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Appeal filed:	12/6/2010
49th day:	waived
Staff report prepared:	11/22/2011
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Staff report approved by:	D. Carl
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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal numberA-3-PSB-10-062, Koligian Duplex

Applicant.....Vaughn and Maryann Koligian

AppellantsCommissioners Mark Stone and Sara Wan; San Luis Obispo Coastkeeper

Local governmentCity of Pismo Beach

Local decisionApproved by the City of Pismo Beach City Council on October 19, 2010 (Coastal Development Permit (CDP) Application Number PM08-0163).

Project locationBetween Addie Street and Pismo Creek (140 Addie Street) in Pismo Beach, San Luis Obispo County.

Project description.....Construction of a 3,651 square-foot two-story duplex (two residential units within one structure) with two attached two-car garages on top of exposed piles, and related development, including demolition of a portion of the neighboring vacation rental house (that extends across the property line onto the project site), construction of a driveway bridge, utility and right of way improvements, and front yard fencing.

File documents.....Administrative record for City of Pismo Beach CDP Number PM08-0163; Lot Legality Analysis, MBS Land Surveys, May 10, 2011; Wetland Determination and Biological Assessment, Sage Institute, March 25, 2011; Response to Coastal Commission Comments, Earth Systems Pacific, March 29, 2011; Geotechnical Engineering Report for Koligian Duplex, Earth Systems Pacific, April 19, 2011; City of Pismo Beach certified Local Coastal Program (LCP).

Staff recommendation ...**Substantial Issue Exists; Denial**

A. Staff Recommendation

1. Summary of Staff Recommendation

The Applicant proposes to construct a new 3,651 square-foot duplex with two attached two-car garages elevated on piles on a lot located within sand dunes in the backbeach area directly adjacent to the mouth



of Pismo Creek and the Pismo Creek Estuary, in the City of Pismo Beach. The project site is subject to significant development constraints due to shoreline hazards and flooding, as well as the presence of dune and riparian habitat both onsite and extending offsite. The site is also located within a significant public viewshed along the shoreline where it transitions to dunes and Pismo Creek. In addition, the site is located in the City's core visitor-serving commercial area that is protected by the LCP for visitor-serving uses that can appropriately respond to such constraints.

The proposed duplex would consist of a 1,969 square-foot residence on the upper level, and a 749 square-foot vacation rental residence on the lower level. Two 2-car garages (akin to a single four-car garage) would be located on the lower level as well. The piles would be steel pipe with a minimum diameter of 14 inches, and would be driven into the ground to a depth of 40 to 50 feet, with the rest of the structure elevated about 7-8 feet above grade on the piles.¹ The duplex structure would be accessed by a driveway bridge that would extend from the street elevation at Addie Street several feet up to the first floor elevation atop the piles. The project also includes demolition of a portion of the existing neighboring vacation rental house (on piles) which extends onto the subject lot, removal of ice plant, and installation of front yard fencing and landscaping.

The City of Pismo Beach City Council approved a CDP for the proposed project, and that approval has been appealed to the Coastal Commission. The appeals contend that the City's approval raises substantial issues of conformance with the City's LCP, contending that the project approved by the City would not avoid or minimize flooding and other hazards, that setbacks are not adequate to protect biological resources on and adjacent to the site, and that the project would obstruct and otherwise adversely affect important coastal views and would not blend visually with the surrounding area. **Staff recommends that the Commission find that the appeals raise a substantial issue of conformance with the City's LCP.**

The LCP requires new development to avoid and minimize impacts due to hazards. New development must be set back a sufficient distance from the bluff edge to ensure impacts are minimized and future shoreline protection is not needed, and new development on beaches and bluff faces is strictly limited. In addition, new development is prohibited in the floodplain unless it would in no way obstruct passing floodwaters or contribute to flooding hazards. In conflict with these requirements, the proposed project would place new development on the beach seaward of the coastal bluff and on the bluff face, and it would require a pile support structure to protect it from shoreline and flooding hazards. In addition, the proposed driveway bridge and utilities would be located below the 100-year flood elevation, and the series of piles necessary to support the structure would not only obstruct passing floodwaters through placement of fill, but would also be likely to trap debris during flood events, which would obstruct passing floodwaters further and contribute to additional flooding impacts on and offsite.

The LCP also requires biological resources to be protected and maintained. New development must

¹ The project approved by the City was elevated about 7 feet above grade, but in the time since the appeal was filed the Applicant has proposed to raise the structure by an additional foot to better address flooding hazards. Thus, for the substantial issue portion of the Commission's review, the 7-foot elevation applies, but for any de novo review, the 8-foot elevation is what would be considered proposed.



avoid direct impacts to environmentally sensitive habitat areas (ESHAs) and it must be set back an adequate distance from ESHA to ensure impacts to such resources from adjacent development are also avoided and minimized. In conflict with these requirements, the project would include the construction of a new duplex within dune and other habitat, which the Commission's senior ecologist, Dr. John Dixon, has determined is ESHA at this location. Such development in ESHA would directly adversely impact ESHA, and is not allowed by the LCP. Further, such development and siting also leads to related adverse impacts to adjacent to ESHA not directly within the development footprint, including other adjacent dune and riparian resources associated with Pismo Creek/Estuary, and including due to its proximity to riparian vegetation as well as the creek bank and normal creek flow line. These adjacent impacts to ESHA, including in terms of insufficient setbacks, are also not allowed by the LCP.

The LCP requires visual resources to be protected, including by requiring new development to avoid obstructing coastal views, and requiring new development to blend with the surrounding natural environment and the small-scale character of the City. In conflict with these requirements, the proposed duplex would be a large and bulky two-story structure atop piers on a small lot that would block significant views from public areas to the estuary and shoreline, and would adversely impact the public viewshed overall, including clashing with the small-scale character of the City. The mass, scale and form of the proposed development would not minimize impacts on the surrounding environment, or allow it to blend with the surrounding built or natural environment.

Finally, the LCP and the public access and recreation policies of the Coastal Act require new development to maximize public access to the coast, especially development on oceanfront lands. The project is located in the City's core visitor-serving commercial area, in the LCP's hotel-motel zoning district, within a visitor-serving overlay. The Coastal Act's access and recreation policies require new development on the site to protect and provide for public access and recreation, and the LCP only allows for residential uses on the site if the Applicant can conclusively show that visitor-serving uses are infeasible due to the size, shape or location of the parcel. In its review of the project, the City concluded that the site is infeasible for visitor-serving uses based on the Applicant's economic analysis. However, the analysis lacks the detail and information necessary to draw such conclusions for this site, and staff does not believe that the project meets the LCP test for allowing residential uses in this visitor-serving district. In addition, the LCP envisions a public access trail along Pismo Creek at this location, and the proposed project would not accommodate the trail. And finally, the project would result in the loss of onsite parking for the neighboring vacation rental house, potentially leading to overnight visitors using the adjacent public day-use beach parking, negatively impacting the existing supply of public beach access parking. In short, the project would place a residential use in an area protected for visitor-serving uses, and it would not maximize public access to the coast, including because it would not provide for a planned riverside trail and it would potentially displace public beach parking spaces.

For these reasons, which are developed in detail in this report, the proposed project is significantly out of conformance with the City's LCP and applicable Coastal Act policies. Staff is unaware of any modifications that could make a residential project at this site consistent with the Coastal Act. As a result, **Staff recommends that the Commission deny a CDP for the proposed project.** Project denial, however, does not preclude the Applicant from applying for some other use of the site, such as a visitor-



serving use that carefully addresses site constraints. Thus, denial of this project is not a final adjudication of the potential for development on this site but is instead a finding that the project proposed is significantly out of conformance with the LCP and applicable Coastal Act policies and cannot be approved as proposed.

The motions and resolutions to act on staff's recommendation follow immediately below on pages 4 and 5.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-PSB-10-062 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a no vote.

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

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-PSB-10-062 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

Motion. I move that the Commission approve coastal development permit number A-3-PSB-10-062 for the development proposed by the Applicants. I recommend a no vote.

Staff Recommendation of Denial. Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny a Coastal Development Permit. The Commission hereby denies a coastal development permit for the proposed development on the grounds that 1) the development will not conform with the policies of the City of Pismo Beach Local Coastal Program, and 2) denial of the proposed development a) will not constitute a taking of private property for public use



without payment of just compensation, and b) is an action to which the California Environmental Quality Act does not apply.

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Click on the link at left to go to the exhibits.



B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Background

The proposed project is located in the backbeach area between Pismo Creek and Addie Street, about four blocks downcoast of the Pismo Pier in Pismo Beach. The site is at beach and creek elevation about five feet below the elevation of Addie Street. It is currently undeveloped, except that a portion of a vacation rental house that is elevated on exposed wood piles above the beach dunes directly seaward of the site extends across the property line onto this site, and a compacted area² that is used for vehicular access (ramping down from Addie Street) and parking for the neighboring vacation rental is also located onsite. Seaward of that is the wide and expansive sand of Pismo State Beach. Inland of the site and also between Addie Street and the Creek there are two vacant lots and then a four-unit vacation rental condominium complex. Downcoast, across the Creek, there is an RV park and the rivermouth/lagoon area (i.e., the mouth of the Pismo Creek Estuary). Upcoast, across Addie Street, there is a City-owned public parking lot, restroom, and the City's "beachwalk" public access promenade that extends from the site upcoast through the Pier. See project location maps and site photos in Exhibits 1, 2 and 3.

The project area is located in the upland portion of a significant beach dune complex at the mouth of Pismo Creek, where the Pismo Estuary forms. This area contains four sensitive plant communities, including pioneer dune and beach community, estuarine community, freshwater marsh and coastal salt marsh, as well as related wildlife habitats, including riverine, fresh water emergent wetland, estuarine wetland, pioneer coastal dune and marine. These habitats are relied on by many sensitive species, including: California Tiger Salamander, Coast Range California Newt, California Red-Legged Frog, Southwestern Pond Turtle, California Coast Horned Lizard, Silvery Legless Lizard, Common Loon, Clark's Grebe, Western Grebe, California Brown Pelican, Double-Crested Cormorant, Great Egret, Great Blue Heron, Snowy Egret, Black-Crowned Night Heron, Osprey, American Peregrine Falcon, Western Snowy Plover, Long-Billed Curley, California Gull, California Least Tern, Caspian Tern, Forster's Tern, Tidewater Goby and Steelhead Trout. (See also Biological Resources section below.)

In addition to these biological resources, river mouths and dunes such as those at this location are both subject to significant hydrologic and landform changes over time, and the project site has been and will likely continue to be in the future subject to such changes. For example, rivers migrate depending on watershed changes and storm flows, and estuaries regularly form and reform in different configurations. In addition, dunes can migrate dramatically depending on erosion and accretion of the shoreline, storms and wind patterns. At this site, dune morphology is dynamically affected by these types of influences. The site has historically seen such changes, with aerial photographs from 1961 showing the site largely made up of sand, with minimal vegetation. Over the years, other photos show vegetation gradually overtaking open sand at the site when, other than the compacted area used for access to the adjacent

² This area is not paved, and it appears that some sort of rock and/or soil has been deposited here and repeated vehicular use has "hardened" it to a certain degree.



vacation rental house on piles,³ the rest of the site is almost entirely covered with what appears to be riparian plant species and invasive iceplant. Likewise, aerial photos show the dunes, river mouth and estuary in various configurations throughout the years. Again, see current site photos in Exhibit 2, and historic site photos in Exhibit 3.

Given its location at the river's edge where it transitions to the beach, the site is also located within the 100-year floodplain and is subject to coastal flooding and tsunami inundation. In fact, the site has been inundated by significant flooding in recent history. For example, photos taken during the winter storms of 1983 show dramatic flooding at the site (see Exhibit 4). According to the City's Hazard Mitigation Plan, the City can expect to see major flooding events every four to six years, given past frequency of flooding occurrences. Given the expectations for increased intensity and frequency of storm activity due to climate change and sea level rise, such major flooding in the City is likely to increase even more over time. (See also Hazards section below.)

The project is located on a site that is designated by the LCP's Land Use Plan (LUP) as mixed-use, and is located in the LCP Implementation Plan's (IP) Hotel-Motel and Visitor Serving (R-4) district. This district is designed to accommodate and cater to the needs of tourists with lodging and other visitor-serving amenities. The allowed uses are lodging, restaurants and bars and other visitor-serving commercial uses. As a conditional use, residences can be allowed, but only if the applicant can show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use. (See also Public Access and Recreation section below).

The project site and surrounding area seaward of the four-unit vacation rental condominium complex is made up of seven lots located between Addie Street and Pismo Creek in the backbeach area where it transitions to Creek/Estuary (see lots identified as Lots 1 through 7 in Exhibit 1). Lots 1, 2 and 3 are the most seaward lots, and although they were the subject of previous development proposals,⁴ they are currently undeveloped sandy beach area indistinguishable from the rest of the sandy beach environs, and no proposals are currently pending.⁵ Just inland of these sandy beach lots, the existing vacation rental house on piles above the dunes is located on lot 4 and immediately seaward of the project site.⁶ This house was originally constructed in the early 1960s prior to CDP requirements, and it actually extends about 6 feet onto lot 5, which is the subject lot. As indicated above, a compacted vehicular parking area, which is used by occupants of the vacation rental house, is also located on lot 5, which is otherwise sandy substrate covered by riparian vegetation and iceplant. Just inland of lot 5, lot 6 includes the compacted ramp down from Addie Street to the parking area on lot 5, and this lot shares the same substrate and vegetation characteristics as lot 5. Lot 7 also shares these same characteristics, but it is

³ Where this compacted area appears to have been part of a larger open area that was used as a general beach parking area at one time from the 1972 photo.

⁴ Appeal numbers A-3-PSB-02-063, A-3-PSB-02-064 and A-3-PSB-02-065. The Commission found that all three appeals raised substantial LCP conformance issues on September 11, 2002. The proposed project applications were later withdrawn, and thus the Commission did not take any de novo action on the projects.

⁵ Lots 1, 2, and 3 are owned by ALFAM Ltd.

⁶ Lot 4 is owned by Addie Street Land Group.



completely covered with vegetation and otherwise undeveloped.⁷ The Commission's legal division reviewed the history of the Applicant's lot (lot 5) to determine if it is a separate legal lot, and concluded that it is. The owner of lot 4 holds a revocable easement⁸ for the use of a portion of lot 5 that accounts for the current parking use as well as the house encroachment across the property line. The easement would be revoked as part of the proposed project such that the owner and occupants of lot 4 would no longer have a right to use lot 5 for any purpose.⁹ Although identified as different entities (e.g., ALFAM Ltd., ATSCO Ltd., and Addie Street Land Group), all of the lots except for the Applicant's lot (i.e., Lots 1, 2, 3, 4, 6 and 7) list the same property owner address, suggesting that they may all be in common ownership.

The Applicant's lot, lot 5, is a 4,500 square-foot lot located on backbeach dunes, approximately 30 feet from the current edge of flow of Pismo Creek and about 2 feet above the Creek elevation. The lot is separated from the Addie Street sidewalk by a low bluff, approximately 5 feet high, covered by iceplant. Thus, the site is located within the upland portion of the backbeach dunes where they transition to Creek/Estuary, and it exhibits characteristics of both dune and riparian habitat. It also includes a compacted area and a portion of the adjacent house on piles. See Exhibits 1, 2, 3, and 4 for location maps and photos, including historic photos going back to 1961.

2. Project Description

The Applicant proposes to construct a 3,651 square-foot two-story duplex (i.e., two residential units within one structure). The duplex would include two 2-car garages ((akin to a single four-car garage) and a 749 square-foot vacation rental residential unit on the lower level, and a 1,969 square-foot private residential unit on the upper level. Access from Addie Street to the elevated garage and the two residential units would be via a bridge partially on the City's right-of-way and partially on the site.¹⁰ The entire structure, including the two residential units, the two garages, and the bridge, would be elevated on piles approximately eight feet above the existing grade at the site,¹¹ and about three feet above the grade of Addie Street, and it would be 33.5 feet high as measured from site grade. Thus, the structure would extend nearly 30 feet above the Addie Street elevation. The piles would be steel-pipe with a minimum diameter of 14 inches that would be driven 40 to 50 feet into the ground.¹² It is not

⁷ Lots 6 and 7 are owned by ATSCO Ltd.

⁸ The easement may be revoked by the owner of lot 5 at any time.

⁹ The owner of lot 5 is also the owner of the hotel that is located just upcoast of the public parking lot on the other side of Addie Street from this area, and has indicated that users of the vacation rental house on lot 5 would park in the hotel facility and walk to the site.

¹⁰ The Addie Street sidewalk is about 15 feet from the actual edge of the right of way, and thus the sandy bluff area topped by iceplant that extends down to the compacted parking area on the site is in the Addie Street right-of-way.

¹¹ The Applicant had initially proposed to elevate the structure so that the finished floor elevation would be approximately seven feet above existing site grade. However, although this elevation was approved by the City, the Applicant has since proposed to raise the structure by an additional foot to better address flooding hazards. Therefore, for the substantial issue portion of the Commission's review, the 7-foot elevation applies, but for any de novo review, the 8-foot elevation is what is considered proposed. Elevations otherwise identified are in relation to the 8-foot elevation.

¹² The Applicant also originally proposed to install chain link fencing around the perimeter of the piles, but the City conditioned the project to remove the chain link fencing, and the Applicant has since indicated that it is no longer proposed. Thus, although this chain



clear from the project materials exactly how many piles would be required and are proposed to support the structure.¹³ However, adding together all of the piles shown in the proposed elevations and assuming piles would be evenly distributed underneath the structure to support it, it appears that at least 24 piles are proposed (see project plans in Exhibit 5).¹⁴ The structure would be designed so that it could be elevated further in the future¹⁵ in the event that future sea level rise leads to higher than expected flood elevations.¹⁶ In addition, a wrought iron and pillar fence would be constructed along the Addie Street frontage. The project also includes removal of invasive vegetation and installation of landscaping.

Finally, the project includes demolition and removal of development associated with the neighboring vacation rental house on piles. As described above, the owner of lot 4, which contains the vacation rental house, holds an easement for existing development on lot 5, the subject lot, which can be revoked by the owner of lot 5 at any time. Initially, the proposed project did not include the necessary changes to the vacation rental development that would be required before the development of lot 5 could occur, but the City incorporated this into the project because it is needed before the proposed project could be moved forward. However, although the owner of lot 4 has consented to the project, including removal of a portion of his house, only very limited information about the proposal has been provided. A simple site plan shows the proposed plan for demolition (see Exhibit 5). It shows that the downcoast corner of that house and its stairway access that extend across the property line would be cut back approximately 11 feet so that the side of the existing house would be about 10 feet from the side of the proposed duplex structure. This would require significant changes to the existing development, including relocation of one pile, installation of additional support beams, and replacement and reconstruction of the walls, roof and interior, resulting in the loss of an existing staircase and entry way, as well as loss of approximately 180 square feet of living space, including portions of a living room, bedroom and bathroom. In addition, the project would result in the loss of the parking area for the existing vacation rental house, but there is currently no proposal to remove the compacted parking area from lot 4 or from lot 6, which contains the driveway entrance.

See proposed project plans and visual simulations (including photos of project staking) in Exhibit 5.

3. City of Pismo Beach CDP Approval

On August 24, 2010, the City of Pismo Beach Planning Commission approved a CDP for the proposed project (CDP 08-0163). The Planning Commission's approval was appealed to the City Council by San Luis Obispo Coastkeeper, and on October 19, 2010, the City Council denied the appeal, upholding the Planning Commission's approval of the project. Notice of the City's action on the CDP was

link fencing around the piles is shown in the project plans in Exhibit 5, it is not part of the proposed project in either the substantial issue or any de novo portion of the Commission's review.

¹³ The project materials don't show the total number of piles, and don't otherwise describe how many would be needed.

¹⁴ And potentially more, including if the geotechnical engineering requirements dictate narrower spans than are identified in the elevation views provided (see Exhibit 5).

¹⁵ The structure has been designed to allow it to be elevated further into the air as a unit so that additional extension piles could be added.

¹⁶ Any such future elevation would be subject to separate CDP processes.



subsequently received in the Coastal Commission's Central Coast District Office on November 18, 2010 (see Exhibit 7). The Coastal Commission's ten-working day appeal period for this action began on November 19, 2010 and concluded at 5 p.m. on December 6, 2010. Two valid appeals (see below) were received during the appeal period.

4. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. Finally, the City of Pismo Beach LCP specifies that development located in any environmentally sensitive habitat area is also appealable. This project is appealable because it involves development located: between the sea and the first public road; within 300 feet of the beach; within 100 feet of a wetland, stream, and estuary; within 300 feet of a coastal bluff; in a sensitive coastal resource area; and in an environmentally sensitive habitat area.

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

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

5. Summary of Appeal Contentions



The Appellants contend that the City-approved project raises issues with respect to the project's conformance with core LCP policies related to hazards, biological, and visual resources. Specifically, the appeals contend that the project approved by the City would not avoid or minimize flooding and other hazards, would not adequately protect biological resources on and adjacent to the site, and would obstruct important coastal views and would not blend visually with the surrounding environment. See Exhibits 8 and 9 for the complete appeal documents.

6. Substantial Issue Determination

As detailed below, the City-approved project raises substantial issues with respect to its conformance with applicable LCP provisions related to hazards, biological resources, and visual resources. Further detail on each of the substantial issue determination findings is found in the Coastal Development Permit Determination section below, which findings are incorporated herein by reference.

A. Hazards

The City-approved project is located in an area of high geologic, flood and shoreline hazards. The LCP requires that all new development be sited and designed to minimize risk from such hazards by, among other means, avoiding the placement of development in high hazard areas, or by identifying and establishing siting and design standards, including setbacks, based upon a geologic review of all existing and potential impacts, that can appropriately minimize such risks. In addition, the LCP requires the preparation of a geotechnical report by a qualified engineer to assess the nature of flood risks, identify the boundary of the 100-year flood plain, and specify mitigation measures that will need to be implemented to minimize and protect against potential loss of life and property. All critical facility construction must be designed and engineered to withstand the force of an 8.5 magnitude earthquake. In addition, new development is not allowed where it is determined that shoreline protection and/or other shoreline altering development will be necessary for protection of the development now or at any time in the future based on at least a 100-year time frame, taking into account all relevant coastal hazards.

The project site is located in a backbeach area that is directly adjacent to the mouth of Pismo Creek where it outlets to the Pacific Ocean. The site is in FEMA's VE zone, which indicates that it is an area subject to the 100-year coastal flood with wave velocity. In addition, coastal flooding at this location is expected to be more severe in the future due to compounding factors associated with sea level rise, and the site is subject to tsunami hazards and liquefaction. In its approval, the City relied on a preliminary geological report and a portion of a proposed geotechnical engineering report, but did not require the completion of a full geotechnical report, as required by the LCP, which is necessary in order to evaluate the project for consistency with the hazards policies of the LCP. In addition, although the project was designed to avoid the risks of sea level rise, the geological report estimated just two feet of sea level rise over the next 100 years, which is below current estimates (see also Hazards section below). Given the proximity of the project site to Pismo Creek and the Pacific Ocean and given the geologic conditions of the site, it is essential for the City to have all of the necessary information to ensure the project is sited and designed to avoid risk from hazards, and to minimize those that are unavoidable. Therefore, because the City did not require all of the necessary geotechnical information, and because the geological report did not adequately address the risks due to sea level rise, the City did not have sufficient evidence at the



time of its approval to fully analyze whether the project was designed to avoid and minimize hazards as required by the LCP.

In addition, even in the absence of completed hazards studies, it was clear that the project was inconsistent with LCP policies related to near-bluff related development, flood protection policies, and prohibitions on construction of shoreline protective devices, as discussed in more detail in the Coastal Development Permit Determination section below. As such, the City's approval of the project raises a substantial issue of conformance with the LCP's hazards policies, including those specifically requiring adequate technical information prior to approval of a project in a hazardous location like this one, and those requiring new development to avoid and minimize risks due to hazards.

B. Biological Resources

The City-approved project would be within backbeach dunes and adjacent to (and potentially on top of) the riparian/wetland area associated with Pismo Creek. The LCP categorically identifies such dune and wetland/riparian resources as environmentally sensitive habitat areas (ESHAs). The LCP requires ESHA to be protected, it explicitly specifies that development must comply with Coastal Act policies protecting biological resources (including Coastal Act Sections 30230, 30231 and 30240), and it requires a minimum setback of at least 25 feet from the inland extent of riparian vegetation at this location. In its approval, the City did not have the necessary information to evaluate the project for consistency with the LCP policies protecting biological resources. To begin, site is located at the backbeach dune area transitioning to Pismo Creek Estuary habitat, and demonstrates ESHA characteristics; residential development is not allowed in ESHA per the LCP. The City did not find the site to be ESHA, but there was incomplete evaluation on this point to determine no ESHA was present. In addition, the wetlands delineation that the City relied on in its approval did not provide the information necessary for a coastal zone wetland delineation because the rule for establishing the dominance of wetland vegetation was incorrectly used, and it did not include the necessary data points. Furthermore, the delineation did not include a map of the adjacent wetland and riparian areas, so setbacks could not be accurately determined, as required by the LCP. And finally, bracketing the question of direct disturbance in ESHA, due otherwise to the proximity of beach dunes, riparian areas, Pismo Creek, and associated Pismo Creek Estuary habitat vales, the setbacks required to protect adjacent biological resources, as required by the LCP, would need to be more than the minimum 25 feet identified. The City did not evaluate whether larger buffers were required at this site. As such, the approved project raises substantial issues of conformance with LCP policies protecting biological resources, including those specifically requiring protection and enhancement of the dune and wetland/riparian resources present in this case, as well as policies protecting ESHA.

C. Visual Resources

The City-approved project would lead to a large structure elevated on piles in a significant public viewshed at the mouth of Pismo Creek. The two stories above the piles would consist of 3,651 square feet of building space, extending to about 33 feet above grade at this location¹⁷ (and almost 30 feet

¹⁷ Id (based on the 7-foot elevation above grade approved by the City).



above Addie Street), and the elevation above exposed piles serves to make the massing appear even more pronounced (again, see Exhibit 5). The height, size and bulk of the duplex present significant visual issues. The certified LCP requires new development to be sited and designed to reflect the small-scale character of the City, and to protect and enhance views of the ocean, river, and estuary. In conflict with these requirements, the approved residence would be a large, boxy, and bulky structure that would obstruct and otherwise degrade public views of Pismo Creek, Pismo Creek Estuary, Pismo State Beach, and the Pacific Ocean, including as seen from the beach, the public street, and various locations along the public recreation trail. As such, the approved project raises a substantial issue of conformance with the LCP's visual resource protection policies.

D. Substantial Issue Determination Conclusion

In conclusion, the City-approved project raises substantial issues with respect to its conformance with applicable LCP provisions related to avoiding and minimizing hazards and protecting biological and visual resources. Therefore, the Commission finds that a substantial issue exists with respect to the approved project's conformance with the certified City of Pismo Beach LCP and takes jurisdiction over the CDP application for the proposed project.

7. Coastal Development Permit Determination

The standard of review for this application is the City of Pismo Beach certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

A. Hazards

1. Applicable Policies

The LCP requires new development to avoid and minimize risks due to hazards and it requires new development to ensure that it will not result in increased hazards. LCP Policy S-2 states:

***S-2: New development.** New development within the City's jurisdiction shall be designed to withstand natural and man-made hazards to acceptable levels of risk by: ... (c) Evaluating new development, particularly industrial, commercial or utility development, to ensure that construction or operation of the project will not cause hazardous conditions at an unacceptable level of risk; (d) Requiring new development to avoid portions of sites with high hazard levels.*

The LCP also specifically addresses the risks due to bluff hazards. It defines bluffs and blufftops, it prohibits most new development on bluff faces, it requires adequate setbacks from bluffs, and it addresses the need to ensure long-term stability and structural integrity and avoid landform-altering devices. The LCP also restricts the development of permanent structures on the beach, prohibits new development that would require shoreline protection now or in the future, and provides criteria and standards for the development of shoreline structures, including groins, piers, breakwaters and other similar structures that serve to protect development. Relevant LCP policies include:



IP Chapter 17.006 Definitions. ... **17.006.0155 Bluff (Ocean):** A bank or cliff rising from the beach or coastline. ... **17.006.0165 Bluff Top (Ocean):** The point at which the slope of the bluff begins to change from near horizontal to more vertical.

S-3: Bluff Set-Backs. All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The City shall determine the required setback based on the following criteria: (a) For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff (blufftop is defined as the point at which the slope begins to change from near horizontal to more vertical). A geological investigation may be required at the discretion of the City Engineer, and a greater setback may be applied as the geologic study would warrant; (b) For all other development, a geologic study shall be required for any development proposed.

S-4: Blufftop Guidelines/Geologic Studies. Site specific geological reports shall incorporate the information requirements contained in the State Coastal Commission's guidelines for Geological Stability of Blufftop Development, as adopted May 3, 1977 and updated on December 16, 1981. This guideline is included in the Appendix. The report shall consider, describe and analyze the following: (1) A site specific erosion control plan to assure that the development would not contribute to the erosion or failure of any bluff face shall be prepared by a licensed engineer qualified in hydrology and soil mechanics for all bluff top development; (2) Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site; (3) Historic, current and foreseeable cliff erosion, including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs where available and possible changes in shore configuration and sand transport; (4) Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults; (5) Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development and the potential effects of the development on landslide activity; (6) Impact of construction activity on the stability of the site and adjacent area; (7) Ground and surface conditions and variations, including hydrologic changes caused by the development (i.e., introduction of irrigation water to the ground water system; alterations in surface drainage); (8) Potential erodability of the site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design); (9) Effects of marine erosion on seacliffs; (10) Potential effects of seismic forces resulting from a maximum credible earthquake, and; (11) Any other factors that might affect slope stability.

S-5: Development on Bluff Face. No additional development shall be permitted on any bluff face, except engineered staircase or accessways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no



other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face, toe and beach.

S-7: Hazards Overlay Zone. *Areas where blufftop hazards exist shall be included within and subject to the requirements of the Hazards Overlay Zone.*

17.078.060 Shoreline protection criteria and standards.

A. *No permanent above ground structures shall be permitted on the dry sandy beach except facilities necessary for public health and safety, such as, but not limited to lifeguard towers and the pier.*

...

E. *New development shall not be permitted where it is determined that shoreline protection will be necessary for protection of the new structures now or in the future based on a one hundred year geologic projection.*

F. *Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve coastal dependent uses and that may alter natural shoreline processes shall not be permitted unless the city has determined that when designed and sited, the project will:*

- 1. Eliminate or mitigate impacts on local shoreline sand supply;*
- 2. Provide lateral beach access;*
- 3. Avoid significant rocky points and intertidal or subtidal areas; and*
- 4. Enhance public recreational opportunities.*

G. *No additional development shall be permitted on any bluff face, except engineered staircases or accessways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe and beach.*

...

The LCP also addresses hazards due to flooding, restricting development in the flood plain and prohibiting new development that in any way obstructs floodwaters or contributes to flooding. Relevant policies state:

S-8: Flood Plain Zoning. *Areas subject to flooding shall be mapped within and subject to the*



requirements of the Flood Plain Overlay zone.

S-9: Restrictions on Development Within the 100-Year Flood Plain. (1) No habitable structure shall be approved for construction within the area of the 100-year flood plain unless the applicant demonstrates that the finished floor elevations are at least one foot above the projected elevation of the 100-year flood, except as allowed by FEMA regulations; (2) No new fill, structure, or other obstruction shall be permitted to be placed or constructed within a floodway unless a detailed hydrologic study has been prepared and approved by the City Engineer ensuring that the proposed project will not obstruct, in any way, passing floodwaters; (3) No new development shall be allowed in the 100-year flood plain which will contribute to or increase flood hazards on the same or other properties or which would require construction of flood control devices; (4) Any application for development on a parcel any portion of which is within the boundary of the 100-year flood plain shall be required to submit a hydrological engineer's report which assesses the nature of the flood risks, identifies the boundary of the 100-year flood plain and specifies the protective measures that should be undertaken to attain compliance with the city's flood plain zoning and with FEMA regulations.

2. Consistency Analysis

Geotechnical Reports

As discussed in the Substantial Issue Findings of this report, the City did not require the applicant to prepare a full site-specific geotechnical analysis prior to its approval of the project. Therefore, after the project was appealed to the Commission, staff worked with the Applicant and the Applicant's engineer to ensure adequate reports were prepared to allow the Commission to have the information necessary to act on the project, as required by the City's LCP. In addition to the information included in the City's CDP record for the project, the Applicant has since provided a geotechnical engineering report prepared by Earth Systems Pacific, dated April 19, 2011. Earth Systems Pacific also prepared a response to Commission staff's comments, dated March 29, 2011. This response provided an updated 100-year flood elevation, and evaluated the site's beach erosion and tsunami hazards.

Site Characteristics

As previously described, the project site is located in an area subject to a combination of coastal hazards due to its backbeach location on dunes in a floodplain at the mouth of a major river. The site is about 2 feet above Pismo Creek at an elevation of +7 feet NGVD¹⁸ and is separated from the paved portion and sidewalk of Addie Street by a coastal bluff in the City right-of way that is approximately five feet high.

The Applicant's 2011 geotechnical reports describe anticipated 100-year flood elevations at the site over the next 100 years using an estimated sea level rise of 42 inches, or 3.5 feet, over that time frame, citing

¹⁸ The Sea Level Datum of 1929 was the vertical control datum established for vertical control surveying in the United States of America by the General Adjustment of 1929. The datum was used to measure elevation (altitude) above, and depression (depth) below, mean sea level (MSL). It was renamed the National Geodetic Vertical Datum of 1929 (NGVD 29) in 1973. The NGVD 29 was subsequently replaced by the North American Vertical Datum of 1988 (NAVD 88) based upon the General Adjustment of the North American Datum of 1988. Thus, +7 feet NGVD is approximately 7 feet above mean sea level.



the State of California Sea-Level Rise Interim Guidance Document.¹⁹ This estimate is at the lower end of guidance provided in that document, which ranges from 40 to 55 inches (or approximately 3.3 feet to 4.6 feet). The Commission has typically focused on the higher range when planning for such hazards so as to err on the more conservative side. In any case, based on this lower-range estimate, the Applicant's 2011 reports indicate that the 100-year flood elevation at this site is +12.24 feet NGVD, which is just above the elevation of Addie Street. The Applicant's reports also indicate, again based on the lower-range sea level rise estimate, that the 100-year stillwater elevation,²⁰ based on 3.5 feet of sea level rise, is +8.14 feet NGVD, meaning that the site will be under water during stillwater conditions (i.e., the site is currently at +7 feet NGVD). Therefore, even based on the lower-end sea level estimate, the Applicant's reports indicate that the site will be inundated with flooding and storm surges, and will be inundated more frequently in the future.

The Applicant's geotechnical reports also provide the subsurface profile for the site. The site consists of sand to a depth of 13 to 19 feet. Below the sand is a layer of clay that extends to a depth of about 28 feet. Between 28 feet and 50 feet, there is another layer of sand, and below 50 feet, additional clay soils were encountered. No bedrock was found, and subsurface water was encountered at a depth of 5 feet.

Clearly, the site is part of an actively changing shoreline. Although the Applicant's shoreline erosion analysis determined that the shoreline near the site appears to be in near-equilibrium state, it only considered the past 46 years of shoreline changes, and did not consider future expected changes, including due to expected sea level rise. Changes due to sea level rise may be especially significant at this site due to its location in sand dunes that are more prone to shifting and are more easily altered by storms than harder substrates, as well as its extremely low elevation and close proximity to the estuary. As such, it is reasonable to predict that the estuary may migrate or widen in the future and that the beach dunes could be reconfigured by coastal flooding and storms so that the site could be even more regularly inundated with water.

Flooding

The project site is located in the floodplain in an area that is highly susceptible to flooding (see, for example, the photos in Exhibit 4). Although the LCP indicates that new development be avoided in high hazard areas like this (LCP Policy S-2), it also allows for such development in floodplain hazard areas if sited and designed appropriately to address such hazards (including through elevation above expected flood levels, no obstruction to floodwaters, etc.). The Applicant has attempted to address the site's flooding hazards by proposing a structure that is raised to an elevation of +15 feet NGVD (and 8 feet above existing grade)²¹ on at least 24 piles.²² To access the pile-borne structure, a bridge would extend

¹⁹ Coastal and Ocean Working Group of the California Climate Action Team, *State of California Sea-Level Rise Interim Guidance Document*, October 2010.

²⁰ The design stillwater level in the analysis is the maximum stillwater level under typical 100-year recurrence conditions. Stillwater level is dependent upon several factors, including tide, storm surge, wind set up, inverse barometer, and climatic events (i.e., El Niño and La Niña).

²¹ Id (as currently proposed to 8 feet above existing grade).



from Addie Street (at elevation +12 feet NGVD) rising up three feet to the elevation of the base elevation of the garage and duplex structure. This bridge would contain the utility infrastructure for the project, including water and sewer lines.

Thus, although the bottom of the floor of the duplex/garage part of the structure would be at about +14 feet NGVD and just higher (1.25 feet) than the Applicant's estimated 100-year flood elevation of +12.24 feet NGVD (and the finished floor at least 1-foot above this level as required by LCP Policy S-9), the bridge and utilities would be lower than the 100-year flood elevation, and would not meet the flood elevation requirements of LCP Policy S-9. In addition, a 100-year flood at the Applicant's estimated elevation would intersect with the bridge and utilities, obstructing floodwaters and potentially washing the bridge/utility structure out and leading to other impacts (e.g., gas or sewage leak, materials strewn on the public street and/or beach, lack of access to garage/living space, damage to pile-borne structure where connected to bridge, etc.) that would adversely affect coastal resources (including habitat and public recreational access resources). Further, as described above, the Applicant used a lower-end sea level rise estimate. If a more conservative estimate were used, the 100-year flood elevation would be approximately one foot higher, or +13.24 feet NGVD, only several inches below the bottom of the floor of the duplex/garage part of the proposed structure, exacerbating flooding impacts, including those described above.

To address the potential for additional future sea level rise, the proposed project has been designed so that it can be elevated even higher above the flood plain. Although this option would help address the flooding risks to the pile-borne garage/duplex part of the structure itself, it would create additional complications for the bridge and utilities because its slope and distance from the street would increase. It is not even clear if a satisfactory access could be provided in such scenario. In addition, additional elevation creates other problems with the development, including additional public viewshed impacts (see also Visual Resources section below)

Finally, for both lower-end and more conservative estimates for sea level rise and related issues, the proposed project raises other floodway issues by virtue of the fact that it would introduce a series of 24 or more exposed piles in the floodplain. The LCP prohibits projects that include components, like this, that will "obstruct, in any way, passing floodwaters" (LCP Policy S-9). Thus, the LCP identifies a high bar that must be met for proposed projects in the 100 year floodplain. In this case, the proposed piles would be expected to obstruct passing floodwaters, and contribute to exacerbated flood hazards, both by their own surface area and by trapping debris, including objects such as tree trunks, traveling downstream, causing debris jams and impacting the flow of water at and around the site. If even more piles were ultimately required for stability, this impact would be exacerbated. This is inconsistent with the requirements of LCP Policy S-9.

In short, the proposed project is located in the 100-year floodplain and it does not meet the LCP's minimum requirements for addressing this constraint, even based on the lower end sea level rise

²² As stated in the project description, it is not clear from the project materials how many piles are required to support the proposed structure, but it appears from the project plans that at least 24 are proposed. More or less piles may be required depending on geotechnical engineering requirements.



estimate. At higher and more conservative sea level rise estimates, such as are generally used by the Commission, such LCP inconsistencies only increase in number and magnitude. The project includes finished floor components, such as the driveway and utilities, sited below the 100-year flood elevation and includes additional components, such as the piles, that would be expected to further obstruct floodwaters. The project is therefore inconsistent with the LCP's flooding hazard policies as cited in this finding.

Shoreline Development

The proposed project is located at the base of the short bluff fronting Addie Street.²³ The LCP includes numerous policies directed at this shoreline interface, including policies limiting allowable development on the beach and bluff, requiring siting and design to provide 100 years of stability, and prohibiting certain types of shoreline structures (LCP Policies S-3 and S-5, and Section 17.078.060). The proposed project cannot meet these LCP requirements.

First, the LCP prohibits all structures on dry sandy beach areas except for those necessary for public health and safety (such as lifeguard towers) (LCP Section 17.078.060(A)). As described above, the site is in the backbeach dune area between Addie Street and Pismo Creek. Although it has been compacted in part by vehicular access and parking for the adjacent existing vacation rental, the site is still a backbeach site, and is characterized by sandy soils overlain by vegetation known to colonize sand; in this case iceplant. In fact, as indicated by the Applicant's boring profile described above, the site consists of sand to a depth of 13 to 19 feet. The proposed residential structure, including its piles, is not allowed on the dry sandy beach. Thus, the proposed project is inconsistent with LCP Section 17.078.060(A).

Second, the LCP allows very limited development on the bluff face itself (i.e., public beach staircases/accessways; research or coastal dependent pipelines; and drainpipes in limited circumstances), none of which is residential development (LCP Policy S-5 and Section 17.078.060(G)). The proposed project includes the aforementioned bridge and utilities, as well as driveway columns, a metal rolling entry gate, and related development, that would be constructed on top of the bluff face, when this is not allowed by the LCP. Thus, the proposed project is inconsistent with LCP Policy S-5 and Section 17.078.060(G).

Third, the LCP requires residential development to be set back from bluff edges a sufficient distance as to be safe for at least 100 years, and generally requires a minimum setback of at least 25 feet to meet this requirement for residential development (LCP Policy S-3). Clearly, the intent of this policy is to avoid shoreline hazards (erosion, bluff retreat, flooding, etc.) by siting new development away from the shoreline hazards and far enough back from bluff edges as to be safe for 100 years. As such, the LCP

²³ This sloped area is a bank rising up from the backbeach elevation to Addie Street (or, put the other way around, sloping down from Addie Street to the backbeach elevation) at the coastline interface between the backbeach dunes and inland development (namely Addie Street itself), and thus it meets the LCP's bluff definition (LCP Section 17.006.0155). As such, this also means that the site itself technically meets the LCP's "bluff top" definition (because it is at "the point at which the slope of the bluff begins to change from near horizontal to more vertical" (LCP Section 17.006.0165)). However, it is clear that the LCP does not envision the backbeach area (such as this site) to be considered a bluff top, rather it envisions bluffs to be the area above the backbeach area. Thus, for the purposes of this analysis, Addie Street (i.e., the actual paved street and sidewalk) are atop the bluff, and the site is at the base of the bluff.



does not even contemplate development on the backbeach at the base of the bluffs, as this area is within the shoreline hazard area that is being avoided through application of such setback policies. Or, put another way, the LCP does not allow development seaward of the required setback. The 100-year (or 25-foot) minimum setback, applied to this case, would extend inland of Addie Street and the public parking lot. Because the proposed project is not sited inland of the required bluff setback, it is inconsistent with LCP Policy S-3.

Fourth, the LCP prohibits development that would require shoreline protection now or within the next 100 years (LCP Section 17.078.060(E)). Typical forms of residential development and construction would place the proposed duplex and related development at or near existing grade. However, at this location, such siting would place the development in significant danger from shoreline hazards (including coastal flooding, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, landslides, earthquakes, bluff and geologic instability, and the interaction of these elements). To address this shoreline hazard problem, the Applicant proposes to raise the residential portion of the structure on deep steel piles, creating a pier structure, to protect it from such dangers. Thus, the piles act as protection against shoreline hazards.²⁴ Because the LCP defines piers and similar structures as shoreline protection, as discussed in more detail below, and because the proposed project requires such shoreline protection, it is inconsistent with LCP Section 17.078.060(E).²⁵

Fifth, the LCP limits allowable shoreline protective structures to those that protect existing structures or serve coastal dependent uses, and only subject to exacting shoreline access and landform protection criteria (LCP Policy S-3 and LCP Section 17.078.060(F)). IP Section 17.078.060(F) explicitly identifies piers among other shoreline structures that are subject to this criteria. These limitations emanate from similar Coastal Act requirements related to shoreline protection, and are meant to limit allowable protection projects because this type of development can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics, both on and off site, ultimately resulting in the loss of beach. The piles proposed to be placed directly in the shoreline environment at this location are intended to protect the proposed project from shoreline hazards, and they will both alter shoreline processes (including as described in terms of their effect on flooding, and the way in which they will block and alter nature sand and shoreline dynamics), and substantially alter the natural landform (as described earlier). Because the piles are not intended to protect an existing structure or to serve a coastal dependent use, they are categorically prohibited by the LCP. Even if they were allowed, the project does not meet the other LCP criteria that would also be required in order to allow them; namely it does not include components to eliminate or mitigate shoreline sand supply impacts, it does not provide lateral access, and it does not

²⁴ Not unlike the way a seawall proposed at the same time as a residence could be proposed to be used in place of a setback.

²⁵ In addition, the setback provisions of LCP Policy S-3 that are not met by the proposed project (as discussed in the preceding paragraph) are required in part to avoid the construction of protective devices that would substantially alter natural landforms along bluffs. The piers in this case, and also the proposed project as a whole (including the duplex/garages above grade, and the bridge on top of the bluff and connecting to Addie Street) would substantially alter the natural landform at this site. The landform would not be able to adjust naturally to the dynamic processes playing out at this transition from backbeach dune to creek estuary, and instead would be unnaturally altered for as long as the development was in place at this location. As a result, the proposed project is inconsistent in this respect with LCP Policy S-3 as well.



enhance public recreational opportunities (LCP Sections 17.078.060(F)(1-4)). Thus, the proposed project is inconsistent with LCP Policy S-3 and LCP Section 17.078.060(F).

In short, the project proposes LCP-prohibited development on the dry sandy beach and on the bluff face, proposes LCP-prohibited shoreline protection and structures, and proposes development that cannot meet LCP shoreline hazard setback requirements. The project is inconsistent with the LCP's shoreline development policies as cited in this finding.

Conclusion

The proposed project is located at the backbeach dune area where it transitions to creek/estuary habitat in an area subject to significant shoreline hazards (including coastal flooding, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, landslides, earthquakes, bluff and geologic instability, and the interaction of same). The proposed project is inconsistent with the LCP's shoreline development and flooding policies, and cannot be approved consistent with the LCP.

B. Biological Resources

1. Applicable Policies

The LCP includes strong protections for the City's biological resources. Selected principles from the LCP's Conservation and Open Space element state:

Principle 2: Natural Resources--Key Foundation of the City

Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. Conservation and protection of these resources shall be the key focus of the General Plan. The unique geographical character of Pismo Beach is recognized as the foundation for all other aspects of the community. These physiographic characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.

Principle 3: Resources and Open Space Belong to Everyone

Pismo Beach is an integral part of the larger California coastal community, linked by shared resources that are prized by the state, national and even international community. Congenial and cooperative use of these resources by both residents and visitors is recognized. Solutions for cooperative use shall always be based on retaining the area's fragile charm and resources.

Principle 6: The Big Three

The three primary resources and open space for Pismo Beach are: (1) The Ocean--A Resource For Everyone. The ocean, coastal cliffs, and shoreline resources are vital to Pismo Beach for their wildlife habitat, recreational use, open space, scenic value and the city's overall economy. These natural assets will be protected and made available to all. ...

In addition, the LCP defines ESHA broadly and requires it to be preserved and protected within the



intent of the Coastal Act's biological resource protection policies. It defines ESHA as follows:

17.006.0435 Environmentally Sensitive Habitat: *Those identifiable resources within the Coastal Zone which, due to their sensitivity or public value must be protected or preserved within the intent of Section 30230, 30231, 30233, 30236 and 30240 of the Coastal Act. Also, see Sensitive Coastal Resources Areas.*

17.006.0895 Sensitive Coastal Resource Areas: *Those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity, including: (1) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designed in the General Plan/Local Coastal Program Land Use Plan...*

The relevant cross-referenced Coastal Act policies state:

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

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 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.*



- (4) *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.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource-dependent activities.*

...

(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.

...

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236: *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

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



Finally, the LCP specifically requires the protection of Pismo Creek and the riparian areas around Pismo Creek. The LCP requires a minimum setback of at least 25 feet from the inland extent of these habitat areas.

CO-14: Riparian Habitat. *Riparian habitat is the environment associated with lands adjacent to freshwater sources – perennial and intermittent streams, estuaries, marshes, springs, seeps. The habitat is characterized by plant and animal communities that require high soil moisture in excess of that available from precipitation. Among the major plants associated with riparian habitat in the Pismo Beach area are sycamore, cottonwood, willow and occasionally oak. Large riparian areas occur along the banks of Pismo Creek, Meadow Creek and Pismo Marsh, although smaller areas can be found in the planning area. It is the policy of the City to preserve riparian habitat under the following conditions: (1) As part of discretionary planning permits, a biotic resources management plan shall be required; (2) The biotic resources management plan shall include standards for project development which will avoid habitat disturbance; (3) The standards specified in the biotic resource management plan shall be utilized to determine the extent of development. The minimum standards that may be specified in the biotic plan for the preservation of habitat shall include: ... No significant disruption of riparian vegetation will be permitted. In addition, a minimum riparian buffer area shall be identified for each riparian habitat area at the time of development review. Except as specified in Policy CO-21 for Pismo Creek and policy CO-23 for Pismo Marsh, the minimum width of the buffer area shall be as identified by the biotic resources management plan and generally not less than 25 feet. Development standards for the minor riparian habitat areas and their respective buffer areas shall be the same as provided in Policy CO-21 with respect to kinds and locations of allowable uses.*

CO-21: Pismo Creek Protection. *Pismo Creek shall be retained in its natural state and protected from significant alterations. The following measures shall be employed to accomplish this intent:*

(a) Streamside Protection Zone. *There shall be a minimum streamside protection zone to conserve the environmentally sensitive habitats of the creek. This buffer zone shall be measured from the outer edge of the riparian vegetation to where there is no riparian vegetation, from the top of the creek bank. The minimum width for the buffer shall be as follows: West Bank – 100 feet/Cypress northward to City limits; 25 feet/Cypress to the ocean; East Bank – 100 feet/U.S. 101 northward to City limits; 50 feet/U.S. 101 to Dolliver Street; 25 feet/Dolliver to the ocean. A lesser buffer may be permitted if: 1) the minimum widths set forth above would render a parcel inaccessible or unusable for the purpose designated in the land-use plan; or 2) there is a showing by an applicant through the resource assessment study identified in item 'h' that a lesser buffer will not result in loss of, or adverse effects on, streamside vegetation or the biotic quality of the stream. Alternative mitigations shall be required where lesser buffers are authorized. No new construction or vegetation removal, except for normal maintenance, shall be allowed in the buffer zone with the exception of public roadways or bridges identified in the Circulation Element, paths, trails, fences, flood control structures, and other similar structures*



deemed not to adversely affect the creek.

***(b): Open Space.** The sandspit and channel where Pismo Creek enters the ocean and those portions of parcels located within the creek channel shall remain as open space and no structures or fill shall be permitted thereon.*

***(c): Conservation Dedication.** Any new development shall be required to dedicate as a condition of any discretionary approval, an easement for the protection of the streamside area consisting of 25 feet or more from the top of the creek bank. In addition, new development shall provide access amenities adjacent to the creek for the city to use as a greenbelt and/or recreation corridor.*

...

***(h): Resource Protection Plan.** A Resource Assessment and Protection Plan shall be required and approved concurrent with city action on projects located on parcels which have a portion within the streamside protection zone. The plan shall include appropriate measures to protect the creeks biological and visual aspects.*

***CO-31: Grading and Drainage Regulations.** ...**(b)** Development shall be designed to fit or complement the site topography, soils, geology, and any other existing conditions and be oriented to minimize to the extent of grading and other site preparation...*

Thus, the LCP includes strong protections for biological resources and ESHA. The principles in the LCP's Conservation and Open Space element clearly recognize the importance of natural resource protection, and explicitly call out beach and shoreline resources and related ecosystems, including explicitly for open space and wildlife habitat values, for such protection. In addition, the LCP's definition of ESHA requires it to be preserved and protected within the intent of related Coastal Act policies, including Coastal Act Sections 30230, 30231, 30233, 30236 and 30240. These policies require marine and land-based biological resources to be protected, and call for the strict protection of ESHA. Section 30240 prohibits most development in ESHA, and requires new development that is adjacent to ESHA to be sited and designed to prevent impacts to it. Finally, the LCP specifically protects Pismo Creek, including in relation to its riparian habitat values where "no significant disruption of riparian vegetation will be permitted". The LCP requires a minimum 25-foot setback for development adjacent to Pismo Creek as measured from the outer edge of riparian vegetation. The LCP also prohibits structures and fill on the sandspit associated with the Creek.

2. Consistency Analysis

Biological Reports

As was the case for the geotechnical reports, at the time of its approval, the City did not have adequate biological information to rely on in order to analyze the project for consistency with the LCP. In the



time since, the Applicant has had an updated biological report prepared.²⁶ The updated biological report includes an analysis of site biological surveys performed between 2008 and 2011.

Site Characteristics

As previously described, the project is located in a transitional area where beach dunes, coastal salt marsh, riparian vegetation, and the Pismo Creek Estuary all come together (again, see photos in Exhibits 2 and 3). This area contains four sensitive plant communities, including pioneer dune and beach community, estuarine community, freshwater marsh and coastal salt marsh, as well as related wildlife habitats, including riverine, fresh water emergent wetland, estuarine wetland, pioneer coastal dune and marine.²⁷ These habitats are relied on by many sensitive species, including: California Tiger Salamander, Coast Range California Newt, California Red-Legged Frog, Southwestern Pond Turtle, California Coast Horned Lizard, Silvery Legless Lizard, Common Loon, Clark's Grebe, Western Grebe, California Brown Pelican, Double-Crested Cormorant, Great Egret, Great Blue Heron, Snowy Egret, Black-Crowned Night Heron, Osprey, American Peregrine Falcon, Western Snowy Plover, Long-Billed Curley, California Gull, California Least Tern, Caspian Tern, Forster's Tern, Tidewater Goby and Steelhead Trout.²⁸ Although no sensitive wildlife species have been positively identified on the site, there have been no protocol level surveys for such species, and therefore, it is not possible to confirm that the site is not used by sensitive species. Given its location at the estuary/dune interface, it seems likely that the site is used from time to time by certain sensitive species as part of the larger habitat mosaic of which the site is a part.

Backbeach dunes dominate the site closest to Addie Street and closest to the ocean, extending under the adjacent house on piles and through the site. The site generally transitions to riparian vegetation and Pismo Creek proper as it extends away from Addie Street. It is clear that the habitat values of the site have been degraded over time, primarily where the compacted vehicular access/parking area is located in the center of the site (see Exhibits 2 and 3), but also close to the existing house on piles that extends over the property line. The site also includes significant areas colonized by weedy and invasive plant species, including primarily ice plant. In addition, the larger inland and creekside habitats of which this site is a part have seen development that has both displaced portions and as a whole degraded these habitats (including the inland four-unit condominium project two lots away, and the existing house on piles). Nonetheless, the site still exhibits dune and transitional riparian habitat characteristics, including being made up of sand to a depth of 13 to 19 feet,²⁹ and including being occupied by native riparian vegetation toward the Creek.³⁰

California Department of Parks and Recreation (DPR, who manages Pismo State Beach at this location), California Department of Fish and Game (CDFG), and U.S. Fish and Wildlife Service (USFWS) have

²⁶ Sage Institute, Inc., Wetland Determination & Biological Assessment for Koligian Residence at 140 Addie Street, March 25, 2011.

²⁷ See the City's Revised Initial Study of Environmental Impact, SCH #2008091044, July 28, 2010, beginning on page 10 of Exhibit 7.

²⁸ Id (Revised Initial Study).

²⁹ Geotechnical Engineering Report for Koligian Duplex, Earth Systems Pacific, April 19, 2011.

³⁰ Sage Institute, Inc. (March 25, 2011).



all expressed significant concerns about the proposed project. In letters to the City, dated June 21, 2010 and October 10, 2008, DPR states that the project has the potential to change the hydraulic function of the estuary, resulting in substantial erosion of nearby dunes and beach area. In addition, it states that the creek at this location has no defined bank and that the entire property must be considered as part of the Pismo Creek Estuary (see DPR letters starting on pages 80 and 98 of Exhibit 7). After conducting site visits in 2008, both USFWS and CDFG provided comment letters to the City expressing similar concerns. In a letter dated October 10, 2008, USFWS indicates concerns about impacts to habitat for Western Snowy Plovers, Tidewater Goby and California Red-Legged Frog. They also indicate that on January 31, 2008, the USFWS designated 18 acres of lower Pismo Creek as critical habitat for the Tidewater Goby. In summarizing their concerns, they state: “We are concerned the proposed construction activities and removal of the dune community would negatively affect the hydrology and morphology of the lagoon and shoreline, thereby reducing the quality and quantity of habitat for the tidewater goby and California red-legged frog as well as migratory birds” (see Page 71 of Exhibit 7 for the full text of the USFWS letter). Similarly, in an e-mail sent on October 8, 2008, CDFG states that the project would displace and degrade uplands and potential wetlands used by lagoon species and indirectly degrade aquatic habitat, including habitat for Tidewater Goby, Steelhead Trout, Southwestern Pond Turtle, and migratory waterfowl and shorebirds. In addition, they state that the project footprint is within an area that will likely become part of the main creek channel in the future (see Page 84 of Exhibit 7 for the full text of the CDFG e-mail.)

The Applicant’s biological report identifies one group of arroyo willows next to the existing vacation rental house, and patches of native coastal salt marsh and native dune vegetation in the southern fringe of the parcel (see Exhibit 6). The report also indicates that the remainder of the on-site vegetation is largely composed of ice plant, and there are no wetlands meeting LCP wetland criteria (i.e., which is consistent with Coastal Act criteria as opposed to a three criterion ACOE model). The report determines that the small group of willows onsite is not riparian habitat because it is over 100 feet from the bank of the river and is separated from other riparian vegetation by the driveway and degraded dune habitat. It concludes that the habitat onsite is degraded, and that the 25-foot buffer (from Pismo Creek habitat that was used by the City in its approval of the project) is adequate for habitat protection purposes.

After the Applicant’s biologist performed the final site survey in March 2011 and before Commission staff could visit the site to verify biological report conclusions, the owner of the existing vacation rental house on piles on lot 4, allegedly graded lots 4, 6 and 7 (the latter two both just upstream of the site) with a bulldozer, scraping and removing vegetation without benefit of a CDP.³¹ It appears that an area on the Applicant’s lot and adjacent to the compacted area may also have been directly damaged by the grading, but it is difficult to verify with certainty.³² It is also difficult to verify with certainty to what degree more regular manipulation of this sort may have occurred here to the detriment of habitat values. What is clear, in any case, is that since March 2011 when the Applicant’s biologist canvassed the site and took photos, and after the alleged bulldozing episode, significant riparian vegetation growth has

³¹ The City is continuing to pursue this alleged activity as a City enforcement matter, and Commission staff has been coordinating with the City regarding its case.

³² This area is shown in the photos taken by CDFG several days after the alleged grading.



occurred on the subject lot (as well as the neighboring lots), including what appear to be large groups of willows directly at the edge of the compacted area on the Applicant's site.³³ Willows are a native hydrophytic species that are dependent on wet soils and are typical and indicative of riparian habitat. It is not unexpected to see them present in this area, and it is indicative of a riparian zone that is wider than may have first been identified at this location. In any case, it appears clear that the area directly adjacent to the existing compacted area where the willows have established over the course of this year has a higher habitat sensitivity than was identified in the Applicant's biological report.

In addition to the riparian area closest to Pismo Creek, the site itself is composed of dunes, albeit degraded, including both at the compacted area and in the areas covered by invasive iceplant and other weeds. Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply and wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat, and its important ecosystem functions, including that of supporting sensitive species, both now and in the future, especially as the sands shift and dormant seed banks emerge over time.

ESHA Determination

The Commission's senior staff ecologist, Dr. John Dixon, reviewed the relevant biological materials and assessed the project site, and concludes that it meets the LCP's ESHA definition (i.e., that it is a rare and special habitat, albeit degraded in part, pursuant to relevant Coastal Act policies). He reached this conclusion both because of the importance of dunes in general, as described above, and because of the dune location and relationship to other significant habitats on this site and extending offsite, including native coastal salt marsh, riparian, and estuarine habitats associated with Pismo Creek and the Estuary. As described above, this determination is consistent with DPR, USFWS and CDFG conclusions for this site as well.

Therefore, although the habitat on-site is degraded, and the dunes mostly vegetated with ice plant and other weedy species or compacted, the site is ESHA due to the rarity of dunes and their importance in the ecosystem, including their relationship to creek-related resources both on and offsite. As such, the only development allowed on the site consistent with the LCP (LCP Policy 17.006.0435 (which substantively includes Coastal Act Section 30240) and LCP Policy 17.006.0895) is resource-dependent development that will not significantly disrupt habitat resources. The proposed project cannot meet these LCP requirements.

LCP Consistency

First, the proposed project is a residential project located in ESHA. The proposed residential use is not a

³³ The change in vegetation can be seen by comparing the current site photos, taken in November 2011, in Exhibit 2, with the site photos taken for the biological report in March 2011, which are included in Exhibit 6.



resource-dependent use (including the proposed demolition/reconstruction of the side of the adjacent house on piles), and cannot be found consistent with LCP Policies 17.006.0435 and 17.006.0895.

Second, the project site is located where Pismo Creek hits the shoreline and ultimately, at times, enters the Pacific Ocean. This backbeach dune transitional area can be referred to as the sandspit associated with Pismo Creek. LCP Policy CO-21(b)b requires the sandspit (and the channel)³⁴ associated with Pismo Creek to “remain as open space and no structures or fill shall be permitted thereon”. The proposed project would place a residential structure on piers on the sandspit (and would include the above-described development for the existing house on piles as well, including the proposed relocation of one of the piles), and thus it cannot be found consistent with LCP Policy CO-21(b).

Third, the proposed project would disturb onsite habitat by covering 2,267 square feet of the site with a large residential structure and a bridge set atop at least 24 piles, and it would disturb habitat off-site, on lot 4, including because at least one existing pile on that site must be relocated. The area where the piles would be installed would directly displace dune habitat, and what appears to be riparian habitat (where the willows have grown back recently). The dune habitat and any riparian habitat underlying the structure would be almost completely shaded because the residential structures would be about 8 feet above existing grade, thus blocking sunlight. In addition, the introduction of typical residential noise, lights, pets, and related elements would be expected to adversely affect habitat resources, particularly in terms of the effect of such residential development and activity on wildlife nearby (including leading to mortality from pets, and harassment due to lights, noise, and activity visible and audible by wildlife receptors associated with the riparian corridor and the Estuary and the potential introduction of non-native plants and invasive species through decorative landscaping associated with the duplex). In addition, development that is too close to the Estuary could draw more domesticated waterfowl such as coots, tame mallards and domestic ducks into the lagoon area, displacing sensitive wild birds in the lagoon. Finally, the presence of the residential development also results in a general impact to the ecological functioning of the habitat communities, including fragmentation of habitat, and in the case of dunes, these impacts could result in the prevention of sand movement that is an on-going feature of these dune habitat systems. In short, the project would disturb a significant amount of habitat on and off the site. LCP Policy CO-14 requires the project to “avoid habitat disturbance”, and thus the proposed project cannot be found consistent with LCP Policy CO-14.

Fourth, the proposed project appears to be sited atop the new area of willow growth, and thus on top of riparian vegetation associated with Pismo Creek. The LCP prohibits significant disruption of riparian vegetation (LCP Policy CO-14). This potential direct displacement would not only significantly disrupt vegetation by removing it, but it would also significantly disrupt adjacent vegetation that is not directly removed (i.e., through shading, etc.) to the detriment of riparian vegetation. As such, the proposed project cannot be found consistent with LCP Policy CO-14 on this point either.

Fifth, even if the proposed project were otherwise approvable in light of the above factors, the LCP

³⁴ Per the LCP, the channel refers to the area occupied by the normal non-flood flow of the creek (LCP Section 17.006.0245). Accordingly, the channel as it is currently understood per that LCP definition is located off of the project site, and the channel portion of LCP Policy CO-21(b) is not applicable to this project.



requires a minimum 25-foot setback from the edge of riparian vegetation (LCP Policy CO-21(a)). The Applicant's biological report indicates that northern coastal salt marsh habitat is approximately 25 feet away from the southeastern edge of the proposed development. However, as discussed above, it appears that riparian vegetation is located much closer to the development footprint than that, and that willows appear to be in the area of that footprint just off of the existing compacted area on the site. The project is thus much closer than 25 feet from riparian vegetation. In addition, although the LCP calls for a minimum buffer of 25 feet from the edge of riparian vegetation at this location, that is only a minimum, and the buffer distance prescribed per the LCP is indicated by habitat sensitivity and the degree to which larger buffers are needed to protect such habitat. For example, the Commission has typically interpreted Coastal Act Section 30240 as requiring at least a 100-foot buffer from ESHA as a starting point, which can be adjusted upwards or downwards depending on the nature of the habitat and its setback needs. In the case of wildlife habitats, like the Pismo Creek Estuary, appropriate buffers are typically larger in general than for other habitats (e.g., a plant habitat in certain circumstances). Given the sensitive nature of the Pismo marsh and estuary itself, which contains important habitat for a variety of bird and fish species, including Tidewater Goby and Steelhead Trout, it is clear that a larger buffer appears warranted. As proposed, the creek bank is just 37 feet away from the proposed project to the southeast, and appears even closer than that to the northeast (see Exhibit 6).³⁵ Similarly, the site is in and adjacent to a significant beach dune complex which is home to a variety of sensitive species, including Western Snowy Plovers.³⁶ To comply with the LCP and related Coastal Act sections, this habitat would also require a buffer, but none is proposed (as the proposed project is in the dunes). Thus, even if the proposed project were otherwise approvable, it is inconsistent with the LCP's setback and buffer requirements, and cannot be found consistent with LCP Policies 17.006.0435, 17.006.0895, and CO-21(a) in this respect.

Sixth, even if the proposed project were otherwise approvable in light of the above factors, LCP Policy CO-21(c) requires that new development include a conservation easement placed over the area adjacent to the stream where such easement must extend at least 25 feet from the creek bank, and requires it to include public access amenities adjacent to the creek. As with the above-described LCP required habitat setbacks, the width of the required easement area is a minimum of 25 feet and might be more depending on the nature, sensitivity and value of the habitat and related resources. As described above, an easement at this location would undoubtedly be for more than the minimum distance, and would be designed to at least encompass riparian vegetation (which, as described, extends further than 25 feet at this location). In terms of the public access component of the LCP requirements, the City has required trail access along the creek at inland projects (e.g., associated with the inland condo project and inland of that). This trail is partially developed, and a continuation of it would be required across these properties for

³⁵ The adjacent landowner did not allow the Applicant's biologist on site, so the bank edge mapping stops at the adjacent property. Based on the geomorphology observed, though, it appears that the creek bank meanders more toward Addie Street near the inland property, and thus the proposed structure would be much closer than 37 feet from the bank, and likely nearer to 20 feet or so at that point.

³⁶ In fact, as described in the City's Mitigated Negative Declaration for the project, a Western Snowy Plover nest was discovered by California State Parks personnel in 2010, west of the estuary and a few hundred yards south of the end of Addie Street.



continuity.³⁷ In any case, the project does not include the required easement and does not include the required public access improvements and cannot be found consistent with Policy CO-21(c) on this point.

Conclusion

The proposed project is located in and adjacent to ESHA, with degraded ESHA on the site transitioning to higher value ESHA off the site, including with respect to the significant habitat resources associated with the Pismo Creek Estuary. The project proposes development that is prohibited in ESHA and the sandspit and that would remove ESHA and adversely affect ESHA not removed, including off-site ESHA, inconsistent with the LCP. Even if the proposed project were otherwise approvable, it does not meet habitat setback, easement, and public access requirements. Therefore, the proposed project is inconsistent with the LCP's biological resource policies, and cannot be approved consistent with the LCP.

C. Visual Resources

1. Applicable Policies

The LCP provides a series of principles and objectives for protecting the visual resources of the City, highlighting the importance of the beaches and other open space shoreline areas, as well as the small-scale character of the built environment. These principles and objectives call for the protection of scenic views for the benefit of the public and call for new development to blend with the existing open space and built environment. Special emphasis is placed on the feeling of being near the coast. The LCP states:

P-2 Natural Resources--Key Foundation of the City: Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. Conservation and protection of these resources shall be the key focus of the General Plan. The unique geographical character of Pismo Beach is recognized as the foundation for all other aspects of the community. These physiographic characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.

P-6 The Big Three: The three primary resources and open space for Pismo Beach are:

The Ocean--A Resource For Everyone: The ocean, coastal cliffs, and shoreline resources are vital to Pismo Beach for their wildlife habitat, recreational use, open space, scenic value and the city's overall economy. These natural assets will be protected and made available to all.

...

P-7 Visual Quality is Important: The visual quality of the city's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well

³⁷ This continuation of the trail would be required by the LCP to be a passive interpretive trail that could be found consistent with ESHA protection policies.



being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the sea should be emphasized even when it is not visible. Designs reflective of a traditional California seaside community should be encouraged.

P-14 Immediate Ocean Shoreline: *The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. This unique narrow strip of land should receive careful recognition and planning. The purpose of the beach is to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural, and recreational resources of the ocean, beach and related up-lands.*

The LCP also includes specific protections for the visual resources of Pismo Creek, requiring new development to develop a plan to protect the visual aspects of the river, as follows:

CO-21 Pismo Creek Protection: *Pismo Creek shall be retained in its natural state and protected from significant alterations. The following measures shall be employed to accomplish this intent:...* *b. The sandspit and channel where Pismo Creek enters the ocean and those portions of parcels located within the creek channel shall remain as open space and no structures or fill shall be permitted thereon. ...h. Resource Protection Plan: A Resource Assessment and Protection Plan shall be required and approved concurrent with city action on projects located on parcels which have a portion within the streamside protection zone. The plan shall include appropriate measures to protect the creeks biological and visual aspects.*

Finally, the LCP also includes design criteria to ensure development is small in scale and blends with the surrounding environment. Relevant policies state:

CO-31:...b. *Development shall be designed to fit or complement the site topography, soils, geology, and any other existing conditions and be oriented to minimize to the extent of grading and other site preparation...*

D-2 Building and Site Design Criteria

a. Small Scale

New development should be designed to reflect the small-scale image of the city rather than create large monolithic buildings. Apartment, condominium and hotel buildings should preferably be contained in several smaller massed buildings rather than one large building. Building mass and building surfaces such as roofs and exterior walls shall be highly articulated to maintain a rich visual texture and an intimate building scale.

Maximum height, setback, and site coverage standards to achieve the desired small-scale character will be regulated by City ordinance. Except where specified otherwise by this Plan or further limited by the implementing ordinance, the maximum height standard for new buildings shall not be more than 25 feet above existing natural grade in Neighborhood Planning Areas A through J, and Q; and not more than 35 feet above existing natural grade in the remaining portions of the Coastal Zone.



b. Entrances

To residential buildings, to individual dwelling units within the building, and to commercial structures should be readily identifiable from the street, parking area, or semipublic areas and designed to be of a pedestrian scale.

c. Views

Views to the ocean, creeks, marsh, and surrounding hills should be preserved and enhanced whenever possible. The feeling of being near the sea should be emphasized, even when it is not visible.

d. All Facades

Architectural features shall be consistent throughout a development, even when a portion of the development is hidden from public view.

e. Walls

Project perimeter walls should complement surrounding architecture and neighborhood environment and should avoid monotony by utilizing elements of horizontal and vertical articulation.

f. Driveway Widths

Driveway widths shall be kept narrow in order to retain a pedestrian street scale. Minimum and maximum driveway widths shall be as set forth in the Zoning Ordinance.

g. Support Structures

The city shall establish guidelines for architectural review of the appearance of support structures allowable for homes jutting over steep slopes.

D-17 Native and Drought Tolerant Landscaping: *Native and drought tolerant landscaping with drip irrigation shall be required within all new and rehabilitated development requiring discretionary approval in conformance to city water conservation policies.*

Thus, the certified LCP identifies coastal zone scenic values as an irreplaceable asset that must be preserved and enhanced. The LCP explicitly calls out the “ocean, beach, and the immediate abutting land” as “irreplaceable national resources” with open space and ecological resource values demanding “careful recognition and planning”. More specifically, the LCP requires new development to be sited and designed to preserve and enhance views to the ocean, creek, and marsh, and prohibits structures and fill in the Pismo Creek sandspit. Development is required to complement the site and not overwhelm it, and it must reflect the small-scale image of the City, including siting and design that limits heights and that encourages a pedestrian scale. It also requires the City to establish guidelines for the architectural review of the appearance of support structures, such as piles, that extend over steep slopes, and it requires landscaping to be native and drought tolerant. In short, the LCP clearly values coastal viewsheds, particularly those at the shoreline and creek interface, and requires views at this location to be both protected and enhanced.



2. Consistency Analysis

The proposed project is located in a highly scenic area. As discussed previously, it is located in a backbeach dune area transitioning into the Pismo Creek Estuary, and adjacent to the wide sandy Pismo State Beach. The site is very visible from Pismo State Beach, Addie Street, the public parking area on Addie Street, the City's beachwalk promenade extending toward the Pismo Pier, and from the RV park located across the river. In addition, the site is located at the edge of Pismo Beach's main downtown area, between the beach and estuary. This unique location provides a noticeable relief from the surrounding urban environment with a distinct open space character and scenic vista that is easily sensed from the road and surrounding public viewpoints. Although the public viewshed at this location is adversely impacted by the existing residence on piles located seaward of the site, the damage that this pre-CDP requirement structure does to the public viewshed still does not eliminate the value of the viewshed associated with the site and the viewshed overall. The site is otherwise framed by the surface level public parking lot, undeveloped lots, and further away, condominium development (2 lots inland), hotel development (about 100 yards upcoast), and the RV park opposite the Creek. Such existing surrounding built environment is relatively open and building heights are generally low.

Several tools are available that are useful for evaluating the proposed project's impact on the public viewshed. These include site visits, site photos, visual simulations, a photograph of the story poles that were erected to approximate the mass of the structure, the project site plans and elevation sheets. See Exhibits 2 and 5 for photos, visual simulations, story poles analysis, and plans.

The proposed duplex would significantly block public coastal views across the site. It would be a 3,651 square-foot, two-story boxy structure that would occupy more than 50% of the site up to a height of 33.5 feet above existing grade (and almost 30 feet above Addie Street). For reference, the existing house on piles seaward of the site extends to approximately 25 feet above grade, and thus this structure would be approximately nine feet taller than that. As seen from the elevation simulations, it would dwarf this adjacent existing house by comparison (see Exhibit 5). In addition, because the first floor would be elevated to about eight feet above existing grade on piles, to avoid flooding hazards, the entire structure would be raised about three feet above the elevation of Addie Street, causing it to further block views across the site. As discussed previously, the duplex elevation could be raised even higher in the future, if sea level rise is more than expected, causing further visual impacts.³⁸ In addition, the project would be a structure and fill in the Pismo Creek sandspit when this is not allowed (see also previous biological resources finding). The project lacks articulation, and it is fairly boxy (e.g., first and second story walls atop one another, etc.), also serving to emphasize rather than deemphasize its massing in this respect. The proposed bridge/driveway would also add to the sense of bulk and massing, including due to the walls and gates associated with same. In addition, the structure would have only a five-foot setback from the side-yard lot line, so that the distance between the existing vacation rental house on piles and the proposed duplex would be only ten feet (once about 11 feet of the existing house were removed), completely blocking the view of the estuary from many vantage point for the entire length of both structures. Views across the site from Pismo State Beach, Addie Street, the public parking area on Addie

³⁸ As discussed previously, the Applicant's engineer used the lower-range estimate for future sea level rise, making it more likely that this increase in elevation would be necessary in the future.



Street, the City's beachwalk promenade extending toward the Pismo Pier, and from the RV park located across the river would be completely blocked by the proposed project (again, see Exhibit 5). Commission staff have visited the site on multiple occasions and confirmed that the proposed project would result in significant such view blockage and impacts.

In short, the proposed project would block, would not preserve, and would certainly not enhance, public views, and it cannot be found consistent with LCP Policies P-2, P-6, P-7, P-14, CO-21, and D-2.

In addition, the proposed development would not blend with the surrounding natural environment, nor is it designed to fit the topography of the site, as required by the LCP. Instead, the duplex would appear as a massive and bulky structure with straight lines, hard angles, and minimal articulation. The front-facing driveway columns and rolling metal driveway gate are large and urban in appearance, and the entire building, which would be supported by large steel pipe piles, would not include adequate elements to soften or hide its form. In fact, the piles would be seen clearly in views from the east, west and south. Further, the two proposed palm trees would frame the duplex with additional large simple lines that are perpendicular to the ground. These trees not only conflict with requirements to blend with the surrounding environment, which is better defined by sloping dunes and the meandering estuary, they are also inconsistent with the LCP's requirement for native landscaping in new development. In sum, the development would have little regard for the open space setting or the natural features of the estuary, river channel and dunes, and would therefore be inconsistent with the LCP policies requiring new development to blend with the surrounding natural environment (including the same LCP policies cited above).

Further, the proposed development would not blend with the surrounding built environment. As discussed above, the proposed duplex would be a large and bulky structure that is two stories atop a third pier story and 33.5 feet above existing grade, with 3,651 square feet of building square footage on top of an elevated platform with gates and walls, in an area that is primarily characterized by open space and smaller scale buildings and other developments that are generally low in height. The majority of the view of the structure from the street at eye level would be taken up by two, two-car garage doors, behind a wrought iron gate with pillars and a lot-spanning bridge/driveway, and it would tower over the neighboring vacation rental house on piles (that currently extends to approximately 25 feet) and completely overwhelm the site and surrounding environment (see visual simulations in Exhibit 5). Further, because the structure would be elevated to avoid flood waters, as discussed above, it would be raised to eight feet above grade on piles, which is about three feet higher than the grade of Addie Street, and the structure is designed to be raised even higher in the future to address sea level rise. As such, the mass and scale of the structure as viewed from the public street and the beach would be exacerbated even further. The structure has not been sited and designed to reflect a small-scale image and pedestrian scale (including through a lot-spanning bridge/driveway when the LCP requires driveway widths to be kept narrow to retain such scale) as required, does not include a high degree of design articulation as required "to maintain a rich visual texture and an intimate building scale", does not complement the existing built and natural environment, and does not otherwise preserve and protect the significant public viewshed of which the site is a part. Therefore, the project is inconsistent with the LCP policies requiring new development to complement and blend with its surroundings (including the same LCP



policies cited above).

The proposed project is located in the middle of a significant public viewshed along the shoreline and adjacent to Pismo Creek. As is illustrated by the images included in Exhibit 5, the proposed project is inconsistent with the visual resource protection policies of the certified LCP because it substantially blocks coastal views and calls for a large, bulky structure and inappropriate landscaping that is incompatible with and in contrast to visual resource values associated with the surrounding natural environment and the small-scale character of the City. The proposed project is inconsistent with the LCP's visual resource policies, and cannot be approved consistent with the LCP.

D. Public Access and Recreation

1. Applicable Policies

Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities, including visitor-serving resources. 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 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

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

The LCP also includes policies protecting public access and visitor-serving uses. It protects oceanfront land for open space and recreation. It specifically calls for visitor-serving uses in this LCP zoning district, and only allows residential uses if the Applicant can show that visitor-serving uses are not



feasible at the site. In addition, the LCP requires new development to provide for a public recreation trail along Pismo Creek, and protects parking availability for beach users. Relevant policies include:

CO-15 Ocean Shore – Principal Open Space Resource. *The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Oceanfront land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource.*

17.027.040 Uses Requiring a Conditional Use Permit: ... (2) *Residential and/or non-visitor-serving commercial uses. These residential and/or non-visitor serving uses may be allowed only if the applicant can substantially show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use as stated pursuant to the Local Coastal Program Land Use Plan and Chapter 17.099. Uses prohibited specifically from the zone shall include office space for general or medical businesses and non-retail commercial services.*

LU-K-2 ... b. Pismo Creek Trails. *A creekside trail system shall be developed on both sides of Pismo Creek from its mouth at the ocean inland to the future golf course/recreation area in Price Canyon. Public improvements such as trash cans and seating shall be included with the development of the creek trails. Dedication of a portion of properties adjacent to Pismo Creek for a public pathway shall be required with new development applications. These dedications shall include the buffer zone as identified in the conservation and open space element. Development approvals by the City shall require the installation of trail improvements.*

CO-21(c): Conservation Dedication. *Any new development shall be required to dedicate as a condition of any discretionary approval, an easement for the protection of the streamside area consisting of 25 feet or more from the top of the creek bank. In addition, new development shall provide access amenities adjacent to the creek for the city to use as a greenbelt and/or recreation corridor.*

PR-1 Opportunities For All Ages, Incomes, and Life Styles. *To fully utilize the natural advantages of Pismo Beach's location and climate, park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles. This means that: (a) The beach shall be free to the public; (b) Some parking and/or public transportation access to the beach shall be free to the public...*

P-2 Natural Resources--Key Foundation of the City: *Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. Conservation and protection of these resources shall be the key focus of the General Plan. The unique geographical character of Pismo Beach is recognized as the foundation for all other aspects of the community. These physiographic characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.*

2. Consistency Analysis



The City's LCP and the public access and recreation policies of the Coastal Act require public recreational access opportunities to be maximized, including visitor-serving facilities, especially lower cost visitor facilities and water-oriented activities, and it protects areas at and near the shoreline for these purposes. As previously described, the proposed project is located in a prime, visitor-serving area, steps away from the City's core visitor-serving neighborhood and its most significant beach, and in and adjacent to its most significant natural resource area. In conflict with the applicable public access and recreation policies, the majority of the proposed development would be occupied by the one larger residential unit and associated garage, resulting in a significant loss of potential for public access and visitor-serving uses at this important, oceanfront site.³⁹

LCP zoning regulations require land in this Hotel-Motel and Visitor Serving district to be used for visitor-serving uses, either for overnight accommodations or for visitor-serving commercial uses. Residential uses are only allowed if the applicant can substantially show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use. In this case, the Applicant's consultant prepared a feasibility study for uses of the proposed site (see Exhibit 10). Unfortunately, the report provides a fairly cursory analysis of the economic feasibility of using the site for visitor-serving uses, specifically examining a hotel, a retail business, a restaurant, and a vacation rental. It concludes that the site is infeasible for visitor-serving uses, largely due to the small size of the lot. However, the report lacks the detail and information necessary to draw such conclusions for this site.

First, the report makes broad assumptions about each component of the analysis, and these assumptions are not clearly supported. For example, it uses a land value for the parcel of \$500,000, which was apparently determined by local realtors, but it does not provide any information as to how this value was arrived at or how it compares to other similarly highly constrained properties within the site area or the City. It is not at all clear why a small property in and adjacent to ESHA associated with dunes and the Pismo Creek Estuary, in and part of a significant public viewshed, in the 100 year flood plain at the shoreline interface affected by many different types of coastal hazards (including coastal flooding, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, landslides, earthquakes, bluff and geologic instability, and the interaction of same), and subject to significant development constraints and challenges in light of these attributes, would be valued at \$500,000.

In addition, the analysis assumes all parking must be provided on site, which can be difficult on small lots given the City's parking requirements, but ignores the fact that the LCP allows for in-lieu parking payments, as well as off-site parking in some circumstances. The report also does not evaluate a parking neutral type of project designed to serve coastal visitors who may have parked and made their way to this location on foot.

With regard to expected business operations, the report assumes specific hotel and vacation rental occupancy rates and operating costs, but provides no information as to how these figures were derived.

³⁹ It would also include a vacation rental residential unit, but this unit too would be constructed as a residential unit with a two-car garage, and shares some of the same issues in this regard.



Further, it assumes the anticipated rental rates for potential retail use must be at a discounted rate due to the “remote location” of the property, even though, as described above, the property is adjacent to the heavily used Pismo State Beach as well as a free City parking lot and the terminus of the Pismo Promenade, which extends four blocks from the Pier to Addie Street.

In addition, the LCP requires that the Applicant substantially show that the size, shape or location of the site is what makes it infeasible for visitor-serving uses. Given that the adjacent property is used for a vacation rental and that it is in essentially the same location and is similar in size and shape to the subject parcel, it appears to be unlikely that the Applicant can make the showing necessary to allow residential development on this site. But, in any case, based on the limited nature and lack of supporting data provided by the Applicant to date, there is not adequate evidence to substantially show that the size, shape or location of the parcel makes it infeasible for visitor-serving uses, as is required by the LCP when residential uses are proposed in this visitor-serving zoning district. Therefore, the Commission finds the proposed project is inconsistent with IP Section 17.027.040, because the Applicant has not substantially shown that a visitor-serving use on the site is infeasible, and thus residential uses are not allowed.

Furthermore, regardless of whether the Applicant can or cannot show with certainty that the site is infeasible for visitor-serving uses under current conditions, the loss of this oceanfront site to residential use must also be evaluated for consistency with the LCP and Coastal Act policies that require new development to protect and preserve oceanfront and other land for public access, recreation and visitor-serving uses. As described above, this is a critical location in terms of its proximity to the City’s core, visitor-serving downtown area and the City’s most popular and significant beach, as well as a large and scenic estuary. Therefore, pursuant to the applicable policies, this site must be protected and preserved for public access and recreational uses, especially boating and other water-oriented recreational uses that rely on oceanfront locations. Although the project would offer one small vacation rental unit, this visitor-serving component is minimal when compared to the proposed residential use of the property, because it is significantly smaller than the residential unit and located on the lower level along with the two 2-car garages. In contrast with the visitor-serving unit, the residential unit is nearly 2,000 square feet, and is located on the upper level with high ceilings and a prominent entranceway. As such, the project would result in the significant loss of visitor-serving development potential to a private residential use, inconsistent with LCP and Coastal Act policies requiring development to maximize public access and protecting oceanfront land for public access and recreational uses.

Further, the project is inconsistent with LCP requirements for trail access at this location. The City’s LCP calls for a trail that would extend along the length of Pismo Creek, through the City and out to the ocean. Properties that develop along the river are required to provide at least 25 feet of public access and public access improvements, to be held by a City easement. The City has made significant progress on this trail between Highway 101 and Dolliver Street, but it has not yet extended the trail out to the ocean. In this case, the City did not require the Applicant to provide an access easement because the lot does not extend all the way to the current bank of the river, and therefore, the Applicant does not have the



ability to grant an easement over the land closest to the current river edge.⁴⁰ However, due to the significant ESHA along Pismo Creek and Estuary at this site, as well as the potential variability of the river bank location in the future and the adverse impacts this development will have on public access, in this case, a buffer that is wider than 25 feet is required to minimize impacts to ESHA and ensure this critical public access is developed and maintained, as required by the LCP. Therefore, because the project would inhibit public access in this area and because no public access easement or public access improvements are proposed as part of the project, it is inconsistent with the public access requirements of the LCP calling for a riverside trail at this location, as well as the public access and recreation policies of the Coastal Act that require maximum public access to be protected and provided in new development.

Finally, the project raises public access issues related to the parking requirements for the existing vacation rental house on piles on the adjacent parcel. The LCP requires the vacation rental house to be served by at least two parking spaces. Historically, these spaces were provided on the site of the proposed project, but development of the proposed project would eliminate them entirely. The LCP's zoning code does allow for parking in this district to be located at a reasonably convenient off-site location. In this case, the vacation rental house is owned by the entity that owns the hotel across the public parking lot and upcoast of the site, which is less than a block away, and parking could potentially be reserved there for the occupants of the vacation rental house. However, because the City-owned parking lot, which offers free parking, is so close to the vacation rental house, it is highly likely that occupants would park their cars there instead. The City lot is meant for beach and other coastal access day use, and is currently the only remaining free parking lot located in downtown Pismo Beach.⁴¹ As such, it is specifically protected by LCP Principle PR-2, which requires free public parking to the beach to be provided. Therefore, the potential loss of two or more of these free, public beach access parking spaces to this private use is an unacceptable impact on public access, and is inconsistent with the public access and recreation policies of the Coastal Act and the LCP.

In conclusion, the project is inconsistent with the public access and recreation policies of the certified LCP and the Coastal Act because it would place a residential use in an area protected for visitor-serving uses, and it would not maximize public access to the coast, including because it would not provide for a planned riverside trail and it would potentially displace beach parking spaces, and it cannot be approved consistent with the LCP or the Coastal Act.

E. CDP Determination Conclusion - Denial

As discussed in the above findings, the proposed project is inconsistent with the LCP and the public access and recreation policies of the Coastal Act. When the Commission reviews a proposed project that is inconsistent with the Coastal Act and LCP, there are several options available to it. In many cases, the

⁴⁰ The property closest to the northern river bank is a portion of the lot that contains the RV park south of the river. That lot includes the river bed, as well as approximately 30 feet of uplands, from the current bank north to the subject site.

⁴¹ The free parking lot at the foot of Pismo Pier was changed to pay parking by the City in 2007. However, because the City did not provide adequate notice of its CDP action on that change, it has not been recognized by a CDP and is currently being tracked by Commission enforcement staff as a violation.



Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the Coastal Act. In other cases, the range of possible changes is so significant as to make conditioned approval infeasible. In these situations, the Commission will frequently deny the project and provide guidance to the applicants on the type of development changes that must be made for Coastal Act conformance. These denials are without prejudice inasmuch as applicants are given direction on what they need to do to propose an alternative project that can meet Coastal Act policies. In rare cases, there are no feasible conditions that could bring the project into conformance with the Coastal Act, and there are no obvious feasible alternatives consistent with the Coastal Act that the Commission might suggest to an applicant. When this happens, the Commission might deny the project without further guidance to the applicant at that stage, or it might consider approval of a different project that is the minimum necessary to avoid a taking of private property without just compensation.

In this case, the proposed project is significantly out of conformance with the Coastal Act and LCP because the entire project site is subject to severe hazards, within and adjacent to ESHA, located in the middle of a significant public recreational access area, and the proposed project would be extremely prominent in an important public viewshed. As a result, the proposed project must be denied, and the Commission is unaware of any modifications that could make a residential structure at this site consistent with the Coastal Act. This denial, however, is not a final adjudication by the Commission of the potential for development on this parcel, as it does not preclude the Applicant from applying for some other development or use of the site, such as a more minor development that proposes a visitor-serving use and more carefully addresses the site's constraints. Looking broadly at the site and the site area, it is clear that the LCP is correct in designating this oceanfront site for visitor-serving uses. It is steps away from Pismo State Beach, and is framed inland by public access amenities (like the public parking lot and trail promenade), hotels and other overnight accommodations. The site is in an incredibly beautiful coastal setting, overlooking a quiet estuary and wetlands filled with wildlife, with a view of dunes, wide sandy beach and the ocean in the distance. The beauty of the site and its proximity to the City's core visitor-serving district make it ideal for a visitor-serving use. A creative use of the site may also allow for a development that is consistent with the LCP policies related to hazards, biological and visual resources discussed above, including potential uses that could maximize public access to the site, such as a kayak or other boat or surf rental facility, or a seasonal eatery based from a mobile structure that could be removed prior to the rainy season or large storms.

8. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and



Nonapplication. ...*(b) This division does not apply to any of the following activities: ...*(5)
Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) *CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposals. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.



Th21b

John L. Visser

15605 Avenue 208, Strathmore CA 93267

RECEIVED

DEC 02 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
Central Coast District Office
725 Front Street, Ste 300
Santa Cruz, CA 95060

Attn: Madeline Cavalieri

RE: Agenda Item No: Th21b

This letter is written in opposition to the proposed construction of a 3,600 square foot duplex to be located at 140 Addie Street at the mouth of Pismo Creek, Pismo Beach (San Luis Obispo County), APN 005-163-29.

I am the current owner of property located at 128 Park Place, Pismo Beach, CA, and member of the Park Place Homeowners Association, and without further information on this proposed structure, I cannot support this project.

Respectfully,



John Visser

Cc: file

JV:dt

STATE OF CALIFORNIA - THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863; fax (831) 427-4877
www.coastal.ca.gov

RECEIVED

NOV 29 2011

November 23, 2011



addressed to

VISSER RANCH, INC.

IMPORTANT PUBLIC HEARING NOTICE

NEW APPEAL

HEARING DATE AND LOCATION:

DATE: Thursday, December 8, 2011
TIME: Meeting begins at 9:00 AM
PLACE: Aquarium of the Bay
Pier 39
San Francisco, CA
PHONE: (415) 407-3211 - (this number only in service during the meeting)

AGENDA ITEM NO.: T121b

FAX

831-427-4877

attn: Madeline Cavaliere

Appeal Number: A-3-PSB-10-062

Applicant(s): Vaughn and Mary Kollgian

Appellant(s): San Luis Obispo Coastkeeper; California Coastal Commission, Commissioners Sara Wan and Mark Stone

Project location: 140 Addie Street (along Addie Street at the mouth of Pismo Creek), Pismo Beach (San Luis Obispo County), APN 005-163-29.

Project description: Construction of a 3,600 square foot duplex residential structure on raised pilings, demolition of a portion of the neighboring residential structure (which extends onto the project site), construct a bridge from the sidewalk area to provide access to the new duplex, and other related improvements.

HEARING PROCEDURES:

People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

AVAILABILITY OF STAFF REPORT

A copy of the staff report on this matter is available no later than 10 days before the hearing on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from the Central Coast District office.

SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than the Friday before the hearing (staff will then distribute your materials to the Commission).