 feet.

Under CZLUO 23.07.1742(d) the setback may be adjusted to not less than 10 feet, provided findings (i – iv) of that standard can be made, the required findings include:

- (i) *Alternative locations and routes are infeasible or more environmentally damaging; and*
- (ii) *Adverse environmental effects are mitigated to the maximum extent feasible; and*
- (iii) *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; and*
- (iv) *The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

The grading provision, applied without adjustments, would result in a building envelope of approximately 900 square feet, which could potentially deny the Applicant a principal permitted use of the project site, which encompasses 3 parcels zoned for Residential multi-family development. By allowing an adjustment of this setback to the 30 feet recommended for riparian habitat and the 50 foot setback from the Monarch habitat area of the riparian habitat the Commission finds that it will adequately protect ESHA based on the biological recommendations. In order to mitigate any potentially adverse environmental impacts conditions requiring a deed restriction, landscaping plans and others are incorporated into the approval of this permit. The Commission finds there is no other less environmentally damaging location for the project than the corner that has been designated in Exhibit H as the building envelope because all other locations of the project would encroach into required setbacks. The adjustment allowed is made only to the minimum amount necessary to allow the development of a multifamily residential use, up to three units, with on-site parking, while still ensuring habitat protection. These parameters provide the Applicant with an approximate 6,500 square foot development envelope.

Based on the significant biological resources present on the site and the recommendations of the staff ecologist and private consultant, the Commission finds that it is necessary for the continuance of ESHA to require a 50 setback from the canopies of all eucalyptus and cypress trees for all development activities and a 30 foot setback from the edge of riparian vegetation. These setbacks are the most environmentally protective without resulting in restricting a principal permitted use.

Finally, even with the buffers applied herein, a future residential use in the approved development envelope will have impacts on the adjacent ESHAs. Such impacts include increased noise and light from the residential use of the property that could affect bird habitat; potential introduction of non-native species into the riparian corridor; and impacts on riparian species from domestic animals and other



unintentional human uses of the buffer areas. Although difficult to pin down, without much more detailed site-specific data and future monitoring, there may also be changes in the micro climate conditions, such as wind and temperature changes, that adversely affect the Monarch roosting areas. These types of impacts may persist, regardless of the development buffer areas. As discussed below, landscape restoration, including the removal of invasives and the planting of vegetation to enhance Monarch habitat will mitigate these impacts.

D. Project Modifications

As approved the project does not currently comply with the LCP policies and it presents clear threats to the continuance of nearby ESHA. In order to ensure compliance and allow the approval of the project the Commission recommends several special conditions designed to protect and preserve the riparian and Monarch habitats as required by the LCP. Foremost of these conditions is **Special Condition 1a** which requires that the Applicant submit a revised site plan for the project, for the Executive Director's review. Key elements of this plan include: the use of the alternative access way through the alley; the reorientation of the dwellings away from the creek and toward the relocated access; and the clear delineation of the setbacks required by **Special Condition 2** showing that all planned development will occur outside this area. Monarch sensitivity to human activities, as documented in this report, necessitates **Special Condition 2** requiring that the redesigned project meet a 50 foot setback as measured from the edge of the tree canopy. This condition also requires that the riparian setback of 30 feet from the edge of the furthest extent of riparian vegetation and be measured according to the original vegetation map produced by Rincon Consultants in 2002.

To ensure the continuance of the sensitive habitats **Special Condition 1c** requires an Erosion and Sedimentation Control and Drainage Plan, to detail the best management practices to be used on site during construction and the specific design elements that will direct run-off away from the stream for the life of the project. **Special Condition 1d** requires landscape plans with elements that enhance riparian vegetation and Monarch habitat and prohibit any vegetation modifications as mitigation for those impacts that will not be fully mitigated by the required development buffers. In light of the changes in the site plan under Special condition 2, **Special Condition 4** and **Special Condition 5b** are also necessary to ensure that the alternative alley access meets Fire Code requirements and to secure an access easement for Lots 7, 8 & 9 to expand the alley to the 18 foot width required by **Special Condition 4** prior to construction. Commission staff have coordinated with the fire department and confirmed that with the special conditions, the alley access should be adequate for fire safety purposes.

The Commission also adopts **Special Condition 5a** which requires that the Applicant record an open space deed restriction for the entire combined setback areas for habitat protection shown in Exhibit H. Construction restrictions are to be guided pursuant to **Special Condition 6**. Finally, all County conditions as listed in **Special Condition 7** are incorporated into the approval of this permit.

E. Conclusion

The Commission concludes based on the above discussion that the project as conditioned would be consistent with the LCP and provide for the protection of ESHA. In order to ensure compliance with the



LCP the Commission adopts **Special Conditions 1-7** which together modify the project sufficiently to comply with the applicable policies and protect riparian and Monarch butterfly habitat.

2. Water Quality

A. Applicable Policies

County of San Luis Obispo Coastal Plan Policy Chapter 9 states, in part:

Policy 8: Timing of Construction and Grading

Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 9: Techniques for Minimizing Sedimentation

Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 10: Drainage Provisions

Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

B. Analysis of Consistency

The project is sited adjacent to Little Cayucos Creek containing riparian vegetation and sensitive Monarch butterfly habitat. Locating development too close to a stream raises erosion and polluted run-off concerns. To avoid potential impacts specific setbacks have been incorporated into the project approval appropriate to the biological resources on the ground. In addition, conditions to assure



protection of water quality are required. The project as conditioned will adequately prevent any harmful effects by locating the project at an appropriate distance from the creek and following the conditions in this permit. In order to comply with the erosion and sedimentation policies, the Applicant is required to have a soil scientist or qualified professional prepare an erosion and sedimentation control plan. This plan shall follow the SLO County Standard Improvement Specifications and Drawing guidelines and design the project to minimize harmful impacts to ESHA that may result from increased run-off, erosion or sedimentation. The project is also conditioned to provide a plan for controlling erosion and sedimentation associated with the development process. **Special Condition 1c** specifically requires that the project meet the LCP requirements noted above. As conditioned the project would not present any significant threats to water quality.

3. Archaeological Resources

A. Applicable Policies

County of San Luis Obispo Coastal Plan Policy Chapter 13 states, in part:

Policy 1: Protection of Archaeological Resources

The county shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 5: Mitigation Techniques for Preliminary Site Survey before Construction

Where substantial archaeological resources are found as a result of a preliminary site survey before construction, the county shall require a mitigation plan to protect the site. Some examples of specific mitigation techniques include:

- a. Project redesign could reduce adverse impacts of the project through relocation of open space, landscaping or parking facilities.*
- b. Preservation of an archaeological site can sometimes be accomplished by covering the site with a layer of fill sufficiently thick to insulate it from impact. This surface can then be used for building that does not require extensive foundations or removal of all topsoil.*
- c. When a project impact cannot be avoided, it may be necessary to conduct a salvage operation. This is usually a last resort alternative because excavation, even under the best conditions, is limited by time, costs and technology. Where the chosen mitigation measure necessitates removal of archaeological resources, the county shall require the evaluation and proper deposition of the findings based on consultation with a qualified archaeologist knowledgeable in the Chumash culture.*



d. A qualified archaeologist knowledgeable in the Chumash culture may need to be on-site during initial grading and utility trenching for projects within sensitive areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]

Policy 6: Archaeological Resources Discovered during Construction or through Other Activities

Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) 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. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.05.140 AND 23.07.106 OF THE CZLUO.]

B. Analysis of Consistency

The project site was surveyed by Central Coast Archaeology starting in 2002. In Phase I evidence of a prehistoric archaeological site was found, containing shellfish remains and chipped stone. This discovery led to Phase II testing that classified the site as a Late Period habitation site. A Phase III plan was developed by the consultants to mitigate and monitor construction activities. This plan includes an archaeologist's review of footing trenches prior to mechanical excavation, monitoring by a Native American Monitor from the Salinan Tribe and continued monitoring by both during any excavation and ground disturbing activities. Detailed mitigation requirements can be found in the report segment attached as Exhibit J. The County conditions for Cultural Resources (conditions 22, 23, 24, 35, and 37) are incorporated into **Special Condition 7** and are adopted with the approval of this permit. These conditions directly incorporate the archaeologist's recommendations for mitigation and continued monitoring. The Commission finds that these conditions adequately protect the potential cultural resources as required by CEQA and the SLO County LCP.

4. Public Services

A. Applicable Policies

The SLO County LCP contains policies to ensure that adequate public services are available for new developments, and require an Applicant to produce evidence of service availability prior to permit issuance. The specific policies pertaining to this project are listed below:

County of San Luis Obispo Coastal Plan Policy Chapter 8 states, in part:

Policy 1: Availability of Service Capacity



New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. ...

CZLUO Section 23.04.430

23.04.430 - Availability of Water Supply and Sewage Disposal Services.

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:

a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line. ...

B. Analysis of Policies and Conclusion

The proposed development does not raise significant concerns about availability of water or sewage disposal services. Cayucos receives water from the Whale Rock Reservoir via three service providers; this project is located within the Morro Rock Mutual Water Company's service area. Conservation efforts in the area have helped keep water supply available to new development, currently the company is not limiting its will serve letters. The city as a whole is at a level II severity for water supply, which means it is projected to reach capacity within the next five years. Sewer services for Cayucos are provided through an agreement between the Cayucos Sanitary District and the City of Morro Bay; Cayucos is allocated a capacity of .721 mgd for sewage flow. The city is currently at 42.3 % of this capacity during the dry season and is at an "OK" severity level. Peak day wet weather flow based on 2004 data show .909 mgd for Cayucos, winter flows are noted to be 3 times greater than average daily flows and inflow and infiltration are known problems within the system. Combined, Morro Bay and Cayucos are at 66% capacity for the system during the dry season and have entered into an agreement to convert the system from a primary treatment facility to a secondary treatment facility by 2014.¹⁰ Despite wet weather extreme high flows the system has experienced a 40% reduction in total wastewater flows over the last two decades and appears to be well equipped to handle increases in population caused by new developments.

¹⁰ City of Morro Bay, Public Review: Sphere of Influence Update: Municipal Services Review April 2007



The project is located within the urban services line and is not required to make findings for public services outside this line as required by Policy 1 and section 23.04.430 of the CZLUO. Policy 1 requires that the Applicant provide evidence that there are sufficient services for the development. Prior to issuance of building permits, the Applicant is required to meet County conditions 14, 15 and 33. County condition 14 requires the Applicant to submit documentation from the Cayucos Sanitary District confirming they have met all the District's requirements and can provide adequate sewer function. Condition 33 requires a set of as-built plans be provided to the District for review. County condition 15 requires that the Applicant submit a final will serve letter from the Morro Rock Mutual Water Company to verify adequate water supply for the development. (The full text of the County conditions is available in Exhibit F.) The Commission finds that County conditions 14, 15 and 33 adequately ensure the project will comply with current LCP public services standards.

5. Alleged Violation

In 2005, a neighboring property owner reported to the Commission's enforcement team alleged trimming and creek alteration activities occurring on the subject property. Staff opened violation case number V-3-05-031 on July 20, 2005.

The project, as detailed in this report, has been conditioned to locate development away from the sensitive areas where unpermitted vegetation removal and creek alterations have allegedly taken place because of LCP ESHA policies. As proposed in this permit the project is designed around pre-violation vegetation information.

California Coastal Commission consideration of this application has been based on the certified San Luis Obispo County LCP. Review of this permit does not constitute a waiver of any legal action with regard to the violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

D. 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.

Two types of ESHA are found on the subject property, riparian habitat and Monarch butterfly winter habitat, both of which are protected under CEQA. As conditioned herein a redesigned project within the identified development envelope is the least environmentally damaging feasible alternative. The project is also required to mitigate its impacts by following a landscaping plan and biological resources management plan and to dedicate the entire area of the ESHA setbacks through a deed restriction, in an open space easement.



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 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 which 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.

