

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800
FAX (805) 641-1732



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Filed: 9/9/22
270th Day: 6/6/23
Staff: SF-V
Staff Report: 4/20/23
Hearing Date: 5/12/23

STAFF REPORT: REGULAR CALENDAR

Application No.: 4-22-0020

Applicant: J. Michael Cicileo

Agent: Rincon Consultants, Inc. c/o Chris Price

Project Location: 5300 Shoreline Drive, Goleta, County of Santa Barbara
(APN 065-230-014)

Project Description: Habitat restoration and enhancement of areas impacted by unpermitted development as well as enhancement of additional areas on-site, removal of certain development that was placed within riparian buffer, removal of a portion of unpermitted fill, after-the-fact authorization of a portion of fill for the purpose of improving access within a public equestrian and hiking easement along an existing 825 ft. long access road, removal of gates that are obstructing public access to the equestrian and hiking easement, and installation of public access signage, on a privately-owned 7.9 acre lot with residential and horse boarding uses.

Staff Recommendation: Approval with conditions.

Summary of Staff Recommendation

Commission staff recommends that the Commission **approve** coastal development permit application (CDP) 4-22-0020 with the following nine (9) special conditions: (1)

Final Revised Habitat Mitigation and Monitoring Program, (2) Erosion Control Plans and Construction Responsibilities, (3) Final Public Access Signage Plan, (4) Removal of Unpermitted Gates, (5) Biological Surveys and Monitoring, (6) Required Approvals, (7) Assumption of Risk, (8) Deed Restriction, and (9) Archaeological Resources Mitigation.

The subject 7.9-acre parcel is located along a portion of Atascadero Creek in unincorporated Santa Barbara County (APN 065-230-014). The creek and its associated riparian woodland habitat bisect the northern portion of the parcel and is considered an Environmentally Sensitive Habitat Area (ESHA). An access road/trail exists in the northern portion of the subject property, south of and parallel to Atascadero Creek. A 15 ft. wide equestrian and hiking public access easement held by Santa Barbara County Parks Department and a 115 ft. wide access easement held by the Santa Barbara County Flood Control District both exist across this road. In this location, the existing road that allows the County Flood Control District to access the creek also functions as a public equestrian and hiking trail. This trail continues east along Atascadero Creek and connects to a larger network of formal and informal publicly used trails, some of which pass along coastal bluffs and connect to the beach below More Mesa. The trail also connects to Shoreline Drive, Patterson Avenue, and a public bike path to the west and north. There are also 10 ft. wide and 15 ft. wide equestrian and hiking trail easements held by Santa Barbara County Parks Department on the subject site along Shoreline Drive. The site also contains a single-family residence, outbuildings, equipment and material storage areas, trailers, vehicular parking, and livestock paddocks associated with an on-site horse boarding facility.

Between 2009 and 2020, the property owner increased the width of the approximately 825 ft. long existing access road/trail along Atascadero Creek from its previous width of 12 feet to a present width of 26 feet, and placed 8-10 inches of road base (fill) on top of the expanded road. In order to increase the width of the roadway, the property owner removed approximately 8,550 square feet of riparian woodland ESHA, and about 3,000 square feet of riparian scrub vegetation within the ESHA buffer. In addition, gates have been installed at the western and eastern ends of the flood control access road and public access easement, and barbed wire was placed along the western gate. These gates have obstructed public access to the existing public access trail easement. Commission Enforcement Staff and Commission Staff Senior Ecologist, Dr. Jonna Engel, have engaged in numerous discussions with the property owner and their biologist to resolve the violations consensually through the permit process in a way that would fully restore public access and the ESHA and ESHA buffer that was impacted by the unpermitted development, and that would mitigate for temporal impacts to habitat and provide additional habitat restoration to fully resolve the violation.

The proposed project consists of habitat restoration and enhancement where unpermitted development took place, consisting of removal of approximately 225 cu. yds. of unpermitted fill and habitat restoration along an existing 825 ft. long, 26 ft. wide dirt access road to restore the road to its original 12 ft. width, with 3.35 acres of riparian habitat restoration and enhancement along the north and south banks of the creek, and within an approximately 50 ft. wide buffer area (portions of the proposed restoration extend beyond the 50 ft. buffer but are contiguous with the restoration area) south of the

access road where existing sheds, stockpiles, equipment, walls, landscaping, and fences are proposed to be removed. Approximately 447 cu. yds. of unpermitted fill would be retained within the 12 ft. width of the flood control access road/public equestrian and hiking trail, for public access purposes. In addition, unpermitted gates that obstruct public access along the access road within the equestrian and hiking access easement would be removed and public access signage would be installed. The area of proposed habitat restoration and enhancement would represent a mitigation ratio of 4:1 (area of restoration and enhancement to area of impact from unpermitted development). This exceeds the minimum 3:1 mitigation ratio required for this habitat type under the Santa Barbara County Local Coastal Program (LCP), and would significantly increase the quality of the riparian habitat for wildlife along this reach of Atascadero Creek.

In order to implement the applicant's proposal and ensure the technical specifications and monitoring requirements are complete in the applicant's final Habitat Mitigation and Monitoring Plan, staff is recommending Special Condition One (1), which requires the applicant to provide a final revised Habitat Mitigation and Monitoring Program prior to issuance of the permit that is in substantial conformance with the applicant's draft plan. Staff is also recommending Special Conditions Three (3) and Four (4) to require the applicant to remove the unpermitted existing gates located across the public equestrian and hiking trail easement on the subject property within 30 days of permit issuance, and to submit a final public access signage plan to install public access signage to inform the public of available public access within the 15 ft. wide public equestrian and hiking trail easement located at the northern portion of the subject property, south of and parallel to Atascadero Creek. Such signage plan shall specify the type, size, design, text, and location of public access signage and shall include a minimum of one sign at both the eastern and western ends of the trail easement on the subject property, and one additional sign (to be installed on the subject property) at the northeast corner of the intersection of Patterson Avenue and More Ranch Road, in visible locations, informing the public of the availability of the public equestrian and hiking easement for public access. Special Condition 3 also requires the applicant to implement the approved final signage plan within 30 days of permit issuance and to maintain the approved signage in perpetuity. Staff is also recommending Special Conditions 1-9 to ensure the proposed restoration and enhancement activities will be conducted in a manner protective of coastal resources and consistent with the relevant policies of the Coastal Act and County LCP.

Although the Commission has previously certified a Local Coastal Program (LCP) for the County of Santa Barbara, the project is located within an area where the Commission has retained jurisdiction (former tidelands or potential public trust land) over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter 3 policies of the Coastal Act, with the applicable policies of the County of Santa Barbara LCP as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act and County LCP. Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application 4-22-0020, as conditioned. The motion and resolution to act on this recommendation are on **page 5**.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Aerial](#)

[Exhibit 3 – Proposed Restoration and Enhancement Areas](#)

[Exhibit 4 – Proposed Road Remediation Plan](#)

[Exhibit 5 – Assessor’s Parcel Map](#)

[Exhibit 6 – Equestrian and Hiking Easement Areas](#)

[Exhibit 7 – CCC Permit Jurisdiction Map](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 4-22-0020 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the 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 a coastal development permit for the proposed development 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

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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Final Revised Habitat Mitigation and Monitoring Program

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Final Revised Habitat Mitigation and Monitoring Program for the subject property prepared by a qualified restoration biologist with qualifications acceptable to the Executive Director, in substantial conformance with the Draft Atascadero Creek Habitat Restoration, Mitigation, and Monitoring Plan for the subject property, prepared by Hunt & Associates, dated October 8, 2020, and as updated March 24, 2023. The program shall address all proposed restoration and enhancement areas depicted in [Exhibit 3](#), and shall incorporate the following criteria:

- A. Technical Specifications. This plan shall include, but not be limited to, the following:
 - i. A description of the goals of the restoration and enhancement plan, including topography, hydrology, vegetation/habitat types, sensitive species, and wildlife usage.
 - ii. A baseline assessment of existing conditions, including a map, and photographs taken from pre-designated sites annotated to the map.
 - iii. A schematic map/plan of the proposed restoration and enhancement plan including elevations, grading, habitat types and boundaries, roads, fences, irrigation, structures, and any other existing or proposed development at the site, including development to be removed. The proposed grading plan shall also be included in the plan.
 - iv. The location and type of any habitat restoration and enhancement informational signage and any temporary fencing and irrigation, and timing as to when the fencing and irrigation will be removed.
 - v. Habitat enhancement shall include, at a minimum, the removal of any and all invasive plant species identified by California Invasive Plant Council (Cal-IPC) as highly and moderately invasive within project areas and revegetation of all disturbed areas with appropriate native species of local genetic stock, including areas where invasive non-native plants were removed. Plans must indicate that invasive plant species shall be removed from all development and restoration and enhancement areas until habitat is successfully established pursuant to the final success criteria in B.2 below.
 - vi. Invasive non-native species shall be removed by hand where feasible and herbicide use shall be minimized. If herbicide use is determined to be a necessary component of an integrated pest management (IPM) approach to remove invasive non-native plants a licensed Pest Control Advisor (PCA)

must write a comprehensive report on how IPM will be implemented that includes a description of where, when, how, and why herbicides will be used and the herbicide(s) that will be used. The PCA or an individual with a Qualified Applicator License (QAL) or a Qualified Applicator Certificate (QAC) must supervise the application of herbicides. If the restoration biologist is a PCA or a QAL or QAC, he/she may fill these roles. Herbicides shall not be used within any portion of the stream channel as measured from toe of bank to toe of bank. Herbicide use shall be restricted to the use of an herbicide registered in California by the California Department of Pesticide Regulation (CDPR) appropriate for the respective task. If glyphosate is determined to be the best herbicide for the respective task, only aquatic versions of glyphosate such as Aquamaster™ (previously Rodeo™) shall be employed. The restoration biologist shall conduct a survey of the project site each day prior to commencement of vegetation removal and eradication activity involving the use of herbicide to determine whether any native vegetation is present. Native vegetation shall be clearly delineated and protected on the project site with fencing or survey flags. In the event that invasive non-native vegetation to be removed is located in close proximity to native riparian vegetation or surface water, the applicant shall either: (a) remove invasive non-native vegetation by hand (*Arundo donax* shall be cut to a height of 6 inches or less, and the stumps painted with the appropriate herbicide), or (b) utilize a plastic sheet/barrier to shield native vegetation or surface water from any potential overspray that may occur during use of herbicide. Herbicide use shall explicitly comply with label instructions and in no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain. All work involving herbicides will be conducted under the supervision of a PCA, QAL, or QAC. The restoration biologist shall monitor all initial and subsequent invasive non-native vegetation removal and herbicide application to ensure that native vegetation, wildlife, and water quality are not adversely affected. Re-treatment work done after initial removal of biomass will be seasonally timed to occur before flowering and seed set of target species.

- vii. Invasive non-native plant control shall not disturb sensitive native vegetation or nesting birds. Weeding shall be timed to avoid the nesting season for birds. If this is not feasible, the restoration biologist shall survey the areas to be weeded for active bird nests and shall direct work crews to avoid these areas until young birds have fledged.
- viii. A description of the planting palette (seed mix and container plants), planting design, source of plant material, and plant installation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. Plantings shall be maintained in good growing condition throughout the life of the project and,

- whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the restoration and enhancement plan. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained.
- ix. The plan shall be prepared in coordination with the Santa Barbara County Flood Control District and Santa Barbara County Parks regarding all restoration and enhancement plan areas located within the County's easement areas.
 - x. Sufficient technical detail including, at a minimum, a planting program including a description of planned site preparation, method and location of non-native ornamental/exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques inclusive of removal plans for temporary drip irrigation and other temporary support measures.
 - xi. Documentation of performance standards, which provide a mechanism for making adjustments to the restoration or enhancement project when it is determined, through monitoring, or other means that the program techniques are not working.
 - xii. Documentation of the necessary management and maintenance requirements, and provisions for timely remediation should the need arise.
- B. Monitoring Program. Said monitoring program shall set forth the methods, criteria, and performance standards by which the success of the restoration and enhancement shall be determined. The monitoring program shall include but not be limited to the following:
- i. Description of the sampling methods (transects, quadrats, photo plots, etc.) that will be employed to track the success of the restoration and enhancement program.
 - ii. Interim and Final Success Criteria. Interim and final success criteria shall include, as appropriate: species diversity, percent cover of vegetation layers (herbaceous, shrub, and/or canopy), and evidence of wildlife usage. The success criteria may be based on appropriate reference sites identified for each habitat type or the peer reviewed literature. The final success criteria for highly and moderately invasive non-native plants shall be 5% cover or less.
 - iii. Annual Monitoring Reports. The applicant shall submit, for the review and approval of the Executive Director, an annual report, for a period of five (5) years, prepared by the restoration biologist indicating the progress and relative success or failure of the restoration and enhancement on the site.

The report shall include additional restoration and enhancement activities needed to ensure the project will meet the criteria and performance standards. The report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of the respective restoration and enhancement areas. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration and enhancement project in relation to the interim performance standards and final success criteria.

- iv. Final Reporting. At the end of the five-year period, a final detailed report on the restoration and enhancement project shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration and enhancement project has, in part, or in whole, been unsuccessful, based on the performance standards specified in the approved restoration plan, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental program shall be submitted to the Executive Director, for review and approval. Following the restoration and enhancement, reports shall be submitted every ten years to ensure that the restoration and enhancement areas are maintained.
 - v. Monitoring Period and Mid-Course Corrections. During the five-year monitoring period, all artificial inputs (e.g., irrigation, soil amendments, plantings) shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the survival of the restoration and enhancement areas. Irrigation frequency shall be reduced beginning in Year 3 post-planting and upon approval of the restoration biologist so that plants can survive without supplemental water by Year 5 post-planting. The restoration and enhancement areas shall not be considered successful until they are able to survive without artificial inputs.
- C. The applicant shall undertake development in accordance with the Final Revised Habitat Mitigation and Monitoring Program. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no new amendment or permit is legally required.

2. Erosion Control Plans and Construction Responsibilities.

Prior to the issuance of the coastal development permit, the applicant shall submit a final Erosion Control and Construction Best Management Practices (BMP) Plan, prepared and certified by a qualified, licensed professional. The qualified, licensed

professional shall certify in writing that the Erosion Control Plan and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

A. Erosion Control Plans

- i. The plan shall delineate the areas to be disturbed by grading or demolition activities and shall include any temporary staging and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
- ii. Include a narrative report describing all temporary run-off and erosion control measures to be used during grading and demolition activities.
- iii. The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- iv. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins desilting basins or silt traps); temporary drains and swales; sandbag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10-year, 6-hour duration rainfall intensity event.
- v. The erosion control measures shall be required on the project site prior to or concurrent with the grading operations and maintained throughout the process to minimize erosion and sediment from runoff waters during grading work. The excavated material and development to be removed from the site shall be transported off-site to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive the material.
- vi. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sandbag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
- vii. All temporary, construction-related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and removed by the end of the five-year monitoring period unless otherwise provisioned. Bio-degradable erosion control materials may be left in

place if they have been incorporated into the restoration plan design described within the approved Final Habitat Restoration, Mitigation, and Monitoring Plan.

B. Best Management Practices

- i. No demolition or construction materials, debris, stockpiles, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to waves, wind, rain, or erosion and dispersion. Construction materials, debris, or waste shall be located as far from the creek on the designated site as feasible and in no event shall materials be stockpiled less than 30 feet in distance from the top edge of the creek bank, or where it may be subject to erosion and dispersion.
- ii. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- iii. Any and all debris resulting from demolition or grading activities shall be removed from the project site and transported off-site to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive the material.
- iv. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- v. All trash and debris shall be disposed in proper trash and recycling receptacles at the end of every construction day.
- vi. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- vii. Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- viii. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- ix. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

- x. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- xi. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- xii. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- xiii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The final Erosion Control and Construction Management Practices Plan shall be in conformance with the habitat restoration plans approved by the Coastal Commission. Any necessary changes to the approved plans required by a qualified, licensed professional shall be reported to the Executive Director.

3. Final Public Access Signage Plan

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a final public access signage plan to implement their proposal to install public access signage within the 15-ft wide public equestrian and hiking trail easement located at the northern portion of the subject property, south of and parallel to Atascadero Creek. Such a signage plan shall specify the type, size, design, text, and location of public access signage and shall include a minimum of one sign at both the eastern and western ends of the trail easement on the subject property, and one additional sign (to be installed on the subject property) at the northeast corner of the intersection of Patterson Avenue and More Ranch Road, in visible locations, informing the public of the availability of the public equestrian and hiking easement for public access. The applicant shall also demonstrate that the signs are acceptable to the County of Santa Barbara in type, size, design, text, and location.

All public access signs to be installed pursuant to the approved signage plan shall include the language: "Public Access provided in cooperation with the California Coastal Commission."

The applicant shall remove the existing unpermitted gates in accordance with Special Condition No. 4 and implement the approved final signage plan within 30 days of issuance of this permit, and shall maintain the approved signage in perpetuity. Any

proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

4. Removal of Unpermitted Gates

The permittee shall remove all existing gates located across the public equestrian and hiking trail easement on the subject property within 30 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

5. Biological Surveys and Monitoring

By acceptance of this permit, the permittee shall retain the services of a qualified biologist to conduct sensitive species surveys (including birds and terrestrial species) and monitor all project activities identified in Section F of this condition. At least 30 calendar days prior to commencement of any project activities, the permittee shall submit the name and qualifications of the qualified biologist, for the review and approval of the Executive Director. The permittee shall have the qualified biologist ensure that all project operations are carried out consistent with the following:

- A. The permittee and qualified biologist shall hold a pre-construction meeting followed by weekly updates for all construction personnel about the environmental sensitivity of the site, the construction/BMPs requirements and reporting rules to avoid adverse impacts, and the particular species of concern.
- B. The qualified biologist shall conduct surveys 30 calendar days prior to commencement, or recommencement, of the approved activities to detect any active sensitive species, reproductive behavior, and active nests within 500 feet of the project site. Follow-up surveys must be conducted 3 calendar days prior to the initiation of site work and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.
- C. In the event that any sensitive species are present in or adjacent to the work area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the qualified biologist shall implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The qualified biologist must have the requisite permits for working with/handling the respective sensitive species. The permittee shall immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.

- D. If an active nest of a federally or state-listed threatened or endangered species, bird species of special concern, or any species of raptor or heron is found, the permittee/qualified biologist shall notify the appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action specific to each incident. The permittee/qualified biologist shall notify the California Coastal Commission in writing within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.
- E. If an active nest of any federally or state listed threatened or endangered species, species of special concern, or any species of raptor or heron is found within 300 feet of grading or demolition activities (500 feet for raptors), the permittee shall retain the services of a qualified biologist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The qualified biologist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction-related noise. The qualified biologist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Grading and demolition construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site. If construction noise exceeds a peak level of 65 dB at the nest(s) site, sound mitigation measures such as sound shields, blankets around smaller equipment, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting trees/areas shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.
- F. The qualified biologist shall be present during all demolition, grading, excavation, and vegetation removal activities. The qualified biologist shall require the permittee to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. If significant impacts or damage occur to sensitive habitats or wildlife species, the permittee shall be required to submit a revised or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit or a new coastal development permit.
- G. Temporary habitat protective symbolic fencing (post and rail or rope) around sensitive areas shall be installed prior to the start of grading or demolition activities and shall remain in place and in good condition until such grading and demolition work is completed. The placement of the fencing shall be identified on site by the environmental resource specialist.
- H. For the purpose of this special condition, "sensitive species" shall be taken to mean any special-status wildlife species. Special-Status Species are species

listed as Endangered, Threatened, or Rare under the federal or state Endangered Species Acts, Candidate Species, State and Globally Listed Species Ranked 1 through 3, California Species of Special Concern, California Fully Protected Species, and, pursuant to CEQA Guidelines Section 15380(d), all other species tracked by the California Natural Diversity Database (CNDDDB), which are considered by the California Department of Fish and Wildlife to be those species of greatest conservation concern, and locally important species including raptors and wading birds..

6. Required Approvals / Other Authorizations

By acceptance of this permit, the permittee agrees to obtain all other Local, State or Federal permits, authorizations, or agreements that may be necessary for all aspects of the proposed project (including the California Department of Fish and Wildlife, California State Lands Commission, Regional Water Quality Control Board, Santa Barbara County, and the U.S. Army Corps of Engineers) or evidence that no other permits, authorizations, or agreements are required. 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.

7. Assumption of Risk, Waiver of Liability and Indemnity Agreement

By acceptance of this permit, the permittee acknowledges and agrees, on behalf of itself and all successors, and assigns (i) that the site may be subject to hazards, including but not limited to flooding and erosion; (ii) to assume the risks, to the permittee/landowner and the property that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Deed Restriction

Prior to the issuance of the coastal development permit, the applicant 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 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. Such restrictions shall require that all restored and enhanced areas within the subject property and associated with this CDP are protected in perpetuity. In the event that

future development proposals would involve impacts to these areas, a new coastal development permit will be required prior to development.

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 property 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 property.

9. Archaeological and Tribal Cultural Resources Mitigation

If an area of archeological and/or tribal cultural resources is discovered during the course of the project, project activities with the potential to impact such resources shall cease and shall not recommence until a qualified archeological and/or tribal cultural resource specialist, in consultation with Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Upon approval of the supplementary archeological plan, the permittee shall implement the development in compliance with the approved final plans. No changes to the approved supplementary archaeological plan shall occur without a Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project consists of habitat restoration and enhancement along a portion of Atascadero Creek at 5300 Shoreline Drive in unincorporated Santa Barbara County (APN 065-230-014) where unpermitted development took place, including, but not limited to: installation of gates and barbed wire blocking access to a public equestrian and hiking trail easement, and grading and placement of 672 cu. yds. of fill, and removal of 36,535 sq. ft. (0.83 acres) of native vegetation to widen an existing dirt access road/trail as described further below. Proposed restoration and enhancement activities would consist of: removal of approximately 225 cu. yds. of unpermitted fill and habitat restoration along an existing 825 ft. long, 26 ft. wide dirt access road to restore the road/trail to its previous 12 ft. width, with 146,140 sq. ft. (3.35 acres) of riparian habitat restoration and enhancement along the north and south banks of the creek, and within an approximately 50 ft. wide buffer area (portions of the proposed restoration and enhancement extend beyond the 50 ft. buffer but are contiguous with the restoration area) south of the access road where existing sheds, stockpiles, equipment, walls, landscaping, and fences are proposed to be removed ([Exhibit 1](#)).

The applicant's consulting restoration biologist Lawrence Hunt prepared a Draft Atascadero Creek Habitat Restoration, Mitigation, and Monitoring Plan, dated October 8, 2020 and as updated March 24, 2023, which details 1.26 acres of proposed riparian habitat enhancement activities (removal and control of invasive non-native species) along the north bank of the creek, 2.09 acres of riparian habitat restoration along the south bank of the creek and within an approximately 50 ft. wide habitat buffer area south of the access road (portions of the proposed restoration and enhancement extend beyond the 50 ft. buffer but are contiguous with the restoration area) through removal of non-natives and planting native, locally-occurring riparian canopy trees with an understory of herbaceous ground cover and woody shrubs that are commonly found in coastal riparian woodland habitats, as well as, hydroseeding with a riparian scrub seed mix the approximately 3,000 sq. ft. area adjacent to the access road after the road been restored to its previous 12 ft. width. The area of proposed habitat restoration and enhancement would represent a mitigation ratio of 4:1 (area of restoration and enhancement to area of impact from unpermitted development), which, in order to address the unpermitted development that has occurred, exceeds the typical ratio for these types of impacts. Approximately 447 cu. yds. of unpermitted fill would be retained within the 12 ft. width of the flood control access road/public equestrian and hiking trail, to level the surface and improve public access along the trail. In addition, unpermitted gates that obstruct public access to the equestrian and hiking trail would be removed and public access signage would be installed to inform the public that the trail is available for public equestrian and hiking use.

The subject 7.9-acre parcel is zoned Agriculture I (AG-I-10) and contains a single-family residence, outbuildings, equipment and material storage areas, trailers, vehicular parking, and livestock paddocks (horse boarding facility). Construction of the residence, garage, 12-stall barn, eight covered portable stalls, and a covered riding area was approved by the Commission in 1991 through CDP No. 4-91-56. The County of Santa Barbara also granted a Special Use Permit (No. 90-SUP-048) for the development approved by the Commission in CDP No. 4-91-56. In 1998, the County approved a Conditional Use Permit (No. 96-CP-048) for establishment of an on-site commercial horse operation with up to 35 horses to be boarded on the site, which required the applicant to grant a 15 ft. wide public equestrian and hiking trail easement parallel to Atascadero Creek and along Shoreline Drive and Patterson Avenue to Santa Barbara County that would connect to existing public trails or roads on adjacent parcels ([Exhibit 6](#)). This grant of public access easement was recorded on April 22, 1999 and is described further below.

Atascadero Creek runs through the northern portion of the subject parcel, which is mapped as an environmentally sensitive habitat area (ESHA) in the County's LCP. The creek enters the Goleta Slough approximately one mile downstream of the subject parcel. The subject parcel is bordered by existing agriculture and a public bike path to the north, open space to the east, Shoreline Drive to the south and South Patterson Avenue to the west ([Exhibit 2](#)). An access road/trail exists in the northern portion of the subject property, south of and parallel to Atascadero Creek. Prior to the unpermitted development, the access road was an approximately 12 ft. wide dirt road. A flood

control access easement and a 15 ft. wide equestrian and hiking trail easement exist across the existing dirt road. In this location, the existing road that allows the County Flood Control District to access the creek, also functions as a public equestrian and hiking trail. The unpermitted development consisting of vegetation removal, grading, and placement of fill, caused the road to be widened from approximately 12 feet to its existing width of approximately 26 feet. The widened road was used by the landowner to access private development on the property. The road/trail is located within a 115 ft. wide easement held by the Santa Barbara County Flood Control District that spans across Atascadero Creek ([Exhibit 5](#)). This 115 ft. wide County Flood Control District easement across Atascadero Creek exists for flood control purposes, to allow the District perform periodic desilting, discing, dredging, and vegetation management activities within the channel of the lower 1.4 mile portion of the creek to prevent flooding. The desilting program was most recently authorized by the Commission in CDP No. 4-19-1158. Within that 115 ft. wide County Flood Control District easement, to the south of and parallel to Atascadero creek, lies a 15 ft. wide equestrian and hiking public access easement held by Santa Barbara County Parks Department that was recorded by a previous owner of the property on April 22, 1999 pursuant to Santa Barbara County CUP 96-CP-048 ([Exhibit 6](#)). The 15 ft. equestrian and hiking trail easement parallels Atascadero Creek at the northern portion of the subject property and continues along Patterson Avenue to Shoreline Drive, connecting the public to a previously recorded 10 ft. trail easement along Shoreline Drive.

Although the Commission has previously certified a Local Coastal Program (LCP) for the County of Santa Barbara, the project is located within an area shown on the County's Post LCP Certification Permit and Appeal Jurisdiction map where the Commission has retained jurisdiction (former tidelands or potential public trust land) over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter 3 policies of the Coastal Act, with the applicable policies of the County of Santa Barbara LCP as guidance.

Unpermitted Development

The applicant engaged in unpermitted development including, but not necessarily limited to: (1) removal of major vegetation consisting of native riparian canopy and understory along an 825 ft. reach of the southern bank of Atascadero Creek; (2) grading and widening of an existing County of Santa Barbara Flood Control District access road; and (3) placement of fill. In addition, installation of gates and barbed wire blocking access to a 15 ft. wide public equestrian and hiking easement has occurred on the subject property. All of the unpermitted development occurred in Environmentally Sensitive Habitat Area (ESHA) and ESHA buffer, as described further below.

Road Grading and Widening and Placement of Fill

Between 2009 and 2011, the property owner increased the width of the approximately 825 ft. long existing County Flood Control access road from its previous width of 12 feet to a width of 19 feet. Between October 2019 and January 2020, the property owner increased the width further from 19 feet wide to its present average width of 26 feet.

Additionally, between 2019 and 2020, the property owner placed 8-10 inches of road base (fill) on top of the 26 ft. wide access road. This unpermitted development resulted in the footprint of the existing roadway increasing from about 9,900 square feet to its current footprint of approximately 21,450 square feet.

Removal of Major Vegetation

In order to increase the width of the roadway, the property owner removed approximately 8,550 square feet of ESHA riparian woodland vegetation, and about 3,000 square feet of ESHA buffer riparian scrub vegetation.

Installation of Gates, Hog Wire Fencing, and Barbed Wire

Metal gates were installed at the western and eastern ends of the flood control access road that prevent public access to the recorded 15 ft. equestrian and hiking easement. The gate at the eastern end of the easement would allow equestrian access, but physical development such as storage containers currently blocks that access. Barbed wire was also installed around the gate at the western end of the easement. This development is unpermitted development and resulted in obstruction of public access to the recorded 15 ft. public equestrian and hiking trail easement. Additionally, a hog wire and barbed wire fence was placed along the south side of the split-rail fence that borders the southern edge of the flood control easement.

Enforcement Action

The California Department of Fish and Wildlife (CDFW) visited the site on 13 November 2019 and issued a stop work order to the property owner. Santa Barbara County staff sent a Notice of Violation (“NOV”) letter to the property owner on December 10, 2019 to inform the property owner of the violation and request that the property owner submit a coastal development permit to the County for restoration to abate the violation. CDFW staff observed that unpermitted grading and fill placement continued to occur through early January 2020 and CDFW also issued a formal Notice of Violation to the property owner on 10 March 2020.

The property owner submitted a CDP application to the County in February 2020. After the County began processing that permit application, it was determined that most of the subject property is in fact within the jurisdiction of the Coastal Commission. Commission mapping staff confirmed that most of the subject parcel is within the Coastal Commission’s retained jurisdiction, with a small portion of the property being located in the County’s jurisdiction ([Exhibit 7](#)). After confirming the jurisdictional matter, the property owner began working with Commission staff to resolve the violation through the Commission’s Coastal Development Permit process.

All of the unpermitted development occurred within the Commission’s retained jurisdiction, and the restoration and enhancement activity proposed under this CDP will

also take place on the portion of the property within the Commission's retained jurisdiction.

Proposed Resolution

As part of the original coastal development permit application submittal in 2020, the property owner prepared a Biological Assessment to evaluate and quantify disturbance to ESHA and the ESHA buffer (Hunt & Associates, 2020), along with a Habitat Restoration, Mitigation, and Monitoring Plan (Hunt & Associates, October 8, 2020). The property owner and their biologist have engaged in numerous productive discussions with Commission staff to resolve the violation consensually through the permit process in a way that would fully restore the ESHA and ESHA buffer that was impacted by the unpermitted development, mitigate for temporal impacts to habitat, and provide additional habitat restoration and enhancement to fully resolve the violation and the Commission's claim for monetary penalties. The property owner has modified their original proposal to include restoration of the willow riparian habitat along Atascadero Creek that was impacted by the unpermitted development, removal of a portion of unpermitted fill, removal of physical development within the 50 ft. ESHA buffer, and enhancement of the riparian corridor and ESHA buffer at a ratio of 4:1 to the impacted area through a mix of removal of non-native invasive vegetation and planting of appropriate native species.

Upon Commission staff's discovery of a recorded 15 ft. equestrian and hiking easement along the northern edge of the subject parcel, as well as unpermitted public access obstructions thereto (including gates, barbed wire, and storage containers), and following discussions with Santa Barbara County staff and the applicant, the proposal was further modified at staff's direction to include removal of the gates located at the east and west entrances of the public equestrian and hiking easement, removal of any other physical development such as barbed wire and storage containers obstructing access to the existing easement in order to provide public access to the equestrian and hiking easement and cease obstruction of the public access easement. As stated above, the property owner had widened the road from 12 feet to 26 feet in width, and placed fill on top of the entire length of the road. The road is proposed to be restored back to its previous width of 12 feet, and a portion of the fill removed. However, after discussions with Santa Barbara County Parks staff and Commission's Senior Ecologist, it was determined that the fill that was placed atop a 12 ft. wide portion of the previously dirt road/equestrian and hiking trail at the northern edge of the parcel could remain in place for the benefit of the public. In addition, the applicant is also proposing installation of appropriate signage to inform the public of the available equestrian and hiking trail.

The project, as proposed, would restore ESHA and ESHA buffer habitat that was impacted by the subject unpermitted development, and provide additional mitigation for temporal impacts to habitat, as well as provide additional restoration and enhancement that would fully resolve the violations consisting of removal of habitat and would address the Commission's claims for monetary penalties.

Approval of this CDP pursuant to the staff recommendation, issuance of the permit, and the applicant's performance of the work authorized by this permit pursuant to the terms and conditions herein would result in a resolution of the violations consisting of removal of habitat described herein. In addition, implementation of the approved development under this permit will result in removal of obstructions to access and placement of public access signage. Staff has referred the matter to Santa Barbara County for its staff to consider further enforcement of the County CUP 96-CP-048 that required the equestrian and hiking access easement be recorded and remain free of obstructions.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other 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.

B. Biological Resources and Water Quality

The standard of review for the proposed project is the Chapter 3 policies of the Coastal Act, with the applicable policies of the County of Santa Barbara LCP as guidance.

Section 30231 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states:

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

Section 30240 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states:

(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.

Coastal Act Section 30107.5, which is also incorporated as part of the Santa Barbara County LCP, states:

“Environmentally sensitive area” means 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.

In addition, the Santa Barbara County LCP includes the following applicable provisions, used as guidance:

Eastern Goleta Valley Community Plan Policy ECO-EGV-2.5 (Coastal) states:

Restoration: In cases where adverse impacts to biological resources as a result of new development cannot be avoided and impacts have been minimized, restoration shall be required. A minimum replacement ratio of 3:1 shall be required to compensate for adverse impacts to native habitat areas and biological resources, except that mitigation for impacts to wetlands shall be a minimum 4:1 ratio. Where onsite restoration is infeasible with regard to long-term preservation of habitat, offsite restoration shall be required.

Eastern Goleta Valley Community Plan Policy ECO-EGV-3.4 states:

Atascadero Creek Greenway: Atascadero Creek shall be considered as a ‘greenway’ and wildlife corridor from its headwaters in the San Marcos Foothills to its outlet at Goleta Slough and Goleta Beach. The greenway is defined generally as a 100-foot buffer from the centerline of the creek, but may be adjusted where appropriate to include biological/hydrological resources consistent with this Plan. Within the buffer, the greenway shall conceptually and functionally protect and enhance the creek corridor’s habitat, hydrologic, and recreational value to the community, including, but not limited to, the installation of passive hiking trails, bike paths, wildlife passage, and pocket parks. Protection, restoration, and enhancement of the greenway shall be encouraged for all development proposed within or adjacent to the greenway consistent with this Plan.

Eastern Goleta Valley Community Plan Policy ECO-EGV-5.1 states:

Environmentally Sensitive Habitat (ESH) areas and Riparian Corridors (RC) within Eastern Goleta Valley shall be protected and, where feasible and appropriate, enhanced.

Eastern Goleta Valley Community Plan Policy ECO-EGV-5.2 (Coastal) states (in part):

Environmentally sensitive habitat (ESH) means any area in which plant or animal life or their habitats are either (1) rare or (2) especially valuable because of their special nature or role in an ecosystem. The presence and extent of ESH shall be identified on a case-by-case basis based upon site-specific evidence provided by a biological report prepared by a qualified biologist.

Eastern Goleta Valley Community Plan Policy ECO-EGV-5.7 states:

Minimum Buffer Areas for ESH: A minimum setback of 50 feet from the outer edge of all ESH habitats shall be required unless otherwise specified in the Local Coastal Program.

Eastern Goleta Valley Community Plan Policy ECO-EGV-5.8 (Coastal) states:

Resource dependent uses may be allowed in ESH where sited and designed to avoid significant disruption of habitat values. A resource dependent use is a use that is dependent on the ESH resource to function (e.g., nature study, habitat restoration, and public trails). Non-resource dependent development, including fuel modification, shall be sited and designed to avoid ESH and ESH buffer areas. If avoidance is infeasible and would preclude reasonable use of a parcel, then the alternative that would result in the fewest or least significant impacts shall be selected.

Eastern Goleta Valley Community Plan Policy ECO-EGV-6.3 states:

Riparian vegetation shall be protected and shall not be removed except where clearing is necessary for the maintenance of free-flowing channel conditions, the removal of invasive exotic species, the provision of essential public services, or where protection would preclude the reasonable use of a parcel. Degraded riparian areas shall be restored.

Land Use Plan Policy 3-19 states:

Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.

Section 30231 requires that the biological productivity and quality of coastal waters be maintained. Section 30240 of the Coastal Act provides that environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values and that only development and uses that are dependent on the ESHA be allowed in those areas. In addition, the County's certified LCP contains policies related to the protection of ESHA, riparian vegetation, and water quality, as well as specific requirements for habitat restoration to compensate for adverse impacts to native habitat areas and biological resources. Eastern Goleta Valley Community Plan Policy ECO-EGV-3.4 establishes the Atascadero Creek Greenway along Atascadero Creek and a 100 ft. buffer from the creek centerline and requires that the creek corridor's habitat, hydrologic, and recreational value to the community shall be protected and enhanced.

Atascadero Creek runs through the northern portion of the subject parcel, which is mapped as an environmentally sensitive habitat area (ESHA) in the County's LCP. Atascadero Creek and a 100 ft. buffer from the creek centerline is also mapped as the

Atascadero Creek Greenway in the County's LCP. According to the site-specific Biological Assessment Report (October 8, 2020) prepared by the applicant's restoration biologist Lawrence Hunt for the proposed project, the site contains an 825 ft. long reach of Atascadero Creek and its associated arroyo willow woodland riparian habitat along the banks of the creek that is classified by the California Department of Fish and Wildlife as a special-status plant community and meets the definition of ESHA. The active channel along this reach varies from 20-25 feet wide and supports perennial surface flows. The dominant tree species along the subject parcel reach of the creek is arroyo willow (*Salix lasiolepis*), which forms a mostly closed-canopy woodland. Sub-dominant canopy trees include widely spaced individuals of western sycamore (*Platanus racemosa*), Southern California black walnut (*Juglans californica*), black cottonwood (*Populus balsamifera* var. *trichocarpa*), box elder (*Acer negundo*), and coast live oak (*Quercus agrifolia*). Non-native trees also are scattered throughout this canopy and include Chinese ash (*Fraxinus malacophylla*) and Victorian box (*Pittosporum undulatum*) along the south bank, supplemented by stone pine (*Pinus picea*) and Canary Island palm (*Phoenix canariensis*), blue gum (*Eucalyptus globulus*), and giant reed (*Arundo donax*) along the north bank.

According to the site-specific biological assessment, unpermitted vegetation removal affected approximately 36,590 square feet (0.84 acres) of *Salix lasiolepis* Shrubland Alliance vegetation (arroyo willow woodland) mapped as ESHA along the south bank of Atascadero Creek between October 2019 and January 2020.

As described in the applicant's Biological Assessment Report, the aquatic and riparian habitats in Atascadero Creek, including the reach through the subject parcel, provide high-quality foraging, nesting, roosting, and shelter habitat for an unusually large number of rare, threatened, or endangered animals due to the juxtaposition of agricultural fields, grassland, scrub, oak woodland, eucalyptus windrows, riparian woodland, salt marsh, and beach habitats in and around the project area. Forty-six special-status animal species, including insects, fishes, amphibians, reptiles, birds, and mammals, have been reported from the project region. Nine of these species have been observed in the subject parcel reach of Atascadero Creek and its riparian corridor and twenty-five other species have a moderate to high potential of using these habitats.

Eight listed species (state or federal) have been observed on the subject parcel or have a high potential of occurring there. Individual monarch butterflies were observed flying in the riparian corridor and perching on willows, and overwintering roosts occur less than a mile southwest of the subject parcel. Adult southern steelhead have been observed on several occasions in Atascadero Creek and Maria Ygnacio Creek upstream of the subject parcel and use the reach in the project area as feeding, dispersal, and cover habitat. Tidewater gobies occur in Tecolotito Creek upstream of Goleta Slough and use the common channel formed by that drainage, San Pedro/Las Vegas creeks, and Atascadero Creek to access those habitats, and so have a high potential of occurring in the subject parcel reach. California red-legged frogs historically occurred throughout Atascadero Creek and Maria Ygnacio Creek and extant populations are still found in the latter watershed. Populations likely still occur in Atascadero Creek, particularly in the upper watershed and the subject parcel reach provides suitable aquatic and riparian

habitat for this species. White-tailed kites have been observed foraging and perched in willow woodland habitat immediately south of the subject parcel and likely include the subject reach of Atascadero Creek as foraging and temporary roosting habitat. Western yellow-billed cuckoos, willow flycatchers, and Least Bell's vireos have been found in the Atascadero Creek riparian corridor in and around the subject parcel. Southwestern pond turtles, a California Species of Special Concern, were also observed during surveys performed by the restoration biologist.

The Commission's Senior Ecologist, Dr. Jonna Engel, has reviewed the applicant's biological assessment report, conducted a site visit on March 24, 2023, and has determined that the creek and riparian corridor of the subject reach of Atascadero Creek (including the area where unpermitted vegetation removal and road widening occurred) meets the definition of ESHA. Just south of, and parallel to, the riparian corridor of the creek is an existing dirt access road/trail on the subject property, that is located within a 15 ft. wide access easement held by the Santa Barbara County Flood Control District for access to the creek for flood control activities, as well as a 15 ft. wide equestrian and hiking public access easement held by Santa Barbara County Parks Department.

The applicant is proposing habitat restoration and enhancement along the banks of Atascadero Creek where the aforementioned unpermitted development took place. No alteration of the creek bed or channel is proposed.

Specifically, the applicant's consulting restoration biologist Lawrence Hunt prepared a Draft Atascadero Creek Habitat Restoration, Mitigation, and Monitoring Plan, dated October 8, 2020 and as updated March 24, 2023, which details 1.26 acres of proposed riparian habitat enhancement activities (removal and control of invasive non-native species) along the north bank of the creek, 2.09 acres of riparian habitat restoration and enhancement along the south bank of the creek and within an approximately 50 ft. wide buffer area south of the access road (portions of the proposed restoration and enhancement extend beyond the 50 ft. buffer but are contiguous with the restoration and enhancement area) through removal of non-natives and planting native, locally-occurring riparian canopy trees with an understory of herbaceous ground cover and woody shrubs that are commonly found in coastal riparian woodland habitats, as well as hydroseeding with a riparian scrub seed mix the approximately 3,000 sq. ft. area adjacent to the access road after the road been restored to its original 12 ft. width. Since the proposed project includes restoring the existing access road/trail to its previous 12 ft. width within the County Parks' 15 ft. wide equestrian and hiking trail easement and the County Flood Control District's 115-wide access easement, the applicant has proposed to hydroseed the approximately 3,000 sq. ft. area of removed unpermitted fill using a riparian scrub seed mix, rather than use container plants and larger species, to serve as a transition area between the road and the restored riparian area and to be compatible with use and maintenance of the public trail and access road. This will ensure that any widening or improvements to the road/trail within the County's easement that may be proposed in the future would not be precluded or require significant alteration of the riparian canopy. The area of proposed habitat restoration and enhancement would represent a mitigation ratio of 4:1 (area of restoration and enhancement to area of impact from unpermitted development). This exceeds the

minimum required 3:1 mitigation ratio for this habitat type under the County's LCP. The proposed enhancement activity would serve to mitigate for a 0.83 acre area of riparian ESHA along Atascadero Creek that was impacted by unpermitted development.

The proposed habitat restoration and enhancement project will significantly increase the quality of the riparian habitat for wildlife along this reach of Atascadero Creek. It will also serve to improve water quality and nesting, foraging, and shelter habitat available for avian, amphibian, salmonid, and other special-status species with a documented presence within the project reach. Resource dependent development, such as habitat restoration that is proposed in this case, is allowed in ESHA under the Coastal Act as a use that is dependent on the resource. Without the proposed project, the riparian habitat would remain limited and in a degraded state, and invasive non-native species would continue to proliferate and displace native species. The proposed project will enhance the riparian habitat and the Atascadero Creek Greenway for habitat, hydrologic, and recreational values and will be compatible with the continuance of the adjacent ESHA.

Under Section 30240, development allowed within ESHA must also protect against significant disruption of habitat values. Since the preparation of the Draft Atascadero Creek Habitat Restoration, Mitigation, and Monitoring Plan for the proposed project dated October 8, 2020 (Lawrence Hunt), the area and scope of the proposed restoration and enhancement activities has been modified and expanded in coordination with Commission enforcement staff to provide a 4:1 mitigation ratio to mitigate for temporal impacts to habitat. The proposed project has also been revised since that time to include removal of gates in order to resolve public access violations, as discussed above. The applicant's consulting restoration biologist prepared an updated habitat restoration and enhancement plan project description and associated exhibits, dated March 24, 2023, which was developed in coordination with Commission staff. The Commission's Senior Ecologist, Dr. Jonna Engel, has conducted a site visit and reviewed the applicant's proposed restoration and enhancement plan, and has determined that the proposed plan is well designed and would significantly improve the habitat values of the subject riparian corridor.

In order to implement the applicant's proposal and ensure the technical specifications and monitoring requirements are complete in the final plan, the Commission finds **Special Condition One (1)** is necessary, which requires the applicant to provide a final revised Habitat Mitigation and Monitoring Plan prior to issuance of the permit that is in substantial conformance with the applicant's draft plan.

While the proposed project is not expected to adversely impact remaining intact habitat nearby, there is a chance that the proposed use of heavy machinery for remediation grading could result in disturbance to native vegetation, wildlife, and nesting birds and the proposed use of herbicide for removal and control of problematic invasive species as part of habitat enhancement activities may result in the loss of native vegetation and potential adverse effects to water quality on site and to downstream Goleta Slough. As such, **Special Condition One (1)** requires that non-native plant control shall not disturb sensitive native vegetation, and that the final revised Habitat Mitigation and Monitoring Plan detail: site preparation, method and location of exotic species removal, timing of

planting, plant locations and elevations on a baseline map, and a description of maintenance timing and techniques to be employed. All plants to be installed shall follow the approved planting palette (seed mix and container plants), planting design, source of plant material, and plant installation detail.

Special Condition One (1) also specifies that invasive non-native species shall be removed by hand where feasible and herbicide use shall be minimized. If herbicide use is determined to be a necessary component of an integrated pest management (IPM) approach to remove invasive non-native plants, the restoration biologist or restoration contractor involved in the project must be a licensed Pest Control Advisor (PCA) or have a Qualified Applicator License (QAL) or a Qualified Applicator Certificate (QAC). To account for water quality concerns, herbicide use shall be restricted to the use of Glyphosate Aquamaster™ (previously Rodeo™) herbicide in upland areas outside of the stream channel, and for purposes of habitat restoration only. To account for overspray concerns, the use of herbicide in close proximity to native plants shall be avoided where feasible, and otherwise limited to cut-and-daub application where possible or application behind a non-permeable barrier where not. All work involving herbicides will be conducted under the supervision of the environmental resource specialist, and herbicide use will be prohibited during the rainy season (November 1 – March 31), immediately before or after forecasted rain events, and during periods of winds in excess of 5 mph. To ensure the long-term success of proposed restoration and enhancement activities, **Special Condition One (1)** also requires submission of annual reporting throughout and the submission of a final report at the end of a monitoring period that will extend for five years or until all criteria and performance standards of the approved plan have been met.

To avoid potential project impacts to avian species during the breeding season (March 15 through August 31), **Special Condition One (1)** requires that non-native plant control shall not disturb nesting birds, that weeding shall be timed to avoid the nesting season for birds, and that if the preceding proves infeasible, the restoration biologist shall survey the areas to be weeded for active bird nests and shall direct work crews to avoid these areas until young birds have fledged.

Additionally, **Special Condition Five (5)** requires that an environmental resource specialist shall conduct surveys 30 calendar days prior to commencement, or recommencement, of any approved activities to detect any active sensitive species, reproductive behavior, and active nests within 500 feet of the project site. This condition further requires that follow-up surveys must be conducted 3 calendar days prior to the initiation of site work and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.

According to **Special Condition Five (5)**, the environmental resource specialist shall be present during all demolition, grading, excavation, and vegetation removal activities. Upon discovery of sensitive species within or adjacent to the work area, the qualified biologist shall implement a resource avoidance program with sufficient buffer areas to ensure that adverse impacts to sensitive species, such as noise impacts upon nesting birds, are avoided. If any breach in permit compliance occurs, or if sound mitigation

measures do not reduce noise levels to a required maximum, or if any other unforeseen sensitive habitat issues arise, the environmental resource specialist shall require the applicant to cease work immediately and not recommence until mitigation measures can be employed or nesting is complete. And in the event that significant impacts or damage occur to sensitive habitats or wildlife species **Special Condition Five (5)** requires that the applicant shall submit a revised or supplemental program to adequately mitigate such impacts. Temporary habitat protective symbolic fencing (post and rail or rope) around sensitive areas is also required to be installed prior to the start of grading or demolition activities and shall remain in place and in good condition until such grading and demolition work is completed to avoid impacts to sensitive species and habitats.

Although all work would take place within existing disturbed areas of the site, construction activities related to the proposed project have the potential to negatively impact the surrounding environment, habitats, and water quality. Introduction of waste or construction debris could create deleterious impacts to coastal waters and could stem from activities such as stockpiling of materials or cleaning of construction equipment. The Commission finds **Special Condition Two (2)** is necessary, which requires the applicant to submit a final Erosion Control and Construction Best Management Practices (BMP) Plan prior to issuance of the permit that details erosion control measures, best management practices, and construction responsibilities to be employed during site work to protect ESHA and the biological productivity of coastal waters consistent with the relevant Coastal Act and LCP policies cited above.

As an additional measure to ensure that the applicant avoids adverse impacts to sensitive species and habitats, **Special Condition Six (6)** also requires that the applicant obtain all other Local, State or Federal permits, authorizations, or agreements that may be necessary for all aspects of the proposed project (including the California Department of Fish and Wildlife, California State Lands Commission, Regional Water Quality Control Board, Santa Barbara County, and the U.S. Army Corps of Engineers) or evidence that no other permits, authorizations, or agreements are required. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations implementing the Coastal Act.

Conclusion

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30240 and 30231 of the Coastal Act and the applicable guidance policies of the Santa Barbara County LCP regarding ESHA, water quality, and coastal resources.

C. Public Access and Visual Resources

Section 30210 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states:

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

Section 30251 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states:

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 subordinated to the character of its setting.

In addition, the Santa Barbara County LCP includes the following applicable provisions, used as guidance:

Eastern Goleta Valley Community Plan Policy PRT-EGV-6.3 states:

Trail Design and Maintenance: In developing and maintaining the trail system, provisions shall be made for the following:

- Appropriate trail signage at all major trail heads and signs or markers on public recreational trails
- Maintenance of the trail
- Adequate trailhead parking
- New trailheads, with consideration given to the use of Old San Marcos Pass Road for trailheads
- Minimization of erosion and water pollution, particularly that associated with trails located near creeks

Eastern Goleta Valley Community Plan Policy PRT-EGV-6.4 states:

The visual character and aesthetics of existing and proposed public trails shall be maintained.

Eastern Goleta Valley Community Plan Policy PRT-EGV-6.5 states:

Trail corridors designated on the PRT maps shall be kept clear from encroachment by development and incompatible uses, to the extent reasonably feasible.

Coastal Act section 30210 mandates that maximum public access and recreational opportunities be provided. In addition, Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. The Eastern Goleta Valley Community Plan portion of the County's certified LCP contains the relevant policies cited above related to the protection, maintenance, and visual quality of public trails and the establishment of the Atascadero Creek Greenway to protect and enhance the creek corridor's habitat, hydrologic, and recreational value to the community.

The subject parcel is located along Shoreline Drive and immediately southeast of the junction of South Patterson Avenue and Atascadero Creek. The site is bordered by a public bike path and agricultural fields to the north (across the creek) and publicly accessible open space on the east. A dirt access road/trail exists in the northern portion of the subject property, south of and parallel to Atascadero Creek, which is located within a 15 ft. wide equestrian and hiking trail easement held by Santa Barbara County Parks Department. This trail continues east along Atascadero Creek and connects to a larger network of public trails, some of which pass along coastal bluffs and connect to the beach below More Mesa. The trail also connects to Shoreline Drive, Patterson Avenue, and the public bike path to the west and north. There are also 10 ft. wide and 15 ft. wide equestrian and hiking trail easements held by Santa Barbara County Parks Department on the subject site along Shoreline Drive. The site is also located within Santa Barbara County's Atascadero Creek Greenway. The Atascadero Creek Greenway functions as a 'greenway' and wildlife corridor that extends from the creek's headwaters northeast of the subject property in the San Marcos Foothills and terminates southwest of the subject property at Goleta Slough and Goleta Beach and is generally defined through a variable-width buffer from the centerline of the creek in which "habitat, hydrologic, and recreational value to the community" are to be protected and enhanced through promotion of means inclusive of development limitations, wildlife passage, and passive hiking trails, amongst others.

The proposed project would restore and enhance public access that is presently obstructed by unpermitted development. As described previously, a 15 ft. wide equestrian and hiking trail easement held by Santa Barbara County Parks is located within the northern portion of the subject property, south of and parallel to Atascadero Creek, and overlaps with an existing dirt access road/trail. The 15 ft. wide easement continues around the south and west bounds of the subject property along South Patterson Avenue and Shoreline Drive, connecting to an existing 10 ft. wide County equestrian and hiking trail easement along South Patterson Avenue. The unpermitted installation of locked gates at the east and west ends of the 15 ft. wide public equestrian and hiking easement along Atascadero Creek on the property prevented public access to the easement. Unpermitted installation of barbed wire along the west gate further discouraged and prevented public access to the 15 ft. wide County equestrian and hiking trail easements on the property. The proposed project includes removal of both

gates and all barbed wire and any other physical development that interferes with, discourages, or obstructs, public access to the recorded equestrian and hiking easement, as well as installation of appropriate signage in visible locations to inform the public of the available public access on the site. The proposal also includes removal of a portion of the unpermitted fill that was placed beyond the 12 ft. wide pre-existing access road/trail and retention of that portion of the fill on the 12 ft. wide road/trail to enhance the durability of the trail and reduce the generation of dust and improve the overall public equestrian and hiking trail experience on the site.

To implement the applicant's proposal and ensure protection of public access consistent with the requirements of the Coastal Act and County LCP, the Commission finds that **Special Conditions Three (3) and Four (4)** are necessary to require the applicant to remove the unpermitted existing gates located across the public equestrian and hiking trail easement on the subject property within 30 days of the issuance of this permit, and to submit a final public access signage plan to install public access signage to inform the public of available public access within the 15-ft wide public equestrian and hiking trail easement located at the northern portion of the subject property, south of and parallel to Atascadero Creek. Such signage plan shall specify the type, size, design, text, and location of public access signage and shall include a minimum of one sign at both the eastern and western ends of the trail easement on the subject property, and one additional sign (to be installed on the subject property) at the northeast corner of the intersection of Patterson Avenue and More Ranch Road, in visible locations, informing the public of the availability of the public equestrian and hiking easement for public access. The applicant shall also demonstrate that the signs are acceptable to the County of Santa Barbara in type, size, design, text, and location. All public access signs to be installed pursuant to the approved signage plan shall include the language: "Public Access provided in cooperation with the California Coastal Commission." **Special Condition Three (3)** requires the applicant to implement the approved final signage plan within 30 days of issuance of this permit, and to maintain the approved signage in perpetuity. As conditioned to ensure that the applicant's proposal to remove impediments to public access is implemented, the recreational values of the Atascadero Creek Greenway will be enhanced and maximum public access will be provided.

The proposed project area would be visible from multiple vantage points along public road and trail systems on and adjacent to the subject property. The proposed riparian habitat restoration and enhancement plan to restore and widen the creek's riparian corridor and remove invasive non-native plant species, and work to restore the access road/trail to its previous 12 ft. width prior to unpermitted widening, would significantly improve the visual quality of the area as viewed from the on-site public trails and adjacent public roads and open space. In addition to enhancing the habitat, hydrologic, and recreational values of the Atascadero Creek Greenway, as discussed above, the proposed project will restore and enhance visual quality that was previously damaged by unpermitted development.

The proposed project includes removal of approximately 225 cu. yds. of unpermitted fill along the existing dirt access road/trail to restore the road to its previous 12 ft. width, and retention of approximately 447 cu. yds. of unpermitted fill within the restored 12 ft.

width of the access road for public access purposes. The retained fill (base mix) would have no adverse visual impacts as it would be limited to the width of the pre-existing access road, would not result in significant landform alteration, and would function to stabilize the road, reduce dust, and reduce the amount of fill to be removed from the site. To ensure that the applicant's proposal relative to road/trail restorative grading work and is appropriately implemented, **Special Condition One (1)** requires that the final revised Habitat Mitigation and Monitoring Plan include the final grading plan that shall be in substantial conformance with the applicant's proposed plans. In addition, the project includes removal of existing sheds, stockpiles, equipment, walls, landscaping, and fences south of the access road/trail to facilitate additional areas of habitat restoration and enhancement. To account for potential visual impacts of grading and demolition activities inclusive of stockpiling practices, fill disposal, and removal of temporary erosion control measures, all work must be implemented in compliance with the final revised Habitat Mitigation and Monitoring Plan as required by **Special Condition One (1)**, and the final erosion control and construction best management practices plan as outlined in **Special Condition Two (2)**.

In addition to the protection of scenic and visual qualities of coastal areas, section 30251 of the Coastal Act requires that, where feasible, the visual quality of such areas be restored and enhanced where presently degraded. The proposed restoration and enhancement activities involve expansion of former and existing habitat that, as conditioned through **Special Condition One (1)**, would accomplish this goal. Upon successful completion of all restoration and enhancement requirements outlined in **Special Condition One (1)**, the scenic and visual qualities of the subject property will better integrate with the surrounding habitat areas of the larger Atascadero Creek Greenway and will be more visually compatible with the character of surrounding area.

Conclusion

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, and 30251 of the Coastal Act and the applicable guidance policies of the Santa Barbara County LCP regarding public access and visual resources.

D. Hazards and Geologic Stability

Section 30253 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states in part that new development shall:

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

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The proposed project to restore an access road/trail to its prior width, revegetate disturbed areas, and restore and enhance the riparian corridor would serve to improve stability and erosion potential at the subject site; however, the proposed activities would not completely eliminate the potential for erosion at the site. The Commission finds **Special Condition Two (2)** is necessary in order to require a final Erosion Control and Construction Best Management Practices (BMP) Plan prior to issuance of the permit and implementation of the approved plan. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins desilting basins or silt traps); temporary drains and swales; sandbag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible. The erosion control measures shall be required on the project site prior to or concurrent with the grading operations and maintained throughout the process to minimize erosion and sediment from runoff waters during grading work. All cut material produced by grading and demolition activities will be removed from the project site and transported off-site, where it will be deposited in an appropriate approved dumping location, either outside of the coastal zone or within the coastal zone to a site permitted to receive the material. Further, no demolition or construction materials, debris, stockpiles, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind, rain, or erosion and dispersion. Construction materials, debris, or waste shall be located as far from the creek on the designated site as feasible and in no event shall materials be stockpiled less than 30 feet in distance from the top edge of the creek bank, or where it may be subject to erosion and dispersion.

In addition, the Commission notes, based on the information submitted by applicant, that the proposed development is located in an area of the Coastal Zone which has been identified as subject to potential hazards from flooding. Past reports from Santa Barbara County Flood Control District have indicated that the areas surrounding Atascadero Creek inclusive of the project site have previously been subject to substantial damage from seasonal flood events during the winter storm season. The Coastal Act recognizes that certain types of development, such as the proposed project, may involve the taking of some risk regarding coastal hazards. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When proposed development is sited in areas with identified hazards, the Commission considers the hazard associated with the project site, its inhabitants, and any potential cost to the public, as well as the individual's right to use their property as they desire. As such, the Commission finds that due to the possibility of erosion and flooding, the applicant shall assume these risks as a condition of project approval. Therefore, **Special Condition Seven (7)** requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk shows that the applicant is aware of and appreciates

the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253.

E. Archaeological and Tribal Cultural Resources

Section 30244 of the Coastal Act, which is also incorporated as part of the Santa Barbara County LCP, states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Archaeological and tribal cultural resources are significant to an understanding of cultural, environmental, biological, and geological history. The Coastal Act requires the protection of such resources and the need to reduce potential adverse impacts to such resources through the use of reasonable mitigation measures. Degradation of archaeological resources can occur if a project is not properly monitored and managed during earth moving activities and construction. Site preparation can disturb and/or obliterate archaeological and/or tribal cultural materials to such an extent that the information that could have been derived would be permanently lost or the significance of the resource destroyed. In the past, numerous archaeological sites have been destroyed or damaged as a result of development. As a result, the remaining sites, even though often less rich in materials, have become increasingly rare and valuable as a resource. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the other sites which remain intact.

A previous Environmental Impact Report (94-EIR-1; July 1994) submitted by Santa Barbara County Flood Control District and prepared by Woodward-Clyde Consultants indicates that Native American Archaeological resources have been identified within two separate areas (SBA-45 and SBA-1588) near Atascadero Creek. However, both of these areas are located over a quarter mile away from the subject site. Additionally, only limited restorative grading activities would occur where illegal fill was previously placed to restore the length of the creekside access road and top-of-bank to a pre-violation profile and contour. Grading of this fill is unlikely to uncover any artifacts, as the land has been recently disturbed and proposed cut activities would not exceed previous grade depth ([Exhibit 4](#)).

The Commission finds that there is still a potential for adverse effects to tribal cultural and/or archaeological resources to occur due to inadvertent disturbance during grading and ground-disturbing activities. As such, the Commission finds that **Special Condition Nine (9)** is necessary to require that if an area of archeological and/or tribal cultural resources is discovered during the course of the project, project activities with the potential to impact such resources shall cease. Such activities shall not recommence

until a qualified archeological and/or tribal cultural resource specialist, in consultation with Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, analyzes the significance of the find. If necessary, the specialist(s) will prepare a supplementary archaeological plan for the review and approval of the Commission's Executive Director. If human remains are encountered, the permittee shall comply with applicable State and Federal laws.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30244 of the Coastal Act.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (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 Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 4-22-0020 and associated file documents.

Biological Assessment Report by Hunt & Associates dated October 8, 2020.

Proposed Atascadero Creek Habitat Restoration, Mitigation, and Monitoring Plan by Hunt & Associates dated October 8, 2020.

Updated Project Description for Proposed Restoration and Revegetation Plan by Hunt & Associates dated March 24, 2023.

Proposed Remediated Road Plans dated April 12, 2023.

Coastal Development Permit No. 4-19-1158 (Santa Barbara County Flood Control District).

Coastal Development Permit No. 4-91-56 (5300 Shoreline Drive).

Santa Barbara County Special Use Permit No. 90-SUP-048 (5300 Shoreline Drive).

Santa Barbara County Conditional Use Permit No. 96-CP-048 (5300 Shoreline Drive) and associated Grant of Easement for Riding and Hiking Trail.