

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



W13a

Filed: 4/29/2020
Action Deadline: 1/16/2021
Staff: Brian O'Neill - SC
Staff Report: 5/22/2020
Hearing Date: 6/10/2020

STAFF REPORT: CDP HEARING

Application Number: 3-18-1092

Applicant: Joseph Perry

Project Location: 746 Jetty Avenue in the unincorporated community of Oceano in San Luis Obispo County.

Project Description: Construction of concrete foundations for the placement of two manufactured homes; installation of decomposed granite parking areas; and restoration of habitat where unpermitted grading and excavation and significant vegetation removal took place.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project includes placement of two single-story manufactured homes (1,025 square feet and 853 square feet) at 746 Jetty Avenue in the unincorporated community of Oceano in San Luis Obispo County. The project site is an approximately 6,875-square-foot undeveloped lot at the terminus of a dead-end street, with an existing residence to the northeast, but which is otherwise surrounded by a variety of sensitive habitat types and an unnamed tributary to the Arroyo Grande Creek. The site is located

3-18-1092 (Perry Manufactured Homes)

partially within the County's jurisdiction and partially within the Coastal Commission's retained permit jurisdiction because it is located on historic tidelands. At the Applicant's request, the County requested the Commission process a consolidated CDP. The standard of review for this consolidated CDP application is the Coastal Act, with the certified San Luis Obispo County Local Coastal Program (LCP) used as guidance.

In early 2018, Commission staff was notified that the Applicant had undertaken unpermitted grading, excavation, and vegetation removal for the purpose of placing a manufactured home at the site. In order to resolve the violation, Commission enforcement staff issued a notice directing the owner to submit a CDP application for restoration of the disturbed portions of the property, along with any other development planned for the site, such as placement of a mobile home. The property owner subsequently submitted the current application.

The project site lies within and adjacent to an identified Environmentally Sensitive Habitat Area (ESHA). Although the proposed residential units are mostly sited outside of the identified ESHA, a small portion of the driveway is located within ESHA and the majority of the residential development would occur within the LCP's required 50-foot ESHA buffer. However, although the LCP is not the standard of review here, it is worth noting that the LCP accounts for the unique circumstances of Oceano, where small residential parcels are often completely surrounded by ESHA. The LCP allows the 50-foot setback to be reduced to a minimum of 10 feet if necessary to accommodate some residential use, in order to avoid a taking of private property. In this case, the project involves a vacant, legal, residentially zoned lot. As such, allowing this residential parcel to enjoy the limited benefits of *some* residential development is necessary to avoid a taking and is permissible if ESHA impacts are minimized and appropriately mitigated to be as consistent as possible with ESHA protection policies.

Due to the limited size of the project parcel and the entirety of the parcel being located within the LCP's 50-foot setback, alternative locations outside of the 50-foot setback are not feasible, and thus a reduced setback is permissible to allow for some residential use of the property. However, residential development providing an economically viable use of the property can occur here without eliminating the setback entirely or allowing development to occur directly within the ESHA. A 20-foot setback, which is double the LCP minimum, can be found appropriate in this case because it maximizes the ESHA setback as much as feasible while still providing space for some limited residential development. Further, the fact that the project site slopes away from ESHA minimizes the project's potential runoff and other indirect habitat impacts. The project is therefore conditioned to require revised plans to ensure that development remains outside of the required 20-foot ESHA setback required by this permit. In addition, the project is conditioned to require restoration of the surrounding ESHA areas and provides for the long-term maintenance of these areas in order to address the direct, indirect, and cumulative impacts of the development. A deed restriction is also required to ensure

3-18-1092 (Perry Manufactured Homes)

that the ESHA and setback areas are protected in perpetuity.

Additionally, because the project is located in a flood hazard area, the project has been conditioned to require the incorporation of structural mitigation measures to reduce the risk of flood damage. The project is also conditioned to incorporate construction best management practices to control runoff and erosion in order to protect adjacent coastal waters.

Staff therefore recommends **approval** of the CDP as conditioned. The motion is found on page 5 below.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS.....	6
IV. FINDINGS AND DECLARATIONS.....	13
A. PROJECT DESCRIPTION	13
B. STANDARD OF REVIEW	14
C. RESIDENTIAL DEVELOPMENT STANDARDS.....	14
D. ENVIRONMENTALLY SENSITIVE HABITAT AREAS.....	16
E. PUBLIC ACCESS AND RECREATION	24
F. FLOOD HAZARDS	25
G. WATER QUALITY	26
H. VIOLATION.....	28
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	28

APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contact with Agencies and Groups

EXHIBITS

Exhibit 1 – Project Location Map

Exhibit 2 – Project Site Photos

Exhibit 3 – Project Site Plans

Exhibit 4 – Development Envelope and ESHA Setback Map

Exhibit 5 – Notice of Violation Letter dated September 27, 2018

3-18-1092 (Perry Manufactured Homes)

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission **approve** Coastal Development Permit Number 3-18-1092 pursuant to the staff recommendation, and I recommend a **yes** vote.

Resolution to Approve CDP: The Commission hereby approves Coastal Development Permit Number 3-18-1092 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following 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.

3-18-1092 (Perry Manufactured Homes)

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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two sets of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall be substantially in conformance with the proposed plans submitted to the Coastal Commission (titled Preliminary Site Plan 746 Jetty Avenue by Garing, Taylor and Associates, Inc. and dated received in the Central Coast District Office on November 2, 2018; see **Exhibit 3**), but shall show the following changes and clarifications to the project:
 - (a) **Development Envelope.** All residential development shall be located entirely within the identified development envelope and outside of the 20-foot riparian setback as shown on **Exhibit 4**, except for the minimum amount of driveway required to provide safe vehicular access to the development envelope. Development, other than habitat restoration (see **Special Condition 2**), shall be prohibited outside of the development envelope.
 - (b) **Lighting.** All allowed night lighting shall be minimized, shielded, directed downward, and designed to minimize light spill into the 20-foot habitat setback and adjacent habitat areas. All lighting shall have lighting controls that prohibit operation when sufficient daylight is available, and shall include the capability, either through circuiting, dimming, or alternating sources, to be able to reduce lighting without necessarily turning all lighting off.
 - (c) **Landscaping.** Any landscaping proposed within the development envelope area shall consist of non-invasive plant species that are native to the Oceano area, and compatible with the approved Habitat Restoration Plan (see **Special Condition 2**).
 - (d) **Flood Hazards.** The ground floor of all structures, including all attached utilities (e.g., water, sewer, electric, etc.) is required to be elevated a minimum of one foot above the 100-year storm flood elevation. All structures shall be anchored to enhance stability, including to help prevent collapse, lateral movement or flotation that could result in damage to other structures, surrounding development, and habitat. Water supply and sanitary sewage systems shall be sited and designed to avoid infiltration of flood waters into the system and to reduce or eliminate discharge from such systems into flood waters to the maximum extent possible.
 - (e) **Construction Best Management Practices (BMPs).** The Revised Final Plans shall identify the type and location of the measures that will be implemented during

3-18-1092 (Perry Manufactured Homes)

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 shall be located entirely within the development envelope shown in **Exhibit 4**. Discharge outside of the development envelope shall be prohibited. 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; and provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments and other pollutants from all runoff. The Revised Final 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 Revised Final Plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the Permittee shall delineate the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

- (f) Post-Construction Drainage Plan. Plans to control drainage after construction is complete shall include retaining runoff from the roof, driveway, decks, and other impervious surfaces onsite to the greatest degree feasible. Runoff shall be captured and directed into designated pervious areas, percolation pits or appropriate storm drain systems. The Drainage Plan shall demonstrate that the pervious areas, percolation pits, or drainage systems are sized and designed appropriately to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85% storm) excess runoff shall be conveyed off-site in a non-erosive manner. Drainage Plan preparation shall be coordinated in conjunction with the Habitat Restoration Plan (**Special Condition 2**) and the project's biologist to determine the best suited location for percolation pits and drain systems to avoid any adverse impacts on adjacent habitat and native restoration activities located outside of the development envelope.
- (g) Construction Site Documents. Copies of the signed CDP and the approved Revised Final Plans shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Revised Final Plans and

3-18-1092 (Perry Manufactured Homes)

the public review requirements applicable to them, prior to commencement of construction.

- (h) Construction Manager. The Revised Final Plans shall provide that a construction manager be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction manager should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction manager shall record the contact information (name, phone number, email, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. Any critical and/or significant complaints and related responses shall be reported to the Executive Director as soon as possible, and all complaints and all actions taken in response shall be summarized and provided to the Executive Director on a weekly basis.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this coastal development permit. The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans. Minor adjustments to these requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary by the Executive Director; and (2) do not adversely impact coastal resources.

- 2. Habitat Restoration Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Habitat Restoration Plan for the review and written approval of the Executive Director. The Habitat Restoration Plan shall be prepared by a qualified resource specialist, shall provide for habitat restoration, enhancement, and monitoring for the area identified in **Exhibit 4**, and shall at a minimum provide for the following components:
- (a) Goals and Objectives. Restoration shall be premised on creating or enhancing habitat so that it is self-functioning, high quality habitat in perpetuity.

3-18-1092 (Perry Manufactured Homes)

- (b) Description of Existing Conditions. The Habitat Restoration Plan shall include a map and description of the habitats that will be impacted by development, including all plant and wildlife species present, and any special status species.
- (c) Proposed Restoration/Enhancement. The Habitat Restoration Plan shall include a map and description of the proposed restoration/enhancement area that shall include all previously graded areas up to the original dripline and the 20-foot setback area as shown in **Exhibit 4**. The restoration/enhancement shall be designed and contoured in order to restore the natural contours using historical records of the area and the most proximal reference sites.
- (d) Non-Native and Invasive Plant Removal. All non-native and/or invasive species shall be removed, and continued removal shall occur on an as-needed basis to ensure complete removal over time. The absolute cover of species listed by the Cal-Invasive Plant Council shall not exceed 5% at any point following the onset of restoration.
- (e) Native Planting Plan. The Habitat Restoration Plan must include a detailed planting plan emphasizing the use of seeds, plugs, or container plants planted prior to fall rains, unless another time period or planting method is fully described and justified within the plan. All vegetation planted in the restoration areas shall consist of plants native to the area and consist only of local genetic stock. The planting plan should be based on vegetation community structure (e.g., species and relative densities) at an approved nearby reference site and shall be designed to avoid the use of irrigation following the stage of plant establishment. If irrigation is considered necessary to initiate restoration, it should be temporary (on the order of 1 to 3 years following planting), and provisions for its removal must be included in the planting plan.
- (f) Sensitive Species. If sensitive species (plants or animals) are identified within the habitat area that will be impacted, the design for the restored habitat shall include any special provisions deemed necessary to facilitate the survival and success of those sensitive species, and such provisions shall be consistent with applicable state and federal agency requirements for these species.
- (g) Plant Maintenance. All required plantings shall be maintained in good growing conditions for as long as any portion of the approved development exists at this site, and whenever necessary shall be replaced with new plants to ensure continued compliance with the approved plans.
- (h) Implementation. A map shall be provided showing the type, size, and location of all plant materials to be planted, the irrigation system (if any), topography and finish contours, and all other landscape features. If fencing is required to protect restored habitat, then such fencing shall be limited to temporary rope and pole

3-18-1092 (Perry Manufactured Homes)

barriers or equivalent. Detailed guidance on plant propagation, planting methods, and irrigation shall be included, as shall a schedule for all restoration activities.

- (i) Restoration Best Management Practices. The Habitat Restoration Plan must include a discussion of the specific BMPs that will be implemented to facilitate the success of the restoration, including sand fencing, straw plugs, and jute rolls to keep sand in place as seeds and plants are established; project staging area precautions, provisions for periodic adjustments and ultimate removal of materials that are no longer necessary, etc.
- (j) Grading Plans. The Habitat Restoration Plan shall include grading plans.
- (k) Sand Source. If new sand is required for restoration/enhancement, a description of the sand source and composition must be included in the Habitat Restoration Plan. The new sand characteristics (grain size, color, sorting, angularity, etc.) must match the existing sand as closely as possible.
- (l) Monitoring and Maintenance. The Habitat Restoration Plan shall include a monitoring program designed to provide data to judge the success of the restoration/enhancement and to guide any adaptive management actions for ensuring success. Monitoring and maintenance of the restoration/enhancement area shall continue for as long as any portion of the approved development exists at this site, and shall at a minimum include:
 1. Schedule. A schedule out to 5 years, with conditional inclusion of additional years of monitoring if success criteria are not met in the initial five-year time frame.
 2. Monitoring Methods. The monitoring program must describe the monitoring methods that will be used (e.g., transects, quadrats, photo plots, etc.), the number of samples, sampling density, and the timing of monitoring, along with a justification for the chosen timing with respect to seasonal cycles. A power analysis should be performed to inform design of the sampling scheme in order to ensure that there will be adequate statistical power to detect differences between target success criteria and on the ground conditions within the restoration.
 3. Reference Sites. If reference sites are to be used, the criteria used for their identification must be described (e.g., soil type, slope, aspect, proximity to restoration site, percent native cover, etc.), and they must be monitored using the same methods as those employed at the restoration site.
 4. Performance Standards. Success criteria for species richness and vegetative cover for each vegetation type (as characterized by a specific plant palette and planting plan, and any modifications based on slope and aspect) shall be provided and shall be based on any applicable reference sites.

3-18-1092 (Perry Manufactured Homes)

5. Data and Statistical Analysis. The Habitat Restoration Plan must include a description of the data analysis methods to be employed, and the maximum allowable difference between the vegetative cover and species richness characteristics found in the restoration/enhancement area and each success criterion. The statistic tests that will be used (e.g., a one or two sample t-test) to detect differences between success criteria and on the ground conditions shall be specified.
 6. Annual Reports. A report that includes a presentation of monitoring results, assessment of progress toward meeting success criteria, and any adaptive management recommendations, or actions taken, shall be submitted each year to the Executive Director for review and written approval for the first five years of the restoration, or for an adjusted time period dependent on restoration success.
- (m) Reporting and Contingency. Five years from occupancy of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and written approval of the Executive Director, a monitoring report prepared by a qualified resource specialist that certifies the restoration/enhancement is in conformance with the approved Habitat Restoration Plan. The report should include photographic documentation of plant species and plant coverage beginning the first year after initiation of the Habitat Restoration Plan, annually for the first five years, and then every ten years after that, assuming success criteria are met within the first five years of initiating the restoration/enhancement. If the monitoring report or biologist's inspections indicate the restoration/enhancement is not in conformance with or has failed to meet the performance standards specified in the approved Habitat Restoration Plan, the Permittee shall submit a revised or supplemental restoration/enhancement plan for the review and written approval of the Executive Director. The revised or supplemental plan shall be prepared by a qualified specialist and shall specify measures to remediate those portions of the original approved plans that have failed or are not in conformance with the original approved plans. These measures, and any subsequent measures necessary to carry out the approved plans, shall be carried out in coordination with the direction of the Executive Director until the approved plans are established to the Executive Director's satisfaction.
- (n) Habitat Restoration Implemented Prior to Occupancy. Initial restoration/enhancement activities, including at a minimum non-native and invasive species removal and initial site planting, shall be implemented prior to occupancy of the approved development.

3-18-1092 (Perry Manufactured Homes)

- (o) Habitat Restoration Maintained. All restoration/enhancement activities pursuant to the approved Habitat Restoration Plan shall be the Permittee's responsibility for as long as any portion of the approved development exists at this site.
- (p) Property Owner Consent. The Habitat Restoration Plan shall be submitted with evidence indicating that the owners of any properties on which restoration activities are to take place consent to such use of their properties.

All requirements above and all requirements of the approved Habitat Restoration Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake development in conformance with this condition and the approved Habitat Restoration Plan. Minor adjustments to these requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary by the Executive Director; and (2) do not adversely impact coastal resources.

3. **Other Authorizations.** PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director written documentation of authorizations from all entities from which such authorization is necessary for the approved project, including, at a minimum, San Luis Obispo County, California Department of Fish and Wildlife, and United State Fish and Wildlife Service, or evidence that no such authorizations are required from each of these entities. The Permittee shall inform the Executive Director of any changes to the project required by any other such authorizations. Any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.
4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from coastal flooding, (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense due to such hazards), expenses, and amounts paid in settlement arising from any injury or damage.
5. **Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal

3-18-1092 (Perry Manufactured Homes)

Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of the property (hereinafter referred to as “the terms and conditions of this CDP”); and (2) imposing all such terms and conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The restriction shall include a legal description of the Permittee’s property and 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 CDP shall continue to restrict the use and enjoyment of the subject properties so long as either this CDP or the development it authorizes (or any part, modification, or amendment thereof) remains in existence on or with respect to the subject properties.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Project Location

The proposed project is located at 746 Jetty Avenue in the unincorporated community of Oceano in San Luis Obispo County. The project site is an approximately 6,875-square-foot undeveloped lot at the terminus of a dead-end street. There is an existing single-family home to the northeast of the property and the rest of the parcel is surrounded by a variety of habitat types including dune, oak woodland, and riparian habitats. An unnamed tributary to the Arroyo Grande Creek is located to the west, south, and east of the property. The Oceano Airport is located approximately 200 feet to the southwest. The entire Oceano Airport region consists of a historical mosaic of habitat types, including former wetlands, that were filled to accommodate development. See **Exhibit 1** for project location maps and **Exhibit 2** for photos of the project site.

Project Background and Project Description

In early 2018, Commission staff was notified by the California Department of Fish and Wildlife (CDFW) that the Applicant had undertaken unpermitted grading, excavation, and vegetation removal at the subject site and in adjacent areas on County and CDFW property for the purpose of placing a manufactured home at the site¹ (Commission Violation Case No. V-3-18-0100). After further investigation, it was determined that approximately 0.45 acres of riparian, oak woodland, and dune vegetation was removed. Commission enforcement staff sent the property owner (and current Applicant) a notice of violation letter on September 27, 2018 (see **Exhibit 5**). In order to resolve the violation, the notice directed the owner to cease any additional development at the site and submit a CDP application for restoration of the disturbed portions of the property,

¹ Photographic evidence suggests that an unpermitted manufactured home may have been placed at the site, but it has since been removed and the site is vacant.

3-18-1092 (Perry Manufactured Homes)

along with any other development planned for the site, such as placement of a mobile home. The property owner subsequently submitted the current application.

The proposed project includes placement of two single-story manufactured homes (1,025 square feet and 853 square feet) on the parcel. Placement of the homes would require construction of concrete slab foundations, installation of decomposed granite parking areas, installation of utility lines, and associated grading. The application also includes restoration of the approximately 0.45-acre area partially on the project site and partially on adjacent property owned by the County and CDFW that was previously graded. See **Exhibit 2** for photos of the project site and **Exhibit 3** for the proposed project plans, including the proposed restoration plan.

B. STANDARD OF REVIEW

The site is located partially within the County's jurisdiction and partially within the Coastal Commission's retained permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean, which were previously filled in order to build the Oceano Airport and the surrounding neighborhood. As such, the development spans the two permitting jurisdictions.

If a CDP for a proposed development is needed from both the Commission and a local government with a certified Local Coastal Program (LCP), Coastal Act Section 30601.3 allows the Commission to act on a single consolidated CDP (with the policies of Chapter 3 of the Coastal Act as the standard of review, and the certified LCP to be used as guidance), if the Commission, the local government, and the applicant agree to such consolidation and public participation will not be substantially impaired by review consolidation.

At the Applicant's request, the County submitted a letter (dated October 18, 2018) to request that the Commission process a consolidated CDP for this project, and the Executive Director agreed to the consolidated permit process. The Commission also finds that public participation will not be substantially impaired here by review consolidation. Thus, consolidation is proper and the standard of review for this consolidated CDP application are the policies of Chapter 3 of the Coastal Act, with the certified San Luis Obispo County LCP being used as guidance.

C. RESIDENTIAL DEVELOPMENT STANDARDS

Applicable Coastal Act Policies and LCP Guidance

Coastal Act Section 30250(a) addresses new residential development and requires that new development not have significant adverse impacts on coastal resources:

3-18-1092 (Perry Manufactured Homes)

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Coastal Act Section 30251 also requires new development to be compatible with surrounding development.

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The project site is located within the LCP's San Luis Bay Area Plan, which implements the above Coastal Act Sections through zoning standards that address residential density, floor area, and height.

San Luis Bay Area Plan Oceano Urban Area RMF [Residential Multi-Family]

Standard 1. Maximum Density. New multi-family development is not to exceed a density of 15 units per acre. Maximum floor area may not exceed 48 percent.

San Luis Bay Area Plan Oceano Urban Area RMF Standard 5. Height. Structures shall not exceed 25 feet.

Analysis

The subject property is zoned RMF, which in the LCP's San Luis Bay Area Plan allows up to 15 residential units per acre (i.e. one unit per 2,900 square feet) as a principally permitted use within the Oceano Urban Area. The project site is 6,875 square feet, which means it can accommodate up to two residential units under the LCP's guidance. The proposed project includes two units and thus is consistent with the LCP's guidance in this respect. Per the LCP's guidance, floor area ratio is allowed at a maximum of 48%, which for a lot of this size would accommodate a maximum of 3,300 square feet of

3-18-1092 (Perry Manufactured Homes)

floor area (6,875 x .48 = 3,300). The proposed project includes a 1,025-square-foot single-story unit and an 853-square-foot single-story unit for a total of 1,878 square feet of floor area, which equals a floor area ratio of 0.27 and is within the LCP's maximum. Per the LCP's guidance, the maximum height for structures in this area is 25 feet. The proposed units would be approximately 12 feet tall, which is within the LCP's 25-foot height limit.

In sum, under the LCP's guidance, the project is an allowed use in the LCP's RMF district, and the project meets the LCP's guidance with respect to applicable residential design standards. Thus, the project can be found consistent with the above-cited Coastal Act policies regarding new residential development. However, as explained in more detail below, modifications to the location on the site of the proposed residential development is necessary in order to adequately protect environmentally sensitive habitat areas (ESHA).

D. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Applicable Coastal Act Policies and LCP Guidance

Coastal Act Section 30240 specifically calls for the protection of environmentally sensitive habitat area (ESHA), including with respect to development in areas adjacent to ESHA, and states:

Section 30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

The Coastal Act, in Section 30107.5, defines an environmentally sensitive area as:

30107.5...any area in which 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 developments.

While Coastal Act policies are the standard of review, San Luis Obispo County's LCP also provides guidance to the Commission as it considers proposals for development in and adjacent to ESHA. This includes development adjacent to riparian vegetation specifically, and in terrestrial habitats, such as dunes and oak woodlands. The LCP contains the following relevant policies:

3-18-1092 (Perry Manufactured Homes)

LUP Policy 1 for Environmentally Sensitive Habitats: New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area.

Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.174 – Streams and Riparian Vegetation (in relevant part): 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 [Urban Reserve Line]) this setback shall be a minimum of 50 feet. In the rural areas (outside the [Urban Reserve Line]) this setback shall be a minimum of 100 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. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted nest management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats.

(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.

3-18-1092 (Perry Manufactured Homes)

(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.

CZLUO Section 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.

In sum, the Coastal Act prohibits all uses within ESHA that are not dependent on the habitat resource. The Coastal Act also prohibits any development that will significantly disrupt habitat. Because riparian ecosystems are a significant and easily disturbed habitat resource, the LCP categorically acknowledges riparian habitat as ESHA and provides specific requirements for development in, and adjacent to, riparian areas. The LCP also protects terrestrial vegetation that is rare or endangered or that harbors rare or endangered plant or animal species.

Analysis

The subject site lies within a geographical area known for its occurrence of sensitive native plant and animal species, including those listed as endangered or threatened under Federal and/or State regulations, such as marsh sandwort (*Arenaria paludicola*); La Graciosa thistle (*Cirsium loncholepis*); Gambel's watercress (*Nasturtium gambelii*);

3-18-1092 (Perry Manufactured Homes)

California red-legged frog (*Rana draytonii*), western pond turtle (*Emys marmorata*), coast horned lizard (*Phrynosoma blainvillii*), and legless lizard (*Anniella pulchra*). Residential and commercial development has affected habitat values throughout the greater Oceano area. All substantial remaining undeveloped areas within this historically rich habitat area represent ESHA, in various stages of disruption or recovery.

The proposed development also lies within and adjacent to an unnamed tributary of the Arroyo Grande Creek that was identified by CDFW as a riparian area, which qualifies as ESHA under the Coastal Act and is categorically defined as ESHA under CZLUO Section 23.07.174. The area directly adjacent to the property also contains woodland and dune sands that are likely to support rare and endangered dune plants, which would also constitute ESHA under CZLUO Section 23.07.176. The exact extent of the riparian, woodland, and dune habitats is difficult to determine due to unpermitted grading, excavation, and tree removal that occurred on the project site and on adjacent property owned by the County and CDFW. The Commission's practice is to analyze a proposed project by assessing the impacts it would have had if the project site were in the condition that *would have existed* were unpermitted development not to have occurred, in order to fairly evaluate the impacts of proposed development and not incentivize landowners to destroy habitat values without authorization.² Stated differently, unpermitted development does not form the baseline from which impacts are assessed.

The analytic baseline for considering this proposed project is therefore the dune, oak woodland, and riparian habitat values that existed prior to the unpermitted activities. Based upon photographic evidence, a portion of the project site does appear to have been devoid of vegetation prior to the unpermitted grading, excavation, and tree removal activities, while vegetative cover appears to have extended to the outer extent of the tree dripline that existed prior to the unpermitted grading. The extent of ESHA at the project site, prior to the unpermitted activities, has therefore been identified by Commission staff as the original dripline that is marked in red on **Exhibit 3**.

Although portions of the project site may lie outside of the identified ESHA boundary shown on **Exhibit 3**, the entirety of the site is located directly adjacent to ESHA, and some of the unpermitted grading, excavation, and tree removal activities took place on adjacent County and CDFW property. To implement Coastal Act Section 30240, the Commission typically requires not only avoidance of direct ESHA loss, but also the use of buffering to minimize significant disruption of habitats. Such impacts include light and noise; shading of habitat; the potential introduction of non-native plants and invasive species; direct disturbance of habitat from residentially related activities; and potential impacts on flora and fauna from domestic animals. In urbanized areas such as this, the

² See *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770, 797 ("to enable the Commission to protect coastal resources, and to avoid condoning unpermitted development, the Commission properly reviewed the application as though the unpermitted development had not occurred").

3-18-1092 (Perry Manufactured Homes)

LCP's guidance requires a minimum buffer of 50 feet from riparian ESHA. Almost the entire parcel lies within the LCP's required buffer area.

The proposed development includes construction of two concrete slab foundations to accommodate the installation of two manufactured homes, and associated infrastructure improvements, which will cover approximately 1,878 square feet of the parcel (see **Exhibit 3**). The project also includes approximately 500 square feet of decomposed granite areas for the driveway and parking. Thus, the proposed project will result in approximately 2,378 square feet of development. A small portion of the driveway approach is located directly within the identified ESHA, although the remainder of the entire project is located adjacent to ESHA and within the LCP's default 50-foot riparian ESHA buffer (see **Exhibit 3**). Moreover, additional disruptions may result from residential development and subsequent use of the site, but these uses are generally amenable to native plant restoration and maintenance measures. Such activities may include installation of a storm drainage system, utility trenching and, over the long run, ordinary residential activities on the premises, such as the presence of dogs, cats, and other human activity in the habitat area.

None of the residential development activity described, including the small portion of the driveway located directly within ESHA, is dependent on a location within the sensitive resource area. In addition, this development and its associated activities are located immediately adjacent to ESHA, which could likely result in a significant disruption of the ESHA onsite as well as in the habitat areas on the surrounding County and CDFW property. Therefore, the project cannot be found consistent with Coastal Act Section 30240.

Coastal Act Sections 30240, however, must be applied in the context of other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation." Thus, if strict construction of the restrictions in Section 30240 would cause a taking of property, the section must not be so applied and instead must be implemented in a manner that will avoid this result.

The Commission has previously expressed the need to provide for a residential use on existing vacant lots of record in Oceano, despite the presence of ESHA on site, in order to avoid a taking of private property pursuant to Coastal Act Section 30010 (e.g., 3-01-060 (Carter) and 3-01-121 (Bachman)). In addition, since the *Bolsa Chica* decision in 1999,³ there has been increased attention on the need to more strictly apply the resource-dependent requirement of Section 30240 to more closely conform with the

³ *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493.

3-18-1092 (Perry Manufactured Homes)

legal principles regarding 30240 as established by caselaw (including *Bolsa Chica*, among others).

In this case, the project involves a vacant, residentially zoned legal lot, and thus, allowing this residential parcel to enjoy the limited benefits of *some* residential development in ESHA is permissible, if necessary to provide an economically viable use of the site,⁴ and if ESHA impacts are minimized and appropriately mitigated to be as consistent as possible with ESHA protection policies. The proposed residential units are mostly sited outside of the identified riparian ESHA and avoid any sensitive plant species, although a portion of the proposed driveway does extend into the identified ESHA. Additionally, the majority of the residential development occurs within the LCP's default 50-foot riparian ESHA buffer. Commission staff ecologist, Dr. Laurie Koteen, has reviewed the project materials regarding the sensitive biological resources at the site and has determined that a 50-foot ESHA buffer is appropriate and necessary here in order to protect adjacent habitat areas.

However, CZLUO Section 23.07.174(d)(2) does allow the buffer to be reduced to a minimum of 10 feet in certain cases if: (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.

Here, alternative locations for the development that would make it conform to the default 50-foot setback in the LCP are not feasible because the entire parcel is located within the 50-foot riparian setback. An adjustment to the buffer is therefore necessary in order to allow a principally permitted use of the property, and there is no redesign that could allow for the principally permitted use with the standard 50-foot riparian setback. Thus, the first and third criteria in CZLUO Section 23.07.174(d)(2) are satisfied here, meaning that a reduction to the setback would be allowable under the LCP if adverse environmental effects are mitigated to the maximum extent feasible and the adjustment is the minimum necessary to allow for the establishment of a principally permitted use. In addition, such a setback is necessary here to accommodate some residential development as mandated by Coastal Act Section 30010.

Although the 1,878 square feet of residential development is fairly modest in size, a small portion of the proposed driveway is located directly within ESHA, the proposed project does not establish any specific riparian ESHA setback, and the proposed project provides minimal restoration for only the areas that have been disturbed by the unpermitted grading, excavation, and vegetation removal (including on adjacent County

⁴ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

3-18-1092 (Perry Manufactured Homes)

and CDFW property). The project's adverse environmental effects have therefore not been mitigated to the maximum extent feasible because a portion of the driveway is located directly in ESHA, the remainder of the proposed project (while located outside of ESHA) does not include any specific setback from ESHA (as required by the LCP's guidance), and the proposed project does not provide adequate mitigation for the prior unpermitted activities and the future direct and indirect impacts on ESHA from residential development in and adjacent to ESHA. The proposed 0.45 acre mitigation simply replaces the illegally removed vegetation and does not adequately account for the interim loss of habitat value that has occurred after removal, does not account for the need for additional restoration in case the restoration is not entirely successful, nor does it provide additional habitat to act as a buffer between the proposed residential use and adjacent riparian areas.

Due to the limited size of the project parcel and the entirety of the parcel being located either directly within ESHA or within the LCP's 50-foot riparian setback, and the fact that the project site slopes away from ESHA (thus minimizing potential runoff and other impacts into ESHA), a 20-foot setback can be found appropriate in this case, which is double the minimum setback allowed under the LCP. While a 50-foot setback would be consistent with the LCP requirements to protect adjacent ESHA values, such a setback is infeasible here due to the parcel's relatively small size. As cited above, the guidance of CZLUO Section 23.07.174(d)(2) allows a reduction in the setback if four findings are made. In this case, based on the submitted design, three of the required findings can be made⁵ to allow for a reduced 20-foot setback and thus **Special Condition 1** requires the Applicant to submit revised project plans to ensure all development is located outside of ESHA, outside of the 20-foot ESHA setback, and within the identified development envelope shown on **Exhibit 4**. Although the driveway can be modified to avoid direct ESHA impacts as currently proposed, even with a reduced 20-foot buffer the project site would not be accessible without an exception to the setback for vehicular access to the site because the 20-foot ESHA setback completely surrounds the parcel. **Special Condition 1(a)** thus allows for a driveway approach within the 20-foot setback area if the driveway approach is the minimum necessary to provide safe vehicular access, and also requires that all other development, except for habitat restoration, be located outside of the identified setback.

⁵ The three findings that can be met are: (i) alternative locations and routes are infeasible or more environmentally damaging (the property is relatively small in size and development cannot be located outside of the LCP's guidance regarding riparian setbacks; and this is the last parcel on this street and there is no other location to develop a driveway that will be less environmentally damaging); (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow use with the standard setbacks (see above); (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use (a setback larger than 20 feet would severely constrain or even preclude any reasonable residential use of the parcel).

3-18-1092 (Perry Manufactured Homes)

However, the finding that requires that: “(ii) Adverse environmental effects are mitigated to the maximum extent feasible,” has not been met for the reasons stated above. Thus, to ensure that the project is as consistent as possible with Coastal Act Section 30240 (while still allowing some residential use to avoid a taking), and that all findings can be made to allow for a reduction in the ESHA setback consistent with the LCP’s guidance, additional Special Conditions are required. To reduce indirect habitat impacts from the adjacent residential uses allowed within the development envelope, **Special Condition 1(b)** requires a lighting plan that prevents light from spilling over into adjacent habitat areas. **Special Condition 1(c)** requires a landscaping plan that includes only native noninvasive plants that are compatible with the adjacent habitat.

With respect to mitigation for the unpermitted grading, excavation, and vegetation removal, the proposed project includes a restoration plan that only proposes to restore the portion of the identified riparian ESHA that was removed without a permit (**Exhibit 3**). In order to adequately mitigate for project impacts, **Special Condition 2** requires the submittal of a revised restoration plan that requires restoration of all areas on the Applicant’s property identified as ESHA in **Exhibit 4**, in addition to all areas adjacent to the property that have been disturbed by the unpermitted activities. This condition also prohibits the planting of non-native invasive species; requires all plant materials to be complementary to the native riparian habitats in the project vicinity; and requires annual monitoring and reporting to ensure restoration success over time. Additionally, because the unpermitted activities and required restoration include areas that are not owned by the Applicant, **Special Condition 2(p)** requires that the Applicant submit proof of landowner consent prior to undertaking restoration on adjacent property. Moreover, because the project involves development that may require permits or authorizations from other entities (such as an encroachment permit from San Luis Obispo County, a streambed alteration agreement from CDFW, or an incidental take permit from USFWS), **Special Condition 3** requires the Applicant to provide any necessary approvals or letters stating no approval is required prior to commencing construction.

In order to ensure that future owners are aware of these conditions and to ensure the protection of sensitive areas in perpetuity, **Special Condition 5** requires a deed restriction to be recorded against this property that includes all of the conditions of approval, including the habitat restoration plan and prohibition on development outside of the development envelope.

Recognizing the unique circumstances of ESHA protection within the residential areas of Oceano, including the LCP provisions that clearly establish a 50-foot ESHA buffer, while also allowing for reduction in such buffers if necessary to accommodate some residential use, the project as conditioned to address the direct, indirect, and cumulative impacts of the development can be found as consistent as possible with Coastal Act Section 30240 while still ensuring a viable economic use of the property, as required by Section 30010.

E. PUBLIC ACCESS AND RECREATION

Applicable Coastal Act Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road (Railroad Avenue). Coastal Act Sections 30210 through 30213 specifically protect public access and recreation. In particular:

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

30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

These overlapping Coastal Act policies clearly protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, with a particular emphasis on free and low-cost access. The Coastal Act’s access and recreation policies provide significant direction regarding not only protecting public recreational access, but also by requiring that access is provided and maximized.

Analysis

While the project site is located between the first public road and the sea, the site is also located approximately a half mile inland of the beach at Oceano Dunes State Vehicular Recreation Area and is within a residential neighborhood at the terminus of a dead-end street. Also, due to the existence of the airport to the west of the project site (see **Exhibit 1**), direct access to the beach is not available or feasible from this neighborhood. Thus, the project site is not appropriate for public access or visitor-serving recreational uses. Furthermore, ample direct beach access is provided at the end of Pier Avenue and at the mouth of the Arroyo Grande Lagoon.

3-18-1092 (Perry Manufactured Homes)

The project proposes to install two small residential structures on a private lot in a residential area located a half mile inland of the beach, and which is physically separated from the beach area by Oceano Airport; therefore, the proposed project will not interfere or impact existing beach access and recreational opportunities. As such, the project can be found consistent with the Coastal Act access and recreation policies cited above.

F. FLOOD HAZARDS

Applicable Coastal Act Policy and LCP Guidance

With respect to coastal hazards, Coastal Act Sections 30253(a) and (b) require that new development minimize the risks to life and property in areas of flood hazard:

Section 30253. New development shall: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The LCP also includes provisions for projects located within flood hazard areas, including required design and construction measures to minimize the impacts of hazards on development:

CZLUO Section 23.07.066(a) - Flood Hazard Construction Standards:

- (1) No construction or grading is to limit the capacity of the floodway or increase flood heights on existing structures unless the adverse effect of the increase is rectified to the satisfaction of the Director of Public Works. In no case shall flood heights be increased above that allowed under the Federal Flood Insurance Program.
- (2) Structures shall be anchored to prevent collapse, lateral movement or flotation that could result in damage to other structures or restriction of bridge openings and narrow sections of the stream or river.
- (3) Service facilities such as electrical and heating equipment are to be floodproofed or constructed at minimum of one-foot above the 100-year storm flood profile level for the site.
- (4) Water supply and sanitary sewage systems shall be designed to minimize infiltration of flood waters into the system and discharge from systems into flood waters.

3-18-1092 (Perry Manufactured Homes)

- (5) On-site waste disposal systems shall be located to avoid their being impaired or contaminated during flooding.
- (6) All buildings or structures shall be located landward of mean high tide.
- (7) Residential, commercial and industrial development shall be prohibited outside of urban and village reserve lines.

The proposed project is located within the flood hazard area delineated by the San Luis Bay Coastal Area Plan, which generally corresponds to the area that is subject to flooding under a 100-year storm. CZLUO Section 23.07.066(a) prohibits new residential, commercial and industrial development within flood hazard areas except for those areas within an urban reserve line if the proposed development incorporates design and construction elements to minimize risks from flood hazards. The project site is located within an urban reserve line. However, the proposed project does not include any specific design or construction elements to minimize risk from flooding.

In accordance with CZLUO Section 23.07.066(a), **Special Condition 1(d)** requires the Applicant to incorporate design and construction measures that ensure that the residential structures are anchored to prevent collapse, lateral movement or flotation that could result in damage to other structures; that electrical and heating equipment are floodproofed or constructed at minimum of one foot above the 100-year storm flood profile level for the site; and that water supply and sanitary sewage systems are designed to minimize infiltration of flood waters into such systems as well as discharge from such systems into flood waters. Further, this approval is conditioned on Applicant's assumption of all risks for developing at this location (see **Special Condition 4**). With these requirements, the project is consistent with Coastal Act Sections 30253(a) and (b) with respect to new development minimizing risks to life and property in areas of high flood hazard.

G. WATER QUALITY

Applicable Coastal Act Policies

Coastal Act Sections 30230 and 30231 protect the biological productivity of marine resources and streams:

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

3-18-1092 (Perry Manufactured Homes)

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

Analysis

The proposed project would increase the amount of impervious surface at the site due to the construction of residences, a driveway, and other hard improvements. Specifically, the proposed project has the potential to impact the water quality of the adjacent tributary and riparian area through the installation of two manufactured homes and a driveway, which may alter natural drainage patterns at the site and potentially contribute sediments and pollutants to the adjacent watercourse, particularly during construction. Construction activities can also adversely impact coastal water quality by causing erosion and sedimentation through the removal of vegetation and the movement of dirt. The increase in impervious surfaces that will result from the project will also impact water quality by altering natural drainage patterns and providing areas for the accumulation of pollutants that could eventually be carried into the adjacent riparian area by storm water.

The primary mechanisms to address the proposed project's water quality impacts are to require construction best management practices (BMPs), reduce the overall area of the development, and improve post-construction drainage. With less development area, there would be a reduction in the potential polluted runoff that could ultimately be flushed off site. The 20-foot ESHA setback required by **Special Condition 1(a)** will accomplish this by minimizing the development envelope and concentrating pervious development to one portion of the site. Moreover, the habitat restoration and landscaping requirements of **Special Condition 2** will also help control erosion and provide for more natural drainage patterns that disperse runoff. Further protections include implementing erosion control BMP's during construction and providing post-construction drainage plans that control runoff in the long term, as specified in **Special Conditions 1(e) and 1(f)**. To ensure that such measures are implemented, **Special Conditions 1(g) and 1(h)** require that a copy of the construction plans are maintained on the site at all times and that a construction manager is designated to oversee the project and respond to any complaints.

As conditioned, the Commission finds that the proposed project would maintain water quality; would not adversely impact the biological productivity of coastal waters; and, as such, is consistent with Coastal Act Sections 30230 and 30231.

3-18-1092 (Perry Manufactured Homes)

H. VIOLATION

Violations of the Coastal Act and LCP exist on the subject property including, but not limited to, unpermitted grading, excavation, and tree removal activities (Violation Case No. V-3-18-0100). After discovery of the violations, Commission enforcement staff directed the Applicant to apply for a CDP to restore the site to its original condition, as well as to propose any additional development. Approval of this application pursuant to the staff recommendation will require the Applicant to provide for habitat restoration within all areas of unpermitted grading, excavation, and tree removal as required by **Special Condition 2**. Issuance of the CDP and compliance with all the terms and conditions of this permit will result in resolution of the aforementioned violations of the Coastal Act on the subject property going forward.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and LCP policies (used as guidance) and their application to the site in the condition it would have been in absent the violations. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the Applicant remains subject to enforcement action just as he was prior to this permit approval for engaging in unpermitted development.

Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

I. 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 that the activity may have on the environment.

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

3-18-1092 (Perry Manufactured Homes)

review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal including residential development standards, ESHA, public access and recreation, coastal hazards, and water quality, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

3-18-1092 (Perry Manufactured Homes)

Appendix A – Substantive File Documents⁶

- CDP Application 3-18-1092

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- SAN LUIS OBISPO COUNTY PLANNING AND BUILDING DEPARTMENT
- CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

⁶ These documents are available for review in the Commission's Central Coast District office.