

CALIFORNIA COASTAL COMMISSION

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

F13d

Filed: 9/29/03
49th day: 11/17/03
Staff: MW-SC
Staff report prepared: 10/16/03
Hearing date: 11/07/03
Hearing item number: F13d

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....A-3-PSB-03-100, Guild SFR Addition
Applicants.....Thomas Guild
Appellant.....Bruce McFarlan
Local government.....City of Pismo Beach
Local decision.....Approved with conditions on September 16, 2003
Project location.....101 Indio Drive, Pismo Beach, San Luis Obispo County (APNs 010-205-007).
Project description.....841 square foot addition to an existing single-family residence on a blufftop lot in the Sunset Palisades Planning Area.
File documents.....Pismo Beach Certified Local Coastal Program (LCP); Pismo Beach Coastal Development Permit 03-0125.
Staff recommendation ...No Substantial Issue

I. Recommended Findings and Declarations for No Substantial Issue:

On September 16, 2003, the City of Pismo Beach approved a Coastal Development Permit for an 841 square foot addition to an existing blufftop home at 101 Indio Drive, on a 9,400 square foot parcel in the Sunset Palisades Planning Area of the city. The addition is to the front of the house in an area between the existing house and Indio Drive and thus, does not affect the house's existing setback from the bluff edge. (City approval and location map attached as Exhibit 1). An appeal of this decision filed with the Coastal Commission challenges the Planning Commission and City Council action to approve the addition because the appellant contends no development can be approved on the site because there is currently an unauthorized gunite wall and stairway down the bluff on this parcel. The appeal contends that the unpermitted development is an illegal non-conforming use of the site, which must be cleared up prior to approval of any further development such as the approved addition to the home. The submitted reasons for appeal are attached to this report as Exhibit 2.

Staff recommends that the Commission determine that the appeal raises **no substantial issue** regarding the project's conformance to the Pismo Beach certified LCP.



California Coastal Commission
November 7, 2003 Meeting in San Pedro

Staff: M. Watson Approved by: *DSL*

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1. Project Conformance with the Certified LCP. The City's approval includes an 841 square foot addition to an existing 2,284 square foot, single-family residence on a 9,400 square foot blufftop lot in the Sunset Palisades Planning Area. The existing residence is a legal conforming structure. The approved addition will be located landward of the existing house and is conditioned to meet the 100-year bluff retreat setback and all other yard setbacks. It is consistent with the City's R-1 standards for size, height, lot coverage, parking and all other similar R-1 regulations. The addition of 841 square feet to the existing single-family residence is compatible with the size and scale of existing nearby residences. Thus, the City's approval of the addition is consistent with the certified LCP and does not raise a substantial issue.

2. Non-Conforming Structure. Appellant contends the City shouldn't have approved the addition to the existing single-family residence because there is unpermitted development on the coastal bluff that causes all development on the site to be considered non-conforming. As defined in Section 17.118.010 of the LCP, a non-conforming structure is:

A structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance does not conform with the standards prescribed in the regulation for new development for the district in which it is located, including, without limitation, setbacks, size, height, parking or similar regulations.

The unpermitted development that is the subject of the appellant's claim includes a private stairway down the bluff and gunite facing of the bluff. The appellant claims that the certified LCP contains policies prohibiting construction of private stairways down the bluff and placement of any shoreline armoring along the bluffs without a coastal development permit. Construction of the gunite facing occurred in 1986 and the stairway was constructed sometime thereafter, also without a CDP. The appellant contends that the unpermitted development creates a non-conformity across the entire site including the residential structure, and that the addition to the existing residence should not be approved until the unpermitted development is either removed or permitted.

Although the unpermitted development may very well be a violation subject to an enforcement action, the seawall and stairway do not qualify as legal, non-conforming structures. The structures were not lawfully erected prior to the adoption of the City's ordinance, but were, in fact, constructed after the entire LCP was certified and coastal permitting authority had been transferred to the City. Furthermore, the existence of unpermitted development in and of itself does not create a non-conformance issue for other structures located elsewhere on the site. Non-conformities are created when standards change and existing structures or uses are no longer consistent with the newer standards. As noted above, the existing residence is a legal, conforming structure and the City-approved addition complies with the Sunset Palisades Planning Area standards and regulations establishing setbacks, height, floor area, lot coverage, etc. The City's LCP does not preclude it from approving new development to legal conforming structures when it is found to be consistent with the standards for new development for the district in which it is located. Therefore, existing unpermitted development may not comply with the



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standards as alleged by the appellant, but they are not non-conforming and they are not the subject of the City's approval. Thus, the City's approval does not raise a substantial issue regarding the project's consistency with certified LCP standards for residential development in the Sunset Palisades Planning Area district.

II. Recommended Motion and Resolution

MOTION:

I move that the Commission determine that Appeal No. A-3-PSB-03-100 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-PSB-03-100 does not present a 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.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in 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. This project is appealable because it is 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 LCP 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



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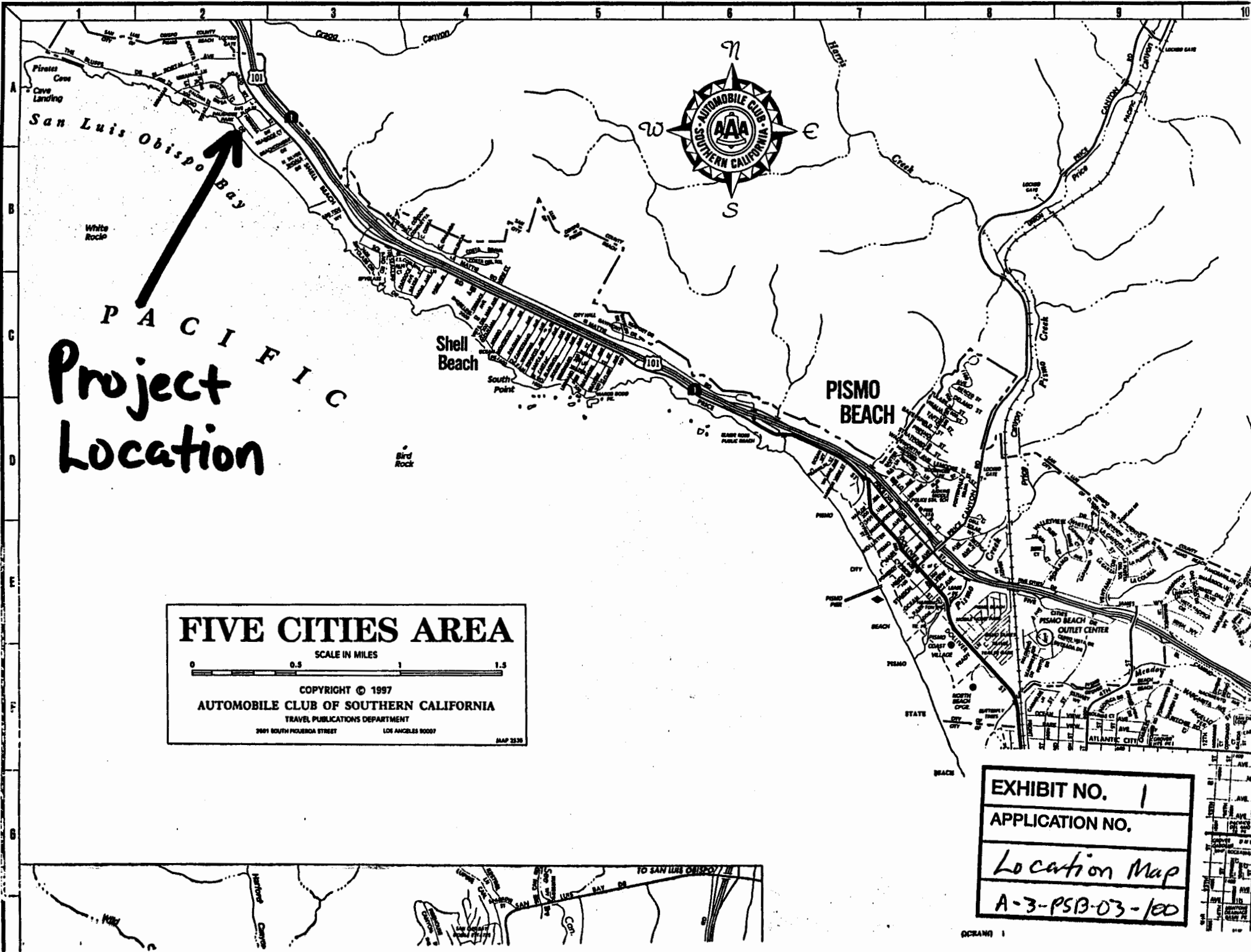
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hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 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. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a de novo review in this case.

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



SEE INSET BELOW



Project Location

FIVE CITIES AREA
 SCALE IN MILES
 0 0.5 1 1.5
 COPYRIGHT © 1997
 AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA
 TRAVEL PUBLICATIONS DEPARTMENT
 3001 SOUTH PICUREDA STREET LOS ANGELES 90007
 MAP 2526

EXHIBIT NO. 1
 APPLICATION NO.
 Location Map
 A-3-PSB-03-100

RESOLUTION NO. R-03-68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH UPHOLDING A PLANNING COMMISSION ACTION APPROVING A COASTAL DEVELOPMENT PERMIT, PROJECT NO. 03-0125, 101 INDIO

WHEREAS, Thomas & Donna Guild ("Applicants") submitted plans for a 841 square foot addition to a single family residence on a blufftop lot at 101 Indio; and

WHEREAS, the Planning Commission held a duly noticed public hearing consistent with Zoning Code section 17.54.020 on August 12, 2003, at which all interested persons were given the opportunity to be heard; and,

WHEREAS, Planning Commission authorized the Coastal Development Permit consistent with the 1992 City of Pismo Beach General Plan, and 1983 Zoning Code; and

WHEREAS, Bruce McFarlan (Appellant) appealed the Planning Commission's decision on the Coastal development permit approval on August 12, 2003; and

WHEREAS, on September 16, 2003, the City Council held a duly notice public hearing to hear the appeal at which all interested persons were given the opportunity to be heard.

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

The City Council does hereby upholds the action by the Planning Commission, authorizing approval of the project and approving the Coastal Development Permit subject to all of the conditions of the original Planning Commission Permit No. 03-0125 which are attached hereto as Exhibit 1A, as approved August 16, 2003 with the addition of conditions B11 and B12 which are as follows:

B11: No repair and/or maintenance shall be permitted on the private beach stairway located at the base of the wooden stairs adjacent to the seawall.

B12: These conditions shall be recorded against the property prior to issuance of a building permit.

Further, the City Council does hereby deny the appeal and approve the Coastal Development Permit and Architectural Review Permit subject to the Conditions of Permit No. 03-0125 and the following findings:

1. The request complies with all Zoning Code provisions applicable to the proposed use.
2. The proposed use is permitted within the Low Density Residential (R-1) zone and complies with all of the applicable provisions of the Zoning Code.
3. The proposed use is consistent with the General Plan/Local Coastal Plan.
4. The approval of the Zoning Clearance for the proposed project is in compliance with the California Environmental Quality Act (CEQA).
5. The location and operating characteristics of the proposed use are consistent with the existing and anticipated future land uses in the vicinity.

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UPON MOTION OF Councilmember Rabenaldt, seconded by Councilmember Gonzales-Gee, the foregoing Resolution is hereby passed, approved and adopted by the City Council of the City of Pismo Beach this 16th day of September, 2003 on the following roll call vote, to wit:

AYES: Councilmembers Rabenaldt, Gonzales-Gee, Natoli and Mayor Crescione
NOES: Councilmember Reiss
ABSENT: None
ABSTAIN: None



Mayor Benito J. Crescione

ATTEST:



Lori Grigsby, City Clerk

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B. OVERLAY ZONES			
Number	Overlay Zone	Related Conditions	Issue
17.069	Architectural Review (AR): Development of lots abutting coastal bluffs shall require architectural review	None	None: project is subject to architectural review by the Planning Commission.
17.072	Coastal Appeal (CA) Project approvals within this zone can be appealed to the Coastal Commission, in limited circumstances. All projects within the CA zone are reviewed by the Planning Commission.	None	None. Project is being reviewed by Planning Commission. The Planning Commissions action may be appealed to the City Council. Should the Council approve the project, its action can be appealed to the California Coastal Commission.
17.063	Archaeology and Historic Sites (A) Requires archaeological surface survey for all sites in this zone; additional study or mitigation may be required depending on results of survey	None	A Phase 1 study has been completed. No further study is required. If changes are needed, the project would return to the Planning Commission.

**C. Development Standards Consistency Chart: 101 Indio.
R-1 Zone, Sunset Palisades**

Item	Permitted/Required	Code Section	Proposed	Complies?
Lot area	5,000 sq. ft. min.	17.102.060	9,400 s.f.	yes
Max bldg height	25' above the center of the building footprint at site grade (99.75'), 15' above the high point (103.55') of lot	17.102.010	18.4' @ center, 14.6' from high point (Proposed = 18.1')	Yes, where max 118.55' allowed
Max lot coverage	55% Allowed: 3,008.4 sq. ft.	17.102.080	2,955 sq. ft. (31.4%)	yes
2 nd floor Area	Must not exceed 80% of the first floor = 2,955 sf	17.105.135	170 sq. ft. (5.8%)	yes
Max Building Area Ratio	86% of the 1 st 2700 s.f. of lot area and 60% of the remainder = 2322 + 4020 = 6342 sf max.	17.105.135	3,125 sq. ft.	yes
Minimum front yard setback	20% of lot depth or maximum 20' required	17.102.020, 17.108.030 f	10' (existing garage) 38' (new addition)	No; existing non-conforming
Minimum garage setback	20' for garage entrances fronting on the property line.	17.108.030.1.f	10' (existing garage)	No; existing non-conforming
Minimum side yard setback	10% lot width; max. 5'; in this case: 5'	17.102.030	7'	yes
Minimum blufftop yard setback	Per findings of a Geologic Bluff Study (100 year retreat rate + 10'), the minimum required setback = 27'	17.102.040	0' (existing residence) 35' (new addition)	No, existing non-conforming (New addition meets 27' req'd. setback)
Min parking spaces	2 spaces, both within a garage.	17.108.020, 17.108.030 b	2 spaces	

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CALIFORNIA COASTAL COMMISSION

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



RECEIVED

SEP 29 2003

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):

BRUCE D. McFARLAN
331 PARK AVE. #2
PISMO BEACH, CALIF.
93449 (805) 773-9406

Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

CITY OF PISMO BEACH

2. Brief description of development being appealed:

A 841 SQUARE FOOT ADDITION TO AN EXISTING
SINGLE-FAMILY RESIDENCE ON A BLUFF TOP LOT
ON A NON-CONFORMING DEVELOPMENT DUE TO A
NEW ILLEGAL PRIVATE STAIRS TO THE BEACH

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

101 INDIO DRIVE PISMO BEACH
APN: 010-205-067

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: _____

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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: 9/16/03

7. Local government's file number: PROJECT NO. 03-0125 / RESOLUTION #03-0125

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:

THOMAS + DONNA GUILD
101 INDIAN DRIVE
PISMO BEACH, CA. 93448

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) TARREN COLLINS
P.O. BOX 3063
SHELL BEACH, CA. 93448

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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APPLICATION NO.
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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.)

THIS ADDITION SHOULD NOT GO FORWARD UNTIL THE NEW PRIVATE STAIRS TO THE BEACH BE REMOVED. THE CITIES LCP STATES THAT NO NEW STAIRS TO THE BEACH AS PRIVATE STAIRS SHALL NOT BE BUILT! SO THIS MAKES THIS PROJECT A "NON-CONFORMING DEVELOPMENT. THE STAIRS AS TO BEING VERY PRIVATE DOWN TO THE PUBLIC BEACH SINCE THEY ARE IN THE CITIES LCP VIEW ILLEGAL THEY NEED TO BE REMOVED! ALSO THE PERMIT APPLICANT HAS PLACE LOTS OF CONCRETE IN THE FORM OF "GUNNITE" OR "SHOTCRETE" ON THE BLUFF TOP AND DOWN THE BLUFF SLOPE AND ON TO AND INTO THE PUBLIC BEACH AND TIDE POOL. THE CITIES ZONE OF THE SUNSET PALISADES AREA IDENTAFIES THE TIDE POOLS AS "SENSITIVE" THIS IS ANOTHER ILLEGAL MATTER THAT NEEDS TO CORRECTED BEFORE THIS ADDITION CAN BE PERMITTED. THE "GUNNITE" WAS NEVER PERMITTED NOR SUBMITTED TO THE CITY FOR APPROVAL AND WAS "NEVER" PART OF THE FIRST ILLEGAL NON-PERMITTED SEAWALL NOR THE "SECOND" PERMITTED SEAWALL. I HAVE A VCR TAPE OF THE ILLEGAL PARTS,

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.

Dwight J. McFarlan

Signature of Appellant(s) or Authorized Agent

Date 9/25/03

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

EXHIBIT NO. 2
APPLICATION NO.
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