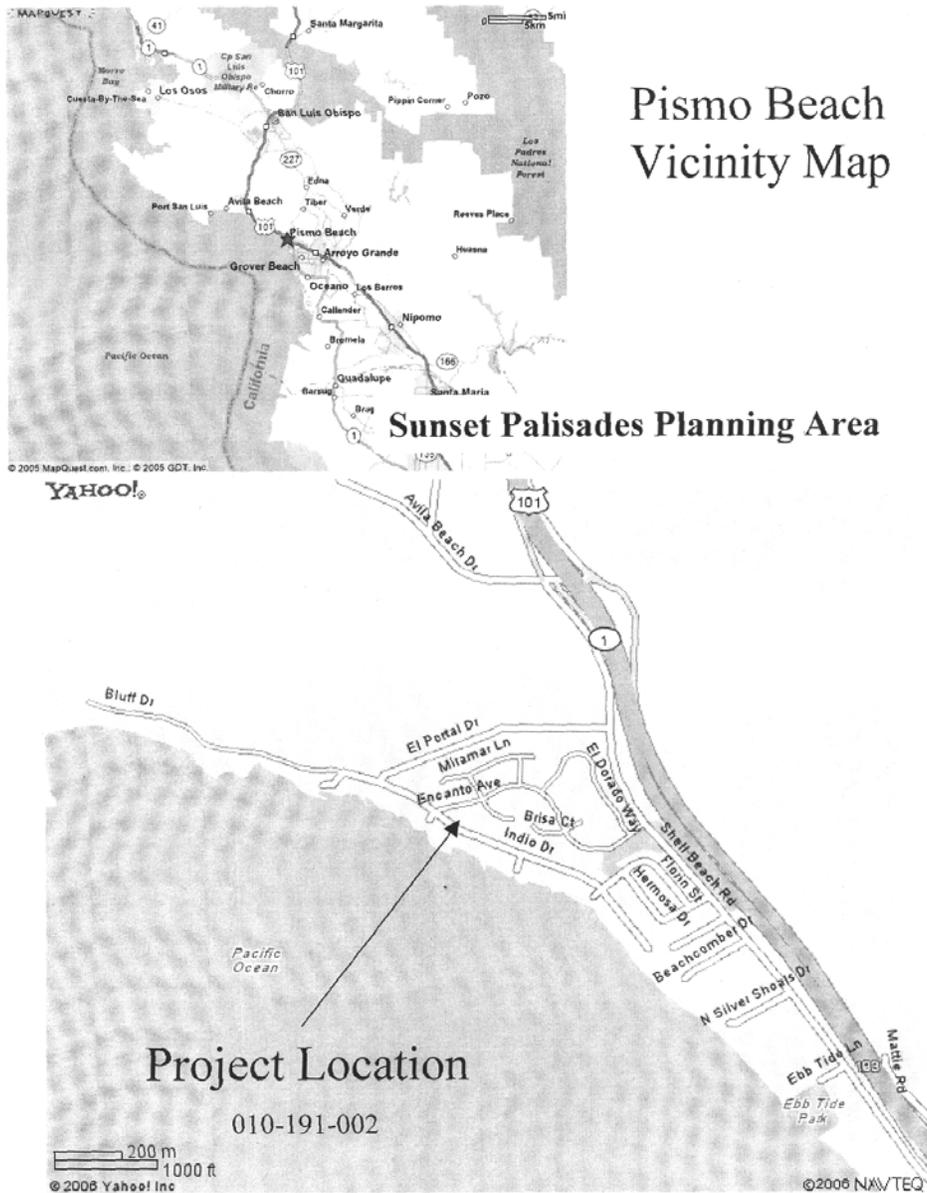


Exhibit 1



SUBJECT: 334 Indio, Matthew Freeland, Applicant; Project No. 05-0162

Coastal Development and Architectural Review Permits for demolition of an existing single family residence and the construction of a new 4,660 square foot single-family residence. The site is located in the Single-Family Residential (R-1) Zone of the Sunset Palisades Planning Area. APN: 010-191-002

RECOMMENDATION: Adopt Resolution 05-0162, approving the project as conditioned.

EXECUTIVE SUMMARY: The applicant proposes the demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence.

The project as conditioned is in conformance with the policies and standards of the 1992 General Plan/Local Coastal Plan and the 1983 Pismo Beach Zoning Code. The 1983 Zoning Code applies to development of this site as it is located inside the Coastal Zone.

A letter was received noting concerns regarding the height measurement and establishment of the grade at the high point of the lot (see attached Exhibit 3). Staff contacted the applicant and requested that a copy of the stamped survey be provided to staff prior to the meeting. Staff had not received the copy of the survey by the time staff reports were due for packet preparation. Should staff receive the survey prior to the meeting, an oral report will be provided.

Prepared by: Sarah Davis, Project Planner **Meeting Date:** November 8, 2005

Reviewed by: Scot Graham, Senior Planner

Approved by: Carolyn Johnson, Planning Manager

- Exhibits:**
- 1) GP/LCP, Overlay Zoning Issues, Development Standards Chart
 - 2) Resolution 05-0162
 - 3) Letter from neighbor
 - 4) Plans

Exhibit 1
GP/LCP, Overlay Zoning Issues, Development Standards Chart
Project No. 05-0162, Address: 334 Indio,
APNS: 010-191-002, Planning Area: Sunset Palisades

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General Plan and Zoning Code Consistency Issues Charts

A. GENERAL PLAN/LOCAL COASTAL PLAN POLICIES			
Number	General Plan Policy	Related Condition	Issue
LU-A-6	<i>Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluffs and intertidal habitat area. Infill development shall be compatible with the existing community.</i>	None	The project design is consistent with this policy.
LU-A-7 (a)	<i>El Portal Drive, Indio Drive No structure shall exceed 15 in height when measured from the highest point of the site natural grade to the highest point of the structure; Nor shall any structure exceed 25 feet, in height, when measured from the highest point of the roof above the center of the building footprint to the elevation of the natural grade directly below that point.</i>	None.	None: the design appears to meet these design guidelines. Structure will be 15' from high point, and 22.5" from center of building footprint.

B. OVERLAY ZONES			
Number	Overlay Zone	Related Conditions	Issue

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17.069	Architectural Review (AR): Development of lots smaller than 5,000 sf in area require architectural review	None	None: project is subject to architectural review by the Planning Commission.
17.063	Archaeology and Historic Sites (A) Requires archaeological surface survey for all sites in this zone; additional study or mitigation may be required depending on results of survey	<u>ARCHAEOLOGY.</u> The applicant shall provide signed contracts for Archaeological monitoring. The contract shall include provisions for both an archaeological and Native American monitor.	An archaeological surface survey ("Phase I report") was completed for the site. The archaeologist noted displaced archaeological/cultural material on the site. It is recommended that "because of the presence of displaced cultural materials on the lot archaeological monitoring should accompany any excavations on the lot."
17.072	Coastal Appeal (CA) Project approvals within this zone can be appealed to the Coastal Commission, in limited circumstances. All projects within the CA zone are reviewed by the Planning Commission.	None	None. Project is being reviewed by Planning Commission. The Planning Commissions action may be appealed to the City Council. Should the Council approve the project, its action can be appealed to the California Coastal Commission.

C. DEVELOPMENT STANDARDS CONSISTENCY CHART: 334 Indio, R-1 Zone, Sunset Palisades Planning Area				
Item	Permitted/Required	Code Section	Proposed	Complies?

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Lot area	5,000 sq. ft. min.	17.102.060	6,604 sq. ft.	yes
Max bldg height	15' from highest point of site grade, 25' above the center of the building footprint at site grade	17.102.010	15' above high point @ 105.5' = 120.5', 22.5' at center from grade @ 98.0' = 120.5', where 120.5' max. is allowed	yes
Max building area	86% of the 1 st 2700 sf of the lot size, plus 60% of the remainder Allowed: 4664 sf	17.102.080	4660 sq. ft.	yes
Max lot coverage	55% of lot area Allowed: 3662 sf	17.102.080	2,978 sf = 45%	yes
2nd Floor/1st Floor Ratio	80%. Step back should be facing the street	17.105.135	1 st floor: 2654sf 2 nd floor: 2006sf Ratio: 75.5%	yes
Planting Area	20% = 1,320 sf required	17.102.095	2,566 sq. ft. (38.8%)	yes
Garage setback from street property line	20' minimum	17.108.030.1.f	21'	yes
Minimum front yard setback	20' minimum	17.102.020	20'-7"	yes
Minimum side yard setback	10% lot width; min. 4', max. 5'; in this case: 5'	17.102.030	5'	yes
Minimum rear yard setback	10% lot depth; min. 5'; max. 10'; in this case 9'3"	17.102.040	14'7"	yes

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Parking spaces	2 spaces, both within garage	17.108.020	2 spaces	yes
Garage Design	10' x 20' clear of any obstructions	17.108.030.1d 17.34.070	19'6" x 25' clear of obstructions	yes
	Roll-up garage doors are required	17.105.135.3a	Roll-up doors	
Driveway width at street	No smaller than 12' and no larger than 16'	D-2	15'	yes

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EXHIBIT 2
RESOLUTION NO. 05-0162
A Resolution of the Planning Commission of the City of Pismo Beach
Approving Project No. 05-0162

Demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence
334 Indio; APN: 010-191-002

WHEREAS, Matthew Freeland ("Applicant") has submitted an application to the City of Pismo Beach for a Coastal Development Permit and Architectural Review Permit for the demolition of an existing single family residence and the construction of a new 4,660 square foot single-family residence; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on November 8, 2005, at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission determines that under the provisions of the California Environmental Quality Act (CEQA), the demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence is exempted per section 15301.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Pismo Beach, California as follows:

A. FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

1. The demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence.
3. The demolition of an existing single-family residence and the construction of a new 4,660 square foot single-family residence is exempt from CEQA in accordance with section 15301 of the CEQA Guidelines, exempting limited numbers of small structures where all infrastructure is present.

B. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AND ARCHITECTURAL REVIEW PERMIT:

1. The project improvements comply with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.

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2. The new 4,660 square foot single-family residence is appropriate in size so as to be compatible with the adjacent structures.
3. The architectural and general appearance of the new 4,600 square foot single-family residence. The proposed new residence is compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.
4. The proposed 4,660 square foot single-family residence is consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Low-Density Residential.
5. The new 4,660 square foot single-family residence is compatible with the nearby existing uses and not detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.
6. The proposed 4,660 square foot single-family residence will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.
7. The proposed 4,660 square foot single-family residence will not impair the desirability of investment or occupation in the neighborhood.

The Planning Commission does hereby approve the Coastal Development Permit and Architectural Review Permit subject to the Conditions attached as Exhibit A.

UPON MOTION of Commissioner, seconded by Commissioner, the foregoing Resolution is hereby approved and adopted the 8th day of November 2005 by the following roll call vote, to wit:

AYES: Commissioners
NOES: None
ABSTAIN: None
ABSENT: None

Chairman Sorgenfrei

ATTEST: _____
Elsa Perez, Deputy City Clerk

EXHIBIT 2A

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**PERMIT NO. 05-0162, CDP / ARP
PLANNING COMMISSION MEETING OF NOVEMBER 8, 2005
334 Indio, APN: 010-191-002**

The conditions imposed on this project shall affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed and made available to the applicant shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit 05-0162 grants planning permits to remodel a residence, as shown on the approved plans with City of Pismo Beach stamp of November 8, 2005. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

Standard conditions, policies and selected code requirements applicable to a single-family home, as adopted by the Planning Commission on November 8, 2005, are by this reference included as conditions of this permit. Such standard conditions will be attached to this permit when signed by the applicant. Special project conditions are listed on Exhibit A of this permit. The applicant agrees to comply with all City standard conditions and conditions specific to the project.

EFFECTIVE DATE: This permit shall become effective upon the passage of 20 days following the receipt of notice of this action by the California Coastal Commission, provided that an appeal has not been filed to the City Council within 10 working days or that an appeal has not been filed to the Coastal Commission within the above 20 days. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on November 8, 2007 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

ACCEPTANCE OF PERMIT AND CONDITIONS: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant.

COMPLIANCE AGREEMENT: I have read and understood, and I will comply with all applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction. The duty of inquiry as to such requirements shall be my responsibility. I agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this

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approval by the City of the project; or my failure to comply with conditions of approval. This agreement shall be binding on all successors and assigns.

**I HAVE READ AND UNDERSTOOD, AND I WILL COMPLY
WITH ALL ATTACHED STATED CONDITIONS OF THIS PERMIT**
Approved by the Planning Commission on November 8, 2005.

Applicant

Date

Property Owner

Date

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**CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS FOR
PROJECT # 05-0162
334 Indio, APN # 010-191-002**

Conditions as indicated below have been deemed to be of a substantive nature on the basis of the Planning Commission's decision. These conditions cannot be altered without Planning Commission approval.

A. STANDARD CITY CONDITIONS:

Project shall comply with all standard conditions and selected code requirements on file at the Community Development Department, Planning Division located at 760 Mattie Road.

B. SPECIAL CONDITIONS:

PRIOR TO ISSUANCE OF A BUILDING PERMIT

Building Division:

1. A soils investigation shall be required for this project.
2. Well-established engineering principles should consider the effect of hydrostatic and hydrodynamic forces.
3. Erosion control of the site shall be clearly identified and mitigated.
4. Fire sprinklers are required per City codes.
5. Projects shall comply with current City and State water conservation regulations.
6. Dust and erosion control shall be in conformance with standards and regulation of the City of Pismo Beach.
7. The permittee shall put into effect and maintain all precautionary measures necessary to protect adjacent water courses and public or private property from damage by erosion, flooding, deposition of mud or debris originating from the site.
8. A licensed surveyor/engineer shall verify pad elevations, setbacks, and roof elevations.
9. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided.
10. Certification of compliance with the soils report shall be submitted to the Building Division prior to final approvals.
11. Title 24, Energy Conservation Documentation shall be prepared and submitted with the Building application.

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Planning Division:

12. **COMPLIANCE WITH PLANNING COMMISSION APPROVAL.** Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and these conditions. Project shall comply with these standards:

ITEM	APPROVED
Lot Area	6,604 sq. ft.
Building Height	15' @ 105.5' high point 22.5' @ 98'
Building Floor Area	4,660 sq. ft.
Lot Coverage	2,978 sq. ft. (45%)
Planting Area	2,566 sq. ft. (38.8%)
Side Yard Setback (Interior)	5'
Rear Setback	14'7"
Driveway Width	15'

13. **ARCHAEOLOGY:** The applicant shall provide signed contracts for archaeological monitoring. Contracts to include provisions for both an archaeological monitor and a Native American monitor.
14. **LANDSCAPING, IRRIGATION and FENCING.** The applicant shall provide Landscaping and irrigation plans encompassing the entire site. The plans shall be submitted by the project applicant to the City for review and approval by the project planner. Detailed calculations shall be provided on the face of the plan indicating the provision of a minimum of 20% landscape area with no greater than 10% provided as lawn. The landscape plan shall be designed in a manner consistent with Chapter 15.48 of the Municipal and include the following provisions:
- Use of low-water-using irrigation systems. Drip irrigation shall be used where feasible.
 - Landscape Design Plan (including plant list)
 - Irrigation Design Plan
 - Separate calculation for landscaping and hardscape shall be provided.
 - Landscape plans shall not include any trees exceeding a mature height exceeding the roof line of the residence and all trees shall be located outside of the side yard setback areas. All trees shall be maintained at a height not to exceed the roof line of the residence.
 - All Fencing proposed within the front yard setback shall be no greater than 42 inches in height. Fencing in the rear yard shall not exceed a maximum height of 6'.

Engineering Division:

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15. **ENGINEERING STANDARD CONDITIONS:** Shall be placed on the plans at time of submittal. A copy may be obtained through the Engineering Department.

General Improvement Requirements

16. Project improvements shall be designed and constructed in accordance with City standards and specifications and in accordance with all applicable City Ordinances. Where no City Standard or Specification exists, the Standards and Specifications of the County of San Luis Obispo shall govern. The decision of the City Engineer shall be final regarding the specific standards that shall apply.
17. The applicant will be responsible for obtaining an encroachment permit for all work within a public right of way (City or Caltrans).
18. The City Engineering Division shall approve any landscaping or irrigation within a public right of way or otherwise to be maintained by the City.
19. The applicant shall provide a current title report to the Engineering Division.
20. Driveways shall be located and constructed per City of Pismo Beach standards. Driveway slopes must conform, in worst case, to City of San Luis Obispo standards for uphill/downhill driveways.

Grading and Drainage

21. All grading and drainage improvements shall be designed and constructed in accordance with the City Grading Ordinance.
22. No Building Permits will be issued during the period from October 15 to April 15 without prior approval of the Engineering Division and an approved erosion and sediment control plan and construction schedule. Erosion control measures shall be in place and approved by the Engineering Division prior to the start of construction.

Sewer System Requirements

23. Applicant is required to show the existing location of the Sewer Main in the street and location of the sewer lateral, if existing, on the plans. If no lateral exists or existing lateral is in poor condition, then applicant is responsible for all costs, materials and labor for the installation of a new lateral. Show size and type of all sewer lines.

Water System Requirements

24. Applicant is required to show the existing location of the Water Main in the street and location of the water lateral, if existing, on the plans. The size of the existing lateral and proposed water meter shall be shown on the plans. If existing lateral is inadequate for the proposed water meter, then applicant is responsible for all costs, materials and labor for the installation of a new water lateral. Show size and type of all water lines.

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Fees and Bonds

25. The Applicant shall pay the following fees and post the following bonds as applicable at the time of construction prior to submitting the plans for approval: (City Standard Fees and Bonds).

Fire Department:

26. Address Numbers – Plans for address numbers on every structure shall meet the following requirements:
- Numbers shall be plainly visible from the frontage street.
 - All residential numbers shall be a minimum of four (4) inches in height.
 - Numbers shall contrast with their background.
27. Access Roadways (For Fire Apparatus) – access roads shall have all-weather driving surface capable of supporting fire apparatus weighing 40,000 lbs.
- All-weather surface shall consist of an asphalt surface All-weather access road shall be provided, prior to the start of construction.
 - The all-weather surface shall be maintained for the duration of construction Asphalt access lanes shall be required in hillside areas or any area deemed necessary by the Fire Chief Roads will be a minimum of 24 feet with no parking allowed on either side.
 - Parking may be allowed with additional road width of 8 feet, for each side having parking.
 - One-way roads maybe allowed if the minimum width is 12 feet and adequate access is maintained. Parking may be allowed with additional road width of 8 feet, for each side having parking.
28. Waterlines and Hydrant Distribution – Prior to construction, plans for waterlines and hydrant locations shall be submitted to the Fire Department for approval. No construction shall be allowed until the required hydrants and waterlines are installed. Water mains should be a minimum of 8" diameter in size. Hydrants spacing must meet CFC Appendix III-B. Waterlines and hydrant distribution must be consistent with the City adopted Water Master Plan.
29. Fire Hydrants – All fire hydrants shall conform to the Pismo Beach water distribution system materials list.
- Each hydrant shall have one 4.5" outlet and two 2.5" outlets Pismo Beach Standard. Each hydrant shall be painted OSHA yellow
 - Rolled curbs will not be allowed within 15" of a hydrant.
 - Sidewalks shall be a minimum of 40" wide behind hydrant center line
 - Curb shall be painted red 15" both sides of hydrant
 - A blue reflective marker shall be installed 6" off center of street in line with hydrant
 - Hydrants must be protected from impact with a curb or bollards as required in the CFC.

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30. Fire Flow – Required fire flow must meet the minimum requirements of the California Fire Code Appendix III-A and the City adopted Water Master Plan. In all cases the minimum acceptable residual pressure shall be 20 psi.
31. Utilities – If any part of the utility system, gas meters, electric utilities and the Fire Water Protection System are subject to vehicular damage, impact protection shall be provided.
32. Clearances – Driveways, common access roads and required fire lanes shall be constructed to accommodate emergency vehicles. Dead end fire apparatus access roads exceeding 150' in length are not allowed.
 - a. A minimum of 13'6" overhead clearance is required
 - b. A minimum of 24' clear width is required for all fire access roads
 - c. The gradient for fire apparatus access roads shall not exceed the maximum, 16% unless approved by the Fire Chief
 - d. All roads shall provide free access to existing roads without obstructions
 - e. The minimum outside turning radius for cul-de-sacs shall be 40' unobstructed
 - f. The inside radius shall be 25'. When parking is permitted in the cul-de-sac, the minimum outside radius from center to curb shall be 48 feet
33. Smoke Detectors – Smoke detectors shall be provided conforming to State Fire Marshall Standard 12-72-2 and CFC and CBC.
 - a. Detectors shall be installed in accordance with the approved manufacturer's instructions
34. Vents – Attic ventilation openings, foundations or under floor vents, or ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches each.
 - a. Vents shall be covered with non-combustible corrosion-resistant mesh with openings not to exceed .25"
 - b. Under floor ventilation openings shall be located as close to grade as practical
35. Building/Tenant Improvements – All future building/tenant improvements shall be forwarded to the Fire Department for review and approval prior to the issuance of a building permit.
36. Automatic Fire Protection Sprinkler System – Provide an Automatic Fire Sprinkler System to be monitored by an approved U.L. listed central station.
 - This system shall comply with requirements of the Pismo Beach Fire Department and NFPA
 - NFPA standard 13D installed in the two unit structures
37. Four sets of plans and two sets of calculations shall be submitted and approved prior to the issuance of a building permit.
38. Water service/fire service laterals and meters serving the property shall be a minimum of 1.5 inch or larger as determined by hydraulic calculations.

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39. Piping on open joists or rafters shall be secured to prevent lateral movement. The piping shall be adequately secured to restrict movement of piping upon sprinkler operation.
40. 200E+ glass bulb heads are recommended in garage area.
41. Sprinklers shall be positioned so that the response and discharge are not unduly affected by obstructions such as ceiling slope, beams or light fixtures.
42. Sprinklers are not required in clothes closets, line closets and pantries where the area of the space does not exceed 24 square feet and the least dimension does not exceed 3 feet and the walls and ceilings are surfaced with non-combustible materials as defined in NFPA 22Q, Standards on Types of Building Constructions.
43. Sprinklers shall be required in attics, crawl spaces and other concealed spaces that are intended for living purposes or storage.
44. FAU=s or other open flame appliances located in concealed areas (i.e. attics, sub-floor areas) shall be protected by sprinklers.
45. Provide a minimum of six spare sprinklers and a wrench in the spare head box.
46. Provide sprinkler head cut sheet.
47. 14. Sprinkler system design shall include provision for a reduction in available water pressure of 10%.

C. THE FOLLOWING CONDITIONS SHALL BE MET DURING CONSTRUCTION

Engineering Division:

1. An Encroachment Agreement must be applied for through the Engineering Division for any proposed walls or structure in the Right of Way over 6" high. Agreement must be reached with City Council, signed and recorded prior to issuance of Building Permit. Applicant shall understand that receiving a Conditional Use Permit does not in any way guarantee that an agreement can, or will, be reached with the City Council for the encroachment into the right-of-way.

D. CONDITIONS TO BE MET PRIOR TO REQUEST FOR A FRAMING INSPECTION:

PLANNING DIVISION:

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1. **ROOF HEIGHT.** Prior to requesting a framing inspection, a licensed surveyor shall measure and certify the height of the building including anticipated finishing materials. Height to be certified as shown on approved plans.

E. CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. **SINGLE FAMILY USE RESTRICTION** - Uses of the subject property shall be limited to the uses listed in Chapter 17.018 of the Zoning Code (Single Family Residential). Said Chapter and Section 17.006.0400 limit the use of the property to no more than one (1) dwelling unit. No portion of the premises may be rented as a separate living quarters. A Lodging House, as defined by Section 17.006.0655, shall not be permitted.
2. **HOLD HARMLESS.** The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

The property owner and the applicant (if different) shall sign these Conditions of Approval within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant.

- END -

ATTACHMENT 5

**Minutes
City of Pismo Beach
Planning Commission Meeting
Tuesday, November 8, 2005**

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SECTION IV. Reasons Supporting This Appeal

Details

- 1. The City's approval of the development does not conform to the standards of the LCP/LUP policies for measuring site grade and the subsequent height of buildings.**

334 Indio is in the HL-1 Overlay Zone within the Sunset Palisades planning area.

The LCP sections that apply are:

INTRODUCTION

THE GENERAL PLAN/LOCAL COASTAL PLAN

The Pismo Beach General Plan/Local Coast Program is the City's constitution for physical development and change within the existing and future city limits. The Plan is a legal mandate that governs both private and public actions.

The general plan is atop the hierarchy of local government law regulating land use. Subordinate to the general plan are specific plans, ordinances and zoning laws. Zoning laws must conform to the adopted general plan.

Land Use Sunset Palisades Policies

LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.

LU-A-7 Height of Structures

a. **El Portal Drive, Indio Drive**

No structure shall exceed 15 feet in height when measured from the highest point of the site natural grade to the highest point of the structure; nor shall any such structure exceed 25 feet, in height, when measured from the highest point of the roof above the center of the building foot print to the elevation of the natural grade directly below that point.

b. **Remainder of Planning Area**

No structure shall exceed 15 feet in height as measured from the height of the center of the finished building pad grade as designated in the final tract Grading Plan at the time of recordation.

The LUP sections that apply are:

17.006.0908 Site Grade: *Phrase used in the Zoning Code ordinance to establish lot grade for the purpose of determining building heights and other development criteria. Site grade is determined as follows:*

a. For subdivided properties existing as of the time of adopting of the October 12, 1976 Zoning Ordinance, site grade shall be the existing topography of each parcel as of October 12, 1976.

17.006.0460 Fill: *The depositing of earth or any other substance or material by artificial means, including new pilings (except for replacement pilings) placed for the purposes of erecting structures thereon placed in a submerged area, any action by which earth, sand, gravel, rock or any other material is placed, pushed, pumped, pulled, transported, or moved to a new location above the natural surface of the ground or on top of the stripped surface and shall include the conditions resulting therefrom.*

17.081 Height Limitations (HL) Overlay Zone

010.081.010 Purpose of Zone *The Height Limitations (HL) Overlay Zone is intended to set special restrictions on maximum building heights in designated area of the City in order to preserve access to extraordinary scenic views and vistas, as well as to preserve and maintain bulk and scale relationships for selected areas. These regulations are intended to preserve and protect the existing character of certain districts, according to stipulations established in the General Plan/ Local Coastal Program Land Use Plan.*

17.081.020 Criteria and Standards

1. *HL-1: In all low density areas identified in the HL Overlay Zone Map, except the Central (sic) Sunset Palisades Planning Area, no structures shall exceed 15 feet in height when measured from the highest point on the roof to the highest point of the site grade, nor shall any such structure exceed 25 feet when measured from the highest point of the roof above the center of the building footprint at site grade.*
2. *HL-2: In the central Sunset Palisades Planning Area, no structures shall exceed 15 feet in height when measured from the height of the center of the building pad (the finished building pad grade designated on the final Tract Grading Plan at the time of recordation).*

Discussion

In the staff report prepared for City Council Agenda of January 17, 2006, Item 5A, page 6, the City states, “In situations where no records exist as to the grade back in 1976, the City establishes grade as that grade currently existing on the site.” The City has refused repeated requests by the appellant to investigate the location of the “natural” grade.

The City has changed the law without benefit of a public hearing or approval of amendments to the certified LCP/LUP’s. At issue here is the current practice by the city that now allows fill material to be used in the measurement. The LCP, which takes precedence, is very clear that “natural” site grade should be used. An analysis of the LCP and LUP shows that the LCP certified in 1992 has added the word “natural” to the detail of the description of HL-1.

Natural is not contained in the 1983 Zoning code that is the certified LUP. It is contended that the word “natural” was added to distinguish between site grade and “filled” grade. “Fill” being defined in 17.006.0460 of the LUP.

Between 1983 and 1992 a significant development was built in the central portion of the Sunset Palisades. Before that time, single-family homes had been constructed on Indio and El Portal. According to the developer of the 1980’s development, the owners of the homes on El Portal were concerned about their private views being disrupted by the new homes proposed in the central community. In order to protect the views of the homes the City designated both El Portal and Indio to have the special designation of HL-1 Zone Overlay and the new track homes as HL-2 since those site grades are known and set by the recorded track map of the development.

According to the original developer and Board Members of the Sunset Palisades Homeowners Association the HL-2 Overlay district was specifically implemented to preserve the private views of the existing homes on El Portal Drive. El Portal and Indio Drives were designated as HL-1 to subsequently maintain the view shed in the gently sloping area for all homes. Historical photographs are available to show the before and after extent of the grading and construction of the new gated community.

The HL-1 Overlay is applied in some of the steep hillside areas of the City to preserve private views. The other flat area besides the subject portion of Indio that has an HL-1 Overlay is the St. Andrews tract. The St. Andrews tract is south of Sunset Palisades and also abuts the ocean. In 2004, Staff recommended to the Planning Commission that the HL-1 Overlay be removed from the St. Andrews track because “it served no useful purpose” in a flat area. The Planning Commission deferred making any decision at the meeting and according to the minutes recommended that a public hearing should be held because “of the potential impacts to the views currently enjoyed from many private properties”. The minutes from the meeting can be supplied.

Even with BMP’s like we use today, new grading has to be monitored for several years according to the applicant’s geotechnical report from GSI. In the 1980’s, when the central Sunset Palisades were graded to the current state, Best Practices were very different or even nonexistent and significant material runoff occurred from the upslope central Sunset Palisades area to the lot at 334 Indio. A gate at the property line between 334 Indio and 371 Encanto has to be dug out after any significant rainstorm even today. Much of the slope was left uncompacted by the original homeowners of 371 Encanto who deposited many cubic yards of material on to the slope of 371 Encanto during their landscaping, not to mention material that was moved during the cutting of the pad.

It is accepted fact that grading can produce extensive material runoff if it is not managed by good BMP’s. In the late 1980’s when extensive grading and construction took place on the contiguous property east of the site, 317 Encanto and the rest of the track, the soil was free to run off. Today BMP’s were not in place. Numerous rainstorms have occurred in the area since the late 80’s. It is contended that the rains have moved a considerable amount of material into the rear area of 334 Indio from the slopes of 371 Encanto. Today the subfloor vents are at or below the existing grade at the rear of the existing house that existed in 1976.

It is the contention of the appellant that the City has erred in even discussing the use of the 1976 grade because it is clear that legally the LCP definition takes precedence; thereby, the conforming measure to use is the natural grade below any fill. It is moot as to when the fill may have been deposited.

Further evidence that the site at 334 Indio has considerable fill upon its “natural” grade is the GSI geotechnical report that recommends that once excavation is done, heavy vibrating

equipment should be used to compact the remaining material. It should be noted that compaction of material is done because it is fill and not in a solid enough state to support the planned structure. According to a local developer who has built several luxury homes on Indio, it is not the common practice to have to do this heavy compacting.

Furthermore, the particular point the survey uses for the high point to measure the grade is in a spot that was excavated and filled when a french drain was installed in the late 1980's on a drainage swale the runs between 334 Indio and 371 Encanto. The property line description is not included at this time because the description on the recorded track map and the applicants survey do not match. (Additional information is being gathered and will be supplied later)

2. The City's approval of the development does not conform to the standards of the LCP/LUP policies for the mass scale and bulk.

The LCP sections that apply are:

DESIGN ELEMENT (D)

Principles of Building and Site Design 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-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.

Policies of Building and Site Design

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 wall 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.

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.

LAND USE

Land Use Principles

P-16 Historic Ambiance

Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in the downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation. This ambiance provides a link with the past, creates a pleasant experience, and adds to community diversity.

Land Use Policies

LU-1 Land Use Maps

Land uses shall be regulated as shown on the Land Use Map, Figure LU-2 and the maps for individual neighborhood planning areas. In case of conflict, the maps for the individual planning areas shall take precedence. Land-use categories applicable to the Downtown area are stated in the policy section for that subarea.

LU-2 Residential Uses

Residential land uses include the categories of Low, Medium, and High density. Specific policies for residential uses are:

a. Variety of Residential Land Uses Encouraged

In order to provide a variety of housing choices for all income groups and create residential areas with distinctive identity a wide variety of densities and housing types shall be encouraged.

d. Densities

Permissible housing densities are established within three broad categories shown in Table LU-3.

Category	Density
<i>Low Density</i>	<i>1 to 4 units per ac.</i>
<i>Medium Density</i>	<i>5 to 10 units per ac.</i>
<i>High Density</i>	<i>11 to 13 units per ac.</i>

These densities are maximums. It may not be desirable or appropriate to meet these densities in any specific situation. The maximum number of dwelling units shall be determined for individual parcels as follows:

- Gross parcel area is computed in square feet or acres.*

- *The amount of parcel area that is unbuildable is calculated, including but not limited to acres with slopes greater than 30%, existing roadways, waterways.*
- *Net buildable parcel area is calculated as a-b.*
- *The maximum number of units or lots is the product of the density factor and the net buildable area.*

Neighborhood Planning Areas

Background

The City has been divided into 18 Neighborhood Planning Areas as shown on Figure LU-3. Specific background and policies applying to each area are indicated in the following sections.

Sunset Palisades/Ontario Ridge Planning Area A

Background

The Sunset Palisades area is an ocean oriented, low profile residential neighborhood with a backdrop of the coastal foothills. The planning area is almost totally developed in low density residential use with only a few scattered vacant residential lots. It includes the Ontario Ridge area which was annexed to the City in 1990 and was being developed as of 1992.

The bluff tops along the Sunset Palisades stretch of coast are primarily under private ownership.

The bluff tops in Ontario Ridge consists of a 9 acre open space/recreational parcel under ownership of the homeowners association but with public access rights.

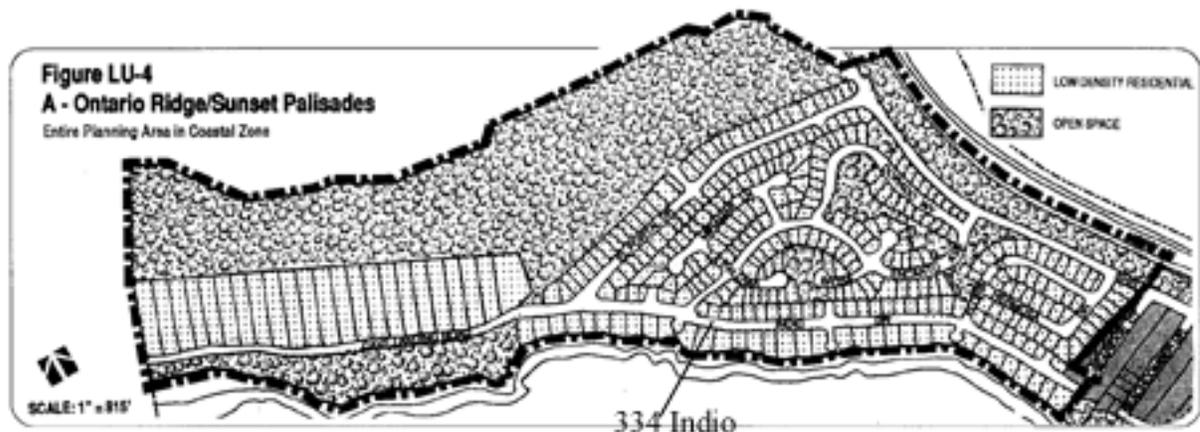
The base of the bluffs is an intertidal habitat, natural resource area, which should be protected. Public access to this sensitive area should be limited. Damage by wave conditions is possible and bluff erosion is an ongoing process. Some residences along the bluffs have provided their own stairways to small beaches. Some of these have been damaged in past storms. Seawalls to protect an existing structure are permitted only if there is no other less environmentally damaging alternative.

The Sunset Palisades area contains 6 acres of private open space in a gated community as well as the 5.7 acre Palisades public park. Fifty three acres of land on the upper slopes of Ontario Ridge are in permanent open space. [does not apply] Archaeological resources are evident in the area.

Sunset Palisades Policies

LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.



The LUP sections that apply are:

17.105.130 Architectural Review

Drawings, sketches and site plans for applications required for Architectural Review under the provisions of Chapter 17.121 shall be considered in an endeavor to provide that the architectural and general appearance of such buildings or structures and grounds be in keeping with the character of the neighborhood and such as not to be detrimental to the orderly and harmonious development of the City, or to impair the desirability of investment or occupation in the neighborhood, and that the project is consistent with the goals, policies and programs of the Local Coastal Program Land Use Plan.

Discussion

The new structure will be almost 3X the size of the existing residence. As a full 2-story residence it will replace a low-profile, 1-story home and will alter the harmony of the neighborhood by creating a significant change in the spatial relationships and architectural character of the existing neighborhood.

LCP Land Use Policy LU-6 stipulates, “Infill development shall be compatible with the existing community.” And LCP Design Element Policy D-2 a. states, “New development should be designed to reflect the small scale image of the city rather than create large monolithic buildings”. By approving the development the City is not in conformance with it policies.

The proposed building is a 2-story, 4,660 square foot structure which is the size of many 6-unit apartment buildings. It will replace a 1,614 square foot, one-story home. The Applicant’s have submitted a photo montage to depict the street elevation, but it does not appear to be properly scaled to the adjacent properties or the existing residence. The following graph shows the size relationship of the proposed structure to the adjacent homes on the inland side of Indio Drive, Encanto and La Paloma.

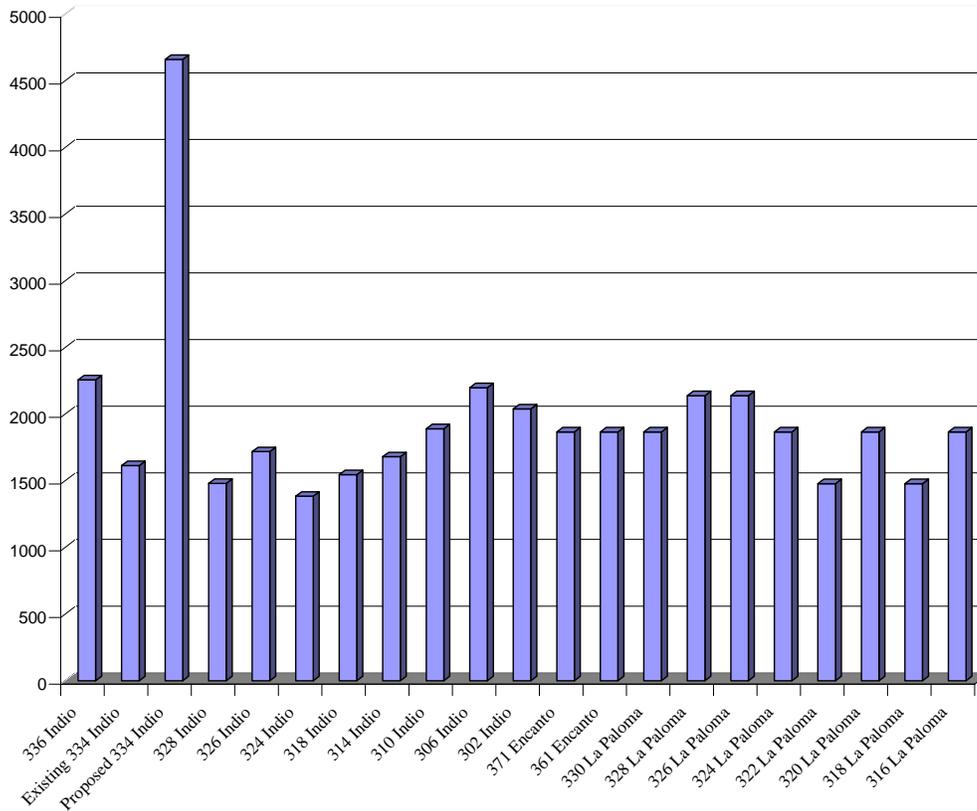


Figure 1. Square footage of improvements in the adjacent neighborhood taken from the records of San Luis Obispo County Assessors Office

The proposed home is still considerably larger than even the biggest bluff side home by nearly 1,000 square feet; the median size on the bluff top being approximately 2300 square feet. While some homes on the bluff top side of Indio are larger than 2,000 square feet; the bluff top homes appear from the street as low profile, single story, low density homes. The extra square footage of the larger homes is contained in a lower level which is not visible from the street. Pictures from the street will be provided that demonstrate the low profile, single story appearance.

It is contended that the City did not adequately evaluate the mass and scale of this development for harmony with the existing development in Sunset Palisades as stipulated by LCP Principle P-7 in the Design Elements. The LCP clearly states, “*Designs reflective of a traditional California seaside community should be encouraged.*” And “*New development should be designed to reflect the small scale image of the city*” from Design Element of the LCP D-2 Building and Design Criteria, a. Small Scale. A home with 4660 square feet on a 6536 square foot lot is a immense departure from small scale called for in the LCP.

The homes on Indio and the adjacent central Sunset Palisades convey the design principles of “*low profile residential neighborhood*”. Development of Sunset Palisades began over 50 years ago on Indio and El Portal. County of San Luis Obispo records indicate the existing home was built in 1951 making it over 50 years old. While it does not have any architectural significance by itself, it does contribute to the historic ambiance of the neighborhood by maintaining the appropriate scale and mass that the LCP calls for within the

entire city. The City has not consider, followed or reinforced their stated Land Use Principle of “*historic ambience*” in the their approval of this project. In addition, the City may be in nonconformance with the State of California regulations that require evaluation of building 50 years old or more for their contribution to historic resources as determined by the California Register of Historic Resources. While no individual building in Sunset Palisades area may rise to the level required for designation as an individual historic resource; consideration should be given to the overall area as one of a potential historic resource because it is a excellent example of Mid-Century low rise, unpretentious California coastal development in the post World War II years.

The Land Use section of the certified LCP has further has divided the city into Neighborhood Planning Areas. The site is in Planning Area A, Sunset Palisades/Ontario Ridge. The LCP clearly states that the area is “*low profile*”, and “*low density*”. Low density is further defined by the LCP as “*1 to 4 units per acre*”. Because this area was subdivided long before the LCP was written most of the lots are less than .25 of an acre (10,890 sq. ft.) and therefore nonconforming by current standards. The subject lot is listed in county records as having 6536 square feet (applicants survey states it is 6604 square feet) making it .15 of an acre. It is smaller than most lots on the 300 block of Indio’s inland side by about 1,000 square feet.

In the Design Element of the LCP it states that site coverage standards will be regulated by City ordinance; however, the LUP does not make any distinction between the low, medium and high density areas of the city. It is contended that by applying the same standards to all density categories within the City, the mandate of the LCP for “*low profile*” and “*low density*” within the Sunset Palisades Planning Area has not been met by only applying the LUP maximum standards. The architectural review has not considered the project in the context of it neighborhood.

3. The project is inconsistent with the LCP/LUP policies on the desirability of investment in the neighborhood; and, the policies protecting scenic and visual resources in Sunset Palisades planning area.

The LCP sections that apply are:

DESIGN ELEMENT (D)

Principles of Building and Site Design 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-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.

Sunset Palisades Policies

LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.

LU-A-7 Height of Structures

b. El Portal Drive, Indio Drive

No structure shall exceed 15 feet in height when measured from the highest point of the site natural grade to the highest point of the structure; Nor shall any such structure exceed 25 feet, in height, when measured from the highest point of the roof above the center of the building foot print to the elevation of the natural grade directly below that point.

b. Remainder of Planning Area

No structure shall exceed 15 feet in height as measured from the height of the center of the finished building pad grade as designated in the final tract Grading Plan at the time of recordation.

The LUP sections that apply are:

17.105.130 Architectural Review

Drawings, sketches and site plans for applications required for Architectural Review under the provisions of Chapter 17.121 shall be considered in an endeavor to provide that the architectural and general appearance of such buildings or structures and grounds be in keeping with the character of the neighborhood and such as not to be detrimental to the orderly and harmonious development of the City, or to impair the desirability of investment or occupation in the neighborhood, and that the project is consistent with the goals, policies and programs of the Local Coastal Program Land Use Plan.

17.105.080 Views

It shall be the responsibility of the City to protect scenic views consistent with the General Plan/Local Coastal Program Land Use Plan and all of its Elements.

Discussion

The city did not evaluate the financial impact to the homeowners whose views will be blocked by the project. Code 10.105.130 clearly states that the Architectural Review shall consider if the development will impair the desirability of investment in the neighborhood.

The City's Design Principle P-7 clearly states that "*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-being of the community*" The coastal views are a significant component of the value of the homes on Encanto Ave and La Paloma. The loss or alteration of the view will devalue each home. Further information can be provided to quantify the cost to the neighbors if this project is allowed to proceed as currently approved by the city.

4. The City's approval of the development does not conform to the standards of the LCP/LUP for protecting archaeological resources.

The section of the LCP that applies is:

Archaeological Resources

Background

Archaeological sites resulting from thousands of years of human settlement along the coast are among the most fragile of resources. Protection of these resources is established in the California Environmental Quality Act (CEQA), the California Public Resources Code, and the California Health and Safety Code.

Policy CO-5 Protect Archaeological Resources

Archaeological and paleontological resources are declared to be important to be conserved. The City shall have available a map that identifies the possible location of archeological resources.

As part of the CEQA process for all new development projects, all known or potential archaeological resources shall be fully investigated by a qualified archaeologist recognized by the state Historic Preservation Office. Appropriate protection shall be determined as part of the review process including:

c. Specific recommendations prepared by the archaeologist shall be incorporated into project approval including: avoidance of portions of sites containing resources, minimizing the impacts of the development on the archaeological resources, preserving a full archaeological record, and/or partial site dedication, and providing a native American monitor onsite to observe excavation in location where there is a possibility of discovery of human remains.

The section of the LUP that applies is:

17.063 Archaeology—Historic Sites (A) Overlay Zone

17.063.010 Purpose of Zone

The Archaeology—Historic Sites (A) Overlay Zone is established to preserve, protect and maintain land and water areas, structures and other sites which have significant historical, archaeological or cultural importance and provide for the designation of areas which may be of unique value for scientific or educational purposes.

17.063.020 Criteria and Standards

2. Any archaeological surface survey of each site shall be conducted by a qualified archaeologist as a condition of development review for any proposed project within the Archaeology—Historic Sites Overlay Zone in areas of unknown significance based upon a written determination of the Public Services Department. The results of this survey shall be submitted as part of the

development application. Included with this survey will be an evaluation as to the presence of cultural resources based on supportable evidence and shall also include appropriate mitigation measures, as necessary, for the project. Any site which is surveyed pursuant to the requirements of this ordinance shall not be required to be further surveyed unless specified by the findings of the survey.

4. *a. Any mitigation measures included in archaeological studies shall be appropriately incorporated into the design of the project, including construction techniques which will minimize impact to the archaeological resources.*

Discussion

The development is within an archaeological overlay zone and the Applicant has supplied the City with a report. The only specific recommendation in the approval is to hire monitors.

On page 3 of Agenda Item 2A for the Planning Commission Meeting of November 8, 2005 it says, “An archaeological surface survey (“Phase I report”) was completed for the site. The archaeologist noted displaced archaeological/cultural material on the site. It is recommended that “because of the presence of displace (sic) cultural materials on the lot archaeological monitoring should accompany any excavations on the lot”.

The approval is inadequate because it does not contain specific recommendations as required per section 17.063.020, 4 a. regarding the construction techniques to be used to ensure that cultural resources are protected during excavation.

The development as approved will dig up hundreds of cubic yards of material. The GSI soils report states that 3 to 4 feet of the home will be below grade and that does not include several more feet for foundation, etc. The 1st floor is 2645 square feet and the geotechnical report recommends an additional 5 feet beyond the perimeter. Therefore an informal estimate is 3,721 sq. ft. of horizontal surface x 6 foot depth = 22,326 cubic feet / 27 = 826 cubic yards of material. A large dump truck typically carries 16 cubic yards so about 51 dump trucks worth of material will need scrutiny.

As required by LCP Policy CO-5 there is no specific recommendations incorporated that addresses the minimization of the impacts of the extensive excavation. For example, how will it be dug out? A big bulldozer loading into a dump truck? How much time will the monitors have to examine each shovel full?

Further background on the archaeological significance can be obtained. It is a fact that the 6 acres of open space in the central Sunset Palisades that adjoins the site are the result of the discovery of Chumash remains and artifacts during the development in the 1980’s.

5. **The City’s approval of the development does not conform and is inconsistent in the applications of the standards of the LCP/LUP for protecting the marine environment of the Sunset Palisades area.**

The LCP sections that apply are:

PRINCIPLES OF CONSERVATION/OPEN SPACE ELEMENT (CO)

P-2 Natural Resources—Key Foundation of the City

Pismo Beach is the ocean, beaches, hills, weather and related eco-systems. 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 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. This natural asset will be protected and made available to all.

Pacific Ocean, Beach and Coastal Cliffs (see Principle P-6)

Background

The Pacific Ocean is the most significant single natural resource and open space for Pismo Beach. The city's shoreline can be divided into four tidal zones as described as follows.

2. Northern Rocky Beach Areas

The rocky beach areas, cliffs and rocky points extend from northwest of the pier to the northern city limits.

Proceeding northerly from the Dinosaur Caves area to the Sunset Palisades area and including Shell Beach are marine terraces. These are actually old wave-cut platforms that have been uplifted. Beaches in this area have been formed by sand being deposited on top of the wave-cut platforms by the ocean currents. The more resistant rock that has withstood the effects of the waves also remains.

The rocky points and reefs along the Sunset Palisades area is particularly valuable habitat for shorebirds, invertebrates and vertebrates.

Potential conflicts exist between recreational use of the rocky beach area and the wildlife. Habitat preservation is of importance for the rocky islets and reefs in the Dinosaur Caves area, some of the coastline along Shell Beach, and the coastline in the Sunset Palisades area north of Florin Circle.

3. Intertidal Zone

Within the boundaries of Pismo Beach, the intertidal zone is owned by the State Lands Commission, which has jurisdiction over all matters concerning the area's wildlife populations, most notably the populations of the Pismo clam. A variety of bird species also feed in the intertidal zone.

Some conflict exists between utilization of the rocky intertidal zone for recreational uses, and preservation of the natural resources. Currently, it appears that the resources are not in jeopardy because the more sensitive intertidal areas are located where public access is limited.

4. Subtidal Zone

In the northern half of the city, the subtidal area is rocky near the shore. In this location are kelp beds, which are recognized for their prime habitat value. Although the subtidal zone is beyond city jurisdiction from a legal standpoint, the city nevertheless has an indirect responsibility for activities that affect the natural resources of the area.

LAND USE

Land Use Principles

P-13 Natural Resource Preservation

All land use proposals shall respect, preserve and enhance the most important natural resources of Pismo Beach; those being the ocean and beaches.

Discussion

The LCP specifically identifies the *“The rocky points and reefs along the Sunset Palisades area is particularly valuable habitat for shorebirds, invertebrates and vertebrates.”*

The concern for the tidal area is the impact from the discharge of ground water into the storm drain system.

The GSI geotechnical report recommends that a sump/drainage system be utilized to pump ground water into the storm drains. The Sunset Palisades area has high ground water and as the GSI report states “moisture can be in the upper 2 to 3 feet in wet winter months.” Since the proposed home is a 2-story structure in a 15-foot zone, a significant portion will be below grade. Therefore, the reason for the pumping of the ground water out is to protect the foundation and portions of the first level.

The quality of the ground water is a concern because prior testing in the adjacent central Sunset Palisades by the Homeowners Association showed results that indicated the ground water as pumped from the ground is not suitable for irrigating landscaping.

If the ground water is not suitable for landscaping, the impact to the fragile tidal area needs to be evaluated before it is poured from the storm drains on to the tidal area. The City has not done this and is therefore not in compliance with its certified Local Coastal Program.

A copy of the report results for test wells has been requested from the Homeowners Association and further details can be provided.

Additional facts that the City did not consider when it failed to evaluate the environmental impact of the ground water are: the site was an oil refinery in the early part of the 20th Century; the site is in close down slope proximity to Highway 101, highway runoff may be in the ground water; and there are known sulphur springs in the area.

- 6. The City’s approval of the development does not conform and is inconsistent in the applications of the standards of the LCP/LUP because it is in a Hazard Overlay zone and there is no evaluation.**

The LCP sections that apply are:

Sunset Palisades Policies

LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.

SAFETY ELEMENT

Geological/Seismic Hazard

Background

The potential for liquefaction and landslides is present within and surrounding the city. Liquefaction areas are limited, however, to soils having relatively low compaction underlain by shallow groundwater.

Policy

S-11 Development Review in Hazardous Overlay Zone

Geologic reports may be required and shall be reviewed by the appropriate decision-making body, prior to approval of any development permits for projects located within the Hazardous Overlay Zone.

The LUP sections that apply are:

17.078 Hazards and Protection (H) Overlay Zone

17.078.010 Purpose of Zone

The Hazards and Protection (H) Overlay Zone is intended to prevent unsafe development of hazardous areas; to minimize damages to public and private property; and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage. This overlay zone includes those area unsafe for development which are (1) prone to downslope movement or severe land slippage (i.e., slump, landslide areas); (2) in direct contact with known active or potentially active faults or fault zones; and (3) located in areas of high liquefaction potential, unstable slopes, retreating ocean bluffs or easily erodible areas. This overlay zone is intended to maintain and enhance land and watershed management, control storm drainage and erosion and control the water quality of both urban runoff and natural water bodies by regulating development within those areas with slopes of 10 percent or greater. [not applicable] This Overlay Zone is intended to also protect and enhance the shoreline bluffs and beaches of the City from visual as well as physical deterioration or erosion.

17.121.005 Permit Approvals

All permits granted pursuant to this ordinance shall be supported by explicit findings describing the consistency with all Code requirements and General Plan/Local Coastal Program Land Use Plan Policies and Programs.

Discussion

A map of the Sunset Palisades Overlay Zones contained in a handout downloaded from the city website shows the site to be in the Overlay-H Hazards & Protect Zone.

The City is out of compliance with its LUP because it does not explicitly state any finding of an evaluation of the hazards as stipulated by section 17.121.005.

Section 17.078.010 of the LUP states the zone is “*intended to prevent unsafe development of hazardous areas; to minimize damages to public and private property*”. Without a statement of the hazards ??????????????

7. The City’s approval of the development does not conform and is inconsistent in the applications of the standards of the LCP/LUP for protecting the coastal bluffs.

The LCP sections that apply are:

Sunset Palisades Policies

LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.

SAFETY ELEMENT

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The Hazards and Protection (H) Overlay Zone is intended to prevent unsafe development of hazardous areas; to minimize damages to public and private property; and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage. This overlay zone includes those areas unsafe for development which are (1) prone to downslope movement or severe land slippage (i.e., slump, landslide areas); (2) in direct contact with known active or potentially active faults or

fault zones; and (3) located in areas of high liquefaction potential, unstable slopes, retreating ocean bluffs or easily erodible areas. This overlay zone is intended to maintain and enhance land and watershed management, control storm drainage and erosion and control the water quality of both urban runoff and natural water bodies by regulating development within those areas with slopes of 10 percent or greater. [not applicable] This Overlay Zone is intended to also protect and enhance the shoreline bluffs and beaches of the City from visual as well as physical deterioration or erosion.

Discussion

It is the contention of the appeal that an impact analysis of the potential consequences of the use of heavy vibrating equipment during site preparation should be done. The coastal bluffs are less than 200 feet from the site. The effect of the waves generated by the heavy vibrating equipment is unknown at the present time and the potential of how far and how physically powerful they will be at given distances should be analyzed before this activity is approved.

