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# Th12e

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# COASTAL DEVELOPMENT PERMIT APPLICATION

**Application number**.....**3-06-009**

**Applicant**.....Ken Finwall

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

**Project description**.....Construct a 1,760 square foot single-family residence with associated grading and landscaping.

**File documents**.....Coastal Act; San Luis Obispo County Permit #D000338P; Biological and Botanical Survey (Terrence Lilley, 2001); California Red-legged Frog Protocol Survey (Althouse and Meade, Inc., 2004); Wetland Delineation (Althouse and Meade, Inc., 2003).

**Staff recommendation** ...**Approval with Conditions**

**Summary:** The applicant proposes to construct a two-story 1,760 square foot single-family residence on a 6,000 square foot parcel located in the community of Oceano in San Luis Obispo County. The site is within the Coastal Commission's original permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. The Coastal Act is therefore the standard of review. The County's LCP, however, may be used for guidance.

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

The project would result in direct, indirect, and cumulative impacts to wetland habitats that are considered significant and unavoidable. The proposed development is inconsistent with Coastal Act Section 30233 because the entire site is considered to be a wetland and residential use is not allowed in wetlands. Although residential development in wetlands is not consistent with the policies of Chapter 3 of the Coastal Act, some development of the site must be allowed in order to avoid a taking of the property without just compensation, as provided under Coastal Act Section 30010. In light of constitutional takings issue associated with the proposed development, staff recommends that the Commission **approve** the proposed development subject to special conditions to maximize wetland habitat protection consistent with private property rights.

In 2005 Coastal Commission staff analyzed development of a multi-family residential project on this same property, but under a different coastal development permit application (3-02-114, Kelley/Green). At that time, Commission staff recommended a maximum 2,400 square foot development envelope located adjacent to the fronting street. The applicants (Kelley/Green) withdrew the project prior to the public hearing. The property was then sold to the current applicant (Finwall). Staff has evaluated the current project using the same wetland studies and continues to make the same recommendation with respect to the size and location of the 2,400 square foot development envelope. The current development proposal for a single-family residence is smaller in size and scale and is located entirely within the previously recommended development envelope.

In addition to establishing a maximum development envelope of 2,400 square feet, special conditions include the following requirements:

- Placement of an open space deed restriction on all wetland habitat area outside the 2,400 square foot development envelope;
- Submittal of revised project plans showing the residential building pad within the development envelope set back a minimum of 5 feet from the open space boundary line;
- Submittal of a wetland restoration and landscape plan using only native non-invasive plants appropriate to the site;
- Submittal of drainage and erosion control plans;
- Environmental monitoring during construction and implementation of specific measures to minimize temporary construction impacts on wetland habitat;
- Application of Oceano Airport compatibility requirements;
- Assumption of Risk, Waiver of Liability and Indemnity due to the location of the project within a flood hazard area and within close proximity to the Oceano Airport.

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

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# I. Staff Recommendation on CDP Application

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

**Motion.** I move that the Commission approve Coastal Development Permit Number 3-06-009 pursuant to the staff recommendation.

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

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

# II. Conditions of Approval

## A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Plans for the Executive Director's review and approval. The Final Plans shall demonstrate the following requirements:

   (a) **Development Envelope.** All development shall be confined to areas within the 2,400 square foot development envelope, as shown in Exhibit B, except for the minimum necessary to provide driveway access, sidewalks, utility connections, and drainage facilities within the public right-of-way of Honolulu Avenue.

   (b) **Open Space Area.** All areas outside of the development envelope, as shown in Exhibit B, shall remain in open space. Degraded open space areas shall be restored consistent with Special Condition #3 (Landscape Plans). The open space area shall be clearly identified on the Final Project Plans

   (c) **Residential Building Pad.** The proposed 880 square foot residential building pad shall be moved a minimum of five feet away from the boundary line of the open space area.

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

**2. Open Space Restriction.**

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

1. Landscaping and restoration activities conducted in accordance with the approved Landscape Plan prepared for the subject property as required by Special Condition 3.

2. Minor drainage improvements consistent with the objectives of the approved Landscape Plan. "Soft" drainage improvements (e.g. earthen berms and/or vegetated swales) shall be favored and implemented where feasible.

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

**3. Wetland Restoration and Landscape Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of Wetland Restoration and Landscape Plans. The Wetland Restoration and Landscape Plan shall be prepared by a qualified expert, in coordination with the project biologist, using native non-invasive plant species appropriate to the site. The Wetland Restoration and Landscape Plan shall include an analysis by a qualified expert that considers the specific condition of the site including but not limited to soil types, exposure, temperature, and moisture. The Wetland Restoration and Landscape Plan shall include, at a minimum, the following components:

(a) A map showing the type, size, and location of all plant materials that will be used, the irrigation system (if any), and all other landscape features, and;

(b) A schedule for installation of plants within the first growing season after completion of construction.

(c) Interim performance standards.

(d) A description of field activities.

(e) A monitoring period of 5 years.

(f) Provision for submission of annual reports of monitoring results to the Executive Director.

(g) Final restoration objectives and final success criteria, including, as appropriate, species diversity, total ground cover of vegetation, wildlife usage, hydrology, presence and abundance of sensitive species or other individual "target" species.

At a minimum, the Wetland Restoration and Landscape Plan shall demonstrate that:

(a) All existing non-native invasive plants and grasses shall be removed from the site.

(b) All landscaping shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

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

Beginning the first year after implementation of the Plan, annual monitoring reports shall be submitted to the Executive Director to document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

Five years from the date of completion of the project, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a wetland restoration monitoring report, prepared by a qualified biologist, that certifies the on-site restoration is in conformance with the approved Wetland Restoration and Landscape Plan along with photographic documentation of plant species and plant coverage.

If the restoration monitoring report or biologist's inspections indicate the wetland restoration and landscaping is not in conformance with or has failed to meet the performance standards specified in the Wetland Restoration and Landscape Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, in coordination with the project biologist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

**4. Water Quality**

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

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

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

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

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

5. **Environmental Monitoring During Construction.** The Permittee shall employ a project biologist/environmental monitor approved by the Executive Director to ensure compliance with all permit conditions and mitigation requirements during the construction phase of the project. Evidence of compliance shall be submitted by the project monitor to the Executive Director each month while construction is proceeding, and upon completion of construction.

6. **Hazards - Airport Review Area.** PRIOR TO CONSTRUCTION, the applicant shall provide evidence to the Executive Director for review and approval that the following airport compatibility requirements have been met:

(a) The applicant shall demonstrate full compliance with Federal Aviation Regulation part 77, "Objects Effecting Navigable Airspace" including filing of FAA Form 7460-1, "Notice of Proposed Construction or Alteration" as instructed by FAA Advisory Circular No. 70/7460.2K.

(b) The maximum interior noise levels in the structure shall be limited to 45 dBA or less and that other provisions of the California Noise Installation Standards are met with respect to aircraft and/or airport noise.

(c) An avigation easement must be granted or updated with the County of San Luis Obispo in a form acceptable to County Counsel.

(d) It shall be demonstrated that non-reflective materials have been used for the structure.

(e) It shall be demonstrated that no light emissions that would interfere with aircraft operations have been incorporated into the project.

(f) It shall be demonstrated that no electronic transmissions that would interfere with aircraft operations have been incorporated into the project.

(g) All owners, potential purchasers, occupants (whether as owners or renters) shall receive full and accurate disclosure concerning the presence and operation of the Oceano Airport and any

noise, safety, or over-flight impacts associated with airport operations prior to entering any contractual obligation to purchase lease.

7. **Hazards – Flood Hazard (FH) Area Combining Designation.** In addition to the requirements of the Drainage and Erosion Control Plans (Special Condition # 4), the Plan shall include base flood elevations, hazard areas, and floodway locations in the vicinity of the project in accordance with CZLUO Section 23.07.064. On the basis of the structural plans and depth analysis, the ground floor of all structures is to be constructed at a minimum of one-foot above the 100-year storm flood profile level. If no flood depth number is available, all structures shall be elevated a minimum of two feet above adjacent natural grade in accordance with CZLUO Section 23.07.066.

8. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from heavy storm damage, flooding, earth movement, and its location within the sphere of influence of the Oceano Airport Review Area; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

9. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

# III. Recommended Findings and Declarations

The Commission finds and declares as follows:

## A. Project Description

### 1. Project Location

The proposed development is located at 537 Honolulu Avenue, approximately 450 feet west of Aloha Place, in the community of Oceano, San Luis Obispo County (see Exhibits A and B). The property is

6,000 square feet (60 ft. x 100 ft.) fronting Honolulu Avenue. Honolulu Avenue is a 60 foot wide public right-of-way, of which 20 feet is presently paved. The remainder of the road, from the asphalt edge to the property line, is dense with willows. Dense vegetation continues north beyond the parcel boundary to the paralleling street, Lakeside Avenue. Beyond Lakeside Avenue is the Oceano Airport. The property is zoned Residential Multi-Family, although the current surrounding land uses are primarily single-family residences and vacant lots. There are existing houses on two sides of the property. The property is approximately 150 feet east of the Arroyo Grande Creek/Meadow Creek marsh system.

## 2. Project Description

The applicant proposes to construct a two-story 1,760 square foot single-family residence (including living areas, and garage). A driveway consisting of concrete turf pavers and a vegetative filter strip is proposed to access the residence from Honolulu Avenue. An additional vehicle parking space using the same material is proposed next to the driveway. An exterior spiral staircase provides access from the second floor to a roof deck/patio. The height of the residence is 25 feet. The project would disturb 40% of the site fronting Honolulu Avenue, including the house, driveways, and front yard landscaping. The remaining 60% of the site will be restored and designated as permanent open space.

## 3. Standard of Review/Basis of Decision

### Jurisdiction

The site is within the Coastal Commission's permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. The Coastal Act is therefore the standard of review. Relevant Coastal Act policies include Section 30233, which limits the fill of wetlands and prohibits residential use within wetlands. In this case, the entire site of the proposed development is a wetland (see finding B (1) below for details). Accordingly, because the proposed development is construction of a single-family residence (which are not an exception under Section 30233) and will result in significant habitat disruption, the proposed residential development cannot be found consistent with Section 30233. Therefore, absent other considerations, this project would have to be recommended for denial.

However, Coastal Act Section 30010 states:

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

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

# B. Issue Analysis

## 1. Marine Resources

### a. Applicable Policies

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

> ***Section 30230.*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***Section 30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

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

> ***Section 30233(a).*** *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
>
> *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
>
> *(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
>
> *(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational*

*piers that provide public access and recreational opportunities.*

*(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

*(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

*(7) Restoration purposes.*

*(8) Nature study, aquaculture, or similar resource dependent activities.*

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

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

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

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

***Policy 5 for Environmentally Sensitive Habitats:*** *Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.*

***CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:***

***d. Development standards for environmentally sensitive habitats:***

*1) New development within or adjacent to the habitat shall not significantly disrupt the resource.*

*2) New development with the habitat shall be limited to those uses that are dependent upon the resource.*

*3) Where feasible, damaged habitats shall be restored as a condition of development approval.*

*4) Development shall be consistent with the biological continuance of the habitat.*

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

## b. Description of Wetlands

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

The property lies in close proximity to the Oceano Lagoon wetland complex. Oceano Lagoon is largely protected as part of Pismo State Beach and Oceano Lagoon County Park. Some parts of this area were previously filled in order to build the Oceano Airport and the surrounding neighborhood. Most substantial undeveloped areas within this historically filled area are wetland habitat, or wetlands in various stages of disruption or recovery. Clear evidence of the original wetland still exists at Oceano Lagoon, a wetland environmentally sensitive habitat area (ESHA) about 150 feet west of the project site. While these areas are representative of the larger Oceano wetland complex that once existed, the extent of the wetland habitat in some areas is more difficult to determine due to the historic filling of the area. The remnant wetland habitat areas have suffered severe impacts and in some areas are heavily developed. Potential wetland development in this area and the loss of habitat values in Oceano is a significant issue.

The subject property has a willow canopy with over 90% cover. Under the willow canopy is a dense growth of blackberry and periwinkle tangles with weedy annual grasses. The property is not part of a riparian corridor and there is no known aquatic habitat currently on the property. According to the biological studies prepared for the project, the dense understory vegetation could harbor transient California red-legged frog (*Rana aurora drytonii*), but does not support breeding habitat. Southwestern pond turtle (*Clemmys marmorata pallida*) could also be found on the property, but is unlikely. Neither of these sensitive species were identified on the property during site studies.

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

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

## c. Wetland Impact Analysis

The proposed development includes filling of wetlands for the construction of a single-family residence, driveways, and landscaping. The proposed development would permanently occupy wetlands and will have on-going direct and indirect impacts to the ecological functioning of the Oceano Lagoon wetland complex. Such ongoing impacts include covering and fragmentation of habitat, interference with and prevention of hydrological dynamics, shading of wetland plants, and the continuation of residential uses, which are inconsistent with protection of wetland habitat. In conjunction with other existing and potential development in the area, the cumulative impacts of the development on the wetland complex are significant.

### Proposed Project Results in Permanent Wetland Loss

As proposed, the project would permanently displace 40% of the onsite wetlands. The applicant has proposed to construct a residence with an 880 square foot building pad (44 X 20 feet), a concrete turf paver driveway with a vegetated filter strip to serve the house, and a separate parking area next to the house made of the same material. The remainder of the site would be planted with native landscaping. As described previously, there is also roughly 1,200 additional square feet of wetland in the County right-of-way between the edge of pavement on Honolulu Avenue and the property line that would be permanently lost with development of the driveways, utilities, or installation of curbs, gutters, and sidewalks. The proposed residence is not a type of use allowed in wetlands and thus such permanent development in wetlands is inconsistent with Coastal Act Section 30233.

### Proposed Project Results in Adverse Temporary Wetlands and Other Impacts

In addition to the permanent loss of wetlands, the proposed project would result in temporary negative impacts to surrounding wetlands during construction. The staging of construction equipment onsite, site preparation, and overall construction activities and human presence are expected to adversely affect species and their habitat outside of the construction zone. Although direct construction impacts are expected to be temporary, such construction can have significant wetland impacts on the short-term productivity of the affected habitat.

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

### Cumulative Impacts

In conjunction with existing and potential development in the Oceano Lagoon area, the cumulative impacts of the project are significant. As discussed in the findings above, the proposed project by itself results in adverse wetland impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future in the general Ocean Lagoon area. The concern is that these individual, undeveloped wetland parcels will be developed in the future for additional residential units. These residential units, when taken together, result in additional fragmentation and disturbance to the larger wetland habitat system. In addition to this permit application, there have been are least four other

such individual residential and commercial projects reviewed by the Commission in this general area.[2] In any case, future development proposals would be subject to the same standards as this proposal, dictating maximum wetland protection in light of Constitutional issues. Even though mitigation measures would be required for each new development, impacts will be significant both on an individual and cumulative basis.

### d. Implementing Sections 30010 and 30233 of the Coastal Act

None of the development described above is dependent on a location within the wetland resource area. In addition, this development and its associated activities, individually and collectively, will result in a significant disruption of the wetland area onsite as well as surrounding the proposed project. Therefore, this project cannot be found consistent with Coastal Act Section 30233.

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

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

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

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

As described, Commission Staff analyzed a previous multi-family residential development for this property, but under a different coastal permit application (3-02-114 Kelley/Green). On July 21, 2005 a staff report was publicly issued for the project with detailed findings and recommended conditions of approval. In that report Staff recommended, amongst other things, a reduced development envelope

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

(2,400 s.f.) fronting the adjacent street. On August 8, 2005, prior to the public hearing on the project, the applicants requested that the project be withdrawn. A few days later, the property was sold to the current applicant (Ken Finwall). According to discussions with the current applicant Finwall, the price paid for the property was equivalent to the value of a 2,400 lot, or the equivalent of the previously recommended development envelope for the subject property. On January 27, 2006, Finwall submitted a new permit application for development of a 1,760 square foot single-family residence with associated grading located entirely within the previously recommended 2,400 square foot development envelope.

The applicant (Ken Finwall) submitted adequate financial information to demonstrate a sufficient real property interest in the privately held property to allow some development. Staff has determined that the applicant bought the property below fair market value for lots not located within a wetland. At the time the applicant purchased the property, these parcels and other parcels in the Tract were designated in the LCP and zoned for multi-family residential use, although the Coastal Act and the LCP also includes policies that would severely limit development on this site as well. Prior to purchasing the property, the applicant was aware of the previous Commission staff recommendation for approval of limited development on the site, although a formal action taken by the Coastal Commission had yet to occur. Thus, in the year that the property was purchased (2005), the applicant could have legitimately assumed that limited development of a residence on this property was a reasonable expectation. Therefore, in view of the other residential uses in the vicinity of the privately held parcels and previous staff recommendations for development of the site, the Commission finds that the proposed residential use is a reasonable economic use, and also that the uses allowed by Coastal Act Section 30233 would not provide an economic use (i.e. the site is too small for a port, energy, or industrial facility; and restoration or nature study would not be an economic use).

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

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

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

### e. Maximizing Wetland Protection

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

In order to maximize protection of the wetland habitat in light of constitutional takings issues, Special Condition 1 limits the development envelope of the overall project to 2,400 square feet (40% lot coverage) while at the same time orienting structures toward the fronting street (Honolulu Ave.) further from undisturbed wetland habitat and drainage areas which provide greater connectivity to surrounding wetland areas. As described, the neighboring lawn has encroached onto the front and side of the property. Locating the development envelope towards Honolulu Avenue utilizes this already disturbed area and will reduce overall wetland habitat losses. The remainder of the property (60%) is required to be restored and will remain in permanent open space. This percentage of allowed lot coverage is consistent with previous Commission action taken on residential use in wetlands in this same general area of Oceano (see Bachman SFD, CDP #3-01-121). In addition to establishing the development envelope, Special Condition 1 requires the 880 square foot residential building pad to be slightly set back from the open space boundary a minimum of 5 feet. This will allow some space behind the house for likely activities such as long-term maintenance, painting, window washing, etc., without the need to encroach directly into sensitive wetland areas.

Appropriate mitigation for the impact to wetland habitat in Oceano includes the preservation of open space/habitat areas and restoration and long-term maintenance of these areas. Special Condition 2 requires that the undeveloped area on the property be preserved in open space, subject to a deed restriction that prohibits uses that are inconsistent with habitat restoration and preservation (Special Condition 10).

In conjunction with this requirement, Special Condition 3 requires that the applicant to submit a revised wetland restoration and landscape plan that restores and enhances degraded onsite wetland areas using exclusively native non-invasive vegetation appropriate to the Oceano area. The wetland restoration and landscape plan requires the complete removal of invasive plants and grasses from the site and includes a monitoring and long-term maintenance component. The most effective and efficient way to deal with weedy species is to prevent invasions. Preventing invasion is of greater conservation benefit in the long run than the far more costly and difficult efforts to control a widespread pest species. Therefore, Special Condition 3 will reduce the potential for invasive plant species to adversely impact the surrounding wetland habitat in the immediate project area as well as to minimize disruption to adjacent wetland habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site. The required on-site wetland protection and restoration measures (approximately 3,600 square feet) will offset the unavoidable loss of degraded wetland resources (about 2,400 square feet) in a manner that is roughly proportional to the impacts to wetlands caused by the new development.

To avoid potential impacts to sensitive species during construction and to assure that the permit conditions and mitigations are being implemented, Special Condition 5 requires an environmental

monitor, approved by the Executive Director, to be present during construction activities.

### e. Conclusion

Although the entire lot is considered to be a wetland, to prevent takings, some development of the parcel must be allowed. However, Coastal Act standards require that permitted development be limited to the constitutionally mandated minimum level of intensity. In this case, the combined suite of mitigations required under this permit is proportional to the impact caused by the development. Thus, only as conditioned does the project maximize the protection of coastal wetlands as required by the Coastal Act and satisfy Constitutional issues.

## 2. Water Quality

### a. Applicable Water Quality Policies

Coastal Act Sections 30230, 30231, and 30232 provide:

> ***Section 30230.*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***Section 30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*
>
> ***Section 30232.*** *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

### b. Consistency Analysis

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

Minimizing sedimentation and impervious surfaces resulting from new development is one way to

reduce nonpoint source runoff. The primary mechanisms for minimizing impervious surfaces, in this case, are to require construction best management practices (BMP's) and limit the development to a single shared driveway. With less impervious area for pollutants to collect upon, there is a reduction in polluted runoff ultimately flushed off site. This can be accomplished by reducing the size of impervious surfaces and implementing erosion control BMP's during and after construction. The proposed vegetated filter strips in the center of the driveways will help to reduce the degree of water quality impact. Special Conditions 1(Final Plans) and 4 (Drainage and Erosion Control Plans) implement these requirements.

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

## 3. Hazards

### a. Applicable Hazard Policies

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

> ***Section 30253*** *of the Coastal Act states:*
>
> *New development shall: (l) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

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

> ***CZLUO 23.07.064- Flood Hazard Area Permit and Processing Requirements:*** *Drainage plan approval is required where any portion of the proposed site is located within a Flood Hazard combining designation, in addition to all other permits required by this title, state and federal law. In addition to the information called for in Section 23.05.042 (drainage plan required) the drainage plan shall include:*
>
> *a. Federal Insurance Administration flood data, including base flood elevation, flood hazard area and floodway locations.*
>
> *b. In areas where weather service elevation data has no been provided by the Federal Insurance Administration, a normal depth analysis or other equivalent engineering analysis that identifies the location of the floodway and demonstrates to the satisfaction of the County Engineer that the structure will not be located within the floodway or be subject to inundation by a 100-year storm. The following information is required to determine the location of flood elevation and the floodway, except where waived or modified by the County Engineer:...*
>
> ***CZLUO 23.07.066 – Construction Standards:*** *New structures or an increase in 65 percent in the square footage of any existing structures (including manufactured homes) or other construction activities within a Flood Hazard Area combining designation are subject to the*

*following:*

***a. Construction, general:***

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

## b. Consistency Analysis

### Airport Hazards

Coastal Act Section 30253 requires that new development shall minimize the risks to life and property. The proposed development falls within the sphere of influence of the Oceano Airport Review Area. Therefore, the applicant is required include a variety of airport compatibility measures into the project. One of which is to grant/update an Avigation Easement to the County of San Luis Obispo. The avigation easement document shall be reviewed and approved by the County Counsel prior to final approval. The County conditioned its previous approval for development of the site to provide such an avigation easement. In addition, the County conditions required the use of non-reflective building materials and limits noise and light levels to avoid interference with airport operations. Special Condition 6 of this permit approval retains these measures. Thus, as conditioned, this aspect of the proposed development is consistent with the hazard policies of the Coastal Act.

### Flood Hazards

Coastal Act Section 30253 requires that new development shall minimize the risks to life and property in areas of high geologic, flood, and fire hazard. In terms of coastal hazards, the project is located within the Flood Hazard (FH) Area delineated by the San Luis Bay Coastal Area Plan, which generally corresponds to the area that is subject to flooding under a 100-year storm. In accordance with CZLUO Section 23.07.064 of the LCP this coastal development permit requires the applicant to submit a drainage plan for Executive director review and approval (see Special Condition 4). In addition, Special Condition 7 requires that all CZLUO Flood Hazard (FH) Area permit processing requirements and construction standards be shown on project plans and implemented during construction.

The experience of the Commission in evaluating the consistency of proposed developments with Coastal Act policies regarding development in areas subject to problems associated with geologic instability, flood, wave, river, and/or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, flooding, landslides, or other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden on the people of the State for damages, applicants are regularly required to acknowledge site geologic risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Special Condition 8 requires the Applicant to recognize and assume the risk of building within an LCP designated Flood Hazard (FH) Area and its location within the sphere of influence of the Oceano Airport Review Area.

With these conditions, the project is consistent with Coastal Act Section 30253.

# 4. Archaeology

## a. Applicable Archaeology Policies

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

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

## b. Consistency Analysis

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

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

# 5. Public Access

## a. Applicable Public Access Policies

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

> ***Section 30210:*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***Section 30211:*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***Section 30212(a):*** *Public access from the nearest public roadway to the shoreline and along the*

*coast shall be provided in new development projects...*

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

### b. Consistency Analysis

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

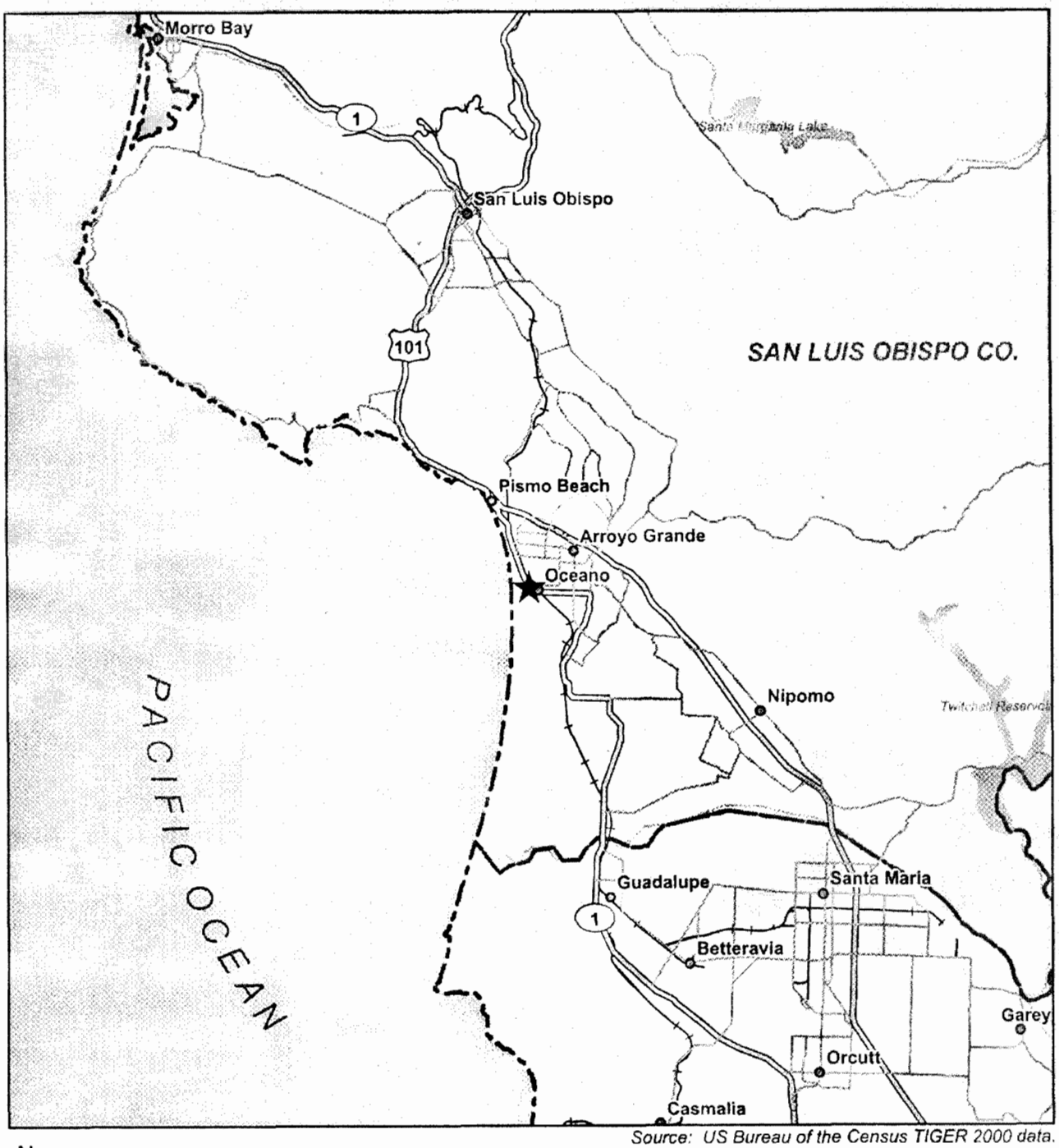
# IV. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

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

**Finwall SFD (3-06-009)**




*Source: US Bureau of the Census TIGER 2000 data.*

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★ Project Location

**Exhibit A (1 of 2)**
Regional Vicinity Map: Oceano Area

3-06-099
Finwall SFD

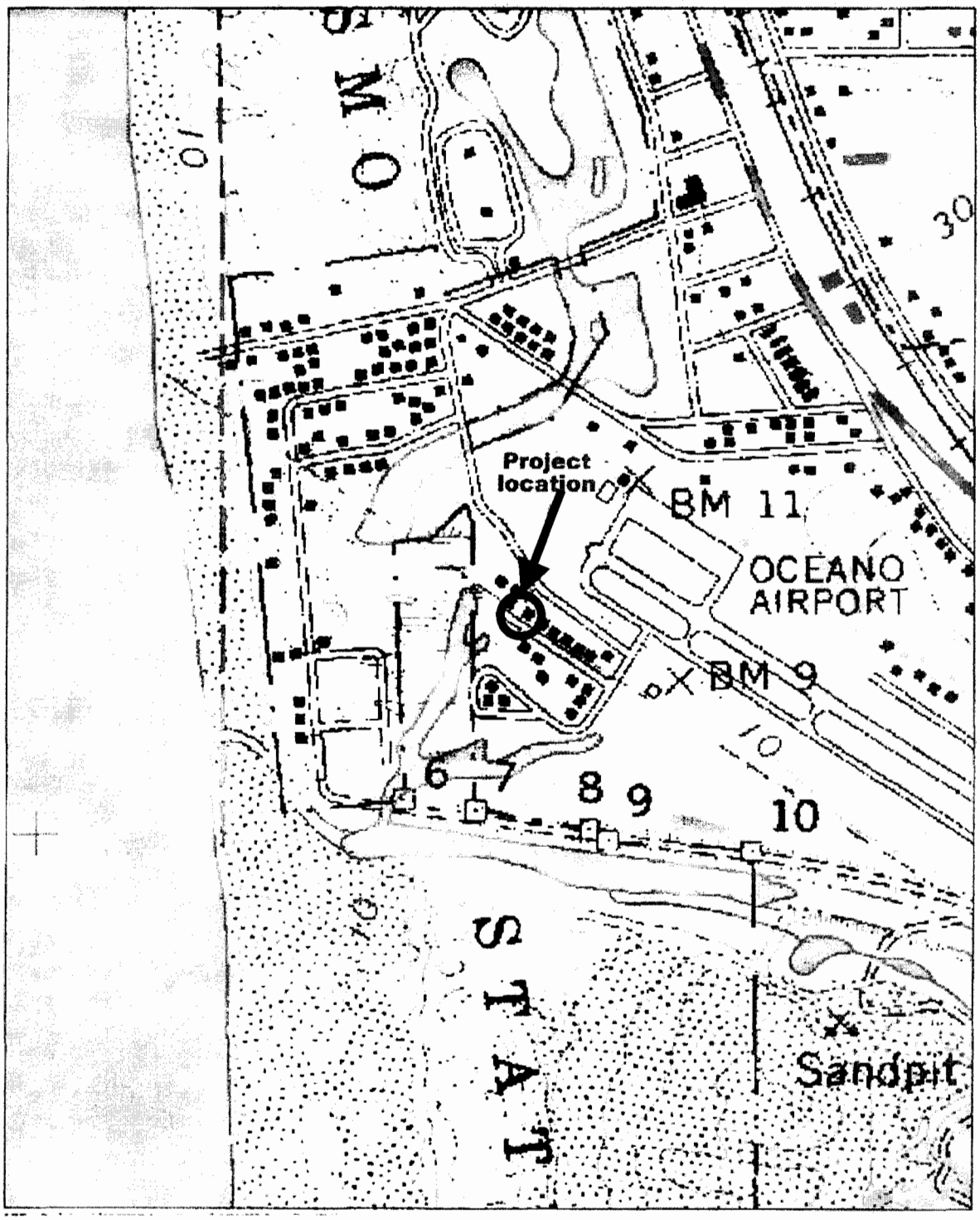


**Exhibit A (2 0f 2)**
Project Location Map

3-06-009
Finwall SFD

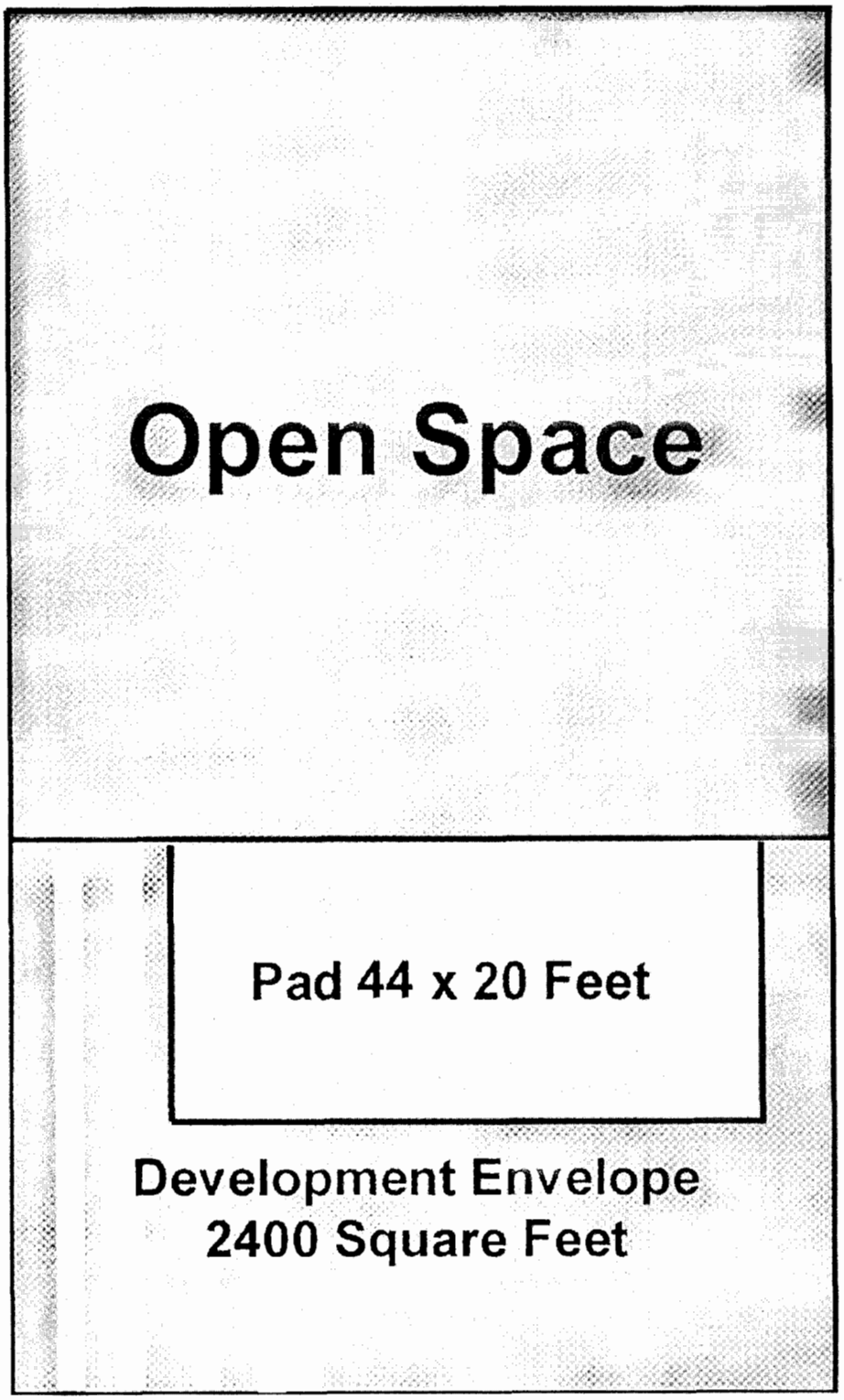


**Exhibit B**
Site Plan

3-06-009
Finwall SFD

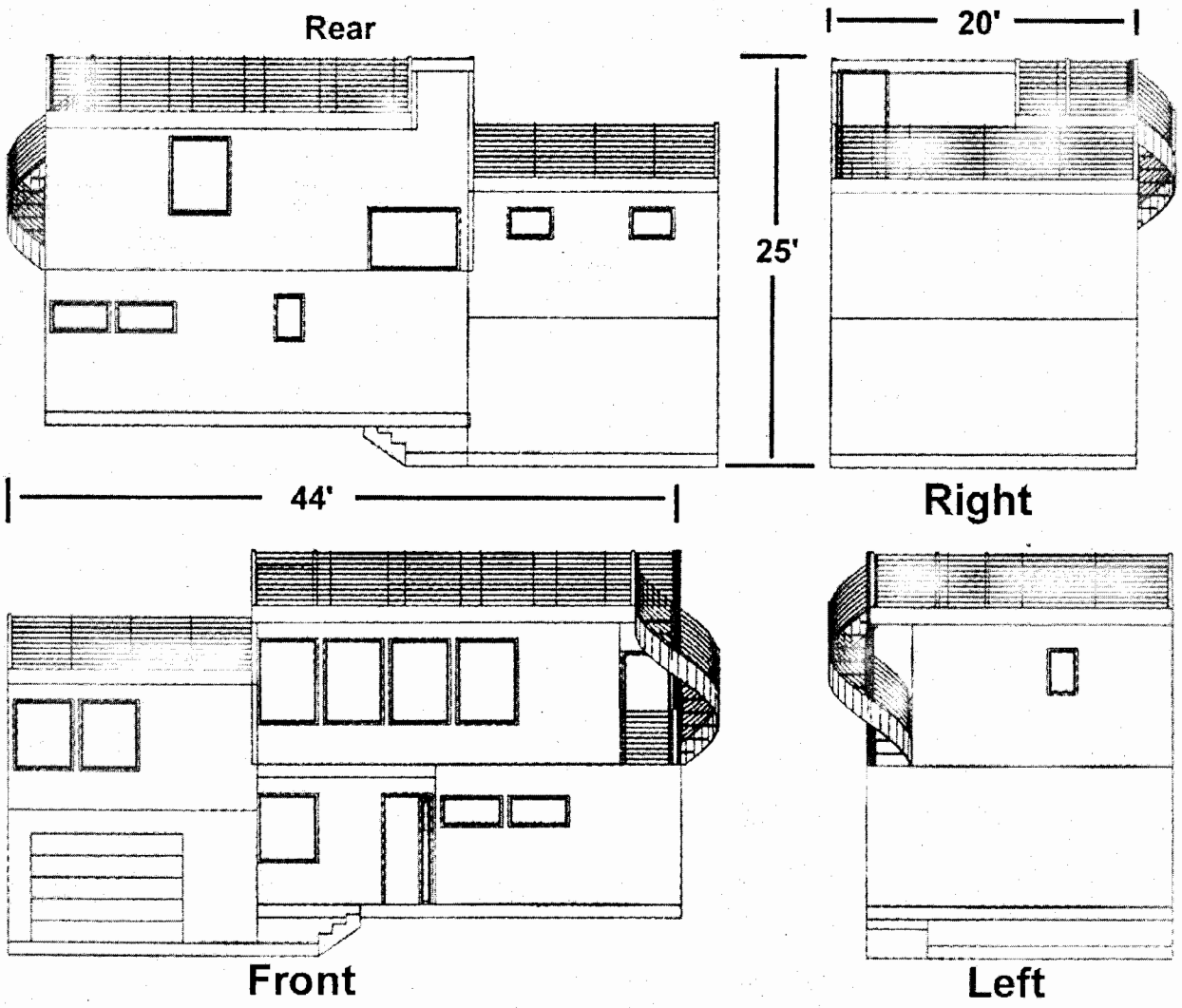


**Exhibit C**
Elevations

3-06-009
Finwall SFD