

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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# Th6g-h-i-j

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## COMBINED APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal numbers**.....A-3-PSB-00-110, 111, 112, & 113 Elwood Single Family Residences

**Applicant**.....Grant Elwood

**Appellants** .....David Duran

Stephen Beck (Rep: Paul Geihs)

**Local government**.....City of Pismo Beach

**Local decision**.....Approved with conditions (6/20/00)

**Project location** .....362, 366, 368, & 372 Boeker Street, City of Pismo Beach, San Luis Obispo County (APN 010-311-009).

**Project description** .....Construction of four (4) single family residences upon four legal lots.

**File documents** .....City of Pismo Beach certified LCP; local permit files 00-0010, 00-0011, 00-0012, & 00-0013

**Staff recommendation**.....No Substantial Issue

### Summary of Staff Recommendation

This is the combined substantial issue determination for appeal numbers A-3-PSB-00-110, 111, 112, and 113. (the Commission previously opened and continued the substantial issue hearing for these matters on August 10, 2000). Development proposed by the applicant includes four single-family residences upon four continuous legal lots under common ownership. The proposed projects are nearly identical in their design and size, with the exception of a slightly larger interior square footage for one of the proposed residences. Consequently, because of the degree of similarity in design, size, and location, Staff has concluded that any potential impacts that might be associated with each individual development proposal are identical in type, degree, and scope. Furthermore, the LCP and Coastal Act issues raised through the appeals are applicable to all four development proposals. As such, Staff has prepared a combined staff report for all four proposed projects. Staff recommends that the Commission find that **no substantial issue** exists with respect to this project's conformance with the certified City of Pismo Beach Local



California Coastal Commission  
September 14, 2000 Meeting in Eureka

Staff: K. Colin Approved by: *K. Colin* 8/24/00

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Coastal Program (LCP) and decline to take jurisdiction over the project.

The appellant's raise six separate issues through the appeal: (1) the Commission violated the procedural requirements of the Local Coastal Program (LCP) by failing to suspend the City's effective final local action notice (FLAN); (2) the proposed projects do not include the LCP required lateral bluff top public access; that the public has acquired a prescriptive right across the applicant's properties; (3) the proposed projects did not go through the LCP-required design review; (4) the City should have required the merger of these nonconforming lots; (5) the proposed projects violate the California Environmental Quality Act (CEQA); and (6) the proposed developments will restrict the ability of emergency vehicle access to this portion of Boeker Street.

Staff recommends that the Commission find that the appellant's allegations do not raise substantial issues because: (1) the Commission's failure to suspend the FLAN did not restrict in any way the public's ability to file a valid appeal nor did it restrict the ability of the public to participate in the public review process by declining to suspend the FLAN; (2) the LCP or Coastal Act do not require the applicant to provide lateral bluff top access at the project sites and there is inconclusive evidence to determine a prescriptive right here; (3) the project did receive the LCP required design review; (4) the LCP does not require a merger of the subject lots; (5) alleged CEQA violations are not a Coastal Act or LCP issue; (6) the proposed project fulfills the parking standards of the LCP and therefore would not further restrict the ability of emergency vehicles to access this portion of Boeker Street.

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## **1. Appellants' Contentions**

In summary, the Appellants contend the following (see Exhibit A for the complete appeal document):

1. The City's final local action notice was not received by the Commission within the time prescribed by the LCP, and thus, the Commission is obligated to notify the City and the applicant that the effective date of the City action is suspended;
2. The LCP requires lateral access across the bluff at Boeker Street and that this should be a requirement of the permit; that historical use of the property by the public has established an implied common law dedication;
3. The proposed project did not receive the LCP required design review;
4. The City should have required the merger of these nonconforming lots, pursuant to Sections 65858 and 66451.11, et. seq. of the California Government Code;
5. The projects are not categorically exempt under the California Environmental Quality Act (CEQA); and
6. Approval of the four single-family dwellings will restrict the ability of emergency access vehicles to access this portion of Boeker Street.

## **2. Local Government Action**

The Planning Commission considered the proposed projects at three public hearings of March 28, April 25, and May 9, 2000. On May 9, 2000 the Planning Commission approved four separate coastal permits, architectural reviews, and landscape reviews, with conditions, for the construction of one 1,975 square foot home at 372 Boeker (lot 90, Block 2, of the Shell Beach Subdivision), and three 1,306 square foot homes at 362, 366, 368 and 372 Boeker Street (lots 89, 87, & 85, Block 2, of the Shell Beach Subdivision) (APN 010-311-009); and variance to the front yard garage setback. This decision by the Planning Commission was subsequently appealed by three separate appellants, John J. Holbrook, Bob Exner, and Merrilee Donald.

On June 20, 2000 the City Council denied all the appeals and upheld the Planning Commission's approval, with no changes to the Planning Commission's decision. The City's complete final action was received by the Coastal Commission's Central Coast District Office on July 3, 2000. The Commission's ten-working day appeal period for this action began on July 5, 2000 and concluded at 5:00 P.M. on July 18, 2000. Two valid appeals were received during the appeal period. See Exhibit B for City of Pismo Beach findings and conditions.

## **3. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in



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jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. These project are appealable because of their location within 300 feet of the top of the seaward face of any coastal bluff and also because they are located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. These projects are located between the nearest public road and the sea and thus, this additional finding needs to be made in a de novo review in this case.

### 4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which the appeals were filed. A finding of no substantial issue would not bring the projects under the jurisdiction of the Commission for hearing and action. The Commission must make a separate motion for each appeal number.

#### Appeal Number A-3-PSB-00-110

*Motion. I move that the Commission determine that Appeal Number A-3-PSB-00-110 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

*Resolution To Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-PSB-00-110 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*



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**Appeal Number A-3-PSB-00-111**

***Motion.** I move that the Commission determine that Appeal Number A-3-PSB-00-111 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

***Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-PSB-00-111 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

**Appeal Number A-3-PSB-00-112**

***Motion.** I move that the Commission determine that Appeal Number A-3-PSB-00-112 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

***Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-PSB-00-112 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

**Appeal Number A-3-PSB-00-113**

***Motion.** I move that the Commission determine that Appeal Number A-3-PSB-00-113 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

***Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-*



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*PSB-00-113 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## **7. Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **A. Projects Background**

#### **Projects Location**

The projects are located in the Shell Beach Planning Area of the City of Pismo Beach, within the portion of the Planning Area that is zoned for and characterized by single-family residences. The area is bound by Highway 101 to the north and the Pacific Ocean to the south. The projects are located at 362, 366, 368, and 372 Boeker Avenue on a dead end street that terminates at the bluff top (see Figure 1 below for localized aerial view of project sites or attached location map Exhibit C).

The proposed projects located upon four contiguously owned parcels near the terminus of Boeker Street. The projects at 362, 366, and 368 Boeker Street are located upon three 1,645 square foot legal lots and the project at 372 Boeker Street is located upon a 2,194 square foot legal lot. The lots are separated from the bluff edge by a single approximately 4,700 square foot lot (See Figure 2 Below).



**Figure 1. Localized aerial view of project sites.**

### **Projects Description**

As mentioned, this is a combined staff report for the appeal of four separate projects. The applicant proposes to construct 1,306 square foot residences (including garage) at 362, 366, and 368 Boeker Street, and also a 1,975 square foot residence (including garage) at 372 Boeker Street. The lots at 362, 366, and 368 Boeker Street total 1,645 square foot in size and the lot at 372 Boeker Street is 2,194 square feet. The City's approval of each project includes an allowed variance to the front yard garage setback requirement of the LCP.

## **B. Analysis of Project Consistency with Local Coastal Program**

### **B.1 Procedural Requirements**

Appellant Beck alleges that since the final local action notice (FLAN) for the projects was not received by the Commission in time to allow for the 10 working day appeal period within 21 days after the local decision that the Commission should have suspended the effective local action date. Specifically, appellant Beck alleges that the Commission failed to comply with Implementation Plan (IP) Sections 17.124.210 and 17.124.230.

### **City Action**

On June 20, 2000, the City Council, on appeal, upheld the decision of the Planning Commission, denied all appeals, and approved the proposed projects. The Commission received the City's notice of final local action on July 3, 2000. The Commission's ten-working day appeal period for this action began on July 5, 2000 and concluded at 5:00 P.M. on July 18, 2000.

### **Implementation Plan Applicable Regulations**

#### ***IP Section 17.124.210 (Final Local Government Action-Notice)***

- 1. Notice after Final City Decision: (This section shall not apply to categorically excluded development.) Within seven (7) calendar days of a final City Decision on an application for any Coastal Development permit, the City shall provide notice of its action by first class mail to the Coastal Commission's South Central Coast District Office, and to any persons who specifically requested notice of such final action [...] Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.*

***IP Section 17.124.230 (Local Government Action-Effective Date)*** *The City's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired or after the twenty-first (21<sup>st</sup>) calendar day following the final City action unless any of the following occur:*



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1. *An appeal is filed in accordance with Section 17.124.180.*
2. *The notice of final City action does not meet the requirements of Section 17.124.210.*
3. *The notice of final local government action is not received in the Coastal Commission's South Central Coast Regional Office and/or distributed to interested parties in time to allow for the ten (10) working day appeal period within the 21 days after the local decision.*

*Where any of the circumstances in subsections 1 through 3 above occur, the Coastal Commission shall, within 5 (5) calendar days of receiving notice of that circumstance, notify the City and the applicant that the effective date of the City action has been suspended.*

**Substantial Issue on Alleged Procedural Violations**

Appellant Beck alleges that since the final local action notices (FLANs) for the projects were not received by the Commission in time to allow for the 10 working day appeal period within 21 days after the local decision, pursuant to IP § 17.124.230 (3), that the Commission should have suspended the effective local action date. Appellant Beck has given no formal indication as to the relevance of a violation of IP § 17.124.230 (3) in this case. As such, the Commission interprets this allegation to pertain to an allegation that the Commission's failure to suspend the effective local action date has caused a restriction of the public's ability to participate in the public review process of these projects.

The intent of IP § 17.124.230 (3) is to ensure that the City forwards all final local action notices within a timely fashion. To date, the Commission's experience with the City of Pismo Beach and various other local jurisdictions indicates that this is often not the case. In large part these delays in receiving FLANs appears to be a function of insufficient staffing at local jurisdictions. As a result, it is common for the Commission to receive FLANs in a less than timely manner.

In this case, the Commission received the final local action notices on July 3, 2000 (thirteen days after the final City action). As such, the Commission did not receive the FLANs in time to allow the 10 working day appeal period within 21 days after the local decision. Under such circumstances, the LCP requires the Commission to suspend the effective final action date for an unspecified period of time. In addition, the LCP does not provide a remedy to cure a violation of IP § 17.124.230 (3).

Commission staff spoke with appellant Beck's representative (Paul Geihs) prior to the filing of his appeal.<sup>1</sup> During the course of this correspondence Mr. Geihs requested that the Commission suspend the effective final action date in order to: (1) allow an extension of the Commission appeal period, or (2) require the City to re-open the public hearing and re-notice the final action in a timely fashion. Commission staff did not honor the appellant's requests as there was no apparent need to do so.

It is quite clear that failure to transmit a timely notice to the Commission in this case resulted in no diminishment of the public's ability to participate in the public review process of these project's. In fact, the effect of the City sending late notice in this case resulted in an informal extension of the Commission's appeal period. As such, the appellant was provided more time with which to file an

<sup>1</sup> July 14, 2000 telephone conversation between Kevin Colin (Commission Coastal Planner) and Paul Geihs.





appeal than is required under the LCP. While the Commission's lack of action to formally suspend the effective local action date because of late receipt of the FLANs was technically inconsistent with the LCP, no harm to the public's ability to participate in potential future public hearings resulted from doing so since the appellant's have in fact filed Commission appeals. In addition, the Commission automatically suspends the effective final local action date when a project is appealed to the Commission. Furthermore, The City held four separate public hearings on the proposed projects during which time the appellant was provided sufficient opportunities to participate in the review of these projects and was alerted to the fact that the projects would be appealable to the Coastal Commission. Given all this, no harm to public's ability to participate in the review process of these development proposals was caused by the Commission's failure to suspend the effective final local action date.

**Therefore the Commission finds that the public was provided with sufficient time and opportunities with which to participate in the public review of the subject development proposals, and that as such the alleged inconsistencies with IP § 17.124.230 (3) raises no substantial issue.**

## **B.2 Public Access and Recreation**

Appellant Beck contends that the LCP requires lateral access along the bluff at the applicant's property and that historical use of the property by the public has established an implied common law dedication.

### **City Action**

On June 20, 2000 the City Council denied all appeals and upheld the Planning Commission's approval, with no changes to the Planning Commission's decision, of four separate coastal permits, architectural reviews, and landscape reviews, with conditions, for the construction of one 1,975 square foot home at 372 Boeker, and three 1,306 square foot homes at 362, 366, 368 and 372 Boeker Street, located upon four approximate 1,645 square-foot lots (APN 010-311-009); and variance to the front yard garage setback..

### **Standard of Review**

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3." Boeker Street is a dead end street that runs perpendicular to and terminates at the bluff top. The first through public road in the vicinity of the projects is Placienta Avenue, a portion of Shell Beach Road, and Windward Avenue. These roads surround Boeker Street. As such, Boeker Street is located seaward of the first through public road and the sea. As a result, for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

*§ 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational*



*opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*§ 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*§ 30212 (a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....*

*§ 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

*§ 30214 (a): The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case....*

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

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

Likewise, LCP policies LU-H-9, LU-H-10, PR-5, and PR-23 are also applicable in this case and state,

***LUP Policy LU-H-9 (Lateral Access at Boeker Street)*** *The City should pursue opportunities to create lateral pedestrian pathways connecting Boeker Street to Placentia Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibly through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)*

***LUP Policy LU-H-10 (Lateral Bluff Access Not Required)*** *The lateral blufftop access dedication requirement set forth in Policy PR-23 shall not be applicable to this planning area. (emphasis added)<sup>2</sup>*

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<sup>2</sup> ***LUP Policy PR-23 (Lateral Bluff-top Open Space and Access Required)*** *Bluff-Top Access Dedication – To ensure public safety, provide for protection of fragile ocean blufftops, and permit enjoyment by the public of oceanfront amenities and recreation, all development on the bluff edge shall be required to dedicate in fee or by an easement in perpetuity a blufftop conservation and public access zone. [...] Existing single family lots on the bluff less than 10,000 feet in area are exempted from the requirements of dedication of the blufftop area, if another lateral public access route (beach, sidewalk or separate path) is or will be available nearby so as to provide continuity of the Coastal Trail.*



**LUP Policy PR-5 (Multi-Use Path System (Trails))** *A system of public paths as delineated on Figure PR-2 shall be developed to connect the various parks, scenic aspects and open space of the city. Ideally the paths should be located within designated greenbelt areas. However, in areas of the community that have already been developed, the system can include sidewalks and right-of-way shoulders of less traveled streets. The system should be delineated with signs, uniform landscaping, and pavement. [..]*

**IP Section 17.066.020 (Criteria and Standards)**

1. *Public access, where required by the General Plan/Local Coastal Plan, shall be provided to the coast through public easements, deed restrictions, stairways, public parking, lateral accesses or bluff accesses, whichever is appropriate to the specific planning area's needs, and shall be required of new development pursuant to the requirements of the certified Local Coastal Program Land Use Plan.*
2. *For all new developments between the first public road and the ocean, the owner shall grant a lateral easement along the shoreline for public access per the requirements of Subsections 3 and 4 of this Section.*
3. *Lateral accessway dedication of the area between the toe of the bluff and the mean tide line shall be required. These accessways should not extend further landward than the foot of an existing shoreline protective device nor shall any path be closer than 10 feet to any residence or 5 feet to any motel room.*
4. *All dry sandy beach, intertidal and subtidal areas seaward of the toe of the bluff shall be dedicated to the State Department of Parks and Recreation or other appropriate public agency. If no lateral sandy beach access is available, a lateral easement of no less than 25 feet in width must be granted at or near the bluffs, unless a greater lateral easement is required per the City's Land Use Plan. Existing single-family lots as of January 23, 1981, or homes on any blufftop area are excluded from the requirement of providing any lateral blufftop easements.*

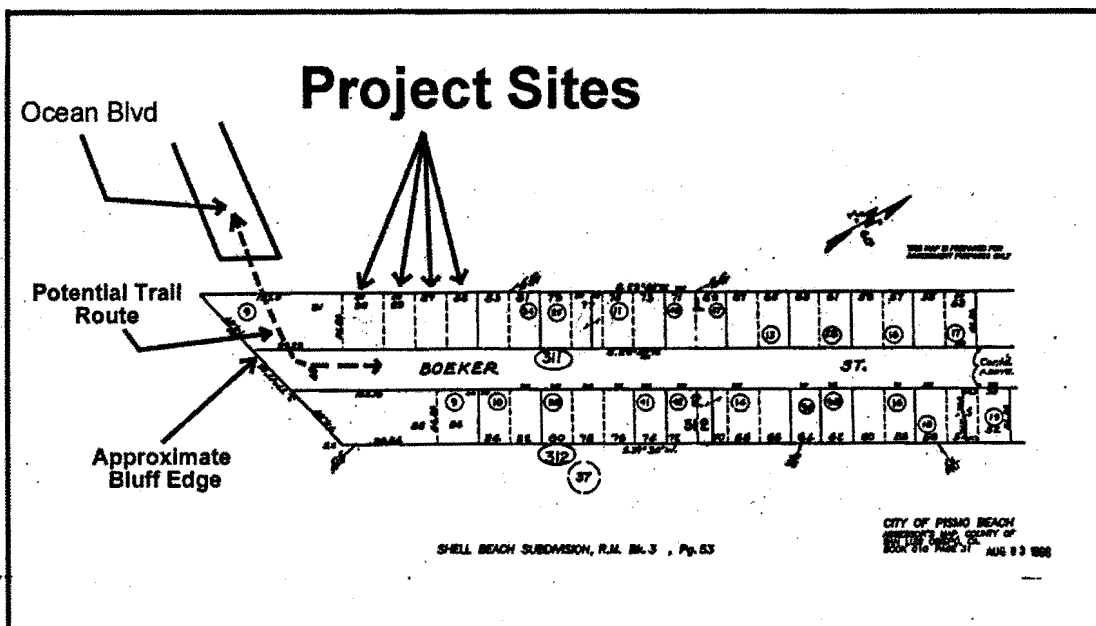
**Substantial Issue Determination on Public Access and Recreation**

Appellant Beck contends that the LCP requires lateral access along the bluff at the applicant's properties. Appellant Beck further contends that historical use of the property by the public has established an implied common law dedication (i.e. prescriptive right).

The proposed projects are located upon four contiguous lots near the terminus of Boeker Street. These lots are separated from the bluff top by an approximate 5,416 square foot bluff top parcel. As mentioned Boeker Street is a dead end street that terminates at the bluff top. Currently, formal lateral bluff top access does not connect Boeker with adjacent parallel streets.



The proposed project's are not situated in a location which the LCP or Coastal Act requires lateral bluff top access. The applicant owns five undeveloped parcels that run perpendicular to the bluff top. The proposed projects are located upon four lots that are separated from the bluff top by one legal lot (See Figure 2 below). This bluff top lot is not the location of any of the current development proposals. Were lateral bluff top access to be contemplated along the bluff at Boeker Street, then this bluff top lot would seem the most logical location given its ability to directly connect with current lateral access to the north. Therefore, the proposed developments are located inland of potential lateral bluff top access routes (i.e. Ocean Boulevard) and hence are not able to directly connect to Ocean Boulevard. Given this, the proposed project sites could not physically provide a lateral bluff access path that remains consistent with Ocean Boulevard to the north (See Figure 2 below). Regardless of the inability of the proposed project sites to provide lateral bluff top access, the LCP does not mandate the establishment of a bluff top lateral access path here.



**Figure 2. Assessor parcel map depicting potential trail route.**

As stated in LU-H-10, "the lateral bluff top access dedication requirement set forth in Policy PR-23 shall not be applicable to this planning area (Shell Beach)." The proposed project sites are not located at the bluff top edge. As such, the LCP does not require the provision of lateral access.

Appellant Beck asserts that the proposed projects should include lateral bluff top access. However, the proposed project sites are separated from the bluff top by a single legal lot. As such, the proposed project sites could not physically provide the public amenity that the appellant asserts should be required. Furthermore, as stated by LUP Policy LU-H-10, lateral bluff top access is not required at this location. **Therefore, the Commission finds that since the proposed project sites could not physically provide lateral bluff top access and because the LCP does not require lateral bluff top access at Boeker**



Street, that no substantial issue is raised in this regard.

In addition, appellant Beck asserts that historical use of the property by the public has established an implied common law dedication. Appellant Beck does not mention how long the public may have used these properties, whether any such access occurred with or without the owner's permission, or if the owner made bona fide attempts to prevent or halt such use. Therefore, Staff has performed a preliminary investigation into the probability of prescriptive rights at this location.

As detailed above, the applicant owns five lots that run perpendicular to the bluff top (See Figure 2 above). The applicant proposes to develop single-family residences upon the four interior lots (Lots 90, 89, 87, & 85, Block 2, Shell Beach Subdivision), while the remaining lot that fronts the bluff top is not proposed for development at this time (Lot 91, Block 2, Shell Beach Subdivision). Staff conducted a brief site visit to the property and confirmed that an approximate three to four foot high fence surrounds these properties.<sup>3</sup> Therefore, the owner has made a bona fide attempt to prevent use. In terms of readily evident historic use, staff reviewed aerial photographs from 1986 and 1993 for the existence of a worn pathway across any of these properties. The subject aerial photos reveal no such pathway. In addition, observation of the properties situation leads to an indication that any public access which might have occurred here would occur from the local neighborhood and not the public at large.

Coastal Act § 30211 provides the standard of review in this case and states,

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

In this case the proposed projects would not obstruct the public's ability to gain access to or along the sea. Furthermore, the proposed projects would not preclude any future proposals for lateral bluff top access. As mentioned, the applicant's bluff top lot is not the subject of the current development proposals. This lot alone contains the potential to provide such access because of its proximity to the sea and ability to directly connect with lateral access to the north (i.e. Ocean Boulevard). The Commission finds that the evidence does not warrant a conclusion that public prescriptive rights exist and that the proposed developments will not interfere with the public's ability to gain access to the ocean and along the coastal bluff. Furthermore, the fifth bluff top parcel contains the potential to provide lateral bluff top access and such access should be considered by the City and/or applicant for any future development proposals which might occur there.

Therefore, the Commission finds that evidence does not warrant the conclusion that public prescriptive rights exist at the proposed development sites, that the proposed project's would not preclude any future proposals for lateral bluff top access, and thus no substantial issue is raised in this regard.

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<sup>3</sup> June 30, 2000 by Commission Staff Planner Kevin Colin.



### **B.3 Required Design Review**

Appellant Beck contends that the LCP requires a design review of the proposed project. Appellant Beck presents this allegation without alluding to any LCP inconsistency issues that the proposed projects might present by their design, size, inability to fit within the community character, or like issues.

#### **City Action**

On June 20, 2000 the City Council denied all appeals and upheld the Planning Commission's approval, with no changes to the Planning Commission's decision, of four separate coastal permits, architectural reviews, and landscape reviews, with conditions, for the construction of one 1,975 square foot home at 372 Boeker, and three 1,306 square foot homes at 362, 366, 368 and 372 Boeker Street, located upon four approximate 1,645 square-foot lots (APN 010-311-009); and variance to the front yard garage setback..

#### **Land Use Plan Applicable Regulations**

*LUP Section D-39 (Focal Point Sites) Properties at the end of streets, "T" intersections and street bends often present unusual design opportunities and visual impacts on the communities due to their unique locations (see Figure D-2). Design review shall be required for all such parcels, many of which are mapped on Figure D-3.*

#### **Substantial Issue Determination on Required Design Review**

The proposed projects are located at the end of Boeker Street. As such, the LCP requires that the City conduct a design review of the proposals.

As a matter of course, the Planning Commission conducts a design review of every project it reviews. The Planning Commission reviewed the proposed projects on three separate occasions and in doing so fulfilled the requirement of LCP policy D-39 through their Design Review Subcommittee (comprised of members of the Planning Commission). **Therefore, the Commission finds that there are no grounds with which to base the appellant's allegation that the proposed projects did not receive the LCP required design review, and that no substantial issue is raised in this regard.**

### **B.4 Merger of Nonconforming Lots**

Appellant Beck contends that the City should have required the merger of these nonconforming lots, pursuant to Sections 65858 and 66451.11, et. seq. of the California Government Code.

#### **City Action**

On June 20, 2000 the City Council denied all appeals and upheld the Planning Commission's approval, with no changes to the Planning Commission's decision, of four separate coastal permits, architectural reviews, and landscape reviews, with conditions, for the construction of one 1,975 square foot home at 372 Boeker, and three 1,306 square foot homes at 362, 366, 368 and 372 Boeker Street, located upon four approximate 1,645 square-foot lots (APN 010-311-009); and variance to the front yard garage



setback.

### **Standard of Review**

*IP Section 17.102.060 (10) (Lot Merger) Until such time as contiguous nonconforming parcels are merged by separate ordinance, no structure shall be erected on any nonconforming contiguously owned residential parcels with a minimum individual lot width of less than 30 feet, nor shall any structure be erected on contiguously owned parcels less than 5000 sq. ft. and more than 20 percent slope if said parcels were acquired from the owner or owners of record of contiguous property or said contiguous owner or owners transferee after October 12, 1976.*

### **Substantial Issue Determination on Merger of Nonconforming Lots**

Appellant Beck contends that, pursuant to Sections 65858 and 66451.11, et. seq. of the California Government Code, these nonconforming lots should be merged. However, these sections of the California Government Code are not the standard of review (i.e. LCP) in this case. The Commission also notes that the cited merger provisions of the Subdivision Map Act are optional and therefore local governments are not required to adopt merger ordinances or ordinances that provide for merger of all of the candidate parcels identified in the statute. The City of Pismo Beach has adopted a merger ordinance consistent with the Subdivision Map Act, but is limited to lots with less than 30 feet of frontage and lots under 5,000 square feet and on slopes over 30 percent. Therefore, the appellant's allegation of the project's inconsistency with Government Code Sections 65858 and 66451.11 raises no substantial issue.

As stated in IP Section 17.102.060 (10) above, the LCP requires that nonconforming lots be merged if one of two conditions are met. In short, if nonconforming contiguously owned lots are less than 30 feet wide or contain a structure upon contiguously owned parcels (less than 5000 square feet) with slopes over 20 percent, then the LCP requires that the lots be merged.

In this case the proposed projects are located upon parcels that are at least 30 feet wide and contain slopes well under 20 percent. As such, the LCP does not require that the subject nonconforming lots be merged. **Therefore, the Commission finds that the allegation that the subject lots should be merged according to Government Code Sections 65858 and 66451.11 is without merit and that according to IP Section 17.102.060 (10) the LCP does not require the merger of the subject lots, and thus no substantial issue is raised in this regard.**

### **B.5 Alleged CEQA Violations**

Appellant Beck alleges that the projects are not categorically exempt under the California Environmental Quality Act (CEQA).

### **City Action**

On June 20, 2000, the City Council found that the proposed projects qualified for a Class 3 exemption from the requirements of CEQA, pursuant to Section 15303 of the CEQA guidelines.



### **Standard of Review & Substantial Issue Determination**

The standard of review in terms of the appellant's allegation is the California Environmental Quality Act and not the Coastal Act or certified City of Pismo Beach Local Coastal Program (LCP). As such, the Commission is not the appropriate body with which to raise such claims. Such accusations are appropriately addressed at the local level during the environmental review process, or if the appellant has not found relief through such a process, then the courts are the appropriate arena for raising such claims. **Therefore, the Commission finds that there are no grounds for appeal under the appellant's statement of alleged CEQA violations, because the CEQA is not the standard of review in this case, and thus no substantial issue is raised in this regard.**

### **B.6 Emergency Vehicle Access**

Appellant Duran contends that the proposed project will restrict the ability of emergency access vehicles to access the end of Boeker Street.

#### **City Action**

On June 20, 2000 the City Council denied all appeals and upheld the Planning Commission's approval, with no changes to the Planning Commission's decision, of four separate coastal permits, architectural reviews, and landscape reviews, with conditions, for the construction of one 1,975 square foot home at 372 Boeker, and three 1,306 square foot homes at 362, 366, 368 and 372 Boeker Street, located upon four approximate 1,645 square-foot lots (APN 010-311-009); and variance to the front yard garage setback.

#### **Standard of Review**

*IP Section 17.108.020 (Minimum Off-Street Parking Requirements) Minimum off-street parking requirements shall be as follows:*

- 1. Single Family and Duplex Structures: Two (2) parking spaces per dwelling, one of which must be a garage or carport.*

#### **Substantial Issue Determination on Emergency Vehicle Access**

As discussed above, Boeker Street is a dead end street that terminates at the bluff top. The paved right-of-way is approximately 35 to 40 feet and there is no cul de sac at its terminus. As such, large vehicles such as fire trucks can not turn around. Consequently, the appellant's contention appears to relate to the overall street design and not the applicant's proposals. Were Boeker Street to connect with its adjacent parallel streets, then it is a certainty that overall vehicle access would be improved. However, this is not the case. There is no reason why the proposed projects would further exacerbate the ability of emergency vehicles to access the full extent of Boeker Street. As required by the LCP, the proposed projects provide 2 off street parking spaces (one in garage). As a result, the proposed projects provide a sufficient number of parking spaces and therefore will not restrict the ability of emergency access vehicles to access this portion of Boeker Street.





Therefore, the Commission finds that because the proposed projects provide the required amount of off-street parking spaces that no further restriction of the ability of emergency vehicles to access the full extent of Boeker Street will occur, and thus no substantial issue is raised in this regard.

## **5. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that as conditioned the proposed project will not have significant adverse effects on the environment within the meaning of CEQA; that there are no feasible alternatives which would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned, is in conformance with CEQA requirements.



STATE OF CALIFORNIA - THE RESOURCES AGENCY

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 437-4643

P. 05/05

RECEIVED

JUL 20 2000

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):

DAVID Duran 350 Boeher Shell Beach CA 93949 (805) 773-4707

(805) 773-4707

Zip

Area Code Phone No.

## SECTION II. Decision Being Appealed

1. Name of local/port government:

Pismo Beach CA

2. Brief description of development being appealed:

4 Single family Homes on approx 30 foot  
Lots. with a Variance to the Garage Set Back

3. Development's location (street address, assessor's parcel number, cross street, etc.):

336 Boeher Shell Beach # 00-0010

362 Boeher Shell Beach # 00-0011

372 Boeher Shell Beach and 368 Boeher Shell Beach. # 00-0012

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: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

EXHIBIT NO. A: 1 of 12
APPLICATION NO.
A-3-PSB-00-110, 111,
112, 113
California Coastal Commission

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)**

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

a. ☐ Planning Director/Zoning Administratorc. ☐ Planning Commissionb. ☒ City Council/Board of Supervisorsd. ☐ Other: \_\_\_\_\_6. Date of local government's decision: June 20, 20007. Local government's file number: APN 010-311-009**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:

Grant Elwood

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

(1) maralee Donald  
336 Boeher  
Shell Beach CA 93449(2) Dr. Steven Beck  
367 Boeher  
Shell Beach CA 93449(3) John Holbrook  
358 Boeher  
Shell Beach CA 93449(4) Paul GEIHS  
354 MAIN Street Suite A  
Pismo Beach CA 93448 (805) 773-4601**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.

A:20f23

**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.)

As a Resident of Boeker St in Shell Beach Ca I would like to appeal the decision of the Pismo Beach city council to allow the construction of four single family dwellings. One of the concerns that I have along with a number of residents on Boeker is the access of emergency vehicles (fire trucks, ambulance police etc...) down at the end of Boeker st due to the fact that it is the only none through street in the village of Shell Beach. Reasons against the projects in their current form include major street congestion that is already a problem on Boeker especially on weekends and holidays. This congestion will only be worsened by the city councils decision to allow these homes to be built with an exception to the current garage set back standard which in turn causes even more parking on the street and making it even more difficult for emergency vehicles to turn around and get to their destination in a timely manner. In closing this appeal I would ask you to consider the concerns of Boeker St residents and maybe we could reach some sort of agreement with the applicant.

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 7/17/00

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

**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 \_\_\_\_\_

A: 3:23

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
723 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



FAXED (831) 427-4877 AND MAILED JULY 18, 2000

**RECEIVED****APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

JUL 20 2000

Please review attached appeal information sheet prior to completing this form.

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA**SECTION I. Appellant(s):**

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

STEPHEN F. BECKc/o Paul A. Geihs, Attorney at LawP.O. BOX 155Pismo Beach, CA 93448(805) 773-4601

Zip

Area Code Phone No.

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

CITY OF PISMO BEACH, a Municipal corporation

2. Brief description of development being appealed:

Approval of four Coastal Development Permits, Architectural Review, Vari-  
ances, Landscape Review, and Environmental Clearance for Project Nos.  
00-0010, 00-0011, 00-0012, and 00-0013 allowing the construction of four  
single-family residences on four small lots.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

362, 366, 368, and 372 Boeker Street, Pismo Beach, California(APN 010-311-009)

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

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: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

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

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

- a. ☐ Planning Director/Zoning Administrator
- b. ☒ City Council/Board of Supervisors
- c. ☐ Planning Commission
- d. ☐ Other: \_\_\_\_\_

6. Date of local government's decision: June 20, 2000

7. Local government's file number: Resolution No. R 2000 - 42

### 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:
- |                       |                           |
|-----------------------|---------------------------|
| GRANT ELWOOD          | JOHN W. BELSHER, ESQ.     |
| 305 Terrace Street    | Attorney at Law           |
| Pismo Beach, CA 93449 | 412 Marsh Street          |
|                       | San Luis Obispo, CA 93401 |
- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal. Also my clients:
- |                            |                               |
|----------------------------|-------------------------------|
| (1) G.A. DREW ARICH        | (5) RICHARD & MERRILEE DONALD |
| 275 Boeker Street          | 336 Boeker Street             |
| Pismo Beach, CA 93449      | Pismo Beach, CA 93449         |
| (2) CAROLYN ELYNN          | (6) MOLLY CAVANAUGH           |
| 314 Boeker Street          | 358 Boeker Street             |
| Pismo Beach, CA 93449      | Pismo Beach, CA 93449         |
| (3) BOB & MILDRED WATERMAN | (7) KIRK & MARY MILLER        |
| 190 Boeker Street          | 405 Indio Drive               |
| Pismo Beach, CA 93449      | Pismo Beach, CA 93449         |
| (4) JOHN HOLBROOK          | (8) ERIC & INGE KIELER        |
| 358 Boeker Street          | 423 Indio Drive               |
| Pismo Beach, CA 93449      | Pismo Beach, CA 93449         |

#### 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.

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 ADDENDUM ATTACHED HERETO,

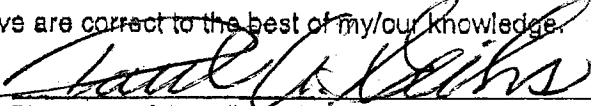
AND BY THIS REFERENCE INCORPORATED

HEREIN AND MADE A PART HEREOF.

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.

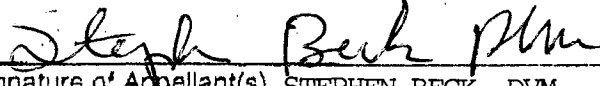
  
Signature of Appellant(s) or Authorized Agent

Date July 18, 2000

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

SECTION VI. Agent Authorization

I/We hereby authorize PAUL A. GEIHS, Esquire to act as my/our representative and to bind me/us in all matters concerning this appeal.

  
Signature of Appellant(s) STEPHEN BECK, DVM

Date July 18, 2000

## ADDENDUM

### PROCEDURAL VIOLATIONS

The projects were approved by the City on June 20, 2000. The City sent notice of its action to the Coastal Commission on June 29, 2000, nine days after its approval, in violation of Section 30603(d) of the Public Resources Code and Section 17.124.210 of City of Pismo Beach Zoning Ordinance No. 320 (Zoning Ordinance). The Coastal Commission received the City's notice of action on July 5, 2000. The ten (10) working day appeal period started on July 5, 2000 and ends on July 18, 2000, pursuant to Section 17.124.180 of the Zoning Ordinance. The twenty-one (21) calendar day period started on June 20, 2000 and ended on July 11, 2000, pursuant to Section 17.124.230 of the Zoning Ordinance. The City's notice of action was not received by the Coastal Commission in time to allow for the ten (10) working day appeal period within the 21 days after the local decision. Consequently, since the circumstances in subsections 2 and 3 of Section 17.124.230 have occurred, the Coastal Commission is *obligated* to notify the City and the applicant that the effective date of the City action has been suspended.

### SUBSTANTIVE VIOLATIONS

The projects are inconsistent with the City of Pismo Beach General Plan & Local Coastal Plan, adopted November 24, 1992, with Coastal Commission Modifications adopted May 18, 1993, in the following particulars:

#### Lateral Access at Boeker Street

LU-H-9 on page LU-30 of the Land Use Element, provides in pertinent part that the City *shall* require as part of project approval, the creation of lateral pedestrian pathways connecting Boeker Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south.

#### Multi-Use Path System (Trails)

PR-5 on page PR-9 of the Parks, Recreation & Access Element



provides in pertinent part that a system of public paths as delineated on Figure PR-2 *shall* be developed to connect the various parks, scenic aspects and open space of the City.

#### Path System

Figure PR-2 of the Parks, Recreation & Access Element, delineates a lateral pedestrian pathway connecting Boeker Street to Placentia Avenue, Windward Avenue, and Ocean Boulevard, as prescribed by LU-H-9 of the Land Use Element.

#### Focal Point Sites

D-39 on page D-17 of the Design Element provides in pertinent part that properties at the end of streets present unusual design opportunities and visual impacts on the communities due to their unique locations; and that design review *shall* be required for all such parcels, many of which mapped on Figure D-3.

#### Special Design Concerns

Figure D-3 of the Design Element delineates the project parcels at the end of Boeker Street as Focal Point Sites.

#### Public Access Requirements

The project improvements are not in conformity with the public access provisions of Section 30212(a) of the Public Resources Code which provides in pertinent part that public access from the nearest public roadway to the shoreline and along the coast *shall* be provided in new development projects.

#### Implied Dedication

Moreover, the historical use of the property by the public for many years has established an implied common law dedication of public easements over private real property pursuant to the California Supreme Court decisions of *Gion vs. City of Santa Cruz* (1970) 2 Cal.3d 29, and *County of Los Angeles vs. Berk* (1980) 26 Cal.3d 201.

#### MERGER OF NONCONFORMING LOTS

The City has the power to preserve this sensitive coastal tip of Boeker Street by the merger of these nonconforming lots pursuant to Sections 65858 and 66451.11, et. seq. of the California Government Code, as more specifically described in my correspondence to the City dated June 22, 2000, along with the

enclosures referred to therein, copies of which are enclosed herewith.

**PROJECTS NOT CATEGORICALLY EXEMPT UNDER CEQA**

In closing, the City violated the CEQA Guidelines promulgated in the California Code of Regulations, Title 14, Chapter 3, in concluding that the projects are categorically exempt under section 15303 (Class 3) based upon the following provisions of the guidelines:

Section 15020 provides that each public agency is responsible for complying with CEQA and these guidelines.

Section 15061(b) provides that a project is exempt from CEQA if:

(2) The project is exempt pursuant to a categorical exemption (commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2

Section 15300.2 provides for the referenced exceptions, including the following:

(a) Location. Class 3 is qualified by consideration of where the project is to be located- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Section 15355 defines Cumulative Impacts as follows:

"Cumulative Impacts" refer to *two or more individual effects* which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or *a number of separate projects*.

(b) The cumulative impact from *several projects* is


change in the environment which results from the incremental impact of the project when added to other closely related past, **present**, and reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

**CONCLUSION**

Based upon the record in these proceedings before the City of Pismo Beach, in light of the procedural violations, substantive violations, merger considerations, and CEQA violations outlined herein, it is respectfully submitted that a new hearing is warranted in this matter.

**Dated:** July 18, 2000.

**LAW OFFICE OF PAUL A. GEIHS**

By   
**PAUL A. GEIHS, Attorney for**  
**Appellant, STEPHEN BECK**

LAW OFFICE OF  
**PAUL A. GEIHS**  
354 MAIN STREET, SUITE A  
POST OFFICE BOX 185  
PISMO BEACH, CALIFORNIA 93448  
TELEPHONE (805) 773-4801

June 22, 2000

HAND DELIVERED

Mayor and Councilmembers  
City of Pismo Beach  
760 Mattie Road  
Pismo Beach, California

Re: **Grant Elwood Boeker**  
**Street Project Nos. 00-0010,**  
**00-0011, 00-0012, and 00-0013**

Dear Mayor and Councilmembers:

Unfortunately, I did not have the opportunity to speak on behalf of my clients, after the public hearing was closed in connection with the appeal hearing on the captioned matter, before the City Council at its meeting of June 20, 2000. Had I been allowed to address members of the City Council after their discussion, but before their vote, in light of the Council's serious concerns and reluctance to approve the projects, based upon its misconception that the City had no power to do otherwise, I would have pointed out to the City Council another viable option available to the City.

Pursuant to the provisions of California Government Code section 65858 dealing with interim zoning, and California Government Code section 66451.11, et seq. dealing with the merger of nonconforming lots, the City does indeed have the power to cause a merger of the subject nonconforming lots. (See copies of the referenced code sections enclosed herewith for your information).

We therefore urge you to consider this superior option, which will result in the City Council's perpetual legacy in the preservation of this sensitive coastal tip of Boeker Street, for the benefit of the residents thereof, as well as the entire City.

Thank you very much, and best personal regards.

Very truly yours,

  
PAUL A. GEIHS

PAG:ceb

Enclosures

cc: Michael Fuson, City Manager w/encl.  
Randy Bloom, Community Development Director w/encl  
Tom Rasori, Planning Commission Chair w/encl  
Bob Exner, Planning Commission Member w/encl  
David R. Hunt, City Attorney w/o encl.  
John W. Belsher, Esq. w/o encl. (Mailed)  
bc: Client w/Encl.

A:116f23

## ERNMENT CODE

## GOVERNMENT CODE

§ 65858

hall provide the notice  
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The requirement to  
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to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects that the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses.

(b) For purposes of this section, a sexually oriented business is one whose primary purpose is the sale or display of matter that, because of its sexually explicit nature, may, pursuant to state law or local regulatory authority, be offered only to persons over the age of 18 years.

(c) This section shall not be construed to preempt the legislative body of any city or county from regulating a sexually oriented business or similar establishment in the manner and to the extent permitted by the United States Constitution and the California Constitution.

(d) It is the intent of the Legislature to authorize the legislative body of any city or county to enter into a legally sanctioned and appropriate cooperative agreement, consortium, or joint powers authority with other adjacent cities or counties regarding regulation of established negative secondary effects of adult or sexually oriented businesses if the actions taken by the legislative body are consistent with \* \* \* this section.

(e) The Legislature finds and declares that in order to encourage the legislative body of a city or county in regulating adult or sexually oriented businesses or similar businesses under \* \* \* this section, the legislative body may consider any harmful secondary effects such a business may have on adjacent cities and counties and its proximity to churches, schools, residents, and other businesses located in adjacent cities or counties.

(Added by Stats.1998, c. 552 (A.B.2055), § 1. Amended by Stats.1999, c. 550 (S.B.275), § 18, eff. Sept. 28, 1999, operative Jan. 1, 2000.)

## Historical and Statutory Notes

## 1999 Legislation

Legislative findings, declarations, short title, and effective date provisions relating to Stats.1999, c. 550, see Historical and Statutory Notes under Elections Code § 13.5.

Stats.1999, c. 550, inserted subds. (a) to (c), relating to regulation of sexually oriented businesses; redesignated former subds. (a) and (b) as subds. (d) and (e), respectively; and, in subds. (d) and (e), substituted "this section" for "subdivision (g) of Section 65850".

## Library References

## Legal Jurisprudences

Cal Jur 3d Zon § 71.

## § 65858. Interim ordinance; adoption or extension; expiration; subsequent ordinances

(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains \* \* \* legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

Additions or changes indicated by underline; deletions by asterisks \* \* \*

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.

(Amended by Stats.1997, c. 129 (S.B.927), § 1.)

### Historical and Statutory Notes

## 1997 Legislation

Stats.1997, c. 129, in subd. (c), substituted "legislative findings" for "a finding" and added subds. (e) and (f), relating to the termination of a subsequent ordinance and an exception to that termination.

Section 2 of Stats.1997, c. 129 (S.B.927), provides:

### Library References

"In enacting this act to amend Section 65858 of the Government Code by adding a subdivision (f) to that section, it is the intent of the Legislature that an ordinance that complies with that subdivision and was in existence on or before April 14, 1997, shall not be invalidated if challenged pursuant to subdivision (e) of Section 65858 of the Government Code."

### Legal Jurisprudences

Cal Jur 3d Muni § 183; Pollut § 277; Zon § 89.

### Treatises and Practice Aids

Witkin, Summary (9th ed) Const Law § 837.

## Notes of Decisions

Development agreement 14  
Legislative findings 13  
Nature of interim ordinances 1.8  
Purpose 1.5  
Standing 16  
Sufficiency of ordinance 15

use other than that designated as permitted use in LCP.  
Conway v. City of Imperial Beach (App. 4 Dist. 1997) 60  
Cal.Rptr.2d 402, 52 Cal.App.4th 78.

#### 4. Validity of ordinance, generally

Interim ordinance adopted by general law city, prohibiting the "processing" of development applications, was invalid under governing statutes; Subdivision Map Act contained no provisions allowing a city to prohibit processing of a subdivision map that was complete, ordinance exceeded permissible scope of prohibiting "uses" that might be in conflict with a general plan under consideration, and it was adopted without a required finding that "approval" of additional subdivisions or building permits would pose immediate threat to public safety, health, or welfare. *Building Industry Legal Defense Foundation v. Superior Court* (App. 4 Dist. 1999) 85 Cal.Rptr.2d 828, 72 Cal.App.4th 1410, 73 Cal.App.4th 984D, modified on denial of rehearing, review denied.

### 8. Moratorium on permits

City's interim ordinances establishing moratorium on issuance of permits for adult businesses, which allowed adult businesses which obtained exception permit in zones in which adult businesses were not previously allowed, authorized "new uses" and, thus, ordinances were facially void under California statute authorizing interim urgency ordinances that prohibited uses which might be in conflict with contemplated general plan, specific plan, or zoning proposal, despite fact that adult businesses had previously been allowed in city, where, prior to enactment of interim ordinances, adult businesses had been restricted to other zones. *CR of Rialto, Inc. v. City of Rialto*, C.D.Cal.1997, 976 F.Supp. 1264.

City's interim ordinances establishing moratorium on issuance of permits for adult businesses were facially void under California statute providing that every subsequent interim urgency zoning ordinance, concerning whole or

### 1.5. Purpose

General purpose of statute authorizing interim urgency zoning ordinances is to allow local legislative body to adopt ordinances prohibiting land uses that may conflict with contemplated general plan amendment or another land use proposal which legislative body is studying or intends to study within reasonable period of time. 216 Sutter Bay Associates v. County of Sutter (App. 3 Dist. 1997) 68 Cal.Rptr.2d 492, 58 Cal.App.4th 860.

### 1.8. Nature of interim ordinances

"Interim ordinances" prohibit a property owner from using his or her property for a specified use for a limited period of time; they protect and promote the planning process by, among other things, prohibiting the introduction of potentially nonconforming land uses that could defeat a later adopted general plan or zoning ordinance. *Building Industry Legal Defense Foundation v. Superior Court* (App. 4 Dist. 1999) 85 Cal.Rptr.2d 828, 72 Cal. App.4th 1410, 73 Cal.App.4th 984D, modified on denial of rehearing, review denied.

### 3. Notice and hearing

Coastal Act does not deprive local governments from exercising their statutory power to enforce urgency interim land use ordinances nor require prior review and approval of such ordinances by Coastal Commission, provided that ordinances are not in conflict with Coastal Act; certification by Coastal Commission is required only for amendments of local coastal program (LCP) authorizing

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Adult-oriented permanent injunctions and ordinances exempts for adults violated California law and was thus Rialto, C.D.C.

## 11. Effect o

Interim urgent board of supervisors enacted by proclamation "ordinary" serve status adopted. 216 (App. 9 Dist. 1)

"Ordinary" without compl even though s ing that they passed only a nance suspens confirmed by requirement. Sutter (App. App.4th 860.

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amendments  
use other than  
Conway v. Cit  
Cal.Rptr.2d 40

### 13. Legislation

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Associates v.  
Cal.Rptr.2d 49

**§ 65860. C.**

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§ 66451.10

## Article 1.5

## MERGER OF PARCELS

## Section

- 66451.10. Contiguous parcels not deemed merged by common ownership; authority for merger.
- 66451.11. Merger of nonconforming, contiguous parcels by ordinance; requirements; determination of ownership.
- 66451.12. Recordation of notice.
- 66451.13. Notice of intent to determine status.
- 66451.14. Request for hearing on determination of status.
- 66451.15. Hearing; time, date and place.
- 66451.16. Hearing; evidence; determination of status.
- 66451.17. Failure to request hearing; determination of merger.
- 66451.18. Determination not to merge; release of notice of intent to determine status; recordation; clearance letter.
- 66451.19. Recordation of notice of merger and continuance of mergers; failure to comply.
- 66451.195. Counties more than 20,000 square miles in size; recording notice of merger for parcels 4,000 square feet or less; application of section.
- 66451.20. Resolution of intent to amend merger ordinance; notice; publication.
- 66451.21. Adoption of merger ordinances; resolution; hearing; notice.

*Article 1.5 was added by Stats.1983, c. 845, § 2.*

**§ 66451.10. Contiguous parcels not deemed merged by common ownership; authority for merger**

(a) Notwithstanding Section 66424, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them.

(b) This article shall provide the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:

- (1) Lot line adjustments.
- (2) Amendment or correction of a final or parcel map.
- (3) Reversions to acreage.
- (4) Exclusions.
- (5) Tentative, parcel, or final maps which create fewer parcels.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1986, c. 727, § 1, eff. Sept. 15, 1986.)

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which were created when there was not yet any land division law to violate. *Morchart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

### 6. Common ownership established prior to law

Under California law, strip of land did not merge into adjoining parcel pursuant to California Subdivision Map Act (SMA) merger provisions when both strip and adjoining parcel came into common ownership, even though strip was not expressly exempt from regulation by SMA or any other local ordinance when it was created, where no land-division provisions regulating subdivisions of four or fewer parcels were in existence when strip was created. In *re Van Ness Associates, Ltd.*, Bkrtcy.N.D.Cal.1994, 173 B.R. 661.

Front and rear parcels of lot did not merge by operation of law when parcels came into hands of same owner so as to set aside conveyance of rear parcel to owners who planned to erect two-story home in subdivision containing one-story homes; no statute or local ordinance provided for merger at time parcels came into hands of same owner, county or city did not take action to effectuate merger of the two parcels pursuant to Subdivision Map Act and city ordinance permitting merger did not indicate intent on part of city to bypass notice and hearing provisions of Subdivision Map Act concerning merger. *Stell v. Jay Hales Development Co.* (App. 2 Dist.

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1992) 15 Cal.Rptr.2d 220, 11 Cal.App.4th 1214, rehearing denied.

### 7. Metes and bounds conveyances

County was required to issue certificates of compliance for 15 lots that were described on map properly recorded under predecessor statute to Subdivision Map Act, as well as local ordinance enacted thereunder, and certificates of compliance or conditional certificates of compliance for fractions of 17 other lots described on map, which fractions were subsequently created by metes and bound conveyances in which none of lots were identified or recognized. 74 Op.Atty.Gen. 149, 8-13-91.

### 8. Nonmerger exemption

Parcels that are ineligible for nonmerger exemption in California Subdivision Map Act (SMA) may or may not be subsequently deemed merged depending on applicability of other merger provisions of SMA. In *re Van Ness Associates, Ltd.*, Bkrtcy.N.D.Cal.1994, 173 B.R. 661.

### 9. Governmental immunity

The sale of 75 contiguous parcels of land owned by the department of transportation in Newport Beach was not immune from the merger provisions of § 66424.2 (repealed). 62 Ops.Atty.Gen. 140, 3-30-79.

## § 66451.11. Merger of nonconforming, contiguous parcels by ordinance; requirements; determination of ownership

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

(1) Comprises less than 5,000 square feet in area at the time of the determination of merger.

(2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.



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(3) Does not meet current standards for sewage disposal and domestic water supply.

(4) Does not meet slope stability standards.

(5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Its development would create health or safety hazards.

(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

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For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1, eff. April 30, 1984; Stats.1985, c. 796, § 1, eff. Sept. 19, 1985; Stats.1995, c. 162 (A.B.555), § 1.)

### Historical and Statutory Notes

Legislative intent regarding Stats.1983, c. 845, see Historical and Statutory Notes under § 66451.10.

Section 5.6 of Stats.1984, c. 102, provides:

"It is the intent of the Legislature, in amending the first paragraph of Section 66451.11 of the Government Code, to restore the preexisting requirement of law that established as a necessary precondition for a merger of contiguous parcels or units of land held in common ownership the requirement that one or more of the parcels or units of land not conform to standards for minimum parcel size to permit use or development under the zoning ordinance of the local agency applicable to any such parcels or units of land. The restoration of this requirement is intended to correct its inadvertent deletion in Chapter 845 of the Statutes of 1983 and shall therefore be construed as not constituting

a change in, but, as declaratory of preexisting law.

"It is further the intent of the Legislature in repealing Sections 66451.25 to 66451.29, inclusive, and in amending Section 66451.19, of the Government Code, to relieve counties of the obligation to mail a general notice of potential mergers, in that specific notices are required to be given pursuant to Sections 66451.13 and 66451.19 of the Government Code, as amended by this act.

"It is also the intent of the Legislature in eliminating the delayed operative date of July 1, 1984, formerly contained in Sections 66451.11 to 66451.18, inclusive, of the Government Code, that a local agency may adopt a merger ordinance which complies with these provisions, and which may then become effective on or after the effective date of this act, rather than on or after July 1, 1984."

### Law Review and Journal Commentaries

Review of selected 1995 California legislation.  
27 Pac.L.J. 349 (1996).

### Notes of Decisions

Construction with other laws 1  
Parcels created prior to law 3  
Preemption of ordinances 2

#### 1. Construction with other laws

Provisions of budget acts suspending or eliminating some of the mandated services from merger provisions governing lease, sale or financing of contiguous commonly owned parcels did not impinge upon statutory determination of conditions which are prerequisite to the imposition of a parcel merger by a local agency, and those conditions remain as an implied preemption of any zoning ordinance that purports to require merger when those conditions have not been met. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

#### 2. Preemption of ordinances

State's concern that forced merger of contiguous parcels under single ownership occur only when certain standards were met, as expressed in the Subdivision Map Act, results in implied

preemption of local zoning ordinance requiring that parcels which would not be eligible for merger under the provisions relating to sale, lease, or financing nonetheless be merged as a condition to issuance of a development permit. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act's merger provision does not preempt zoning ordinances that require, as a condition to development the merger of parcels that could be merged for sale, lease, or financing by ordinance under the Act. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

#### 3. Parcels created prior to law

Provision of the Subdivision Map Act that contiguous parcels are not automatically merged by virtue of common ownership if the parcels were created under prior law or "were not subject to those provisions at the time of their creation" applies to parcels created by an antiquated subdivision map prior to 1893, and the provision is not limited to parcels which

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were exempted from the land-division provisions that were in existence at the time of their creation. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

Subdivision Map Act permits involuntary merger of parcels created in violation of then

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applicable laws, regardless of other circumstances, but does not apply to pre-1893 parcels which were created when there was not yet any land division law to violate. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

### § 66451.12. Recordation of notice

A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.2, eff. April 30, 1984.)

#### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

### § 66451.13. Notice of intent to determine status

Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.3, eff. April 30, 1984; Stats.1993, c. 59 (S.B.443), § 7, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 2.)

#### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by Stats.1983, c. 845, § 2, see note under § 66451.11.

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

#### Notes of Decisions

##### Preemption of ordinances 2 Procedure 1

##### 1. Procedure

In order for local ordinance to provide for merger of parcel with contiguous parcel held by the same owner for purposes of lease, sale, or financing, the agency must initiate a merger by notice of intention to determine status that may be recorded as well as mailed to the record owner, and owner may then request hearing

and present evidence on whether parcels meet standards for merger specified in the ordinance; after deciding whether to merge parcels, local agency must either record notice of merger or release of the notice of intention to determine status. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

##### 2. Preemption of ordinances

Because county ordinances dealing with required merger of commonly owned contiguous

## § 66451.13

### Note 2

parcels for development provided as much procedural protection to parcel as the Subdivision Map Acts provisions for agency-initiated merger for lease, sale, or financing, ordinance dealing with merger for development was not impliedly

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preempted by the Act's concern for procedural rights of the owners. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

## § 66451.14. Request for hearing on determination of status

At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1983. Amended by Stats.1984, c. 102, § 1.4, eff. April 30, 1984.)

### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by

Stats.1983, c. 845, § 2, see note under § 66451.11.

### Notes of Decisions

#### Preemption of ordinances 2 Procedure 1

status. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

#### 1. Procedure

In order for local ordinance to provide for merger of parcel with contiguous parcel held by the same owner for purposes of lease, sale, or financing, the agency must initiate a merger by notice of intention to determine status that may be recorded as well as mailed to the record owner, and owner may then request hearing and present evidence on whether parcels meet standards for merger specified in the ordinance; after deciding whether to merge parcels, local agency must either record notice of merger or release of the notice of intention to determine

#### 2. Preemption of ordinances

Because county ordinances dealing with required merger of commonly owned contiguous parcels for development provided as much procedural protection to parcel as the Subdivision Map Acts provisions for agency-initiated merger for lease, sale, or financing, ordinance dealing with merger for development was not impliedly preempted by the Act's concern for procedural rights of the owners. *Morehart v. County of Santa Barbara* (1994) 29 Cal.Rptr.2d 804, 7 Cal.4th 725, 872 P.2d 143, as modified.

## § 66451.15. Hearing; time, date and place

Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section 66451.14, the local agency shall fix a time, date, and place for a hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.5, eff. April 30, 1984; Stats.1985, c. 796, § 2, eff. Sept. 19, 1985.)

### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 operative date of the addition of this section by

Stats.1983, c. 845, § 2, see note under § 66451.11.



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### § 66451.16. Hearing; evidence; determination of status

At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance.

At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.6, eff. April 30, 1984.)

#### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 Stats.1983, c. 845, § 2, see note under operative date of the addition of this section by § 66451.11.

### § 66451.17. Failure to request hearing; determination of merger

If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.15.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.7, eff. April 30, 1984.)

#### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 Stats.1983, c. 845, § 2, see note under operative date of the addition of this section by § 66451.11.

### § 66451.18. Determination not to merge; release of notice of intent to determine status; recordation; clearance letter

If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

(Added by Stats.1983, c. 845, § 2, operative July 1, 1984. Amended by Stats.1984, c. 102, § 1.8, eff. April 30, 1984.)

#### Historical and Statutory Notes

Legislative intent in deleting the July 1, 1984 Stats.1983, c. 845, § 2, see note under operative date of the addition of this section by § 66451.11.

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§ 66451.19. Recordation of notice of merger and continuance of mergers; failure to comply

(a) Except as provided in Sections 66451.195, 66451.301, and 66451.302, a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless a notice of merger has been recorded prior to January 1, 1986.

(b) Notwithstanding the provisions of Sections 66451.12 to 66451.18, inclusive, a city or county having a merger ordinance in existence on January 1, 1984, may, until July 1, 1984, continue to effect the merger of parcels pursuant to that ordinance, unless the parcels would be deemed not to have merged pursuant to the criteria specified in Section 66451.30. The local agency shall record a notice of merger for any parcels merged pursuant to that ordinance.

(c) At least 30 days prior to recording a notice of merger pursuant to subdivision (a) or (b), the local agency shall advise the owner of the affected parcels, in writing, of the intention to record the notice and specify a time, date, and place at which the owner may present evidence to the legislative body or advisory agency as to why the notice should not be recorded.

(d) The failure of a local agency to comply with the requirements of this article for the merger of contiguous parcels or units of land held in common ownership shall render void and ineffective any resulting merger or recorded notice of merger and no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of those contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(e) The failure of a local agency to comply with the requirements of any prior law establishing requirements for the merger of contiguous parcels or units of land held in common ownership, shall render voidable any resulting merger or recorded notice of merger. From and after the date the local agency determines that its actions did not comply with the prior law, or a court enters a judgment declaring that the actions of the agency did not comply with the prior law, no further proceedings under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units, or any of them, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1984, c. 102, § 2, eff. April 30, 1984; Stats.1985, c. 796, § 3, eff. Sept. 19, 1985; Stats.1986, c. 727, § 2, eff. Sept. 15, 1986.)

Historical and Statutory Notes

Legislative intent in amending this section relating to notice, see Historical and Statutory Notes under Government Code § 66451.11.

## PROCEDURE

§ 66451.21

### Div. 2

#### § 66451.195. Counties more than 20,000 square miles in size; recording notice of merger for parcels 4,000 square feet or less; application of section

(a) Counties more than 20,000 square miles in size shall have until January 1, 1990, to record a notice of merger for parcels of 4,000 square feet or less prior to the time of merger, which were merged prior to January 1, 1984, and for those parcels no parcel merged prior to January 1, 1984, shall be considered merged unless the notice of merger has been recorded prior to January 1, 1990. Counties recording notices of merger pursuant to this subdivision shall comply with the notice requirements of Section 66451.19.

(b) This section shall not be applicable to any parcels or units which meet the criteria of subdivision (a) but which were transferred, or for which the owner has applied for a building permit, during the period between January 1, 1986, and the effective date of this section.

(Added by Stats.1986, c. 727, § 3, eff. Sept. 15, 1986.)

#### § 66451.20. Resolution of intent to amend merger ordinance; notice; publication

Prior to amending a merger ordinance which was in existence on January 1, 1984, in order to bring it into compliance with Section 66451.11, the legislative body of the local agency shall adopt a resolution of intention and the clerk of the legislative body shall cause notice of the adoption of the resolution to be published in the manner prescribed by Section 6061. The publication shall have been completed not less than 30 days prior to adoption of the amended ordinance.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1993, c. 59 (S.B.443), § 8, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 3.)

#### Historical and Statutory Notes

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

#### § 66451.21. Adoption of merger ordinances; resolution; hearing; notice

Prior to the adoption of a merger ordinance in conformance with Section 66451.11, by a city or county not having a merger ordinance on January 1, 1984, the legislative body shall adopt a resolution of intention to adopt a merger ordinance and fix a time and place for a public hearing on the proposed ordinance, which shall be conducted not less than 30 nor more than 60 days after adoption of the resolution. The clerk of the legislative body shall cause a notice of the hearing to be published in the manner prescribed by Section 6061. Publication shall have been completed at least seven days prior to the date of the hearing. The notice shall:

- (a) Contain the text of the resolution.
- (b) State the time and place of the hearing.
- (c) State that at the hearing all interested persons will be heard.

(Added by Stats.1983, c. 845, § 2. Amended by Stats.1993, c. 59 (S.B.443), § 9, eff. June 30, 1993; Stats.1995, c. 162 (A.B.555), § 4.)

# PROOF OF SERVICE

(Section 1013a, 2015.5 CCP, 28 USC 1746)

STATE OF CALIFORNIA )

COUNTY OF SAN LUIS OBISPO )

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 years, and not a party to the within action; my business address is 354 Main Street, Suite A, Pismo Beach, California 93449.

On July 18, 2000, I served the foregoing document(s) described as:

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

on the interested parties in this action by transmitting true copies thereof as follows:

Grant Elwood  
305 Terrace Street  
Pismo Beach, CA 93449

G.A. Drew Arich  
275 Boeker Street  
Pismo Beach, CA 93449

Carolyn Flynn  
314 Boeker Street  
Pismo Beach, CA 93449

Bob & Mildred Waterman  
190 Boeker Street  
Pismo Beach, CA 93449

John Holbrook  
358 Boeker Street  
Pismo Beach, CA 93449

Kirk & Mary Miller  
405 Indio Drive  
Pismo Beach, CA 93449

Richard & Merrilee Donald  
336 Boeker Street  
Pismo Beach, CA 93449

Molly Cavanaugh  
358 Boeker Street  
Pismo Beach, CA 93449

Eric & Inge Kieler  
423 Indio Drive  
Pismo Beach, CA 93449

John W. Belsher, Esq.  
Attorney at Law  
412 Marsh Street  
San Luis Obispo, CA 93401

City Council Of The  
City Of Pismo Beach  
760 Mattie Road  
Pismo Beach, CA 93449

**X**

**BY MAIL** - On the above date, at Pismo Beach California, I caused the above to be placed, with prepaid postage thereon, in the United States mail.

—

**BY FACSIMILE** - On the above date, I caused such document to be transmitted to the offices of the addressee.

—

**BY PERSONAL SERVICE** - By personally delivering the above-captioned documents to the parties within.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this document was executed on July 18, 2000, at Pismo Beach, California.

  
CAROL E. BLANCHARD

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**EXHIBIT D**  
**RESOLUTION NO. R 2000 -**

**A Resolution of the Council of the City of Pismo Beach upholding the Planning Commission's approval of four Coastal Development Permits, Architectural Review, and Landscape Review for Projects no. 00-0011, 00-0010, 00-0013, and 00-0012; APN: 010-311-009 , for four new single-family residences, and denying the appeals of those approvals. 362, 366, 368, and 372 Boeker Street**

WHEREAS, Grant Elwood ("Applicant") submitted four applications to the City of Pismo Beach for approval of Coastal Development Permits, Architectural Review, and Landscape Review; for four new residences at 362, 366, 368, and 372 Boeker Street; and

WHEREAS, the Planning Commission held a duly noticed public hearing on May 9, 2000, at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission approved the four projects on a 3-1 (one absence, one abstention) vote in each case; and

WHEREAS, three residents of Pismo Beach filed appeals of the Planning Commission approval;

WHEREAS, the City Council held a duly-noticed public hearing on June 20, 2000, on those appeals, at which all interested persons were given the opportunity to be heard; and

WHEREAS, these projects are categorically exempt per section 15303 (Class 3) because they are single-family residences each on a legal parcel that is not environmentally sensitive;

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

**A. FINDINGS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

1. The projects consist of construction of single-family residences on sites intended for this purpose.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the project.
3. The project is exempt from CEQA pursuant to section 15303 (Class 3) of the CEQA Guidelines, exempting limited numbers of new small structures.

**B. FINDINGS FOR APPROVAL OF THE VARIANCES:**

1. Special circumstances apply to the four properties, specifically the small sizes of 1,646 and 2,186 square feet, widths of 30' and 40', and depth of 54.86', such that the strict application of the zoning ordinance: specifically the requirement to set back the garage 20' from the street property line, would deprive the properties of privileges enjoyed by other property in the vicinity and under identical zoning classification, including those lots at 358, 336, 332, 280, 274, 226, 220, 200, 190, 182, 120, 164, 158, 150, 142, 134, 126, 355, 333, 319, 275, 257, 245, 215, 167, 159, 151, 143, 137, 135 Boeker, which are also small, narrow lots, and which have been granted 11' garage setbacks; because such a setback would deprive the property owner of the development potential of a significant proportion of the sites,

**EXHIBIT NO. B**

**APPLICATION NO.**

**A-3-PSB-00-110, 111, 112, & 113**

compared to the potential on property in the vicinity that does not share similar circumstances.

2. The variance granted shall be subject to conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated, because the conditions on these permits allow development only as prescribed by the zoning code, with the exception of the 11' setback for the garage, and such privileges are available to the owners of other property in the vicinity that demonstrate similar circumstances.
3. The variance does not authorize a use or activity that is not otherwise expressly authorized by the zone regulation governing the parcels.

**C. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMITS AND ARCHITECTURAL REVIEW PERMITS:**

1. The project improvements are in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.
2. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence along with related improvements are appropriate in size so as to be compatible with the adjacent structures.
3. The architectural and general appearance of the development is in keeping with the character of the neighborhood. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence along with related improvements are compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.
4. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence with related improvements are consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Low Density Residential.
5. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence along with related improvements are in conformance with the requirements of the Zoning Code.
6. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence with related improvements are compatible with the nearby existing uses and not detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed projects.
7. The site is physically suitable for construction of project improvements to provide support for single family residences.
8. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence with related improvements are in keeping with the character of the surrounding area composed of single family residences, and consistent with the zoning of the project site.

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112, & 113**

9. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence with related improvements will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.
10. The proposed three 1,306-square foot single family residences and one 1,872-square foot single family residence with related improvements will not impair the desirability of investment or occupation in the neighborhood.

**D. FINDINGS FOR UPHOLDING THE PLANNING COMMISSION'S ACTION AND DENYING THE THREE APPEALS:**

1. The Planning Commission's actions were in accordance with all policies and ordinances of the City of Pismo Beach and the State of California.

**The City Council does hereby uphold the Planning Commission's actions approving the Coastal Development Permits, Architectural Review Permits, and Landscape Review Permits for 362, 366, 368, and 372 Boeker subject to all Conditions as approved by the Planning Commission, attached as Exhibit A.**

UPON MOTION of Councilmember \_\_\_\_\_ seconded by Councilmember \_\_\_\_\_ the foregoing Resolution is hereby approved and adopted the 20<sup>th</sup> day of June, 2000 by the following roll call vote, to wit:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_

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**A-3-25 B-00-110, 111,  
112, & 113**

*The following conditions are representative of conditions for all four projects, except that the project at 372 Boeker is a slightly larger home on a slightly larger lot, and therefore statistical information for that project differs.*

**EXHIBIT E  
CITY OF PISMO BEACH  
CONDITIONS  
PLANNING COMMISSION MEETING OF May 9, 2000  
PERMIT NO. 00-0011: CDP, ARP, V  
LOCATION: 362 Boeker, APN:010-311-009**

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.

**AUTHORIZATION:** Subject to the conditions stated below, approval of Permit 00-0011 granting permits to construct a new 1,306-square foot single family residence, including garage, as shown on the approved plans with City of Pismo Beach stamp of May 9, 2000. 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 Planning Commission approval, provided that an appeal has not been filed to the City Council within 10 working days. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

**EXPIRATION DATE:** The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on May 9, 2002 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

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 ATTACHED STATED CONDITIONS OF THIS PERMIT**


**Approved by the Planning Commission on May 9, 2000.**

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner

Da

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APPLICATION NO.
A-3-P83-00-110, 14, 112, 113
 California Coastal Commission

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## STANDARD 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 TO BE MET PRIOR TO ISSUANCE OF A BUILDING PERMIT:

#### PLANNING DIVISION:

1. BUILDING PERMIT APPLICATION. To apply for building permits submit five (5) sets of construction plans ALONG WITH FIVE (5) COPIES OF THE CONDITIONS OF APPROVAL NOTING HOW EACH CONDITION HAS BEEN SATISFIED to the Building Division.
2. COMPLIANCE WITH PLANNING COMMISSION APPROVAL. Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and conditions of approval. Project shall comply with the standards noted in the table below:

Item	Project
Lot area	1646 (existing)
Max bldg height	23.5' from center of building pad at grade
Max lot coverage	48% (797 sq. ft.)
Ground floor, gross floor area	779 sq. ft.
2 <sup>nd</sup> floor Area	527 sq. ft.
2 <sup>nd</sup> floor Area Ratio	80% maximum
Building Area	1306 sq. ft.
Max building area Ratio	86% of lot area
Planting Area	675 sq. ft.
Minimum planting area	20%
Minimum front yard setback	11' house and garage
Minimum street side yard setback	4'
Minimum rear yard setback	5.5'
Minimum parking spaces	2, one in garage
Minimum parking space dimension	10' X 20'
Driveway width	16'

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APPLICATION NO.

A-3-958-00-110, 111,  
112, 113

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3. COMPLIANCE WITH SOIL REPORT. Grading and construction plans shall reflect all recommendations as proposed in the Soil Engineering Report prepared for the building permit.
4. COLORS AND MATERIALS. Colors and materials shall be consistent with those shown on the color board as reviewed and approved by the Planning Commission.
5. YARD SETBACK. No solid fences, hedges or walls over 42 inches in height shall be permitted in the front yard setbacks in accordance with the City's Zoning Ordinance.
6. GARAGE. Prior to issuance of a building permit, a minimum of 10' x 20' shall be clearly shown for the interior dimensions of the garage without projections, i.e., FAU, water heater, washers and dryers.
7. BUILDING HEIGHT. Prior to issuance of a building permit, the maximum allowable height of the structure shall be shown on the construction plans not to exceed twenty-five feet in height from the highest point of the roof to the center of the building footprint at site grade, consistent with Section 17.081.020 of the Zoning Code.
8. DRIVEWAY WIDTH. The final plans shall indicate a driveway width at Boeker Street of not less than 12 feet wide and not greater than 16 feet wide consistent with General Plan/Local Coastal Plan Policy D-2 (f).
9. LANDSCAPING AND IRRIGATION PLANS. Landscaping and irrigation plans encompassing the entire site shall be submitted by the project applicant to the City for review and approval by the project planner. Detailed calculations shall be provided on the face of the plan indicating the provision of a minimum of 20% landscape area with no greater than 10% provided as lawn area. The landscape plan shall include the following provisions:
  - a. Use of low-water-using irrigation systems. Drip irrigation shall be used where feasible.
  - b. Landscape Design Plan (including plant list)
  - c. Irrigation Design Plan
  - d. Use of grasscrete, paving stones, or similar material in place of paving between the garage and the second parking space, and wherever else this use may be feasible.
10. ARCHAEOLOGICAL STUDY. A Phase I Archaeological Survey of the site must be completed and submitted to the City. If, based on the results of that survey, the Planning Division determines that a Phase II or further study must be undertaken, such studies must be completed. Depending on what is found on the property, additional environmental study may need to be completed, which may result in revisions to the project design and additional review by the Planning Commission.

**BUILDING DIVISION:**

11. BUILDING REQUIREMENTS. The application for building permit shall be subject to the following requirements:
  - a. The Title Sheet of the plans shall include:
    1. Street address, lot, block, tract and assessor's parcel number.
    2. Description of use
    3. Type of construction
    4. Height of building
    5. Floor area of building(s)

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APPLICATION NO.
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112,113
California Coastal Commission

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6. Vicinity map
  - b. The Title sheet of the plans shall indicate that all construction will conform to the 1994 UBC, UMC & UPC, the 1993 NEC, 1994 California Title 19 and 24, California Energy Conservation Standards and Handicapped Accessibility Standards where applicable and all City codes as they apply to this project.
  - c. Plans shall be required to be submitted by a California licensed architect and/or engineer.
  - d. A separate grading plan complying with Appendix Chapter 33, UBC, and Title 15 PBMC, may be required.
  - e. A soils investigation shall be required by this project.
  - f. All Erosion control of the site shall be clearly identified.
  - g. A licensed surveyor or engineer shall verify pad elevations, setbacks, and roof elevations.
  - h. Clearly dimension building setbacks and property lines, street centerlines, and the distance between buildings or other structures on the plot plan.
  - i. Title 24, Energy Conservation Documentation shall be prepared and submitted with the building permit application.
12. The Building Department shall verify that the residence's building area does not exceed 1,306-s.f. (including garage).

ENGINEERING DIVISION:

13. All Engineering Plans and specifications are required to be stamped and signed by a qualified professional.
14. Accurately identify size and location of all existing public utilities within 10' of the property, and in all public right-of-ways fronting the property. Show all proposed and existing private utilities and Tie-in locations.


FIRE DEPARTMENT:

15. ADDRESS NUMBERS - Plans for address numbers on every structure shall be submitted for review and approval by the Fire Department and 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 inches in height for residential (one & two family).
  - c. Numbers shall contrast with their background.
16. 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.
17. FEES AND PERMITS. Any and all applicable fees and permits shall be secured prior to commencing work.

**B. CONDITIONS TO BE MET 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.

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<b>A-3-883-00-110, 111,</b>
<b>112, 113</b>
 California Coastal Commission

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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 its disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.

#### ENGINEERING DIVISION

3. Owner or owner's contractor is to take precaution against damaging road surfaces. The owner is responsible for protection against or repair of, at owner's expense, all damage incurred during or because of construction.
4. Street is to remain open to through traffic at all times. No temporary or long term parking or storage of construction equipment or materials shall occur without prior issuance of an encroachment permit.
5. Encroachment permit(s) must be obtained prior to undertaking any work in public right-of way.

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

##### PLANNING DIVISION:

1. ROOF HEIGHT. Prior to requesting a framing inspection, a licensed surveyor shall measure and certify the height of the building including anticipated finishing materials. Height to be certified as shown on approved plans.
- D. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND CERTIFICATE OF OCCUPANCY:

##### PLANNING DIVISION:

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

#### 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 view in a manner approved by the Project Planner.
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. SINGLE FAMILY USE RESTRICTION - Uses of the subject property shall be limited to the uses listed in Chapter 17.018 of the Zoning Code (Single Family Residential). Said Chapter and Section 17.006.0400 limit the use of the property to no more than one (1) dwelling unit. No portion of the premises may be rented as a separate living quarters. A Lodging House, as defined by Section 17.006.0655, shall not be permitted.

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A-3-853-00-40, III, 112, 113

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4. HOLD HARMLESS. The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

**F. MISCELLANEOUS/FEES:**

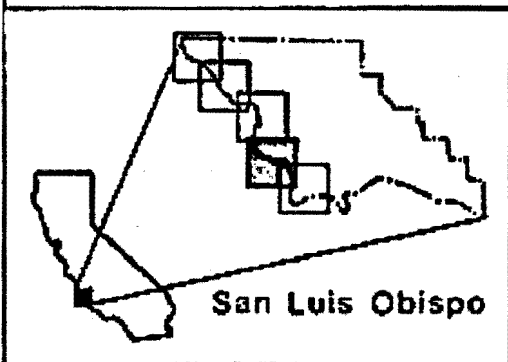
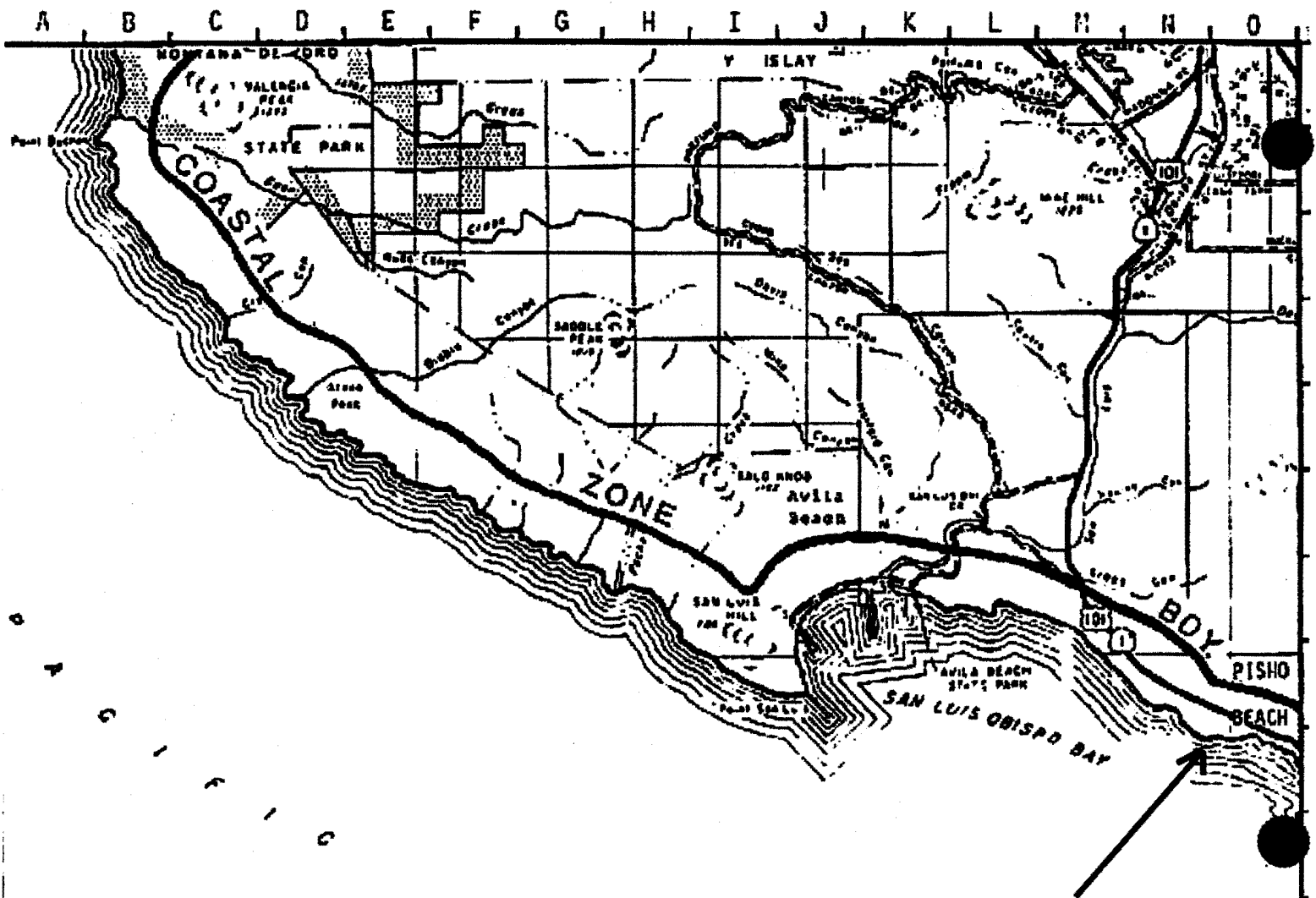
1. REQUIRED FEES. The applicant shall be responsible for the payment of all applicable development and building fees including the following:
- a. All applicable development impact fees pursuant to Ordinance 93-01 and Resolutions 93-12 and 93-33.
  - b. Water system improvement charge.
  - c. Water meter hook-up charge.
  - d. Sewer public facilities fee.
  - e. Park development and improvement fee.
  - f. School impact fees pursuant to the requirements of the San Luis Coastal School District.
  - 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.
    - 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.

- END -

EXHIBIT NO. B
APPLICATION NO.
A-3-PSB-00-110,
111, 112, 113
California Coastal Commission

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California Coastal Commission

## LOCATION MAP

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County of San Luis Obispo

EXHIBIT NO. C

APPLICATION NO.

A-3-268-00-110, 111,  
112, 113

362 Boeker St

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1  
-

362 Boeke St



362 Bocker

725 SHELL BEACH RD., SHELL BEACH, CA 93448 (805) 773-2771

A-2

EXHIBIT NO. D

APPLICATION NO.

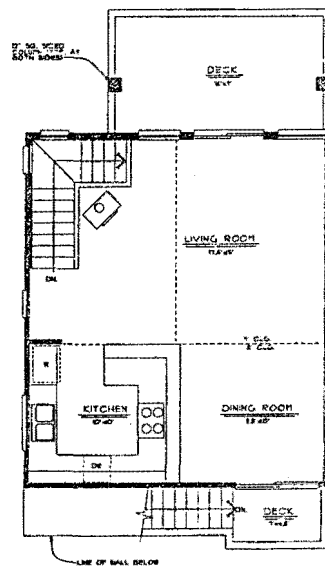
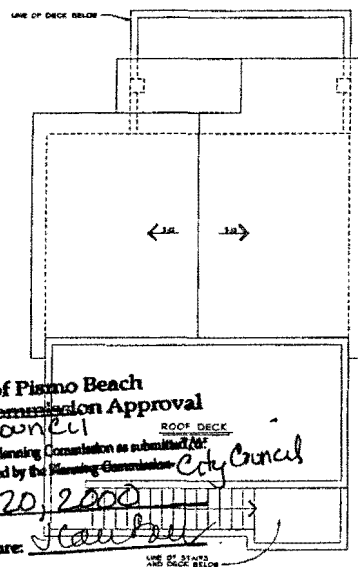
A-3-RB-00-011

366 Boeker St

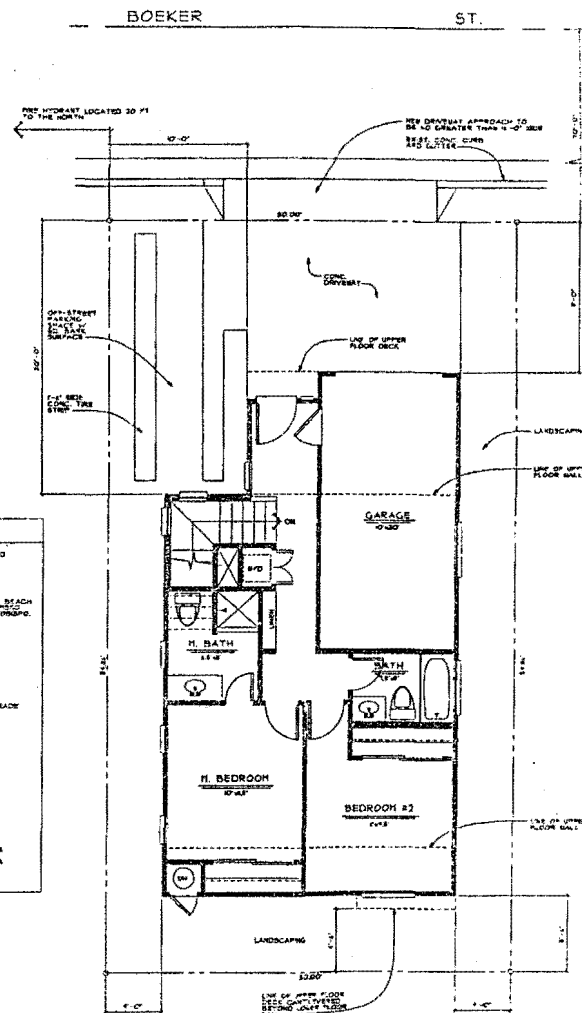
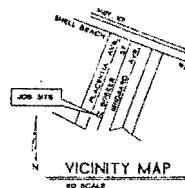
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PROJECT INFORMATION	
OWNER:	GRANT AND PANGLOSS ELWOOD
SITE ADDRESS:	305 TERRACE, SHELL BEACH, CA 93448
LEGAL DESCRIPTION:	LOT 15, BLK 2, THE SHELL BEACH TRACT, THE CITY OF PISMO BEACH, CALIFORNIA
A.P.N.:	000-030-008
FORM:	R-1
OCCUPANCY:	RES
BUILDING TYPE:	V
SPRINKLERED:	NO
NO. OF STORIES:	3
MAX. BUILDING HEIGHT:	35' FROM EXIST'G NATURAL GRADE
PROPOSED HEIGHT:	35'-0"
NO. OF PARKING SPACES:	3
3RD AREA:	1041 SQ. FT.
LIVING AREA:	1111 SQ. FT.
LOWER FLOOR:	1111 SQ. FT.
UPPER FLOOR:	1111 SQ. FT.
TOTAL:	2222 SQ. FT.
GARAGE AREA:	20 SQ. FT.
COVERED PORCH AREA:	8 SQ. FT.
UPPER FLOOR DECK AREA:	75 SQ. FT.
ROOF DECK AREA:	26 SQ. FT.
PLATONER:	16 SQ. FT.
LANDSCAPE AREA:	176 SQ. FT. / 1/4" = 1'-0"
LOT COVERAGE:	761 SQ. FT. / 1/4" = 1'-0"
BUILDING COVERAGE:	100% / 1/4" = 1'-0"
UPPER/LOWER FLOOR RATIO:	100% / 1/4" = 1'-0"



## SITE/LOWER FLOOR PLAN

SCALE: 1/4" = 1'-0"

- NOTES:
1. PROJECT SHALL COMPLY WITH ALL CITY ORDINANCES, RULES AND REGULATIONS AND ANY OTHER APPLICABLE FEDERAL, STATE AND LOCAL ORDINANCES.
  2. PROVIDE 10% IN GARAGE REAR FROM STRUCTURE FOR 10'-0" MIN.
  3. PROVIDE 10% IN GARAGE REAR FROM STRUCTURE FOR 10'-0" MIN.
  4. PROVIDE 10% IN GARAGE REAR FROM STRUCTURE FOR 10'-0" MIN.
  5. PROVIDE 10% IN GARAGE REAR FROM STRUCTURE FOR 10'-0" MIN.
  6. PROVIDE 10% IN GARAGE REAR FROM STRUCTURE FOR 10'-0" MIN.

CALIFORNIA  
DESIGN  
ASSOCIATESPROJECT FOR  
GRANT ELWOOD  
305 TERRACE  
SHELL BEACH, CA  
18051 773-8833

DRAWN: TBT

CHECKED: TBT

DATE: JANUARY 2000

SCALE: AS SHOWN

JOB NO.:

SHEET:

A-1

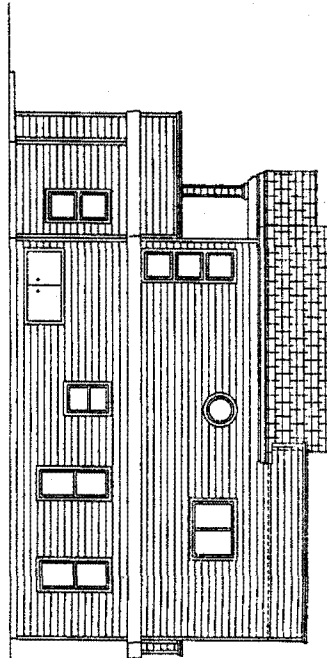
SHEETS

EXHIBIT NO. D

APPLICATION NO.

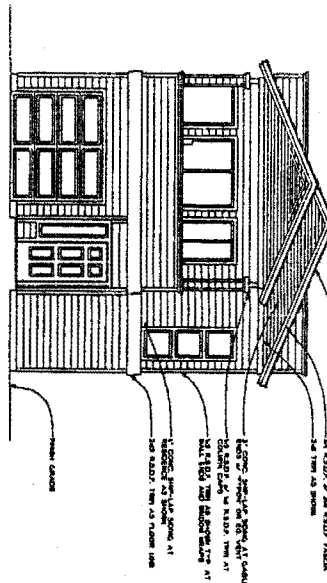
A-3-PSB-00-011

366 Boeker St



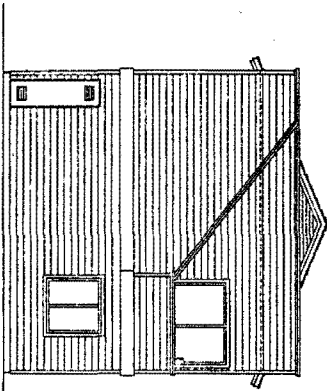
NORTH ELEVATION

SCALE: 1/8" = 1'-0"



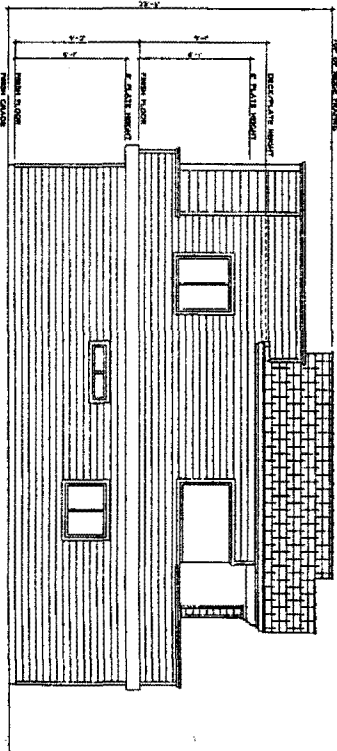
EAST ELEVATION

SCALE: 1/8" = 1'-0"



WEST ELEVATION

SCALE: 1/8" = 1'-0"



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"

366 Boeker

PROJECT FOR:  
GRANT ELWOOD  
305 TERRACE  
SHELL BEACH, CA.  
(805) 773-6130



CALIFORNIA  
DESIGN  
ASSOCIATES

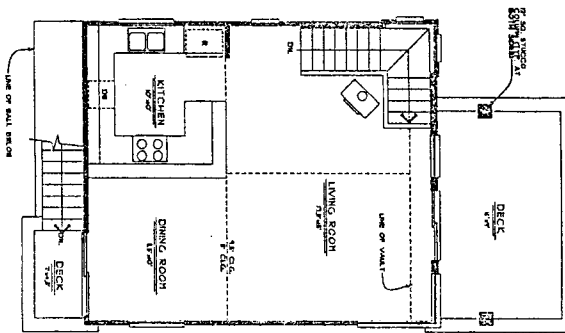
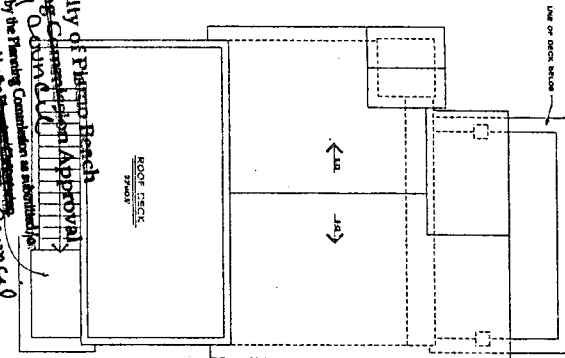
725 SHELL BEACH RD., SHELL BEACH, CA 93448 (805) 773-2771

DRAWN: [blank]  
DATE: JANUARY 2000  
SCALE: AS SHOWN  
SHEET NO.: [blank]

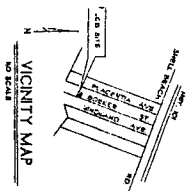
A-2

City of Plaquemine Beach  
Planning Commission Approval  
City Council  
Approved by the Planning Commission as Recommended  
City Council  
As Approved by the Planning Commission as Recommended  
City Council  
Date: June 20, 2000  
Planner Signature: Shalimar

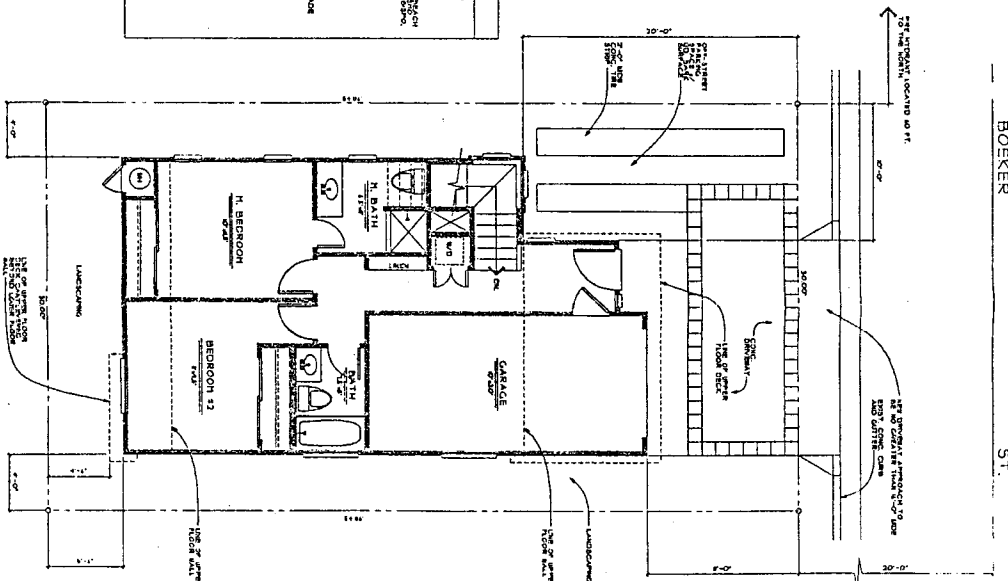
UPPER FLOOR PLAN



### PROJECT INFORMATION

[illegible]

SITE/LOWER FLOOR PLAN



- [illegible]

PROJECT FOR  
GRANT ELWOOD  
305 TERRACE  
SHELL BEACH, CA.  
(805) 773-8133

CALIFORNIA  
DESIGN  
ASSOCIATES

725 SHELL BEACH RD., SHELL BEACH, CA 93449 (805) 773-2771

A-1

368 Boeker

EXHIBIT NO. D

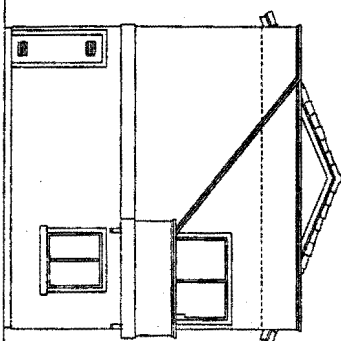
APPLICATION NO.

A-3-PSB-00-012

368 Boeker St

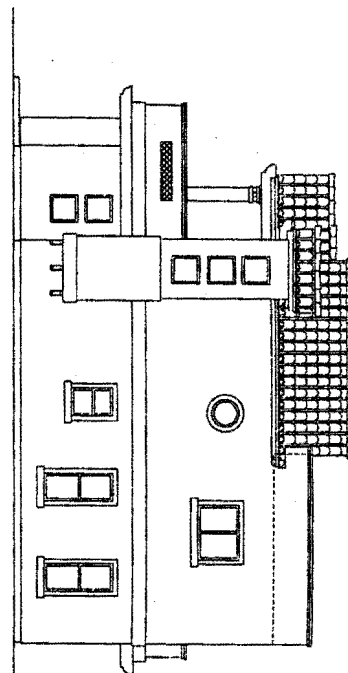
WEST ELEVATION

SCALE: 1/8" = 1'-0"



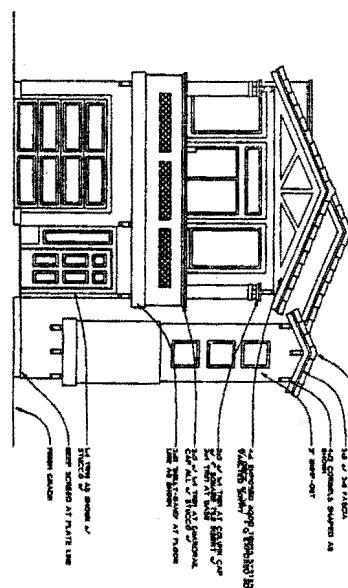
NORTH ELEVATION

SCALE: 1/8" = 1'-0"



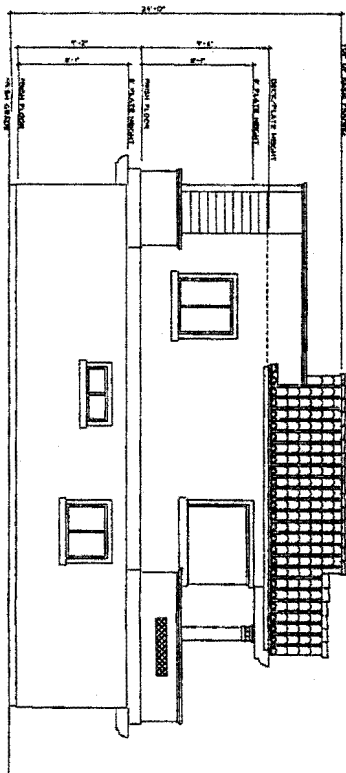
EAST ELEVATION

SCALE: 1/8" = 1'-0"



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"



368 Boeker

A-2

DATE: APRIL 2000  
SCALE: AS SHOWN  
SHEET NO. 1

PROJECT FOR  
GRANT ELWOOD  
305 TERRACE  
SHELL BEACH, CA.  
(805) 773-8133



CALIFORNIA  
DESIGN  
ASSOCIATES

725 SHELL BEACH RD., SHELL BEACH, CA 93449 (805) 773-2771

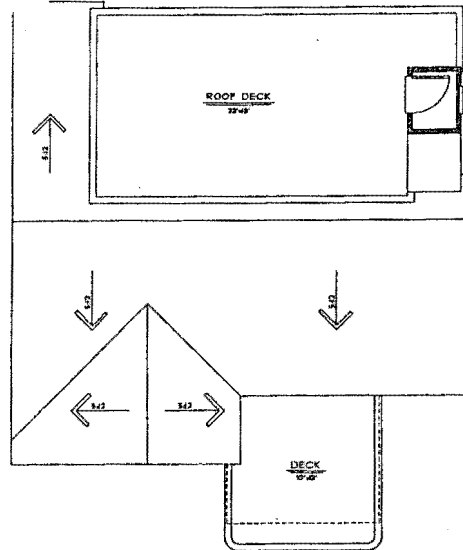


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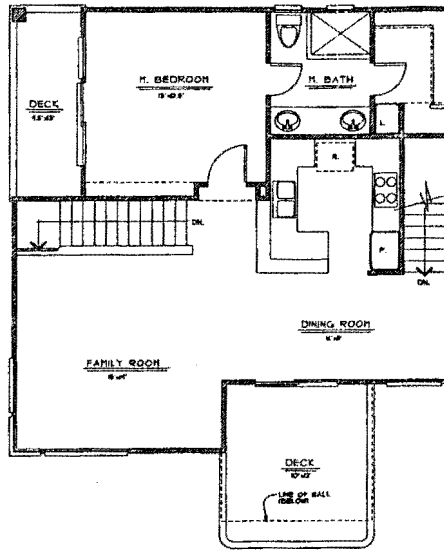
APPLICATION NO.

A-3-PSB-00-013

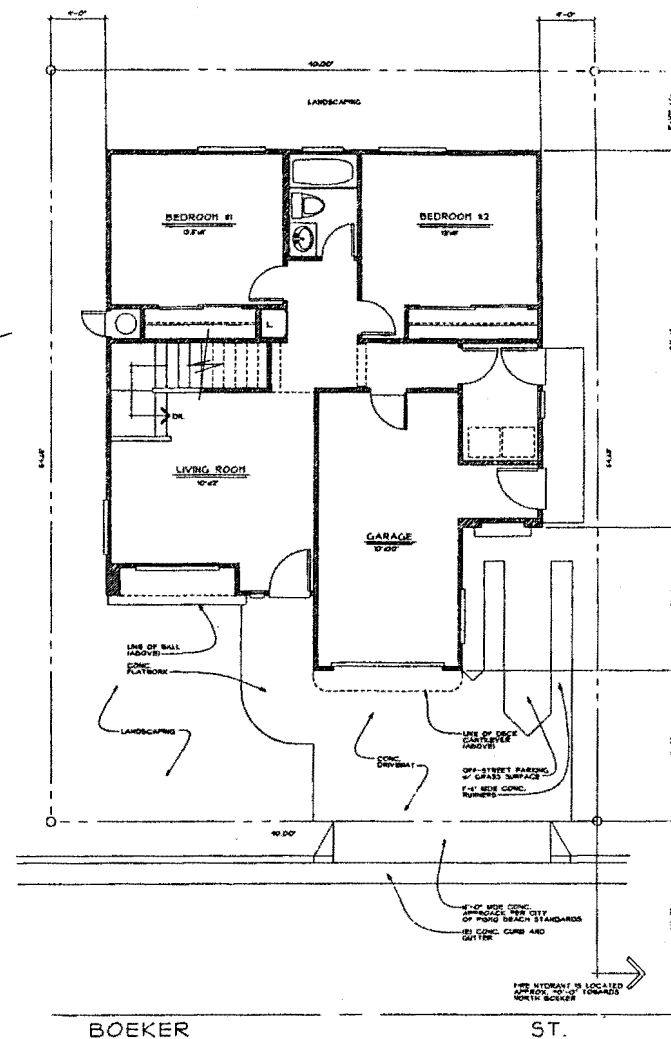
372 Boeker St



ROOF DECK PLAN  
SCALE: 1/8"=1'-0"



UPPER FLOOR PLAN  
SCALE: 1/8"=1'-0"



BOEKER

ST.

SITE/LOWER FLOOR PLAN  
SCALE: 1/8"=1'-0"

## NOTES:

1. PROJECT SHALL COMPLY WITH ALL REG. AND UNIFORMS AND ALL OTHER APPLICABLE MUNICIPAL CODES AND ORDINANCES.
2. PROVIDE NO. 26 DRAINAGE AREA FROM STRUCTURE FOR 2'-0" R/L.
3. PERMITS SHALL BE OBTAINED FROM ALL AGENCIES INVOLVED.
4. PLANS MUST BE IN ACCORD WITH THE CITY OF PISMO BEACH STANDARDS.



CALIFORNIA  
DESIGN  
ASSOCIATES

PROJECT FOR  
GRANT ELWOOD  
305 TERRACE  
SHELL BEACH, CA  
(805) 770-0838

DRAWN: TBT  
CHECKED:

DATE: DEC. 1999

SCALE: AS SHOWN

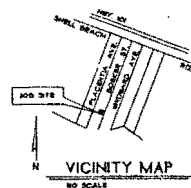
SHEET NO. 1

SHEET

A-1

OF 3 SHEETS

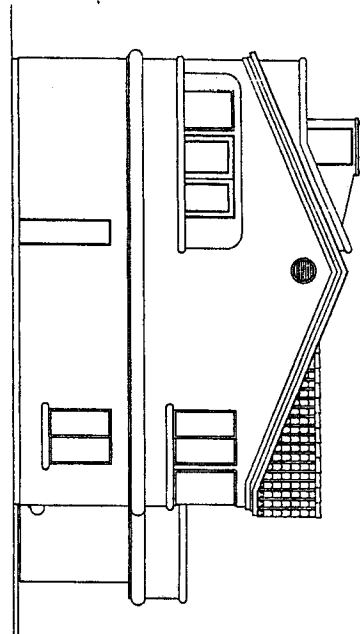
City of Pismo Beach  
Planning Commission Approval  
City Council  
Approved by the Planning Commission as submitted on  
June 20, 2000  
City Council  
Planner Signature: Maudan



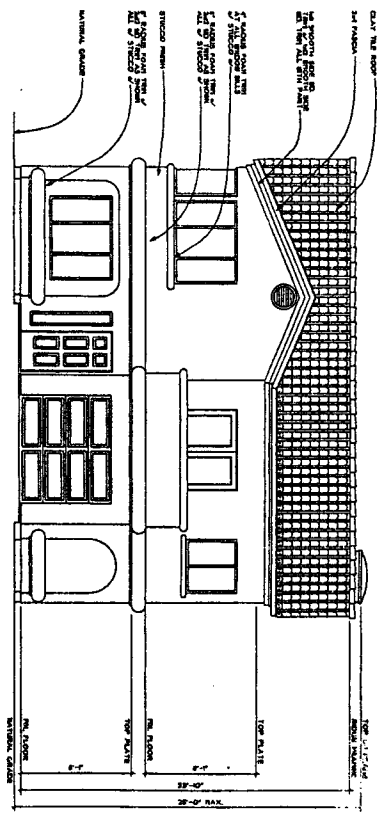
VICINITY MAP  
NO SCALE

PROJECT INFORMATION	
OWNER:	GRANT AND MARJORIE ELWOOD 105 TERRACE SHELL BEACH, CA 94949 805 770-0838
STREET ADDRESS:	305 TERRACE
LEGAL DESCRIPTION:	LOT 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, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 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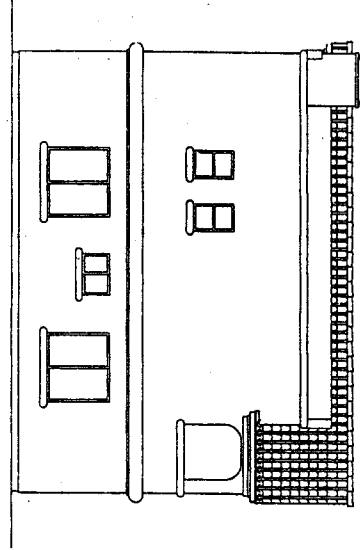
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A-3-PSB-00-013
372 Boelter St



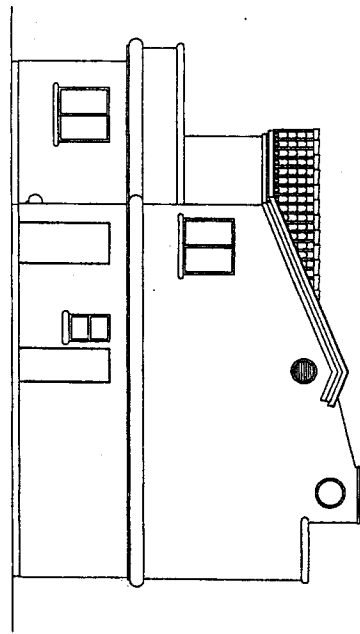
SOUTH ELEVATION  
SCALE: 1/8" = 1'-0"



EAST ELEVATION  
SCALE: 1/8" = 1'-0"



WEST ELEVATION  
SCALE: 1/8" = 1'-0"



NORTH ELEVATION  
SCALE: 1/8" = 1'-0"

372 Boelter

PROJECT FOR: GRANT ELWOOD 305 TERRACE SHELL BEACH, CA (805) 773-8133		CALIFORNIA DESIGN ASSOCIATES 725 SHELL BEACH RD., SHELL BEACH, CA 93448 (805) 773-2771	SHEET A-2 OF 3
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