

CALIFORNIA COASTAL COMMISSION

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Filed: 03/11/96
49th day: 04/29/96
180th day: 09/07/96
Staff: SG-SC
Staff Report: 03/21/96
Hearing Date: 04/10/96
Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO

LOCAL GOVERNMENT: City of Pismo Beach
DECISION: Approval with Conditions
APPEAL NUMBER: A-3-PSB-95-79
APPLICANT: STEVE ANDREWS/JAMES S. LEE
APPELLANTS: (1) Lanier and Dee Harper and (2) Anatol Jordan
PROJECT LOCATION: Southeasterly side of Beachcomber Drive, between Shell Beach Road and the Pacific Ocean, City of Pismo Beach, San Luis Obispo County, APNs: 010-152-019 and -020..
PROJECT DESCRIPTION: Coastal development permit, conditional use permit, architectural review permit, and landscape permit for a subdivision consisting of 23 residential lots and 2 open space lots with passive recreation improvements in bluff top setback area. No houses are proposed, only lots.
SUBSTANTIVE FILE DOCUMENTS: Pismo Beach certified LCP, South Palisades Specific Plan, Mitigated Negative Declaration for Project 92-153

SUMMARY OF STAFF RECOMMENDATION

On January 10, 1996, the Commission opened and continued this appeal due to the facts that the entire record from the City was not available in time to prepare a staff report on the substantial issue determination..

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed . If the Commission so finds, staff further recommends that a **de novo public hearing** on this project immediately

follow with a recommendation for **approval with conditions** requiring that the project be revised to ensure that no part of the proposed loop road will encroach more than 35 feet into the required bluff top open space area, as allowed by the LCP.

Appeal Issues

According appellants Dee and Lanier Harper, the primary issues are (1) Land Use and Planning; (2) Geological Problems; (3) water; (4) Transportation/Circulation; (5) Biological Resources; (6) Hazards; (7) Noise; (8) Public Services, Utilities and Service Systems and Population and Housing; (9) Aesthetics; (10) Cultural resources; (11) recreation; and (12) the spirit and intent of the LCP has not been followed. According to appellant Anatol J. Jordan, the issues are (1) views, (2) bluff erosion, (3) short term notification by the City, and (4) no EIR for the proposal. Please see Exhibits 1 and 2 for the full text of the appeals.

Project Location and Description

The site of the proposal is located in the northern portion of the City on the shelf between Highway One/US Highway 101 and the sea, in an area known as the South Palisades Planning Area (please see Exhibit 4).

The City approved a Vesting tentative Tract Map consisting of 23 residential lots and two open space lots. A 1.35 acre bluff retreat area with passive recreation improvements would be located adjacent to the bluff top. An 8 foot wide pedestrian trail and a 10 foot wide class 1 bicycle pathway would be located within the retreat area. New meandering sidewalks consisting of a 12 foot range (the sidewalk would meander six feet on either side of the center of the sidewalk easement) are proposed within the right-of-way and a 6 foot wide public utility easement area. A 10 foot wide public utility easement and a 14 foot wide slope easement are proposed adjacent to Shell Beach Road right-of-way. Full street improvements are proposed with one-half of the improvements onto the adjacent property to the south (with exception of the sidewalk). No houses were proposed or approved. Each house will be custom built and undergo separate coastal development permit review for all pertinent issues, including height, visual impact, etc.

Project as Proposed Inconsistent with the Certified LCP

Despite the 16 issues identified by the appellants, the only inconsistencies that staff has identified in the City's approval of the proposal are: 1) allowing a portion of the loop road to encroach into the required bluff top open space area more than the 35 feet allowed by the LCP (as much as 65 feet); 2) approving building pads at an elevation above existing grade, and 3) lot coverage greater than allowed. If those items are corrected, then the project will be consistent with the LCP.

Approvable Project

The project will be approvable if the loop road is partially redesigned so that the approximately 65 foot encroachment into the bluff top open space area is reduced to 35 feet, the amount

allowed by the LCP; if the grading creates building pads whose highest elevation is no more than the lowest existing grade on each proposed lot; and if the lot coverage is reduced.

List of Exhibits

- Exhibit 1 - Appeal of Dee and Lanier Harper
 - Exhibit 2 - Appeal of Anatol J. Jordan
 - Exhibit 3 - Pismo Beach Conditions and Findings
 - Exhibit 4 - Vicinity and Site Maps/Plans
 - Exhibit 5 - Photos of subject site with rooftop lines superimposed
 - Exhibit 6 - Correspondence
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I. SUMMARY OF APPELLANTS' CONTENTIONS

The appellants have raised a host of issues in their appeals which are paraphrased below (please see Exhibits 1 and 2 for the complete text of the appeals).

A. Dee and Lanier Harper, received November 17, 1995. This appeal contends that the proposal is inconsistent with the LCP for the following reasons: (1) Land Use and Planning--the jump from Planned Residential (as planned) to Single Family Residential (no planning except in the EIR); (2) Geological Problems with the Bluff Retreat and the unnecessary encroachment into the park and retreat area;(3) Water--the project should address groundwater and drainage patterns with a professional hydrologist's report for the entire project--not 23 times in the future; (4) Transportation/Circulation--Local residents have expressed concern over traffic congestion, hazards to safety from design features, requests for one way streets in the loop system and adequate parking; (5) Biological Resources--the tidepool habitat has been ignored, it should be protected at least with proper signs; (6) Hazards--the Union Oil Pipeline should be in the bluff retreat/park open space; (7) Noise--Exposure of people to severe noise levels is a significant issue--US Highway 101 is about 100 feet from the first lots and there has been no mitigation for exterior noise levels;(8)Public Services, Utilities and Service Systems and Population and Housing--I have seen no reports or documents to support any claim made as to the impact on the local government and agencies; (9) Aesthetics--The proposed project will have a significant and long-term impact. US Highway 101 and Shell Beach Road are both Scenic Highways and the largely unobstructed views to the bluff and ocean will be permanently lost.(10) Cultural resources--the historical impact has not been addressed;(11) Recreation--the project as proposed has a questionable retreat, a street in the park (on top of an oil pipeline) and is offering for sale to the public part of the space that was intended to be set aside for public use, access, recreation, and enjoyment; and (12) The spirit and intent of the LCP has not been followed, there are considerable cumulative impacts, and there are environmental effects that will cause substantial adverse effects on people.

B. Anatol J. Jordan, received November 17, 1995. This appeal contends that the proposal is inconsistent with the LCP for the following reasons. (1) Views from existing dwellings, Shell Beach Road and Highway 101 will be adversely impacted, (2) inadequacy of the geologic report and erosion setback, (3) late notification by the City of the pending proposal, and (4) no EIR was required.

II. LOCAL GOVERNMENT ACTION

The City of Pismo Beach approved the proposal initially at the Planning Commission level. That approval was appealed to the City Council which ultimately denied the appeal and approved the proposal with conditions. The 10 working day appeal period began on December 5, 1995 and concluded at 5:00 P.M. on December 18, 1995.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). Since this project is appealed on the basis of its location between the sea and the first public road paralleling the sea, the grounds for an appeal to the Coastal Commission include not only the allegation that the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

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 stage of an appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **substantial issue** exists with respect to the grounds on which the appeal has been filed. Staff recommends a **NO** vote on the following motion:

MOTION:

I move that the Commission determine that Appeal No. A-3-SLO-95-69 raises no substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a **NO** vote which would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. To pass the motion, a majority of the Commissioners present is required.

V. STAFF RECOMMENDATION ON COASTAL PERMIT

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the project, subject to the recommended conditions below and adopt the following resolution:

Approval with conditions

The Commission hereby **grants**, subject to the conditions below, a permit for the proposed development as modified, on the grounds that the modified development, as conditioned, will be consistent with the certified City of Pismo Beach Local Coastal Program, will be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, and will not have any adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII. Special Conditions

1. Revised Plans

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit two copies of the following revised plans for review and approval by the Executive Director:

- a. tentative tract maps showing that the loop road will encroach into the bluff top open space area no more than the allowed 35 feet. This may require a downward adjustment in the number of proposed lots or a decrease in total residential lot area. The revised tentative tract maps shall contain a note stating that maximum lot coverage is limited to 40 percent of lot area.
- b. grading plans showing that proposed building pads will be at or below the lowest existing grade on each proposed lot and showing that the proposed loop road will not encroach more than the allowed 35 feet into the bluff top open space.
- c. cross-sectional drawing showing that the proposed building pads will be at or below existing grade.

2. CC&Rs

PRIOR TO RECORDATION OF A FINAL MAP, the permittee shall submit to the Executive Director for review and approval two copies of the CC&Rs which shall include language setting forth the maximum lot coverages.

3. Height

Height of all structures shall be measured from the finished grade of the building pad. The elevation of each building pad shall be no higher than the lowest elevation contour on the proposed lot.

4. Lot coverage

Lot coverage shall not exceed 40 percent of gross lot area.

5. City Conditions

City conditions A) 6 and E) 4 are hereby deleted in their entirety. City condition B) 7 is deleted in part where it would conflict with the conditions of this Coastal Commission permit concerning height and lot coverage.

VIII. Findings

A. PROJECT DESCRIPTION AND BACKGROUND

1. Description.

The site of the proposal is located in the northern portion of the City on the shelf between Highway One/US Highway 101 and the sea, in an area known as the South Palisades Planning Area (please see Exhibit 4).

The City approved a Vesting Tentative Tract Map consisting of 23 residential lots and two open space lots. A 1.35 acre bluff retreat area with passive recreation improvements would be located adjacent to the bluff top. An 8 foot wide pedestrian trail and a 10 foot wide class 1 bicycle pathway would be located within the retreat area. New meandering sidewalks consisting of a 12 foot range (six feet in either direction) are proposed within the right-of-way and a 6 foot wide public utility easement area. A 10 foot wide public utility easement and a 14 foot wide slope easement are proposed adjacent to Shell Beach Road right-of-way. Full street improvements are proposed with one-half of the improvements onto the adjacent property to the south (with exception of the sidewalk). No houses were approved. Each house to be built in the future will have to undergo separate coastal development permit review.

2. Background.

The City's LCP was certified in 1984. Major revisions to the Land Use Plan (LUP) were undertaken and certified with suggested modifications in 1992. The City accepted the modifications and the revised document was effectively certified in 1993. The LUP divides the City into 18 planning areas. The subject site is in Planning Area B, the South Palisades Planning Area. According to the LUP, "*The South Palisades Planning Area is developing by the guidelines of a Specific Plan adopted in 1986.*" However, that specific plan was never certified by the Commission. Research into the Commission's files revealed that the South Palisades Specific Plan was adopted by the City on February 3, 1986 and revised on July 14 and 28, 1986, and September 12, 1988. Correspondence between Commission staff and the City in 1987 and 1988 includes discussion of the South Palisades Specific Plan as one part of the initial four part submittal for LCP amendment number 1-88. According to the correspondence and notes in that

file, there were problems with the specific plan submittal and it was withdrawn from consideration. It has never been resubmitted and certified. It was the opinion of a former City official that the LCP was certified with a provision that allows specific plans to be adopted by the City and thereby become legally effective without Commission certification. Staff has found no such provision. Without certification by the Commission, land use regulations are not legally effective in the coastal zone and cannot be relied upon for project approval or denial. **Therefore, the South Palisades Specific Plan is not legally effective and the City cannot rely on it to approve projects in the South Palisades Planning Area.**

The City can regulate land use in that planning area through the certified LUP and zoning ordinance. Thus staff's first task was to determine if the subject proposal was approvable without reference to the Specific Plan. The LUP and the zoning ordinance do contain the regulations that the City applied to this proposal. Therefore the proposal does not fail on the basis of the legal ineffectiveness of the South Palisades Specific Plan. With that determination made, staff's next task was to investigate whether or not the City's approval was consistent with the regulations in the LUP and zoning ordinance. The results of that investigation are included in the Issue Discussion, below.

B. ISSUE DISCUSSION

1. Coastal Access Issues

Coastal Act 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 sandy and rocky coastal beaches to the first line of terrestrial vegetation.*

LUP Policy PR-22. Lateral Beach/Shoreline Access Required. *Coastal Beach Access Dedication - For all developments on parcels located along the shoreline, a lateral public access easement in perpetuity extending from the oceanside parcel boundary to the top of the bluff shall be required for the purpose of allowing public use and enjoyment of dry sandy and rocky beaches, intertidal and subtidal areas. Such easements shall be granted to the California Department of Parks and Recreation, the City of Pismo Beach, or other appropriate public agency.*

The City approval did not specifically condition the project to require a lateral beach/shoreline access easement. However, lot 25, a 1.35 acre blufftop lot proposed as open space seaward of the proposed loop street, is shown on the City-approved tentative map as extending seaward of the bluff to the mean high tide line with a note stating ***IRREVOCABLE OFFER TO DEDICATE TO CITY OF PISMO BEACH***. Typically, these offers are recorded when the final map is recorded. This will accomplish the same end as would a lateral public access easement. The City's approval is consistent with Policy PR-22

Vertical access was neither required by the City nor by the LCP. LUP Policy PR-24 does require vertical access under certain conditions and in certain locations. In the South Palisades Planning Area, no vertical access is contemplated for the subject site. There is an existing beach access about one-quarter mile south of the subject site and a beach access is proposed

with future development about 500 feet south of the subject site. The City approval is consistent with the LCP in this regard.

2. Visual Issues

LUP Policy LU-B-5 Visual Access. *Development of the South Palisades area shall protect visual access to the ocean and to dominant coastal landforms. Specifically, the size and location of structures shall retain to the maximum extent feasible intermittent views of the ocean from U.S. Highway 101. To accomplish these design objectives, the following standards shall be incorporated into the Specific Plan: 1. The building pads for all development shall be at or below existing grade. 2. Residential units shall be predominantly attached and clustered. 3. A minimum of 60 percent of the existing parcels within the planning area as of 1992 shall be retained in open space. 4. Structures immediately landward of the required bluff setback shall not exceed 15 feet in height from the existing natural grade. 5. Heights of structures other than those identified in subsection 4 above shall not exceed a maximum of 25 feet above natural grade. Two story structures shall be permitted only where it is determined that views of the ocean will not be blocked or substantially impaired. A visual analysis of potential view blockage shall be required for each development proposal. 6. Road right-of-way widths shall be complemented by an additional building setback of a minimum of 20 feet. 7. Open space shall be arranged to maximize view corridors through the planning area from public viewing areas to protect and maintain views of both the ocean and coastal foothills, as well as the visual sense of the coastal terrace landform. Accordingly, common open space shall have continuity throughout the development and shall not be interrupted by fences or other structures.*

Zoning Ordinance Section 17.081.020(3)HL-3, Height Limitations. *In the South Palisades Planning Area, heights of all buildings shall vary from one to two stories, with two-story structures being allowable only in areas which will not substantially block ocean overviews from U.S. Highway 101. Heights of structures immediately landward of the required General Plan bluff setback shall not exceed 15 feet in height measured from the highest point of the roof to the center point of the building footprint at the site grade existing as of January 23, 1981. Heights of other structures shall not exceed a maximum of 25 feet above the grade existing as of October 12, 1976.*

Zoning Ordinance Section 17.006.0908 Site Grade. *Phrase used in the Zoning 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 adoption of the October 12, 1976 Zoning Ordinance, site grade shall be the existing topography of each parcel as of October 12, 1976. b. For unsubdivided properties, or parcels subdivided after October 12, 1976, site grade shall be established as being the precise topography of the lot at the time of completion of finished grading, based on the City approved grading plan for the subdivision.*

With respect to the grade at which structures would be developed on the subject site, these three regulations appear to be in conflict. LUP Policy LU-B-5(1) requires building pads to be at or below existing grade, LU-B-5(4) limits heights on lots immediately landward of the bluff setback to 15 feet above existing natural grade, LU-B-5(6) limits heights elsewhere to 25 feet above natural grade; Zoning Ordinance Section 17.081.020(3)HL-3 only requires that heights not exceed a certain figure above grade existing on one of two dates, depending on whether a

lot is immediately landward of the bluff setback or is located elsewhere. Finally, Zoning Ordinance Section 17.006.0908(b) sets site grade as the topographic elevation after grading is completed as approved by the City, for parcels subdivided after October 12, 1976.

Nevertheless, LUP Policy LU-B-5(1) clearly sets the *elevation of the building pads at or below existing grade*, while the other regulations deal with height of structures or, in the instance of Section 17.006.0908, define "site grade." *Existing* grade is not defined in the LCP. The City approval appears to have essentially allowed for "averaging" of building pad elevation in that the cross-sectional drawing approved by the City shows building pads that cut into the existing grade on the up-slope side and are on fill on the down-slope side. The City approved preliminary grading plan shows some lots with this "averaged" grade and a few that are proposed with finished grade at or below the existing grade. This is inconsistent with the LCP because Policy LU-B-5 is specific to the South Palisades Planning Area and clearly states that building pads must be at or below existing grade. On its face this means that no lot can have a building pad that is higher than the lowest existing grade on the proposed lot site. That elevation would then also be the site grade from which building heights would be measured.

This inconsistency can be corrected by requiring that the applicant submit revised grading plans which show that the building pads for each proposed lot be no higher than the lowest existing grade on that proposed lot.

Visual issues involve not only the elevation of the building pads but also the height of the structures to be placed on the building pads and how the structures impact views to and along the coast from US Highway 101 and Shell Beach Road. The following policies apply:

LUP Policy D-23 U.S. 101 Freeway. *The U.S. 101 Freeway, also known as El Camino Real, is hereby designated as a Pismo Beach scenic highway. The portion of this highway within Pismo Beach provides travelers with the only ocean view between the Golden Gate Bridge (San Francisco) and Gaviota, a distance of over 300 miles. The scenic views include the City and ocean on one side and the Pismo Foothills on the other. To implement this policy the City shall: . . .c. Require design review of all projects within 200 feet of the edge of the CALTRANS right-of-way for their visual qualities as seen from the road. . . .d. Require that new. . .development be modified in height, size, location or design so that existing "bluewater" ocean views from U.S. Highway 101 will not be blocked, reduced or degraded. . . .Exceptions will be allowed only for 1) residential or visitor serving commercial structures where no other use of the property is feasible. . . .*

LUP Policy D-26 Shell Beach Road. *Shell Beach Road is hereby designated as a Pismo Beach Scenic Highway. Shell Beach Road is the scenic road that ties together much of Pismo Beach. Its character is derived from the views of the ocean on one side and the foothills on the other. To implement this policy the City shall: a. Conduct a special design study of this corridor. b. Require design review for development on all properties abutting the road right-of-way.*

LUP Policy D-28 Visual Quality. *Any new development along city-designated scenic highways should meet the following criteria: a. Development should not significantly obscure, detract from nor diminish the scenic quality of the highway. In those areas where design review is required, or the protection of public views as seen from U.S. Highway 101 is*

an issue or concern, the City shall require by ordinance a site specific visual analysis. Such analysis shall utilize story poles, photo montages, or other techniques as deemed appropriate in order to determine expected visual impacts, prior to approval of new development. . . .

LUP Policy LU-B-5 Visual Access. *Development of the South Palisades area shall protect visual access to the ocean and to dominant coastal landforms. Specifically, the size and location of structures shall retain to the maximum extent feasible intermittent views of the ocean from U.S. Highway 101. To accomplish these design objectives, the following standards shall be incorporated into the Specific Plan: 1. The building pads for all development shall be at or below existing grade. 2. Residential units shall be predominantly attached and clustered. 3. A minimum of 60 percent of the existing parcels within the planning area as of 1992 shall be retained in open space. 4. Structures immediately landward of the required bluff setback shall not exceed 15 feet in height from the existing natural grade. 5. Heights of structures other than those identified in subsection 4 above shall not exceed a maximum of 25 feet above natural grade. Two story structures shall be permitted only where it is determined that views of the ocean will not be blocked or substantially impaired. A visual analysis of potential view blockage shall be required for each development proposal. 6. Road right-of-way widths shall be complemented by an additional building setback of a minimum of 20 feet. 7. Open space shall be arranged to maximize view corridors through the planning area from public viewing areas to protect and maintain views of both the ocean and coastal foothills, as well as the visual sense of the coastal terrace landform. Accordingly, common open space shall have continuity throughout the development and shall not be interrupted by fences or other structures.*

The subject property lies approximately 165 feet from the edge of US Highway 101, while the nearest building pad is about 185 feet from the highway and so is required to undergo design review. The City did require design review. However, since the approval was only for the creation of lots, design review was limited to a review of a cross sectional depiction of potential building heights and photos with potential future building heights marked on them. It is clear from that information that future houses on the site will be visible from both US Highway 101 and Shell Beach Road. Future houses will not block views of the ocean from US Highway 101; they will obstruct the view of the top of the bluff, but they will not block either surf or blue water ocean views, the surf not being visible now due to the height of the bluffs. Further, the future houses will be sited at a somewhat lower elevation (perhaps two to four feet) than allowed by the City approval, since this permit requires revisions to the grading plans which will result in lower building pads. The City approval requires that each individual house that is proposed will have to undergo individual design review and, furthermore, the City approval *“ . . .in no way guarantees construction of two-story homes. Reduced heights may be necessary to ensure overviews from designated scenic highways.”*

Any house along Shell Beach Road will impact views from that road to the ocean. There is no way to avoid this unless the house were sunken below the grade of the road or no development were allowed at all. While grading to ensure that a house is completely below the road grade is possible, it would require an excavation some 15 to 20 feet deep. To have denied any development on the site would amount to a taking and purchase of the property by the City. There are existing residential developments on either side of the subject site that obstruct views of the ocean from Shell Beach Road; this proposal amounts to infill. The proposal incorporates view corridors along the loop road to the ocean. The City approval states that *“View corridors*

totaling 184' in width (two street right-of-ways plus required 20' front yard setbacks) will be provided for the subject site which has a total width of 332'. The corridors will provide intermittent views of the Pacific Ocean from designated scenic highways."

Although it would be preferable to have the entire potential project, including proposed houses, undergo design review at one time, there is nothing in the LCP that requires that the applicant propose houses at this time. Any approval the City might give to a future house would be appealable to the Commission. The City's approval is consistent with LUP Policies D-23, D-26, D-28, and LU-B-5, regarding visual issues and heights.

3. General Site Planning Issues

a. Planned Residential Zone. The proposed project is zoned Planned Residential (P-R). The appellants contend there was a ". . . jump from Planned Residential (as planned) to Single Family Residential (no planning except in the EIR)." According to Section 17.033.010 of the City's Zoning Ordinance, "*The Planned Residential or P-R Zone is designed to facilitate greater flexibility in the development of any area by providing a means for varying designs and structures best suited to environmentally sensitive locations, including geologically hazardous or visually sensitive areas, as delineated in the General Plan/Local Coastal Program Land Use Plan.*" The P-R zone district allows "*Dwelling units in detached, attached or multi-storied structures or any combination thereof. . . .*" The P-R zone district has 16 site planning standards contained in Section 17.033.120. That Section is reproduced in its entirety below. Staff's comments follow each numbered standard.

Zoning Ordinance Section 17.033.120 Site Planning Standards. *The standards set forth in this section shall apply to each Planned Residential Development Zone. In its report to the Council, the Planning Commission may recommend such additional standards as it deems necessary or desirable in carrying out the general purpose and intent of this article. The intent of this zone is to encourage and foster sensitive and well-conceived residential development proposals. The following data shall be provided:*

1. Plan: The plan may provide for a variety of housing types.

The plans submitted by the applicant indicate that the development will be detached single family dwellings. This is consistent with the approval.

2. Lot area, coverages, Setbacks: The plan shall follow the criteria. . . in Chapter 17.102.

Lot area criteria for the P-R zone district is found at Chapter 17.102 .060(7) which states that lot area shall be "*As established by the Use Permit, or as further identified in the certified Local Coastal Program Land Use Plan.*" The LUP does not identify any particular lot area. The Use Permit set the minimum lot size at 6,000 square feet. The City approval and this requirement are consistent.

Section 17.102.080, lot coverage, for the P-R zone states "*Total maximum lot coverages, less existing road rights-of-way and nonbuildable open space areas: As established by the Use Permit, not to exceed 40 percent, or as further identified in the certified Local Coastal Program Land Use Plan.*" The City approval stated that maximum lot coverage was to be "*55% (per R-1 Zoning Code).*" That approval is inconsistent with the standard given in Section 17.102.080.

To rectify the inconsistency, it is appropriate to require that maximum lot coverage on each of the residential lots be no more than 40 percent.

Section 17.102.020(3), front yard setbacks for the P-R zone district states *"As established by the use permit, but not less than fifteen (15) feet."* The City approval required a minimum 20 foot front yard setback and is therefore consistent with this standard. Section 17.102.030(3), side yard setbacks for the P-R zone district, and Section 17.102.040(3), rear yard setbacks for the P-R zone district state *"As established by the Use Permit, or as further identified in the Certified Local Coastal Program Land Use Plan."* The Use Permit requires a 5 foot sideyard setback for interior lots and a 10 foot sideyard setback for street side yards, and a minimum of 10 feet for the rear yard setback. The LUP is silent on the matter. Therefore, the City approval is consistent with this standard.

3. *Height: The height of buildings shall be flexible, utilizing the limitations established for similar uses by Chapter 17.102 herein as a guideline for R-1, R-2 and R-3 zones, unless specific standards are identified in the General Plan/Local Coastal Program Land Use Plan. Heights of structures shall be designed consistent with the efficiency of public services and protection of public views from designated scenic highways*

Chapter 17.102 limits height in residential zone districts generally to 25 feet. The LUP specifically limits structure heights in the South Palisades Planning Area to a maximum of 15 feet for lots immediately landward of the bluff setback and to a maximum of 25 feet for all other lots. The City approval contains the same height limitations and so is consistent with the LCP.

4. *Urban Form: The quality of the physical plan shall demonstrate a standard of excellence in the grouping of buildings, aesthetic control, a harmony and compatibility among the several elements; all designed to preserve the quality of the natural landscape and enhance the quality of the development.*

This is a subjective standard and, since the proposal does not propose any buildings, is essentially meaningless. The city approval is not inconsistent with this standard.

5. *Density: The density for any P-R Zone shall be within the density range as provided for by the General Plan/Local Coastal Program Land Use Plan. . . .*

LUP Policy LU-B-1 states that *"The south Palisades area is designated for Medium Density Residential. . . ."* The City approval is at a medium density and is therefore consistent with this Policy.

6. *Non-residential uses and/or structures. . . .*

No non-residential uses and/or structures are proposed; this standard is not applicable.

7. *Separation between buildings. . . shall be not less than ten (10) feet.*

No buildings are proposed at this time, but the city approval requires interior sideyard setbacks of at least 5 feet; this would provide 10 feet of separation between buildings on their sides. Rear yard setback is 10 foot minimum which would provide for 20 feet separation between the backs of buildings. The approval is consistent with this standard.

8. *Parking: all parking requirements under Chapter 17.108 et. seq. of this Ordinance shall be met.*

Chapter 17.108.020(2), minimum off street parking requirements for the P-R zone district states "Two parking spaces per dwelling which may be permitted in parking courts, carports, or garages. . . ." The City approval requires two parking spaces per house which is consistent with this standard.

9. *Commercial uses. . . .*

There are no commercial uses proposed in this development and so this standard is not applicable.

10. *Open Space: Open space shall comprise at least sixty (60) percent of the gross lot area less road right of ways in low density and medium density zones. . . . This open space shall be used for recreational or environmental amenities for collective or private enjoyment by occupants of the development, but shall not include buildings or structures, public or private streets, or driveways. Open space shall be organized in an effort to protect views of the ocean and coastal foothills, as appropriate to the property, based on the approved specific plan. A maximum of fifty (50) percent of the total required open space area may be composed of open space on privately owned properties unless a lower percentage is required in the General Plan/Local Coastal Program Land Use Plan. Every owner of a dwelling unit or lot shall own as an appurtenance to such dwelling unit or lot an undivided interest in the private common open space areas and facilities.*

The gross lot area is 322,344 square feet. Road rights-of-way total 42,600 square feet. The gross lot area minus the road rights-of-way is then 322,344 - 42,600 which equals 279,744 square feet. Open space must comprise 60 percent of 279,744 square feet: $279,744 \times .6 = 167,846$ square feet. The two open space lots total 94,115 square feet which is 56 percent of the required open space. Forty-four percent of the required 167,846 (73,852 square feet) would need to come from the residential lots. Up to 50 percent (83,923 square feet) of the required open space can be on privately owned property. The 23 residential lots, as configured, total 177,491 square feet. Since lot coverage will be limited by the condition of this permit to 40 percent of those lots, the other 60 percent could qualify as privately owned open space. Sixty percent of 177,491 equals 106,495 square feet, which is more than enough of the privately owned open space that may be used to meet the total open space requirement. The City approval would also result in enough open space on the residential lots to meet the required total amount. At the City approved 55 percent lot coverage, 45 percent would be available as private open space and 45 percent of 177,491 square feet equals 79,871 square feet, which is slightly greater than the 73,852 square feet of open space needed from the residential lots.

It is possible that by requiring that the loop road not encroach more than the allowed 35 feet into the bluff top open space (see Special Condition 1), the area of the residential lots may be reduced, but it should not be significant in terms of area available to qualify for open space, especially if lot coverage is reduced as required by Special Condition. The City approval required creation of CC&Rs that would create an entity to manage the open space that would be held in common. The City approval is consistent with this standard.

11. Geologic Report: An engineering geological report shall be prepared and submitted by a registered engineering geologist including a description of the geology of the development site, a geologic map and conclusions and recommendations regarding the effect of geologic conditions and marine conditions where applicable on the proposed development.

The City approval included a condition requiring that the applicant *"Provide and engineering geology report to include the following: adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, opinions and recommendations concerning the adequacy for the intended use of the site. Analysis to include recommendations to avoid bluff saturation due to landscape irrigation."* The City approval was consistent with this standard.

12. Public and Private Streets: The location and arrangement of public and private streets shall provide convenient and safe access to all planned residential developments.

The City approval is consistent with this standard.

13. Hillside Developments. . . .

This is not a hillside development and so this standard is not applicable.

14 Title Documents: The adopted final plan shall contain appropriate title documents such as proposed covenants, deed restrictions, easements. . . . Said covenants, easements and other provisions. . . may be modified. . . only in accordance with the amendment requirements of the City's Certified Local Coastal Program and with the approval of the City Council.

The City approval required CC&Rs and is consistent with this standard.

15. Phasing. . . .

The City approval did not contemplate phasing and so this standard is not applicable.

16. Private Maintenance: Open Space, facilities and street commonly owned by all residents shall be maintained by a homeowners' association.

The City approval required creation of a homeowners' association for this purpose and so is consistent with this standard.

b. Noise. The appellants contend that the City failed to apply the noise standards in the LUP appropriately.

LUP Policy N-3 Location of New Development & Noise-Sensitive Land Uses. New development shall not be permitted where the noise level, due to existing stationary sources, exceeds the standards of Table N-3; or the noise levels from existing or projected transportation noise exceeds the standards of Table N-4, unless effective noise mitigation

measures have been incorporated into the development to reduce noise exposure to acceptable levels.

An acoustical analysis was conducted which described noise attenuation methods that could be applied to the two lots nearest US Highway 101, including double paned windows, location noise sensitive rooms (bedrooms, etc.) away from that side of the house, etc. Doing so would bring the existing noise levels down to the standards. Of course, once the two lots nearest the highway are built on, those structures will provide very effective noise attenuation for the lots farther away from the highway. The City approval requires a lot specific noise study prior to issuance of a building permit. The approval is consistent with the policy.

c. Loop road encroachment into blufftop open space. The LUP requires a blufftop open space are equal to 100 feet plus the 100 year setback. Here that equals 125 feet (erosion rate of 3 inches/year for 100 years = 300 inches = 25 feet, plus 100 feet = 125 feet). The LUP allows for an encroachment by a road of up to 35 feet into the bluff top open space. The City approval allowed an encroachment of up to 65 feet and is clearly inconsistent. The 65 foot encroachment resulted from an earlier development. If the road is relocated to encroach no more than 35 feet into the open space area, it will be consistent with this standard. Since there are infrastructure improvements in the existing encroachment, such as drainage improvements, there will be an added cost to the developer to relocate the road. However, without the relocation, the approval is clearly inconsistent..

d. Bluff setback. The appellants contend that the bluff setback is inadequate. Three separate bluff erosion studies were undertaken, one as part of the South Palisades Specific Plan EIR in 1979, which concluded that the erosion rate was 6 inches per year in the vicinity of the subject site. Site specific erosion studies were done in 1992 and 1994; the 1992 study set the erosion rate at 2-4 inches per year, while the 1994 study set it at 2 inches per year. The City approval applied a rate of 3 inches per year which, given the range of estimated erosion rates, is not an unreasonable figure.

LUP Policy S-3 states *"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."* LUP Policy S-4 requires site specific geologic reports. There is no inconsistency because the City approval included the appropriate site specific geologic studies. The LCP requires a site specific bluff erosion study; it does not set any particular erosion rate.

e. Notice and environmental review. The appellants contend that notice by the City was inadequate. This is of course a serious matter since public participation in the land use planning and permitting process is very important. According to the City, proper notice was made. However, even if it was inadequate, this action by the Commission will include notice to the appellants and others so that they can be fully advised of the time and date of the Commission hearing on this matter so that they can participate if they so choose.

It is true that no EIR was required. Based on the 1979 EIR for the South Palisades Specific Plan, the City identified several areas that needed additional review for this project and determined that a mitigated negative declaration was the appropriate vehicle for such review.

Similarly to the question of notice, the Commission review of the proposal on appeal allows for full environmental review of the proposal.

C. CONCLUSION

The City approval is inconsistent with the LCP for a number of reasons as discussed above. Although the City has adopted a Specific Plan for the planning area, it has not been certified by the Commission and so is not legally effective. Nevertheless, with the Special Conditions of this Coastal Commission permit, the proposal is approvable.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. CCSD, the lead agency under CEQA, circulated and certified an Environmental Impact Report for the proposed desalination facility. The Commission staff responded to that EIR with a number of concerns. The Commission finds that, only as modified and conditioned by this permit, the proposed project will not have any significant adverse impacts on the environment and can be found consistent with CEQA.

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NOV 29 1995
PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

LANIER & Dee HARPER
136 N. Silver Shoals Dr.
Shell Beach CA 93449 (925) 773-3314
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Pismo Beach, California

2. Brief description of development being appealed: Subdivision of 23 lots and 2 open space lots

3. Development's location (street address, assessor's parcel no., cross street, etc.): South + East of Beachcomber Drive between U.S. Hwy 101 and the Pacific Ocean Apm 010-152-019 + 020.

4. Description of decision being appealed:
- a. Approval; no special conditions: _____
 - b. Approval with special conditions: _____
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-95-79

DATE FILED: 12/5/95

DISTRICT: Central Coast

EXHIBIT I
A-3-PSB-95-79

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: October 17, 1995

7. Local government's file number (if any): Project 92-153

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

| | |
|----------------------------|--------------------------------|
| <u>James S Lee</u> | <u>Steve Andrews</u> |
| <u>2128 Fonderella DR</u> | <u>521 Shell Beach Road #E</u> |
| <u>Cambridge, CA 93011</u> | <u>Shell Beach, CA 93449</u> |

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) UNOCAL CORP ATTN: MR FRANK L. NICHOLS, Specialist Engr.
Northwest Pipeline and Terminals
P.O. Box 661 San Luis Obispo, CA 93406

(2) About 100 people attended hearing, wrote or call
the city in opposition to the subdivision development
project was opposed to having a quality conforming
development

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

EXHIBIT |
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Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Lanier Harper Lee Harper
Signature of Appellant(s) or
Authorized Agent

Date 11-13-95

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Arnto S. Jordan & Val Jordan to act as my/our representative and to bind me/us in all matters concerning this appeal.

Lanier Harper Lee Harper
Signature of Appellant(s)

Date 11-13-95

EXHIBIT 1
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p3

California Coastal Commission
Central Coast Area Office
725 Front street, Ste. 300
Santa Cruz, CA 95060

Page 1

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SECTION I. Appellants

Lanier and Dee Harper
136 N. Silver Shoals Dr.
Shell Beach, CA 93449

Phone# (805) 773-3314

Section II. Decision Being Appealed

1. City of Pismo Beach, California
2. Application for a Local coastal Development Permit for Project 92-153, Steve Andrews. This project consists of a subdivision of 23 residential lots and two open space lots--a 1.35 acre bluff retreat area with passive recreation improvements would be located adjacent to the bluff top.
3. The project is located east and south of Beachcomber Drive between U. S. Highway 101 and the Pacific Ocean, APN 010-152-019 & 020.
4. b. Approval with special conditions:

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-95-79

DATE FILED: 12/5/95

DISTRICT: Central Coast

EXHIBIT I
A-3-PSB-95-79
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by:
- b. City Council/ Board of Supervisors
6. Date of local government's decision: October 17, 1995
7. Local governments file number: Project 92-153

Section III. Identification of Other Interested Persons

- a. Name and mailing address of permit applicant:
- James S. Lee, Owner & Subdivider
2108 Ponderosa Dr.
P. O. Box 1717
Camarillo, CA 93011 Phone # (805) 987-9107
- Steve Andrews, Owner's Agent
501 Shell Beach Road #E
Shell Beach, CA 93449 Phone # (805) 773-1146
- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the City/county/port hearing (s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) **Unocal Petroleum Products & Chemicals Division**
Unocal Corporation
Mr. Frank L. Nichols, Specialist Engineer
Northern California Pipelines and Terminals
P. O. Box 661
San Luis Obispo, CA 93406 Phone # (805) 547-7247
- (2) Opposition to this project was substantial. The list would perhaps be over 100 names and addresses of those who attended or wrote to the City of Pismo Beach.

SECTION IV. Reasons Supporting This Appeal

EXHIBIT |

A-3-PSB-95-79

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Introduction p.1

- p.2 General Plan Format (10 topics; 23 principles; policies)
- p.2 Regional Setting (San Luis Obispo County General Plan)
- p.2,3,4 Characteristics of the City (Economic)
- p.5 Focus of the General Plan Update-KEY FEATURES
- P.5 CONSERVATION AND OPEN SPACE
- p.6 Design (35 design guidelines)
- p.6 Land use (18 sub-areas)
- p.6 NOISE: Noise standards to preserve a livable community.
- p.6 Parks & Recreation
- p.6 Safety

p.6 "The challenge to find solutions to these problems, however, does not preclude planning for the kind of future the city wishes to achieve."

- C-3 Circulation Element-Background-Regional Facilities-U.S. 101
- C-6 Intersection Levels of Service
- C-7 Bikeways-Bi-Centennial-Pacific Coast Bike Route-Class II
- C-8,9 Table & Figure C-2: Intersection 1,2,42,3,4&5.
- C-10 P-1 Balanced Transportation a,b,c,d & e
- C-11 Policies C-1 Street Classification Plan and Design Standards
- C-12 Fig. C-3 Minor Arterials-Shell Beach Rd. (60-72) Local (56/36)
- C-14 Table C-3 Functional Characteristics of Streets
- C-16 Table C-4 ?
- C-16 C-11 Bikeways Plan
- C-17 C-12 Bikeways Encouraged
- C-17 C-13 Pedestrian Circulation
- C-17 C-14 Parking
- C-21 C-21 Subdivision Planning
- CO-3 Intro, Nat. Resources & Open Space*****
- CO-4,5 Principles & 30 Policies***** ***** ***** ***** *****
- CO-8 Archaeological Resources CO-5, CO-6
- CO-10Coastal Foothills (P-6) Background CO-8,CO-9 & CO-10(11e)
- CO-15Pacific Ocean, Beach and Coastal Cliffs (P-6) Background
- CO-16,17 2. Northern Rocky Beach Areas CO-15
- CO-18CO-18 Beach Access
- CO-25,26 & 27 CO-31 Grading and Drainage Regulations f,m.
- D-1,D-2,D-3,D-4,D-5,D-6,D-7,D-8,D-9,D-10,D-11,D-12,
- D-13,D-14,D-15,D-16,D-17,D-18,D-19 & D-20. ***** *****
- DESIGN-DESIGN-DESIGN-DESIGN-DESIGN-DESIGN-DESIGN
- D-
- 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42 &43. ***** *****

F-5 F-3 COST RECOVERY

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GM-5 P-9 Quality of Life

- " Noise (see Noise Element)
- " Open Space Preservation
- " Sensitive Land and Water Protection
- " Visual Quality (see Design Element)
- " Parks & Recreation
- " Bicycle Routes and Facilities
- " Highways
- " Sidewalks

P-11 PRO-ACTIVE PLANNING (COASTAL FOOTHILLS)

GM-7 GM-1 Residential Growth Rate c. Growth Management Status Rpt.

" GM-2 Financing

LU-1 Land Use

LU-3 Background

LU-6 PRINCIPLES P-13 NATURAL RESOURCE PRESERVATION, P-14 IMMEDIATE OCEAN SHORELINE, P-15 VISITOR/RESIDENT BALANCE, P-16

HISTORIC AMBIANCE

LU-7 **POLICIES: LU-1; LU-2 & LU-8**

LU-14 NEIGHBORHOOD PLANNING AREAS *****

LU-14 PLANNING AREA A

LU-15

LU-16

LU-17 PLANNING AREA B

LU-18

LU-19

LU-20 PLANNING AREA C

LU-21

N-1 NOISE

N-4 Principle **P-20 Noise Levels**, Policies N-1, N-2

N-5 N-3, Table N-2, **TABLE N-3**

N-6 **Existing Noise Contours Figure N-1**

N-10 Table N-4, N-4

PR-1 Parks, Recreation & Access

PR-3 Introduction

PR-8 P-21

PR-8 P-22

PR-8 PR-2

PR-9 PR-5

PR-17 PR-21, PR-22 *****

S-1 Safety

S-3 Background

S-4 P-23, P-24

S-5 S-1, S-2

S-6 Bluff Erosion/Instability, Background, S-3 Bluff Set-Backs

S-7 S-4, S-5

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 5)

Comments on Project 92-153

1. The lot layout reflects a generic subdivision site plan of conventional thinking; most of the lots are narrow with the largest facing the ocean and what is left over facing the freeway. Street frontage on all four sides is excessive, with the ocean facing street also creating an unnecessary hard intrusion to the bluff open space and pedestrian oriented area.

2. Because of its generic nature, the site plan reflects a disregard of its setting at several levels:

a. Frontage road views of ocean would be limited to side streets; the resulting rigid lineup of houses (building footprint) would present a disjunctive break in the surrounding pattern;

b. Highway 101: Two story houses, while not blocking ocean views, would distract views because of bulk of buildings (continues height pattern of adjacent development that contributes to this) in an especially open section, and two story structures would obscure and block views of land form, especially bluff edge.

c. Site plan does not take into adjoining residential site pattern and view impacts on neighbors;

d. No indication of concern for quality of living environment for future homeowners as affected by site layout: integration of ocean and bluff setting is nonexistent except for a few lots; individual house design and placement would be highly constrained by narrow lot dimensions and setback requirements; lots 1 and 23 have highly excessive exposure to frontage road.

3. Pismo Beach's general plan emphasizes planned residential cluster development of medium density with a specific plan for this section of Shell Beach. Because the owner/developer chooses less density with detached single family house lots, to be sold separately, does not constitute a valid basis for disconnecting site planning consequences from eventual home building. A specific plan should be required that focuses on the pattern to be created that is going to have lasting results.

4. A much more creative site plan is possible, one that works with its distinctive setting to produce community results and enhances the value of the eventual homes.

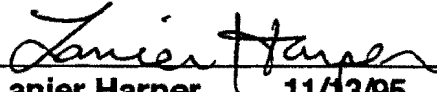
5. Please deny this development, a much better project will follow that conforms to the Local Coastal Plan. Although there are many reasons to support our appeal, we feel that the primary reasons to deny are; (1) Land Use and Planning--the jump from Planned Residential (as planned) to Single Family Residential (no planning except in the EIR); (2) Geological Problems with the Bluff Retreat and the unnecessary

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 6)

encroachment into the park and retreat area; (3) Water--the project should address groundwater and drainage patterns with a professional hydrologist's report for the entire project-- not 23 times in the future; (4) Transportation/Circulation--Local residents have expressed concern over traffic congestion, hazards to safety from design features, requests for one way streets in the loop system and adequate parking; (5) Biological Resources--the tidepool habitat has been ignored, it should be protected at least with proper signs; (6) Hazards--the Union Oil Pipeline should be in the bluff retreat/park open space in order to provide a safety buffer for the future, there should not be a street on top of the pipeline; (7) Noise--Exposure of people to severe noise levels is a significant issue--U S Highway 101 is about 100 feet from the first lots and there has been no mitigation for exterior noise levels; (8) Public Services, Utilities and Service Systems and Population and Housing--I have seen no reports or documents to support any claim made as to the impact on the local government and agencies; (9) **AESTHETICS**--The proposed project will have a **significant** and **long-term** impact. U S Highway 101 and Shell Beach Road are both Scenic Highways and the largely unobstructed views to the bluff and ocean will be permanently lost. The Hwy. 101 view is the only view (18 million motorists annually) of the ocean from the Golden Gate Bridge to Gaviota a distance of 310 miles. The Shell Beach Road view is important for motorists, bicycles and pedestrians. No consideration has been given to neighbors or those who will one day live on the lots. This is to be addressed, inappropriately, 23 times in the future. Traffic on U. S. Highway 101 presently creates a good deal of "stray light" and the future problems of glare from future development has not been addressed; (10) Cultural resources--the historical impact has not been addressed; (11) Recreation--the local coastal plan calls for a park with a bluff retreat that is described as a 100 foot park with a 100 year bluff retreat--the project as proposed has a questionable retreat, a street in the park (on top of the pipeline) and is offering for sale to the public part of the space that was intended to be set aside for public use, access, recreation, scenic and enjoyment; (12) The spirit and intent of the Local Coastal Plan has not been followed or it has been ignored, the project has impacts that are cumulatively considerable, long-term it is detrimental to environmental goals and there are environmental effects that will cause substantial adverse effects on people.

SECTION V. Certification Thank You!

The information and facts stated above are correct to the best of our knowledge.


Lanier Harper 11/13/95


Dee Harper 11/13/95

I/ We hereby authorize Anatol J. Jordan and Val Jordan to act as my/our representative and to bind me/us in all matters concerning this appeal.

 11-13-95

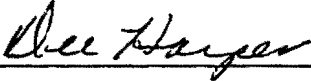
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EXHIBIT 1
A-3-158-95-79

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PETE WILSON, Governor



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Anatol J. Jordan
126 Beachcomber
Shell Beach, CA 93449 (805) 773-3810
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City Council, City of Pismo Beach, CA

2. Brief description of development being appealed: 23 Lot Subdivision
Project Name: Bellstone

3. Development's location (street address, assessor's parcel no., cross street, etc.): East of Beachcomber Drive between the 101 Freeway and the Pacific Ocean TTM 2129, APN 010-152-019

4. Description of decision being appealed:
- a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-95-79

DATE FILED: 12/5/95

DISTRICT: Central Coast

EXHIBIT 2
A-3-PSB-95-79

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: October

7. Local government's file number (if any): Project Case Number 92-153

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Steve Andrews - General Contracting and Developing
501 Shell Beach Road #E
Shell Beach, CA 93449

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) See PROXY(S) ATTACHMENTS

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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p2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached — TWO PAGES

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or
Authorized Agent

Date 11/14/95

NOTE: If signed by agent, appellant(s) must also sign below.

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p 3

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

I state that I am and have been an appellant on the project 'Bellstone', Shell Beach , Ca., and have appeared at all meetings and/or hearings of the Pismo Beach planning commission also city council.

RE: The Above Proposed Development.

My wife and I have been residents of 126 Beachcomber, "Green Dolphin townhomes" since 1988 when those townhomes originally were marketed. As owner in continued occupancy, I've served as president of the Home Owner's Association.

Our unit is proximate to the bluff/cliff and probably the proposed subdivision will not substantially impact our view, as that view will be partially over the roof of single story residences as proposed. Our residence, 126 Beachcomber fronts the street. Of the remainder units of Green Dolphin, 75-80% will have current views of bluff and ocean obscured completely, should two story houses be erected; whereas there is no noticeable protest if single story houses not exceeding 15 ft. be built. The crux of the appeal is therefore 'Views'; not only as affecting existing dwellings but the ocean views from Shell Beach road and highway 101, if the two story concept remains unmitigated current plans will allow to build large mass, 25 ft. in height, on 19 of the 23 lots in Bellstone.

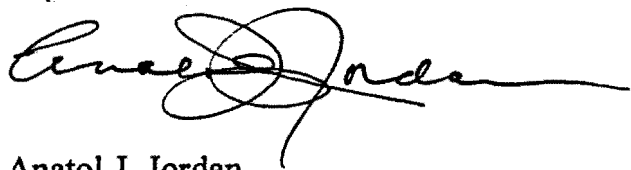
We, my wife and I, have been for in excess of 8 years users of the small Beach below Beachcomber and we have walked the cliff tops from Cliffs Hotel and along Indio to the bluffs in excess of 1000 times. We have noticed erosion far exceeding calculated 4"- 6" per year. When soil falls from the top unto the canyons below, it drops off in excess of 12 inches in many instances, as was evidenced per the effects of last winter's rainfalls. The safety of pedestrians, sometimes bicyclists, often surfers, quite often tourists, spectators of dolphin activity, also of sea otter frolicking should be strongly addressed due to the fact that substantial numbers of visitors are not familiar with the risks of unstable soils which may be lightly covered with camouflaging grasses on the ledges of the cliffs. There is a history of accidents on these cliffs and unto this small Beach. This development with its U shape street should and could sit well back to provide for the ensuing 50-100 years of erosion. A current geologic report was not completed/required and/or brought to the attention of residents of this area by developer.

Short term notification by the city of Pismo Beach officials did not in any way provide residents, neighbors, users of the pertinent Beach an opportunity to thoroughly comprehend the implication of this development. There was no posting of a recent and applicable to this development of an EIR that is customary and should be mandatory with coastal development of this magnitude. If such there was made available and exhibited, to date after months of research it has escaped my scrutiny.

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I join with Mr. Lanier Harper in the appeal to the coastal commission for review of the developers' proposal. I am in accord with the subject matters treated in his appeal. Namely, I address the irreversible damage that will occur if the potential of this subdividing into 23 lots is not mitigated to the degree of acceptability by residents of Shell Beach area, users of Shell Beach road, visitors, tourists and all others who come to marvel at our coastal views. I have done much research and have devoted approximately 100 hours of time and have gone to expense in typing, copying, reading, testifying re the variables that could provide a good approach to this development lying between Beachcomber and Silver Shoals. I ask that in the event my testimony is warranted or requested at the hearings of the commission that I may provide amended pertinent data that could assist in decision.

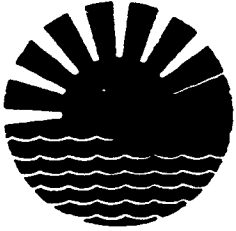
Very truly yours,



Anatol J. Jordan

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City of Pismo Beach, California

COUNCIL AGENDA REPORT

SUBJECT:

1) City Council consideration of Planning Commission recommendation for approval of Mitigated Negative Declaration and Mitigation Monitoring Program, VTTM 2129, CUP, CDP, ARP and LP; and 2) Appeal of Planning Commission recommendation.
(Project No. 92-153, APN 010-152-019 & 020, Steve Andrews, Applicant)

RECOMMENDATION:

Approve VTTM 2129, CUP, CDP, ARP and LP, subject to findings and conditions.

Suggested Motion: " I move to deny the appeal and approve VTTM 2129, CUP, CDP, ARP and LP including adoption of the attached resolution for the Mitigated Negative Declaration and Mitigation Monitoring Program subject to the attached findings and conditions of approval."

EXECUTIVE SUMMARY:

1.0 BACKGROUND:

- 11-24-92 Project No. 92-153 is submitted to the Planning Division
- 12-8-94 Project No. 92-153 is deemed "complete".
- 7-11-95 Planning Commission continues the project to 8-8-95.
- 8-8-95 Planning Commission recommends approval of the project to the City Council.
- 8-18-95 Appeal filed with the City Clerk by Anatol J. Jordan.
- 8-22-95 Appeal filed with the City Clerk by Lanier and Dee Harper.
- 9-5-95 City Council refers the project back to the Commission.
- 9-26-95 Planning Commission recommends approval of the project to the City Council.
- 10-10-95 Appeal filed with the City Clerk by Charles and Dorlene Dutton.

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CENTRAL COAST AREA

Copies of the appeal letters are attached to this staff report as Exhibit 2. A copy of the revised environmental document is attached as Exhibit 3. Copies of past Planning Commission and City Council reports and minutes are attached as Exhibit 4.

Prepared by: Courtney R. Grossman, Assoc. Planner Meeting Date: October 17, 1995
Dennis Delzeit, Public Services

Attachments:
(as noted in report)

FINAL LOCAL ACTION NOTICE
REFERENCE # 3-PSB-95-52
APPEAL PERIOD 12/05 - 12/18/95
AGENDA ITEM NO. 6A

EXHIBIT 3
A-3-PSB-95-79

M. Austin
City Administrator Approval

6A

2.0 SUMMARY:

The proposal is for Vesting Tentative Tract Map 2129 consisting of 23 residential lots and two open space lots. A 1.35 acre bluff retreat area with passive recreation improvements would be located adjacent to the bluff top. An 8' wide pedestrian trail and a 10' wide Class 1 bicycle pathway would be located within the retreat area. New meandering sidewalks consisting of a 12' range (six feet in either direction) are proposed within the right-of-way and a 6' wide public utility easement (PUE) area. A 10' wide PUE / bicycle easement and a 14' wide slope easement is proposed adjacent to Shell Beach Road right-of-way. Full street improvements are proposed with one-half of the improvements onto the adjacent property to the south (with exception of the sidewalk).

3.0 KEY ISSUES:

Environmental Document. Several issues of the appeals are related to the environmental document. In coordination with the City Attorney, the environmental document has been revised. Staff has amended the environmental document to include clarification and amplification to previously discussed mitigation measures. The City Attorney has indicated that a re-circulation of the environmental document would not be necessary.

Public Notice. Per City Council direction, staff has re-noticed the Planning Commission and City Council hearings. Mailing of notices to properties located within 300' of the site and posting at the project site was completed on September 15, 1995. Although, a 21 day review period is not mandated because the environmental document does not require recirculation, staff has provided 32 days before the City Council is scheduled to reconsider the project on October 17, 1995.

4.0 STAFF RECOMMENDATIONS:

1. Receive staff report and testimony from applicant, appellants and other interested persons;
2. Close public hearing after all interested persons have been heard;
3. Approve the proposed Mitigated Negative Declaration and Mitigation Monitoring Program, VTTM 2129, CUP, CDP, ARP and LP, subject to findings and conditions of approval.

5.0 ATTACHMENTS:

1. Resolution incorporating Draft Permit and Conditions of Approval.
2. Letters of Appeal by Anatol J. Jordan, Lanier & Dee Harper, Charles & Dorlene Dutton.
3. Revised Initial Study, Mitigated Negative Declaration and Mitigation Monitoring Program.
4. Copies of past Planning Commission and City Council reports and minutes.
5. Project plans.

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EXHIBIT 3
A-3-95-79
p2

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12/5/95-re-sent
copy

**NOTICE OF CITY COUNCIL ACTION ON
A LOCAL COASTAL DEVELOPMENT PERMIT**

DATE: October 18, 1995

TO: California Coastal Commission
~~640 Capitola Road~~ 725 Front St., Suite 300
Santa Cruz, CA 95060

Attn: Steve Guiney

FROM: City of Pismo Beach
P. O. Box 3
Pismo Beach, CA 93449

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: City of Pismo Beach, City Council Action on an Application for a Local Coastal Development Permit for Project 92-153, Steve Andrews

This correspondence shall serve as notice that on October 17, 1995 the City Council took a local action to approve the project in the above referenced case.

The City's decision on this case shall become effective after ten (10) working days following your receipt of this notice or after the twenty-first (21st) calendar day following the date of City Action on the application unless any of the following occur:

1. An appeal is filed with the Coastal Commission pursuant to the provisions of the Local Coastal Program (Sec. 17.124.180).
2. This notice does not contain the information required by the Local Coastal program (Sec. 17.124.210).
3. This notice is not received by the Regional District and/or distributed to interested parties by the city in time to allow for the ten (10) working day appeal period within the twenty-one (21) calendar days following the local action described above.

In the event that any of the circumstances described above occur (subsections 1-3), the Coastal Commission shall notify the City and the applicant of receiving notice of such circumstance, thereby suspending the effective date of the City's action. The Coastal Commission shall have five (5) calendar days to provide such notice to the City and the application.

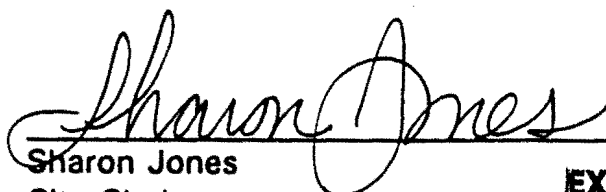

Sharon Jones
City Clerk

EXHIBIT 3
A-3-P58-95-79
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| | |
|--------------------------------------|-------|
| FINAL LOCAL ACTION NOTICE | |
| REFERENCE # | _____ |
| APPEAL PERIOD | _____ |

Sent copy of Staff Report

EXHIBIT B
CITY OF PISMO BEACH
PERMIT NO. 92-153 / VTTM 2129, CUP, CDP, ARP, & LP
(amended) CONDITIONS OF APPROVAL
CITY COUNCIL MEETING OF OCTOBER 17, 1995

The conditions set forth in this permit affect the title and possession of the real property which 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 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.

CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 1/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

AUTHORIZATION: Subject to the Conditions of Approval stated below and incorporated herein by reference, approval of Permit No. 92-153 grants the permittee permission for the following:

- 1) Vesting Tentative Tract Map 2129 consisting of 23 residential lots and 2 open space lots.
- 2) 1.35 acre bluff retreat area with passive recreation improvements located within the bluff top including an 8' wide pedestrian trail and a 10' wide Class 1 bicycle pathway.
- 3) New meandering sidewalks consisting of a 12' range (six feet in either direction) within the right-of-way and a 6' wide public utility easement (PUE) area.
- 4) A 10' wide PUE / bicycle easement and a 14' wide slope easement adjacent to Shell Beach Road right-of-way and bicycle lanes located along the loop street system.

Said items and improvements shown on the approved plans with City of Pismo Beach stamp of October 17, 1995. 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.

EFFECTIVE DATE: This permit shall become effective upon the passage of 20 days following the City Council approval, provided that an appeal has not been filed to the Coastal Commission within 20 working days following the receipt by the Coastal Commission of the City's Notice of Action. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

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DEC 4 1995

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT 3
A-3-PSB-95-7
p 4

CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 2/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. recordation of the final, City-approved map at the County Recorder's Office) of this permit. The permits will expire on October 17, 1997 unless inaugurated prior to that date. Time extensions may be granted as prescribed by Zoning Code Section 17.121.160.

STANDARD & SPECIAL CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS

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) CONDITIONS SUBJECT TO COMPLIANCE PRIOR TO RECORDATION OF A FINAL MAP:

PLANNING DIVISION:

1. **RECORDATION OF PERMIT AGREEMENT.** No later than 30 days following the Effective Date of this Permit, this Permit Agreement shall be recorded with the County Recorder's Office, and evidence thereof provided to the City. Cost associated with filing of this document shall be the responsibility of the applicant.
2. **CC&R'S.** CC&R's providing for the creation of a Homeowners Association shall be submitted to the City for review by the Public Services Department and City Attorney. The CC&R's shall create a legal entity pursuant to the laws of the state for the control and maintenance of all land and improvement to be held in common (open space). This legal entity shall possess the authority to make sufficient assessments and be responsible for the maintenance of all facilities and shall be self-sustaining. CC&R's to include language requiring the Developer to install fencing throughout the tract to be consistent in terms of colors and materials (*amended at 8-8-95 p.c. mtg.*). CC&R's to include language regarding the requirement for a Visual Analysis and Noise Study for individual homes to be submitted with application for development (*amended at 10-17-95 c.c. mtg.*).
3. **OPEN SPACE.** The area of land (Lot No. 24) located between Shell Beach Road and Highway 101 shall be retained in permanent open space as required by General Plan/LCP Policy LU-B-2. Said lot shall be dedicated to the City in fee title in conjunction with recordation of a final map.

EXHIBIT 3

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 3/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

4. **LANDSCAPING AND IRRIGATION PLANS.** Final landscaping and irrigation plans encompassing the entire site shall be submitted by the project applicant to the City for review and approval by the Parks Recreation Beautification Commission. Plans shall be prepared pursuant to PBMC 15.48. **Cost of the plan check and inspection shall be paid by the applicant upon submittal.** Detailed calculations shall be provided on the face of the plan indicating the provision of a minimum of 40% of the total site area in planting and vegetation area with no more than 10% covered with lawn or turf. Plans must comply with the provisions of the South Palisades Specific Plan. The landscape plans shall include the following provisions:
 - a. Water Conservation Checklist
 - b. Landscape Design Plan (including plant list)
 - c. Irrigation Design Plan
 - d. Certificate of Substantial Compliance
5. **STREET TREES REQUIRED.** The project plans shall include appropriate street trees subject to review and approval by the project planner and the Public Services Department.
6. **COMPLIANCE WITH SOUTH PALISADES SPECIFIC PLAN.** All applicable standards of the South Palisades Specific Plan shall be shown on the final map and/or improvement plans including the requirements listed in Section 8 Specific Plan Development Requirements unless otherwise specified herein.

CITY ENGINEERING DIVISION:

7. **FINAL MAP/SUBDIVISION AGREEMENT/IMPROVEMENT PLANS.** A final map and subdivision agreement, and public improvement plans shall be prepared in accordance with the Map Act and local ordinances and submitted for checking and approval by the City Engineer. The final map and subdivision agreement shall be approved, executed and recorded prior to the issuance of a building permit.
8. **BONDING.** Bonding shall be provided to the City of Pismo Beach in the form of a Performance Bond and a separate Labor and Materials Bond in amounts as stipulated by City Ordinance. These securities shall be provided as bonds, set-aside letters and/or irrevocable letters of credit in a format acceptable to the City Attorney. These bonds shall be expressly for the purpose of guaranteeing the installation of public or semi-public improvements required for the development. All required bonds shall be presented to the City as part of the submittal of a Final Map. Monument Bonds may also be required per the City Engineer.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 4/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

9. GUARANTEE BOND/WARRANTY BOND A Warranty/Guarantee Bond shall be provided to the City to be used to ensure that any and all public or semi-public improvements associated with the project are in proper working order/condition for a minimum period of one (1) year after a final inspection of the project, or after acceptance of the public improvements by the City Council of the City of Pismo Beach, whichever is applicable and whichever is later. Said bond will be in amount equal to ten-percent (10%) of the costs of the completed public or semi-public improvements. Said bond may be held for such additional period (beyond one year) as may be deemed appropriate by the Director of Public Services.

10. FEES. All fees required for processing or approving the final map shall be paid at the time of the final map submittal. Variable fees will be estimated by staff, and any discrepancy refunded or collected upon final map approval.

11. RIGHT-OF-WAY DEDICATION. Offers for street right-of-way dedications shall be made for the proposed streets upon the map. Any additional rights-of-way, within or without the tract boundaries that are necessary for the completion of the proposed project shall be provided.

Full width right-of-way for the complete loop street will be required per the Municipal Code and the Public Services Director. All rights-of-way are to be provided by the final map or by separate document prior to the recordation of the final map.

The entire loop street will have one name (Beachcomber Drive),

12. EASEMENTS. Any necessary easement (utility, drainage, grading, etc.) shall be provided by a final map or by separate document prior to the recordation of the final map.

Public easements for water lines, sanitary sewer lines, and storm drain systems shall be of 20-foot width or larger where required to accommodate certain existing and/or proposed facilities.

If City property or right-of-way is to be abandoned, easements for existing utilities will be identified and retained.

13. EXISTING OVERHEAD UTILITY LINE UNDERGROUNDING. All existing overhead utility lines presently running across or located along the frontages of the project and any transformers or other equipment shall be relocated and placed underground in facilities designed by the developer/individual utility companies and approved by the City Engineer prior to the approval of the final map.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 5/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

14. ON-SITE UTILITY LINES/UTILITY PLAN. All on-site utility extensions, transformers or other equipment serving this project shall be placed underground in facilities approved by the City Engineer and Building Official.

A composite utility plan showing all existing and proposed facilities, mains, and laterals be finalized and approved by the Public Works Division. The composite utility plan will show the finalized location of the water mains, domestic laterals, fire hydrants and fire protection laterals as approved by the City Engineer and the Fire Chief.

15. GRADING AND DRAINAGE. A grading and drainage plan including siltation and separation devices, shall be finalized and approved by the City Engineer and Building Official prior to the approval of the final map. On-site or off-site grading associated with this development will not be permitted until the plan is approved. The lot shall be graded to drain the street and/or structures to carry surface water run-off from the site without impacting adjacent property.

Any information required by the City Engineer to review the adequacy of the proposed drainage plan shall be provided by the Subdivider.

16. IMPROVEMENT PLANS. Improvement plans for all public, semi-public and all off-site construction shall be prepared on standard City plan, or plan and profile sheets. Said plans shall be submitted for checking and approved by the City Engineer prior to the approval of the final map. The plans shall detail the location, type and adequacy of existing and proposed:

- a. water lines and facilities for domestic supply, fire protection, and landscape irrigation;
- b. sewer line and facilities for sanitary collection systems;
- c. right-of-way improvement of adjacent public streets per the Public Services Director, including: standard curbs, gutters, driveways and sidewalks;
The southeasterly portion of Beachcomber Drive (along McNeal property) shall be constructed to include everything out to, and including, the curb and gutter, or an AC berm at the full width location.
- d. traffic control signs, signals if applicable, street symbols, curb and roadway striping and street signs;
- e. street light facilities with voltage, underground service, spread of lighted area and spacing of standards noted;
- f. storm drainage lines and facilities (see Grading and Drainage above);
- g. location and number of street tree wells on improvement and building plans shall be reviewed and approved by the Public Services Director and the project planner;

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 6/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

- h. provision of an 8" high curb along the portions of the tract deemed necessary;
 - i. mitigation of drainage and erosion associated with Lopez Water system blow-out valve located at easterly end of tract;
 - j. all other indicated utilities and appurtenant facilities.
17. **BEACH ACCESS STAIRWAY.** Applicant shall pay applicable fee per Ordinance 86-14 which establishing a pro-rata fee for the distribution of cost associated with the preparation of the specific plan and for the construction of public facilities such as stairways to the beach, bus shelter, pay phones, etc.
18. **DESIGN CRITERIA.** All noted public works improvements shall be designed and constructed to the standards of the City of Pismo Beach, or in the absence thereof, to the standards of the County of San Luis Obispo. The City Engineer has all such standards on file at City Hall. The decision of the City Engineer shall be final regarding the specific standards that shall apply.
19. **OFF-STREET PARKING REQUIRED.** Concurrent with the construction of the infrastructure improvements of the subject tract, at own cost, the developer shall construct a code complying parking lot on the Open Space property located between U.S. Highway 101 and Shell Beach Road (Lot No. 24 of Tract 2129), subject to review and approval by the Public Services Director (*added at 10-17-95 c.c. mtg.*).

B) CONDITIONS SUBJECT TO COMPLIANCE PRIOR TO ISSUANCE OF A BUILDING PERMIT:

PLANNING DIVISION:

1. **COMPLIANCE WITH PLANNING COMMISSION APPROVAL.** Prior to the issuance of a building permit, the Project Planner shall confirm that the construction site plan, floor plan and building elevations are in compliance with the Planning Commission's approval and conditions of approval.
2. **BUILDING PERMIT APPLICATION.** To apply for building permits submit four (4) sets of construction plans **ALONG WITH FOUR (4) COPIES OF THE CONDITIONS OF APPROVAL NOTING HOW EACH CONDITION HAS BEEN SATISFIED** to the Building Division.
3. **REVIEW OF FUTURE DEVELOPMENT:** The site is located within the Coastal Appeal Zone - permits for the development of future individual homes shall be reviewed through a public hearing process with notice as required by state and local law.

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A-3-PSB-95-79
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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 7/14
 APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
 LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

4. **VISUAL ANALYSIS.** Prior to issuance of building permits for individual homes, a visual analysis of potential view blockage shall be submitted for review and approval pursuant to General Plan/LCP LU-B-5(5).
5. **NOISE STUDY.** Prior to issuance of building permits for individual homes, a noise study shall be submitted for review and approval pursuant to South Palisades Specific Plan Sections F-1, F-4, and F-5 and Zoning Code Chapter 17.084.
6. **ARCHITECTURAL DESIGN STANDARDS.** Prior to issuance of a building permit, the project plans shall indicate compliance with the architectural design standards for the tract. Development Standards shall be as identified below.
7. **DEVELOPMENT STANDARDS APPLICABLE TO TRACT 2129:**

| Item | Requirement |
|----------------------|--|
| Lot Area min. | 6,000 s.f. (per specific plan) |
| Building Height max. | <p>Heights of structures immediately landward of the required bluff setback shall not exceed 15 feet in height measured from the highest point of the roof to the center point of the building footprint at site grade existing as of January 23, 1981. Heights of other structures shall not exceed 25 feet above the grade existing as of October 12, 1976 per HL-3 Height Limitations Overlay Zone.</p> <p>Approval of vesting tract map 2129 in no way guarantees construction of two-story homes. Reduced building heights may be necessary to ensure overviews from designated scenic highways. Building pads for all development shall be at or below existing grade (added at 10-17-95 c.c. mtg.).</p> |
| Lot Coverage max. | 55% (per R-1 Zoning Code) |
| Building Area max. | 60% (per specific plan) |
| Planting Area min. | 40% (per specific plan) |

EXHIBIT 3

A-3-PSB-95-79

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CASE NO: 92-153 - (VTM 2129, CUP, CDP, ARP, & LP) PAGE 8/14
 APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
 LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

| | |
|---|---|
| Second floor building area limitation and articulation of wall planes | The amount of gross floor area on any second floor shall not exceed eighty (80) percent of the amount of gross floor area on the ground floor. Any "stepbacks" of the second floor living area from the building footprint on the ground level shall be required to be provided at least in part on the street side of the house unless infeasible (per R-1 Zoning Code). |
| Front yard setback min. | 20' (per R-1 Zoning Code) |
| Side yard (interior) min. | 5' (per R-1 Zoning Code) |
| Side yard (street) min. | 10' (per R-1 Zoning Code) |
| Rear yard min. | 10' (per R-1 Zoning Code) |
| Shell Beach Road setback min. | 20' (per specific plan) |
| Parking Spaces min. | 2 (garage with min. 20' x 20' clear interior dimension) |
| Garage Setback min. (if fronting a lot line) | 20' |

BUILDING DIVISION:

8. **BUILDING REQUIREMENTS.** The application for building permit shall be subject to the following requirements:
- a. Project shall comply with the most recent adopted City building codes.
 - b. Plans shall be submitted by a California Licensed architect and/or engineer.
 - c. A separate grading plan complying with Chapter 70, UBC, and Title 15 PBMC, shall be required for this project.
 - d. A soils investigation shall be required for this project.
 - e. The location of the building should be identified on an established flood hazard map. (The most recent flood insurance rate map published by FEMA may be considered).
 - f. Certification that the actual elevation of structures in relation to mean high sea level by a licensed surveyor/engineer.
 - g. Project shall comply with current City and State water conversation regulations.
 - h. Dust and erosion control shall be in conformance with standards and regulation so the City of Pismo Beach.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 9/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

- i. Mitigation measures for any grading may require permits from San Luis Obispo County Air Pollution Control District.
- j. Any demolition shall comply with A.P.C.D. regulations, and acquire any required permits for the demolition.
- k. 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.
- l. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability, details shall be provided.
- m. Building pads shall have a drainage gradient of 2% toward approved drainage facilities
- n. Certification of compliance with the grading plans and soils report shall be submitted to the Building Division prior to final approvals.
- o. A licensed surveyor/engineer shall verify pad elevations, setbacks, and roof elevations.
- p. Provide an engineering geology report to include the following: adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, opinions and recommendations concerning the adequacy for the intended use of the site. Analysis to include recommendations to avoid bluff saturation due to landscape irrigation (*amended at 8-8-95 p.c. mtg.*),
- q. Separate permits are required for retaining walls, must be submitted by architect or engineer.

FIRE DEPARTMENT

9. ADDRESS NUMBERS. Plans for address numbered on every structure shall meet the following requirements:
 - a. Numbers must be plainly visible and clearly legible from the frontage street.
 - b. Numbers to be a minimum of 4" in height for residential (one and two family).
 - c. Numbers shall contrast with their background.
10. ACCESS ROADWAYS (FOR FIRE APPARATUS). Access roads shall have all-weather driving surfaces capable of supporting fire apparatus weighing 40,000 lbs.
 - a. All-weather surface shall consist of a graded road and appropriate base material as certified by a soils engineer.
 - b. Asphalt access lanes will be required in hillside areas or any area deemed necessary by the Fire Chief during inclement weather periods.

EXHIBIT 3

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 10/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

- c. No combustible construction will occur prior to all-weather access being provided and combustible construction may be stopped anytime these conditions are not met.
 - d. Fire Department access roads shall be provided when any portion of an exterior wall of the first story of a building is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building.
11. WATERLINES AND HYDRANT DISTRIBUTION. Prior to construction, plans for waterlines and hydrant locations shall be submitted to the Fire Department for approval. No combustible construction shall be allowed until required hydrants and waterlines are in and serviceable. Water mains to a minimum of 8" in size. Hydrants spacing in residential areas shall not exceed 500 feet.
12. FIRE HYDRANTS. All fire hydrants shall conform to the Pismo Beach water distribution system materials list.
- a. Each hydrant to have one 4-1/2" outlet and two 2-1/2" outlets (wet barrel).
 - b. Each hydrant shall be painted OSHA yellow.
 - c. No rolled curbs will be allowed within 10' of a hydrant, type "A".
 - d. Curb to be painted red 10' both sides of hydrant.
 - e. A blue reflective marker shall be installed 6" off center of street in line with hydrant.
13. FIRE FLOW. All fire protection water must be gravity flow with adequate storage to meet domestic and required fire flow for a minimum of (2) two hours for residential.
- a. Required fire flow will be determined by the Fire Chief, City Engineer, ISO requirements, and Uniform Fire Code Appendix III-A of the Fire Code
 - b. Minimum fire flow will be 1500 G.P.M. for residential.
 - c. In all cases the minimum acceptable residual pressure shall be 20 P.S.I.
14. UTILITIES. If gas meters, electric utilities or any part of the Fire Protection Water System are subject to vehicular damage, impact protection shall be provided.
15. CLEARANCES. Driveways, common access roads, and required fire lanes shall be constructed to accommodate emergency vehicles.
- a. A minimum of 13'-6" overhead clearance is required.
 - b. A minimum of 24' clear width is required for all fire access. The required width of fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 11/14
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LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

- c. The gradient for fire apparatus access roads shall not exceed the maximum approved by the Chief.
16. AUTOMATIC FIRE SPRINKLER SYSTEM. All structures shall install an Automatic Fire Sprinkler System in compliance with the appropriate NFPA Standard and local requirements. Three (3) sets of plans and two (2) sets calculations shall be submitted and approved prior to the issuance of a building permit. Water service/fire service laterals serving the property shall be a minimum of 1-1/2" in size (ID).
17. FEES AND PERMITS. Any and all applicable fees and permits shall be secured prior to commencing work.
18. ROOFING. Roof coverings shall be Class B or better. Wood shakes or shingles are prohibited per City Ordinance.

CITY ENGINEERING DIVISION:

19. Public Works items A.7 through A.18 must be complete and the final map recorded.

B) CONDITIONS SUBJECT TO COMPLIANCE DURING CONSTRUCTION:

BUILDING DIVISION:

1. SITE MAINTENANCE. During construction, the site shall be maintained so as to not infringe on neighboring property. Said maintenance shall be determined by the Building Official.

PLANNING DIVISION:

2. ARCHAEOLOGICAL MATERIALS. In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall cease in the immediate area, and the find left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 12/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

CITY ENGINEERING DIVISION:

3. **TRAFFIC CONTROLS (S)**. During construction, it shall be the responsibility of the Contractor to provide for safe traffic control in and around the site. This will be in accordance with Work Area Traffic Control Handbook and may include but not be limited to signs, flashing lights, barricades and flag persons as directed by the Building Official or the City Engineer. Sidewalks and streets shall be kept free of building materials, dumpsters and other obstructions.
4. **DUST AND EROSION CONTROL**. All dust and erosion control shall be in conformance with the standards of the City of Pismo Beach, applicable ordinances, and the City Engineer.
5. **STREET MAINTENANCE**. During the construction period, the project frontage(s) shall be swept by an acceptable street cleaning firm as needed. At the conclusion of construction, prior to the issuance of an occupancy permit the aforementioned roads shall be inspected by the Director of Public Services and repairs effected as warranted and directed.

C) CONDITIONS SUBJECT TO COMPLIANCE PRIOR TO REQUESTING A FRAMING INSPECTION:

1. **HEIGHT SURVEY REQUIRED**. Prior to requesting a framing inspection, a licensed surveyor shall measure and certify the height of the building, including anticipated building materials pursuant to the above building height condition of approval.

D) CONDITIONS SUBJECT TO COMPLIANCE PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY:

PLANNING DIVISION:

1. **LANDSCAPE INSPECTION REQUIRED**. All landscaping and irrigation systems shown on the approved plans shall be installed by the project applicant and shall be subject to inspection and approval by the project planner prior to the issuance of a Certificate of Occupancy.

CITY ENGINEERING DIVISION:

2. **DAMAGED IMPROVEMENTS**. All curb, gutter and sidewalk cracked or damaged during or prior to construction shall be replaced to the satisfaction of the City Engineer.

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 13/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
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3. AS-BUILT DRAWINGS Mylar reproducible "as-built" drawings of the public or semi-public improvements and final grading shall be furnished to the City after completion of the project. These drawings shall reflect all improvements incorporated in the approved improvement plans and grading plans for the project.

4. SUBDIVISION IMPROVEMENT ACCEPTANCE. The Subdivision improvement shall be complete and accepted by the City Council. The Guarantee Bond mentioned above shall be provided.

E) CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. ROOF-MOUNTED EQUIPMENT. All roof-mounted air conditioning or heating equipment, vents or ducts shall be screened from public view in a manner approved by the Project Planner. Roof-mounted antenna of any type are prohibited.

2. COMPLIANCE WITH APPLICABLE LAWS. 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 shall be met. The duty of inquiry as to such requirements shall be upon the applicant.

3. COMPLIANCE WITH MITIGATION MEASURES. All mitigation measures included in the Mitigation Monitoring Program associated with this Project 94-153 shall be conditions of approval as herein incorporated by reference.

4. COMPLIANCE WITH SOUTH PALISADES SPECIFIC PLAN. All applicable requirements of the South Palisades Specific Plan shall be met. The duty of inquiry as to such requirements shall be upon the applicant.

5. INDEMNIFICATION. 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 to attack, set aside, avoid, or annul this approval by the City of applicants project, and/or a claim failure by applicant to comply with the conditions of approval of the project. This condition and agreement shall be binding on all of applicant's successors and assigns.

F) MISCELLANEOUS/FEEES:

1. REQUIRED FEES. The applicant shall be responsible for the payment of all applicable development and building fees including the following:

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CASE NO: 92-153 - (VTTM 2129, CUP, CDP, ARP, & LP) PAGE 14/14
APPLICANT/OWNER: STEVE ANDREWS / BELLSTONE - JAMES S. LEE
LOCATION/APN: BEACHCOMBER DRIVE / 010-152-019 & 020

- a. All applicable development impact fees pursuant to Ordinance 93-01, Resolution 93-12 and Resolution 93-33.
- b. Water system improvement charge.
- c. Water meter hook-up charge.
- d. Sewer public facilities fee.
- e. Park development and improvement fee and fees in lieu of park dedication.
- f. School impact fees pursuant to the requirements of the applicable California State school fee schedules.
- g. building and construction and plan check fees: building fee, grading and paving fee, plan check fee, plumbing, electrical/mechanical fee, sewer connection fee, lopez assessment, strong motion instrumentation, encroachment fee, and other fees such as subdivision plan check and inspection fees.
- h. Other special fees:
 - 1. Assessment district charges.
 - 2. Other potential fees.
- i. Any other applicable fees

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.

**I HAVE READ AND UNDERSTOOD, AND I WILL COMPLY
WITH ALL ABOVE STATED CONDITIONS OF THIS PERMIT**

Approved by the City Council on October 17, 1995

Applicant

Date

Property Owner

Date

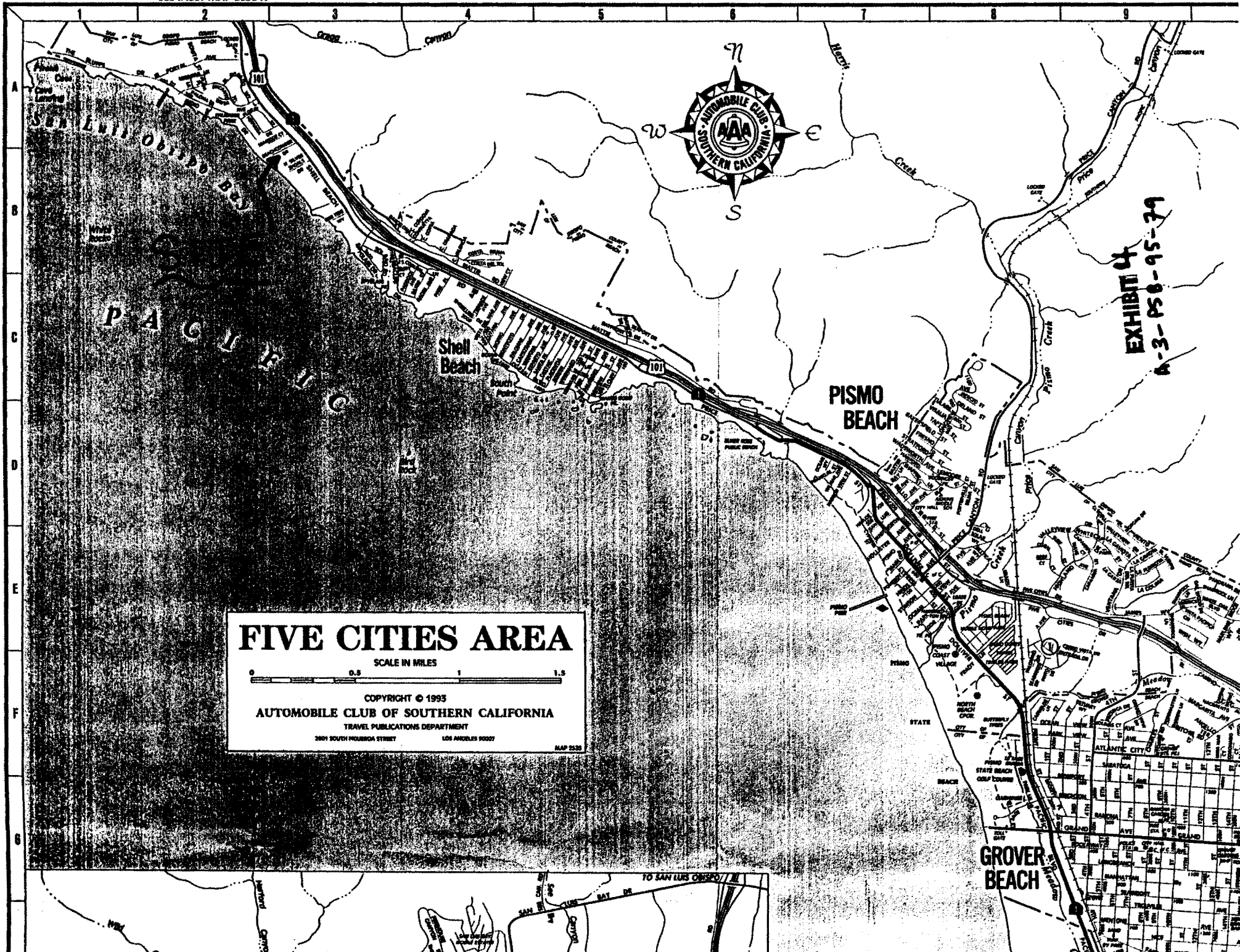
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[END]

EXHIBIT 3
A-3-PSB-95-79

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SEE INSET MAP BELOW



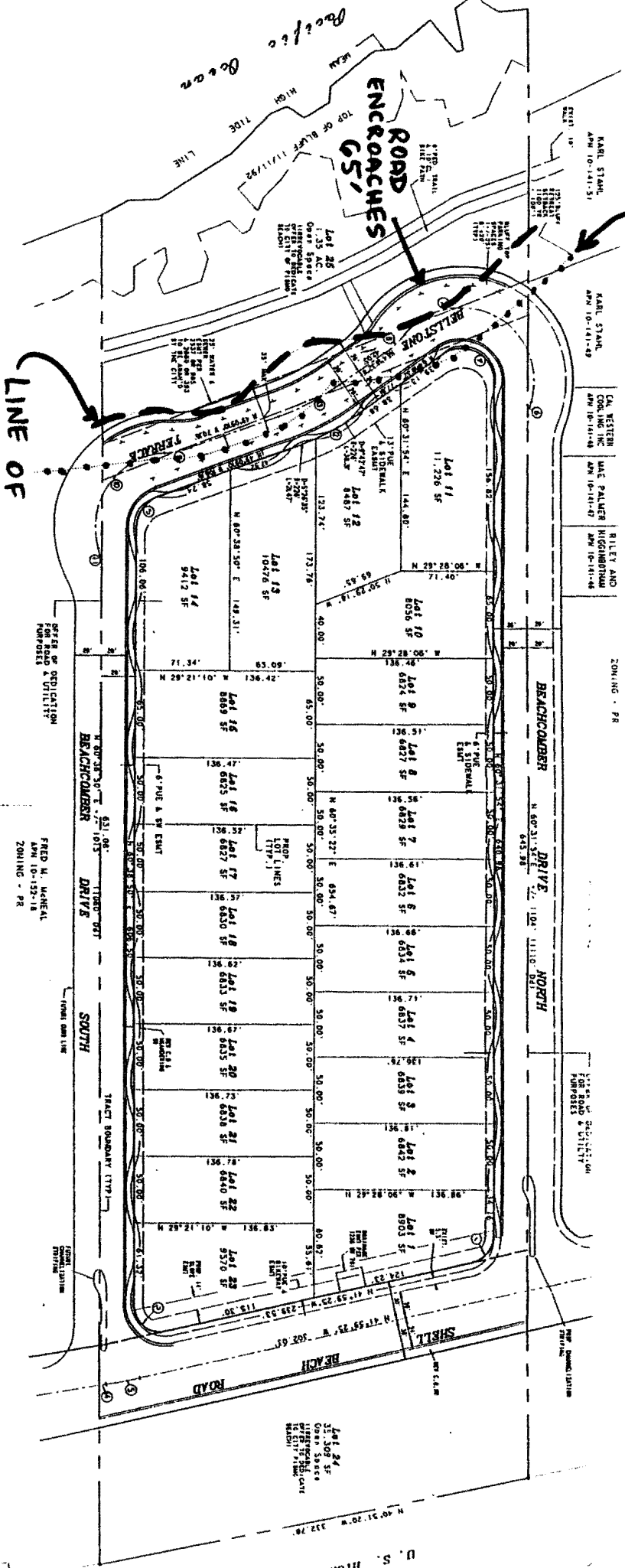
FIVE CITIES AREA
 SCALE IN MILES
 0 0.5 1 1.5
 COPYRIGHT © 1993
 AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA
 TRAVEL PUBLICATIONS DEPARTMENT
 2801 SOUTH HOUBOURG STREET LOS ANGELES 90007
 MAP 2538

EXHIBIT 4
A-3-PS6-95-74

**35' MAXIMUM ALLOWED
ENCROACHMENT BY ROAD INTO
BUFFTOP SETBACK**

LINE OF

**LINE OF
125' BUFF TOP SETBACK**



KARL STAHN
APR 10-141-31
KARL STAHN
APR 10-141-49
CA. WESTER
COOKING INC
APR 10-141-48
JANE PALMER
APR 10-141-47
BILLY AND
HIGHHOODHAM
APR 10-141-46
ZONING - PR

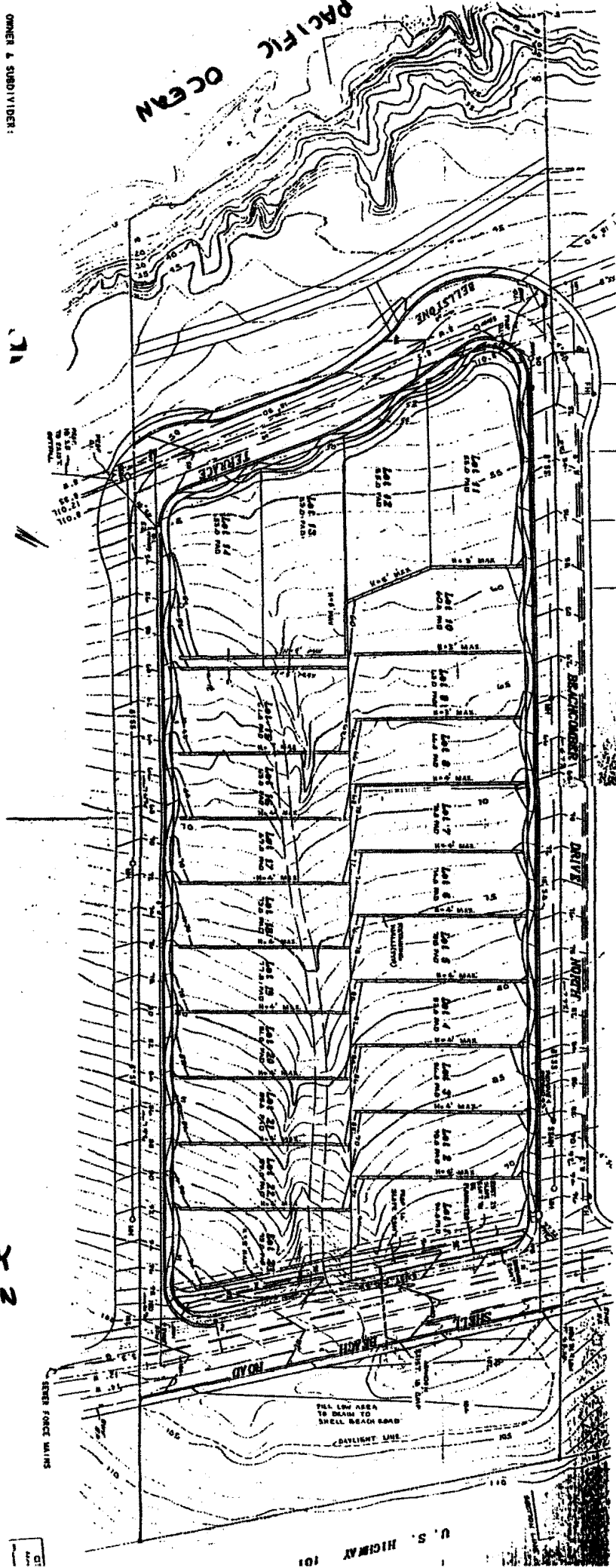
FRED M. MAHEAL
APR 10-152-18
ZONING - PR

**TENTATIVE MAP
EXHIBIT 4
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p 2**

OWNER & SUBDIVIDER:

PACIFIC OCEAN

71

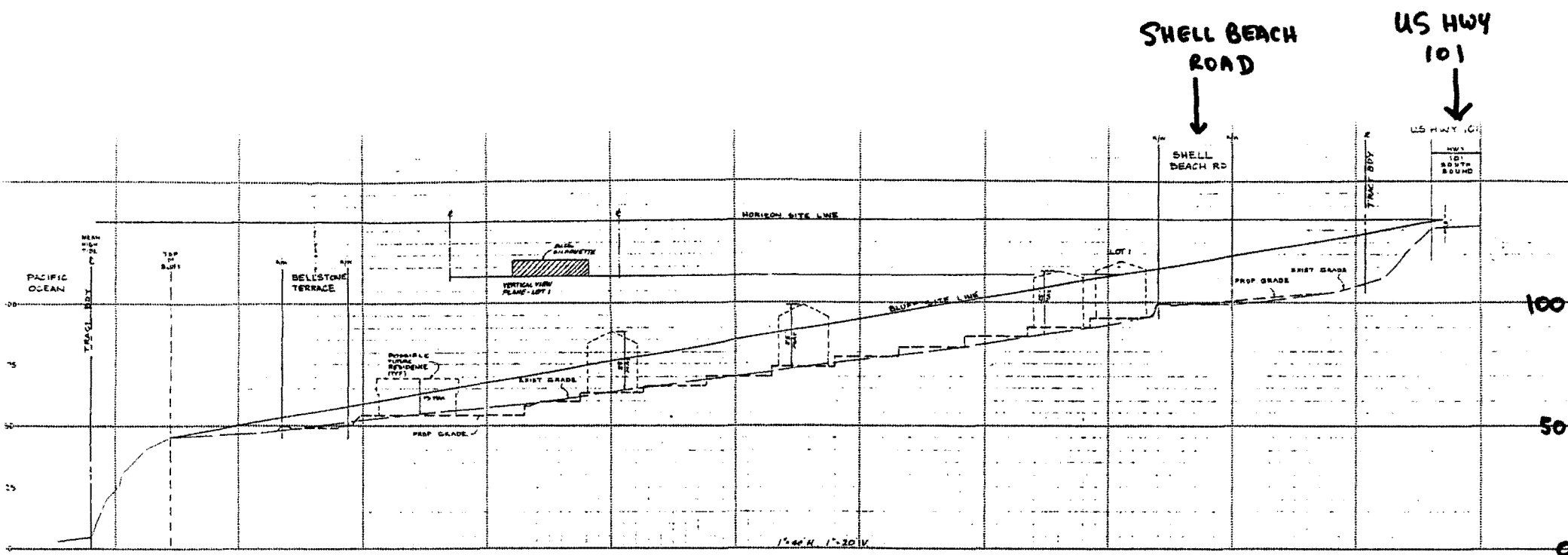


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PRELIMINARY GRADING PLAN

EXHIBIT 4
A-3-PSB-95-74
p3

U.S. HIGHWAY 101



STEVE ANDREWS
 CONTRACTING AND DEVELOPMENT
 805 773-1146
 501 SHELL BEACH RD #E
 SHELL BEACH, CA 93449

OWNER & SUBDIVIDER:
 JAMES S. LEE, INC.
 2108 PONDEROSA DR.
 P. O. BOX 1717
 CAMARILLO CA 93011
 (805) 987-9107
 ASSESSOR'S PARCELS
 10-152-19 & 20

Surveyed by
 William P. Dunn

City of Pismo Beach
 10/17/85
 City Engineer's Office
 Subject to Code...

CROSS-SECTIONAL DRAWING
 TRACT 2129
 BEING A PORTION OF LOT 4 OF A PART
 OF THE PISMO EL RANCHO AND SAN MIGUELTO RANCHO

EXHIBIT 4
 A-3-PSB-95-79
 P4

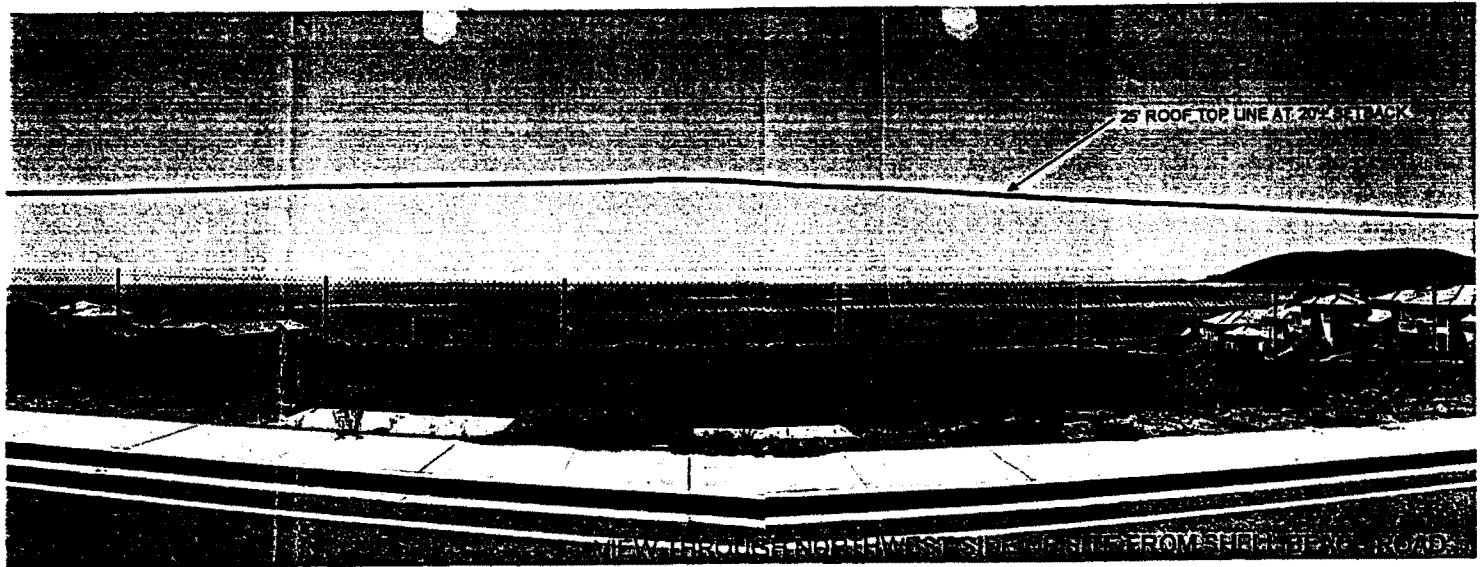
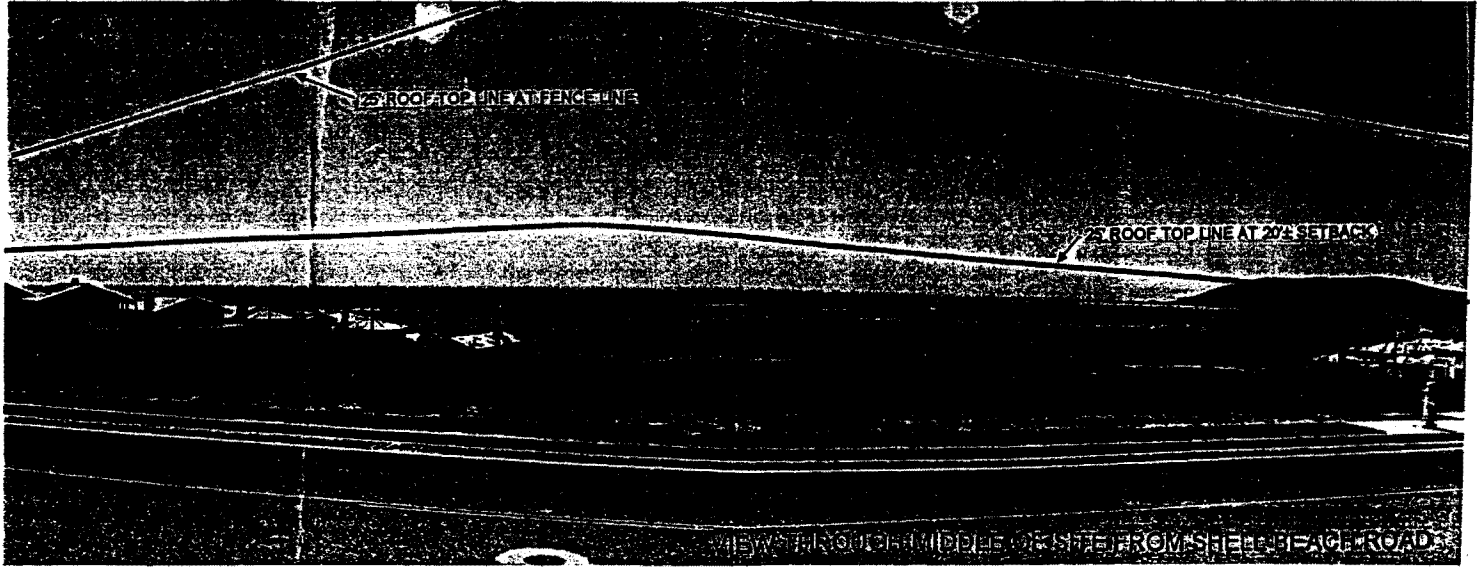


EXHIBIT 5
A-3- P36-95-79

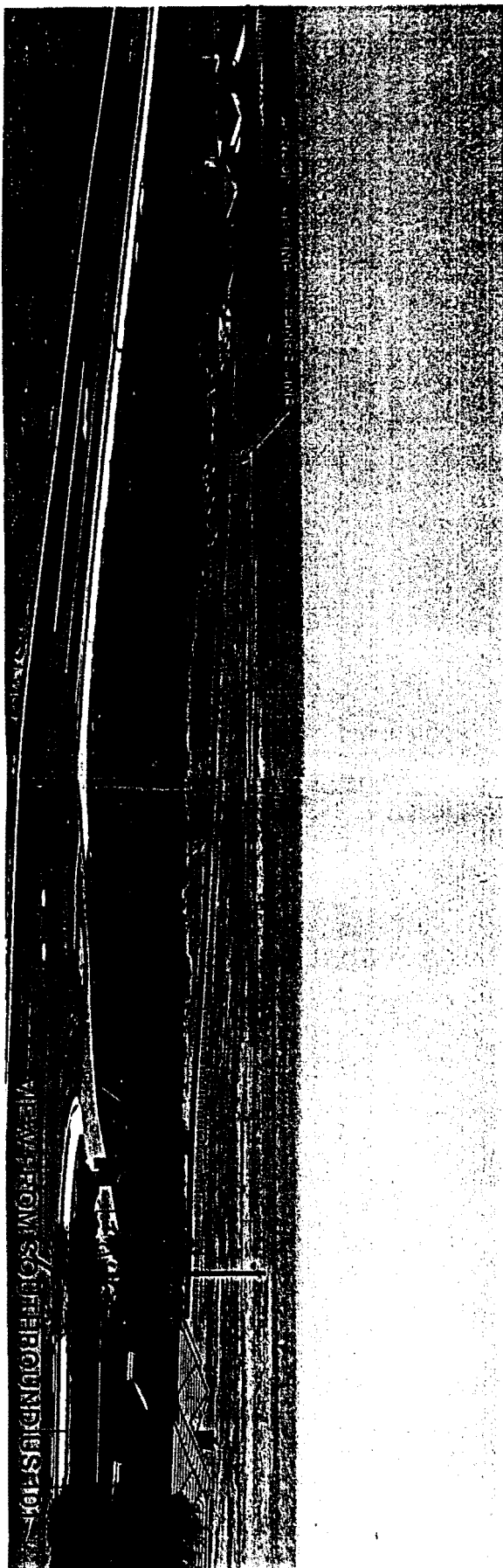
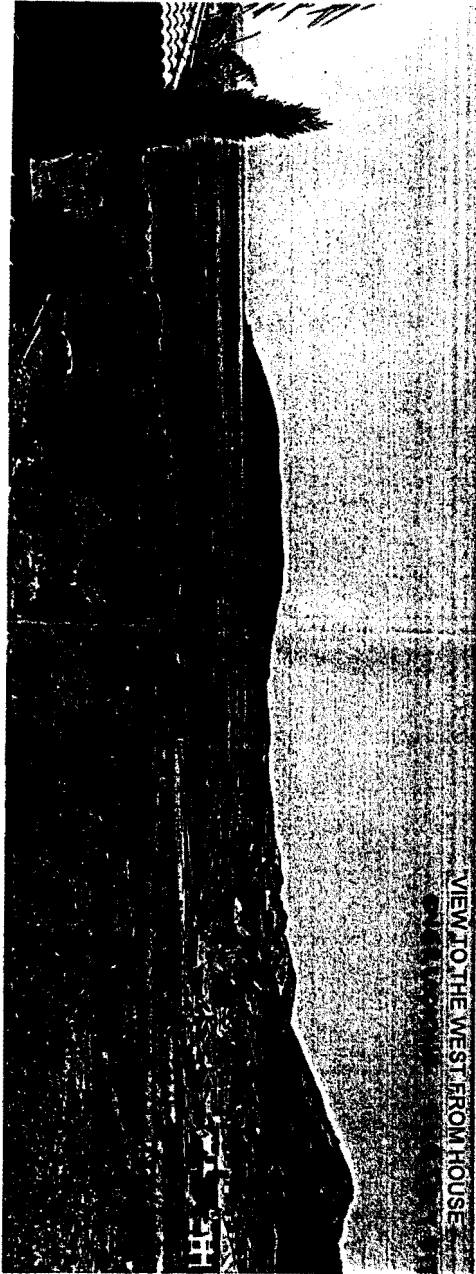
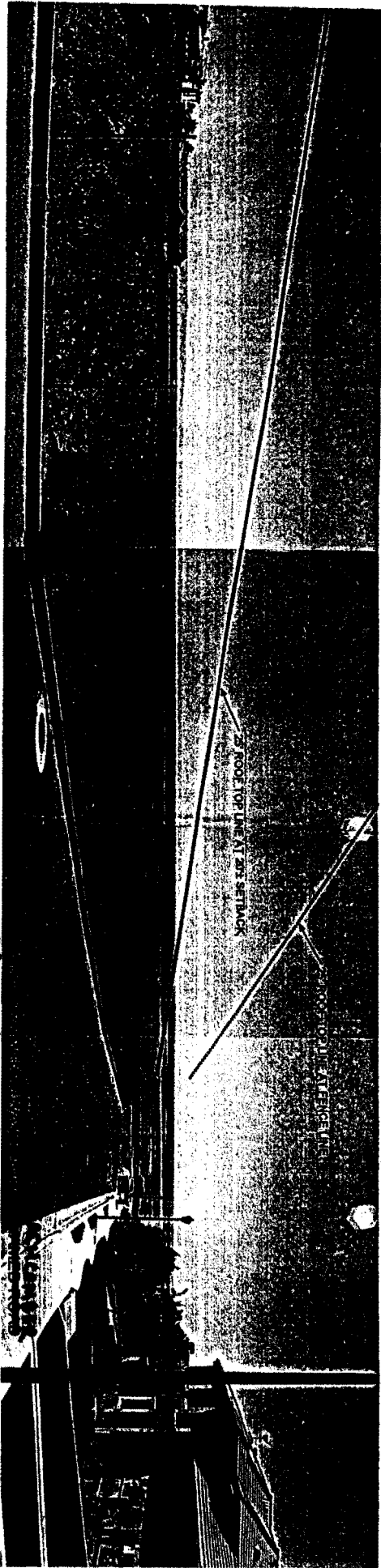


EXHIBIT 5
A-3-PSB-95-79
p2



VIEW TO THE WEST FROM HOUSE



DR. AT NORTH EDGE OF SUBJECT SITE

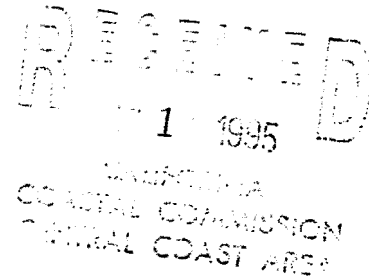
EXHIBIT 5
 A-3-PSB-95-79
 p3

**STEVE ANDREWS
GENERAL CONTRACTING
and DEVELOPING**

501 Shell Beach Road #E Shell Beach, CA. 93449
(805) 773-1146

December 15, 1995

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



Re: Appeal of Project 92-153; Pismo Beach, CA
James S. Lee, property owner
Appellants: Lanier & Dee Harper

Dear Mr. Guiney,

I have reviewed the appeal that has been filed with your office for the above referenced application and would like to provide some factual information related to the project and respond to the issues presented in the appeal.

Setting. This rectangular shaped property is located along the marine terrace at the northerly end of Pismo Beach, between Shell Beach Road and the cliffs above the ocean. It is discussed in the Pismo Beach General Plan/Local Coastal Plan as South Palisades, Planning Area B. This is also the Specific Plan reference for this area of Pismo Beach. This 7.1 acre site and an adjacent property are the only undeveloped residential properties in the vicinity. All of the other adjacent property has been developed with a combination of townhouses or detached residential housing.

Land Use Regulations. The adopted plans for the area designate this and neighboring properties as Medium Density Residential, with a density of 8 units per acre. The Zoning Designation for the property is Planned Residential (P-R) Zoning which allows clustered, detached or multi-storied residential housing developments through the Planning Commission review process. If a detached, single family lot development is proposed, the City of Pismo Beach Planning Commission and City Council has adopted the policy that R-1 lot design standards (for lot area and widths) should be used.

Project. This project is a residential subdivision consisting of 23 single family lots located along a looped street. A 1.35 acre bluff retreat and park area is located adjacent to the bluff and a 35,000 sf open space parcel is located between Shell Beach Road and the Highway 101 right of way. The density of the project is 3.23 units per acre. This is a subdivision only, future dwelling construction will require architectural review hearings, including a viewshed analysis, prior to construction permit issuance.

EXHIBIT 6
A-3-PSB-95-79

Subdivision Design. The owner of this property has chosen a single family detached, individual lot design as his development concept. Today's marketing realities and financing for any other type of residential project do not make financial sense. Circulation improvements are dictated by the Specific Plan and the General Plan, which required that the property be improved with a public, 52 foot wide right-of-way. The two way, looped street with on-street parking will provide public access to the bluff park. Additional parking was required by the City Council and is to be located on the open space parcel between Shell Beach Road and the freeway, thus insuring public access to the coast with nearby convenient parking.

Building Design. One of the supplements that was required with our application for the project required the preparation of a "Design Guidelines for Homebuilders" (covenants for the tract) which addresses building heights, setbacks, massing, roof pitch, materials of construction, design, style, colors, fencing and so on. Future residences must adhere to these design guidelines and each and every proposed structure within the tract will have a public hearing that must include a visual analysis and viewshed analysis. Additional conditions of approval established by the City of Pismo Beach also delineates the details of site development.

Approvals. After several hearings and exhaustive review, this project, including a Vesting Tentative Tract Map, a Mitigated Negative Declaration, Mitigation Monitoring Program, Conditional Use Permit, Coastal Development Permit, Architectural Review Permit and Landscape Permit was twice recommended for approval by the Planning Commission and approved by the City Council. No adjustments or variances or deviations to any of the adopted plans and ordinances was required.

Appellants. Please recognize that this appeal is driven primarily by a few of the immediate neighbors who feel threatened by a loss of their own personal view of the ocean from their two story homes. Had they bought a parcel or a home that was in the front row, it is my guess that this appeal and the complaints about this project from those individuals would have never been made. The other "100 or more" people actually number about 10 vocal neighbors and a few others that were petitioned from grocery store entrances. The Unocal Corp reference is puzzling, as Mr. Nichols only remarked in a letter about maintaining access to the existing Unocal pipeline running through the property, which has been located within one of the proposed right of ways.

Issue 1 - 4 & 5(1) - Lot Design. As mentioned, the clustering concept of development for this property is not realistical financially. The property owner has hired a team of professionals to assist in the plans for his property and does not need amateur designers, engineers and/or financial advisors to tell him how he should develop his land. Given the constraints of the narrow rectangular shaped parcel, the bluff retreat, the open space area and the circulation mandates, the lotting pattern is one of the few realistic ways to develop the property. This is a low density project, 3.23 units per acre. By comparison, the adjacent Green Dolphin project is 5.75 units per acre and others in the neighborhood exceed even that density.

Issue 5(2) - Bluff Retreat Encroachment. The existing road and cul de sac on the north was improved as a half street to serve the adjacent Green Dolphin project. Our project was required by the City to match and tie into those existing ROW improvements. It does encroach into the retreat area for a few feet, as does the existing roadway, cul de sac and storm drain, however angles back out of this retreat area as soon as road engineering design standards allow.

EXHIBIT G

A-3-P50-95-79

p2

Issue 5(3) - Groundwater. A Preliminary Soils Report was prepared for the application and soils data was also prepared for the General Plan and Specific Plan and their respective EIR's. The site and neighboring area has been determined to be suitable for the type of development proposed (residential) and, of course, has been successfully developed as such. A glance at the homes in the vicinity verifies this fact. The standard soils engineering practice is to evaluate soils conditions on a site specific basis, when a building project is proposed for a specific lot. This is a condition of approval for the tract.

Issue 5(4) - Circulation. Improvements required by the adopted plans and the City.

Issue 5(5) - Tidepools. No comment necessary.

Issue 5(6) - Pipeline/Hazards. The existing oil pipeline is within the ROW which allows easy access. This is the preferred location by all parties to this easement.

Issue 5(7) - Noise. The nearest Highway 101 travel lane is located over 200 feet north and elevated at least 16 feet above the nearest lots. An acoustical analysis (David Lord, Ph.D.) was provided for the application which identified noise attenuation methods and mitigation measures that could be employed for structures on affected lots. These methods will be applied when specific structures are proposed.

Issue 5(8) - Public Service Impacts. A Cost-Benefit analysis was prepared for the tract (Joseph Boud & Associates) which concluded that there are no public service impacts or constraints that will be affected and, in fact, suggests that the project will be fiscally beneficial to the City of Pismo Beach.

Issue 5(9) - Aesthetics/Views. As noted, this is only a subdivision project. As conditioned, future structures will have to conform to the Design Guidelines, including a viewshed analysis, which then is processed through an architectural review public hearing. The EIR's for the Specific Plan and General Plan/LCP have addressed this issue and it has been implemented through the Zoning Overlay Height Limitation. The appellant conveniently makes no mention that all of the neighboring property is developed with two story homes with the same physical conditions. Further, I've heard the remark too many times that this site is the only view of the ocean from the Golden Gate to Gaviota, which has about as much relevance as saying that Interstate 5 only has views of the ocean from Seattle to San Diego.

Issue 5(10) - Cultural Resources. The entire area was record searched and site surveyed through the EIR process for the Specific Plan and General Plan/LCP. No resources were identified. As a condition of approval, if any resource is discovered during site construction, work is to stop and an archaeologist will evaluate the find.

Issue 5(11) - Recreation. The bluff top park conforms to the City of Pismo Beach linear parkway plan and matches other neighboring project's requirements. The appellants are mistaken related to the park ownership, as the park will be offered to dedicate to the City, but it will be owned and maintained by the project's Homeowner's Association.

EXHIBIT 6

A-3-PSB-95-79

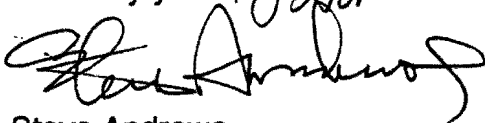
p3

Issue 5(12) - LCP Intent. The project has been determined to conform to all applicable plans and ordinances adopted by the City of Pismo Beach, which were confirmed by the California Coastal Commission.

I hope that these brief comments and responses to the appellant's statements provides you some additional information related to the project and thank you for considering these facts when evaluating the merits of the appeal and the motivations of the appellants. It is my hope that your office determines that there are no coastal issues that have not been considered by the City of Pismo Beach in their review and approval of the project and that the appeal is denied a hearing by the Commission.

Please don't hesitate to contact me should you have any questions or if you would like any additional information in this matter.

Sincerely yours,

for


Steve Andrews
Agent for Owner James Lee

c. James S. Lee

EXHIBIT 6
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p4



PUBLIC SERVICES DEPARTMENT

CITY OF PISMO BEACH

P.O. BOX 3 \ 760 MATTIE ROAD, PISMO BEACH, CA 93449 805) 773-4658 • (805) 773-4684

Steven Guiney
California Coastal Commission
Central Coast Area Office
725 Front Street, Ste. 300
Santa Cruz, CA 95060

March 7, 1996

RE: South Palisades Specific Plan and Project No. 92-153, VTTM 2129

Dear Mr. Guiney:

In your letter dated February 14, 1996 you inquired whether the City of Pismo Beach has indication that the Coastal Commission certified the South Palisades Specific Plan. I consulted with Carolyn Johnson and was informed that the City had not obtained certification of the plan.

I hope this clarifies the issue to your satisfaction. If you have any questions or would like additional information please call the Planning Division at (805) 773-4658.

Sincerely,

Courtney R. Grossman
Associate Planner

cc: Chron File

b:\letter.96\coastal.com

RECEIVED
MAR 11 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT 6

A-3-158-95-71

P 5

