

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4863

F10b



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Filed:	01/28/05
49th day:	03/18/05
Staff:	MW-SC
Staff report:	02/22/05
Hearing date:	03/18/05

Staff Report: Appeal Substantial Issue Determination

Local government.....City of Pismo Beach

Local Decision.....Local Permit # 04-0167 - Approved w/o conditions.

Appeal NumberA-3-PSB-05-002

Applicant.....Mark S. & Sandra L. Yandow

AgentRandy Dettmer

AppellantsTim Page and Commissioners Meg Caldwell and Sara Wan

Project location.....188 Seacliff Drive, Pismo Beach (APN 010-505-014).

Project descriptionConstruction/expansion of an existing residence (garage) to within 5 ft. of the property line and within or on top of an existing vertical access path.

File documents.....City of Pismo Beach certified Local Coastal Program; Coastal Development Permits 04-0167 and 03-0177.

Staff recommendation...**Substantial Issue Raised**

Summary: The Applicant proposes a 125 square foot expansion to an existing two-story, 4,320 square foot single-family residence in the Seacliff Planning area of Pismo Beach in San Luis Obispo County. The subject site is a blufftop lot of approximately 10,976 square feet and contains a coastal access path used by the public for more than 30 years. The proposed expansion will encroach onto the access path and is likely to preclude access entirely. The City approved the project without conditions, finding it consistent with the certified Local Coastal Program.

The appellant's contend that: 1) the approval does not ensure the public's right to gain access to the beach; 2) the approval should have required provision of vertical access and measures to minimize access impacts during construction; 3) the approved expansion is inconsistent with the requirements for maintaining public vertical access; 4) there is unpermitted development within the blufftop area; 5) the project is inconsistent with the conservation, open space, an growth element policies of the LCP.

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed. In particular, the appeals raise a substantial issue regarding project conformance to Coastal Act and LCP policies prohibiting new development from interfering with the public's right of access to the sea and the provision of



California Coastal Commission
March 18, 2005 Meeting in Newport Beach

Staff: M. Watson Approved by: *DFL*

vertical access from the nearest public roadway to shoreline in all new development projects. The City acknowledged the historic use of the path and the potential impacts on access to the coast, but concluded that there was no clear nexus to require access as mitigation for the impact. Nor did they contemplate denying the project to ensure that access would continue to be provided.

As noted above, the access path has been in use for quite some time. Aerial photos from 1972 show the path in approximately the same location at least six years prior to the original construction of the house in 1978. The access path leads to the only shoreline access in the Seacliff and Spyglass planning area neighborhoods, and provides an important link between three blufftop parks along a 0.5-mile stretch of coast. The access path is identified in the Commission’s California Coastal Access Guide (1st – 6th Editions, 1981 – present) and may prove to be a logical link in the California Coastal Trail.

Therefore, staff recommends that the Commission find that a substantial issue is raised by the appellants’ contentions, and that the de novo hearing on the project be continued to a later date to allow for further investigation of the prescriptive use of the access path.

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Exhibits

- 1. Vicinity Map
- 2. Parcel Map
- 3. Site Plan
- 4. Appellants’ Contentions
- 5. City Action on CDP 04-0167
- 6. Site Photos



I. Local Government Action

On September 28, 2004, the Pismo Beach City Council upheld the Planning Commission decision [denied an appeal by Tim Page] to grant a major modification to the previously approved SFR redevelopment and expansion without special conditions (see Exhibit 5 for the City's action).

II. Summary Of Appellants' Contentions

Please see Exhibit 4 for the full text of the appeal.

The appellants, Tim Page and Commissioners Wan and Caldwell, have appealed the final action taken by the City on the basis that approval of the project is inconsistent with Public Access policies of the Pismo Beach certified Local Coastal Program and the Access policies of the Coastal Act, guaranteeing the public's right to gain access from the first public road to the sea.

III. Standard of Review for Appeals

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 to the Coastal Commission because it is located between the first public road and the sea and within 300 feet of the top of the bluff.

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 in order to issue a coastal development permit. 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. This project is located between the first public road and the sea.



IV. Staff Recommendation On Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Coastal Act Section 30603.

MOTION: I move that the Commission determine that Appeal No. A-3-PSB-05-002 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 **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-PSB-05-002 presents 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.

V. Recommended Findings and Declarations

A. Project Location and Description

The project is located at 188 Seacliff Drive in the Seacliff Planning area of Pismo Beach. The Seacliff Planning district is located northwest of the Shell Beach neighborhood planning area and directly adjacent to [southeast] of the Spyglass Planning area and Spyglass Park. Development in Seacliff is comprised of fairly large, modern single-family residences on lots ranging between 6,000 square feet and roughly 12,000 square feet. There are only a few unimproved lots.

The planning area geology is comprised of unconsolidated marine terrace deposits overlaid on top of more consolidated bedrock materials such as Monterey Shale and Obispo Tuff. The bluff face is rather steep, rising nearly vertically to 50'+ above sea level. As a consequence, there is no direct shoreline access to the pocket cove beach or surf area below. Along the bluffs fronting the planning area, there is an improved blufftop park (i.e., Memory Park) and scenic overlook deck (i.e., Vista Point) that is available to the public. See Exhibit 6.

The project site is located in the northwest corner of the planning area on a 10,976 square foot lot (please see Exhibit 3 for project plans) and is improved with a single-family home of approximately 4,320 square feet. Along the northern property line there is an informal access



path that has been used by the public prior to construction of the residence in 1978 and continuing until mid-2004 when the homeowner fenced it off. The access path is roughly 10' in width and provides a vital link to the adjacent Spyglass Park and the shoreline below. The City approved a complete remodel and 500 square foot expansion of the residence in February 2004 that by itself would not have impacted the coastal access. However, in September 2004, the City approved a major amendment to the permit authorizing another 125 square foot expansion of the residence (i.e., 5' X 25' expansion of the garage) to within 5' of the northern property line. The garage expansion encroaches into the area of the lot historically used for public access. The City authorized approval of the development without special conditions for provision of vertical access as required by the LCP or limitations on development to ensure continued use of the access path by the public. It is the major amendment approved by the City that is the subject of this appeal.

B. Substantial Issue Determination

1. Public Access

a. Relevant Coastal Act and Local Coastal Program Provisions

The Appellant's have raised a number of access related issues relevant to the project. The access issues raised correspond to LCP or Coastal Act policies, and the proposed development's conformance with those policies. Applicable Coastal Act and LCP Public Access policies include:

Coastal Act Policy 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...

Coastal Act Policy 30212

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in all new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or (3) Agriculture would be adversely affected...

Applicable City of Pismo Beach LCP policies regarding public access are as follows:

GP/LUP Access Component Background

The City of Pismo Beach has a tradition of shoreline access. The purpose of this shoreline access component is to implement the state Coastal Act shoreline access policies, thus continuing to ensure the public's right to gain access to the shoreline.



Zoning Ordinance 17.066.010 – Purpose of Zone

The Coastal Access Overlay Zone is intended to carry out the requirements of Section 4 of Article X of the California Constitution to ensure the public's right to gain access from the nearest public roadway to the shoreline...

In implementing public access policies applicable to developments in the California Coastal Act and the City of Pismo Beach Local Coastal Program, vertical and lateral accessways shall be required as a condition of development pursuant to the requirements of the certified Local Coastal Program Land Use Plan.

GP/LUP Policy PR-33: Permitted Development in Blufftop Access Areas

Development permitted in the areas reserved for public blufftop access or recreation shall be limited to structures and facilities designed to accommodate recreational use of the area...In no case shall any development except public access paths and access facilities and public stairways be permitted within the bluff retreat setbacks identified in site specific geological studies.

GP/LUP Policy PR-24: Perpendicular Access to Shoreline Required

Public access perpendicularly from the nearest public roadway to the shoreline shall be provided in new development projects except where protection of fragile coastal resources prevents access or adequate public access already exists nearby (generally within 500 feet or as shown on Figure PR-3). Existing blufftop single-family lots less than 10,000 sq. ft. in area are exempted from this requirement.

Zoning Ordinance Standard 17.066.020.8

Public access from the nearest roadway to the shoreline and along the beach shall be provided in new developments except where protection of environmentally sensitive habitats prohibits such access or adequate public access exists nearby unless impacts associated with the accessway are adequately mitigated.

Zoning Ordinance Standard 17.066.020.10

Vertical accessways as required in the GP/LUP are required within each shoreline planning area. This access shall be from the first public roadway to the shoreline (or bluff edge if access is required to reach a blufftop viewing area). Vertical accessways within existing or proposed developments or subdivisions should be a minimum of ten feet in width and no access path shall be sited closer than ten feet to any existing or proposed residential structures or five feet to any motel room.

GP/LUP Policy P-22: Public Shoreline Access

The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the City's parks and recreation program.



b. City Action

On September 28, 2004, the Pismo Beach City Council approved Major Amendment 04-0167 to Coastal Development Permit 03-0177 without conditions. The major amendment authorizes a 125 square foot expansion to the previously approved and relocated garage along the northwest side of the house and in the area of a well-used coastal access path. The original permit authorized the complete remodel and 500 square foot expansion to the existing 3,820 square foot single-family residence. The property owner requested the additional [garage] expansion after learning that the residence addition would have to be reduced by 20 square feet because it could not be accommodated and still conform to the required sideyard setbacks. The City action acknowledged the existence of the access path and the potential for the new development to adversely impact the use of the path by the public, however it did not include mitigation in the form of a vertical access easement as required by the LCP or any other conditions to ensure the public's right to pass would be preserved. Staff report findings indicate that the City was concerned about litigation and concluded that there wasn't sufficient nexus to require vertical access as mitigation for the project.

c. Analysis

1. History/Background

1978 Coastal Development Permit

On February 10, 1978, the South Central Coast Regional Commission issued a coastal development permit (152-01) for the construction of a single-family residence at 188 Seacliff Drive in the City of Pismo Beach, subject to special conditions including execution and recordation of an offer to dedicate (OTD) public access easement along the [north] westerly boundary of the property. The stated purpose of the vertical access condition was for "public access to the beach." As evidenced from early aerial photos, the access path had been in use long before the Commission's action to approve development of the site (i.e., before 1978), a fact which probably helped them come to their decision. After construction of the residence in late 1978, the public continued to use an approximately a 10' wide area between the house and northwest property line to gain public access to the park and shoreline. When the General Plan/Coastal Land Use Plan of the City's LCP was certified in 1982, the coastal access path along the northern property boundary of 188 Seacliff was not identified in the Access Element. According to the terms of the offer, the OTD expired in December 1990 prior to being acquired by the City or other suitable public or private agency, and prior to being identified in the certified LCP. Nonetheless, access continued unabated until the fall of 2004 when the new owners of the property commenced construction of the remodel and addition and fenced off the access path to preclude public passage.

2. Public's Right of Access to the Sea

The Appellant's contend that the City's action does not adequately ensure the public's right of access to the sea will be preserved. Both sections 17.066.010 of the City's zoning ordinance and



30211 of the Coastal Act require that development not interfere with the public's right to gain access to the sea whether acquired by use or legislative authorization. In this particular instance, there is strong case for establishing historic use of the access path. Aerial photos of the site clearly indicate that access was occurring across the property in roughly the same location at least 6 years prior to the construction of the original house in 1978. Subsequent photos also indicate that use of the path continued without interruption over a period of 30 years. Additionally, the Commission acted to authorize public access across the property when it approved the development permit for the original residence. As a condition of the permit, the original property owner was required to record an offer to dedicated public access easement for permanent access to the beach. Unfortunately, the offer to dedicate expired in 1990 prior to being accepted by the City or a suitable public or private agency. In any case, access continued unabated across the property for another 14.5 years, until mid-2004 when the new homeowner fenced it off. The coastal access path has also been memorialized in the Commission's California Coastal Access Guide, 1st – 6th Editions (since 1981) and because of its location, may someday prove to be a logical link in the California Coastal Trail. Accordingly, the City authorized development that will adversely impact access historically used by the public, contrary to LCP and Coastal Act provisions. The City's action acknowledged the historical use of the site, yet did not include any measures to ensure that access would be preserved. And if the current fencing across the access path is any indication, the property owner intends to prohibit access from occurring across the property at any time in the future. Thus, a substantial issue is raised.

3. Vertical Access Required

The applicant's second contention is that the city-approved project is inconsistent with the LCP and Coastal Act policies requiring vertical access in all new development. Coastal Act Section 30212, as well as, LCP policies PR-24 and 17.066.020.8 all require that vertical access public access from the first public road to the sea be provided in new development except where fragile coastal resources, public safety, and national security prevents access or adequate public access exists nearby. In this particular instance, there are no fragile coastal resources or national security issues. The access path traverses a level blufftop lot between two existing homes and no known potential safety hazards. The City approved expansion of the residence will encroach within and on top of a well-known and utilized vertical coastal access path to Spyglass Park and the shoreline below. Many users of this access path are destined for the surf-break just offshore known as St. Ann's. As evidenced by the recent erection of fencing across this accessway, the development will permanently preclude public access to the park and the beach below. The nearest alternate access point to Spyglass Park and the beach access path requires a 0.25 mile detour through the Seacliff neighborhood and is located on private property. Additional access to Spyglass Park and the beach can be gained through the Spyglass planning area neighborhood, though it requires an approximate 1-mile detour from the access path at 188 Seacliff. The City-approved project did not include provision of a public vertical access or require specific measures/conditions to safeguard public access during and after construction and is therefore inconsistent with Coastal Act and LCP standards. Accordingly, a substantial issue is raised.



4. Development Inconsistent with Vertical Access Standards

The appellant's contend that the approved development is inconsistent with the standards for providing public vertical access. Zoning Ordinance section 17.066.020.10 specifies that vertical access paths shall be 10' in width and sited no closer than 10' to any existing or proposed residential structure. The existing access path is located between the northwest property line and the residence at 188 Seacliff Drive; the original construction of the residence was setback to accommodate the access path. The City's approval authorizes construction in the northwest sideyard to within 5' of the property line and on top of the existing access path. Aside from creating a non-conformity, there are trees, vegetation, and other improvements that may preclude access in this alignment. Therefore, a substantial issue is raised.

5. Permitted Development in Blufftop Access Areas

The appellant's contend that the approved development does not conform to LCP standards for development in the bluff retreat setback area. Land Use Plan policy PR-33 restricts development in areas reserved for blufftop access to structures or facilities designed to accommodate recreational use of the area. PR-33 prohibits all non-access related development within the blufftop retreat setback area identified in site-specific geologic studies. In order to prevent the public from utilizing the existing access path, the property owner erected solid fencing across the entrance to the access path within the bluff retreat setback area. Although, section 17.102.120 of the zoning ordinance does allow for see-through fencing in R-1 districts up to 4' in height with a coastal development permit, it is unlikely that the City would permit an 8' plywood fence or any fence across a public access path, as was done at 188 Seacliff. Therefore a substantial issue is raised.

d. Substantial Issue Conclusion

The City approved an expansion of an existing single-family residence that will adversely impact the public's ability to access the beach from the Seacliff planning neighborhood. The City's action also did not contain adequate measures to ensure the public's right to gain access from the first public road to the sea would be preserved during and after construction of the approved remodel and addition. The access path leads to the only shoreline access in the Seacliff and Spyglass planning area neighborhoods, and provides an important link between three blufftop parks along a 0.5 mile stretch of coast. The project is inconsistent with Coastal Act and LCP policies requiring dedication of vertical access when there are no suitable alternatives nearby and does not conform with zoning ordinance standards for designing access paths. Additionally, the property owner has undertaken unpermitted development to preclude access at this location.

Therefore, a substantial issue is raised.



2. Conservation, Open Space, and Growth

a. Relevant Local Coastal Program Provisions

GP/LUP Policy P-13: Natural Resource Preservation

All land use proposals shall respect, preserve, and enhance the most important natural resources of Pismo Beach; those being the ocean and beaches, hills, valleys, canyons, and cliffs; and the Pismo and Meadow Creek streams, marsh and estuaries.

GP/LUP Policy P-14: Natural Resource Preservation

The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region...The purpose of the beach is to make available to the people for their benefit and enjoyment forever, the scenic natural, cultural, and recreational resources of the ocean, beach and related uplands.

GP/LUP Policy P-16: Historic Ambiance

Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation...

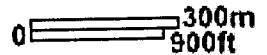
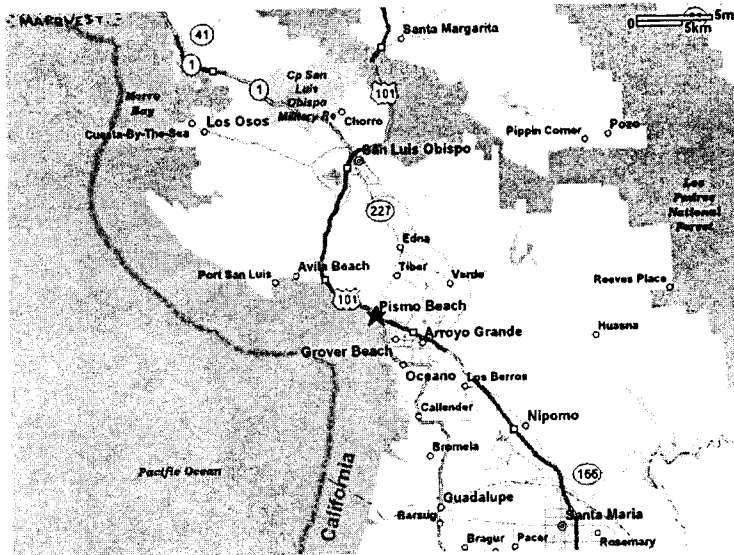
b. Analysis

Appellant, Tim Page, contends the approved project raises issues with respect to conformance with the certified LCP policies protecting/preserving the City's important natural resources and the preservation of the town's historic ambiance. It is implied that the approved project will somehow diminish the City's character and the quality of life of its residents by authorizing the expansion of the residence and consequent loss of the public access path used for generations to gain access to Spyglass Park and the shoreline below. The appellant contends there is no reasonable justification for the City's decision to allow the property owner to interfere with the public's continued right to use the pathway for access to the sea. As noted in the natural resource provisions above, the beach, ocean, and abutting land are the most important and irreplaceable assets of the community. And it is true that Pismo Beach retains the character of a small California beach town. It is not, however, clear what affect, if any, the approved development (± 125 sq. ft. garage addition) would have on the City's historic ambiance. It is equally difficult to estimate the impact of the approved development on the natural resource that is the ocean or beach. Certainly, the connection between the approved development and the impacts on access can be made (see Substantial Issue Finding 1 above), but the contentions raised with respect to conformance with the natural resource and historic ambiance policies cannot be well supported. Thus, no substantial issue is raised.

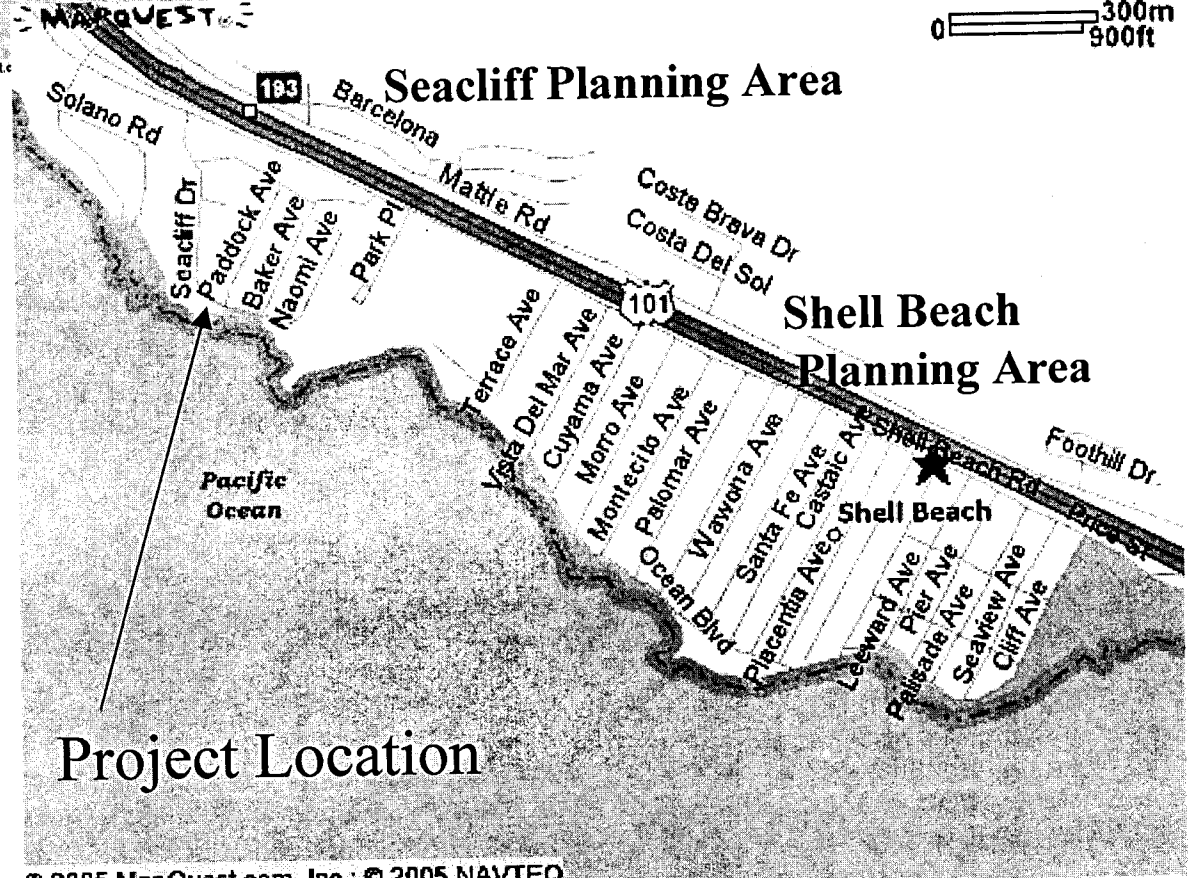


Exhibit 1

Pismo Beach Vicinity Map



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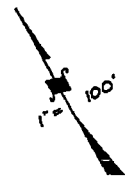


Project Location

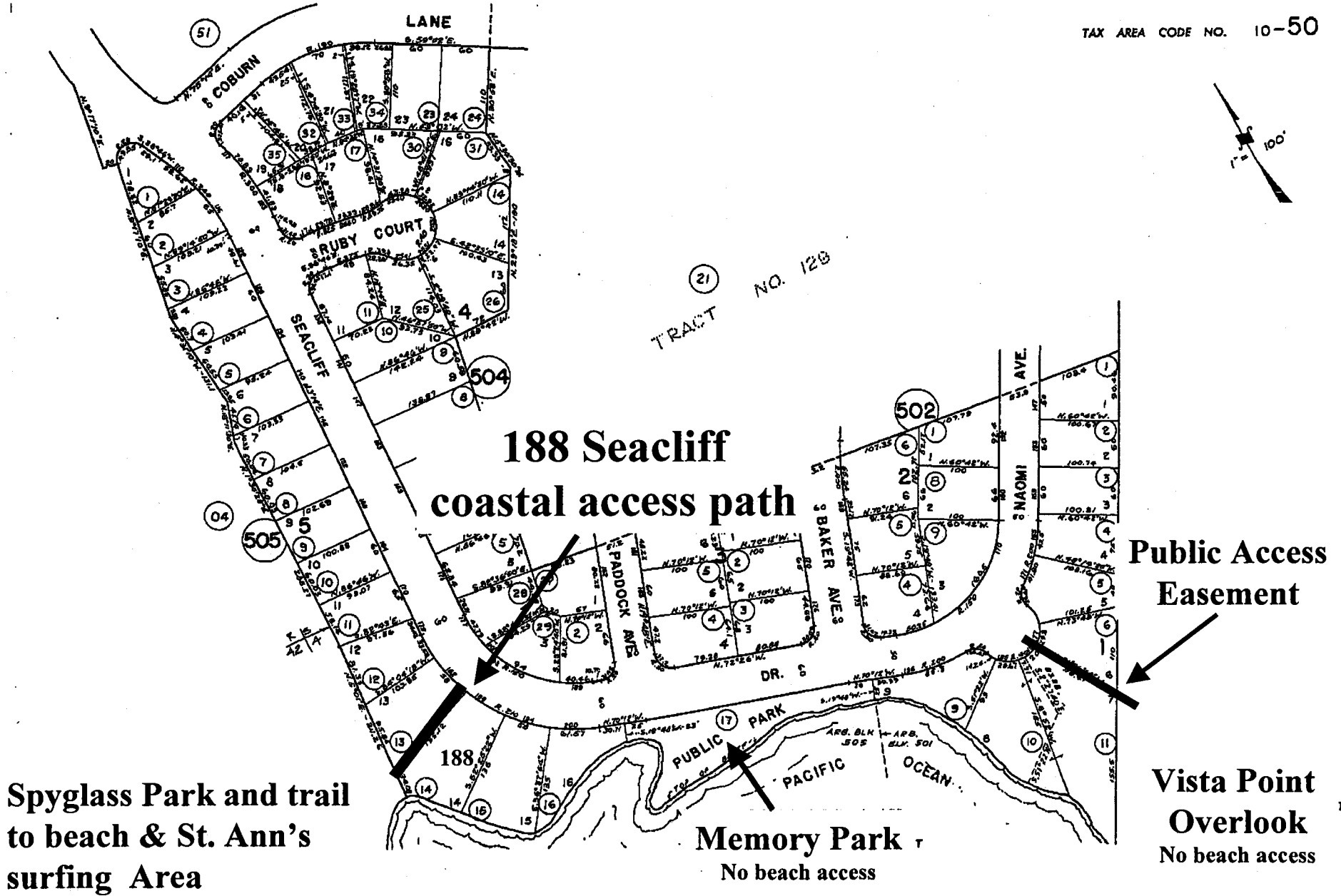
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Exhibit 2: Parcel Map

TAX AREA CODE NO. 10-50



TRACT NO. 128



188 Seacliff coastal access path

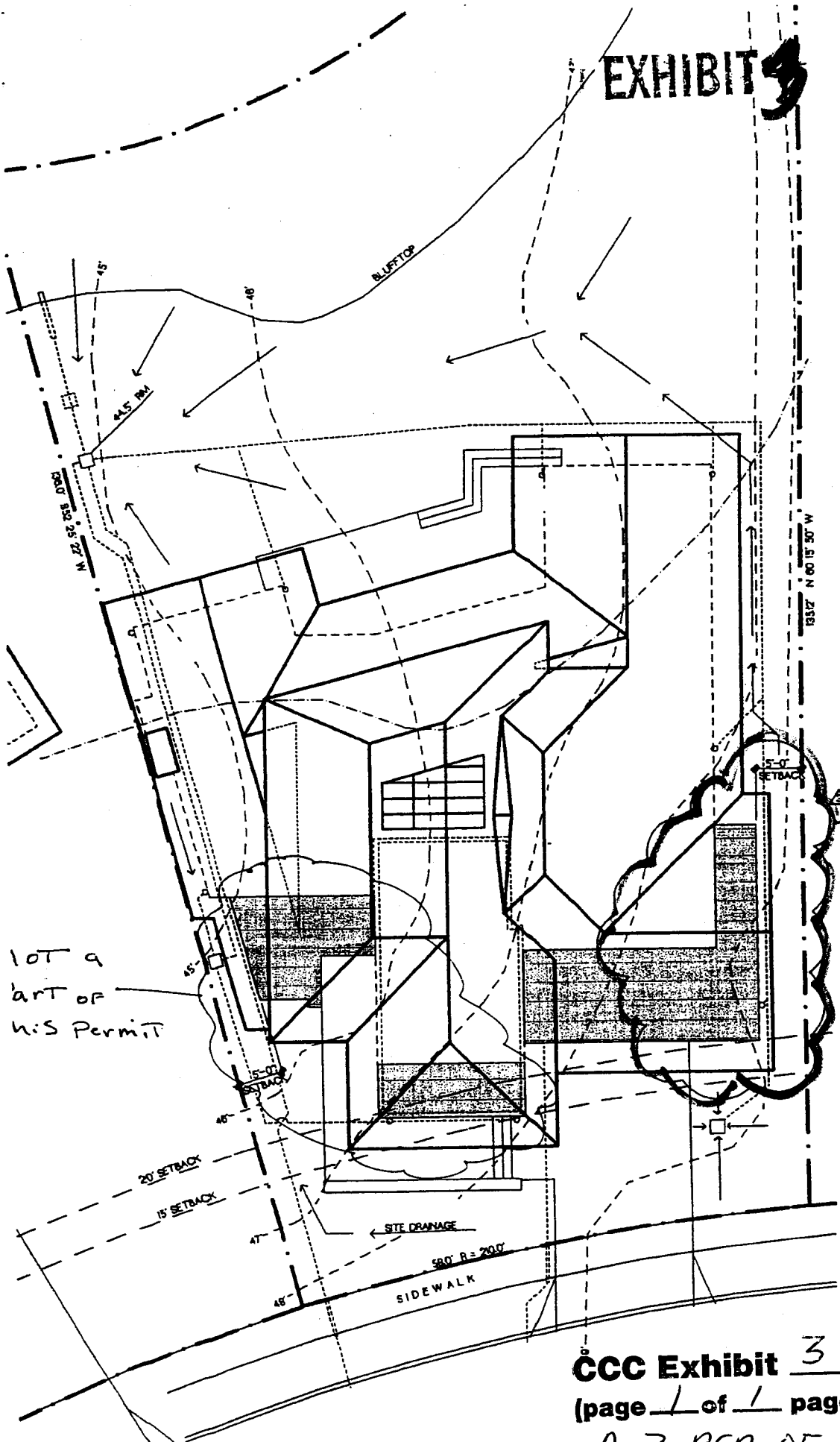
Public Access Easement

Spyglass Park and trail to beach & St. Ann's surfing Area

Memory Park
No beach access

Vista Point Overlook
No beach access

EXHIBIT 3



lot a
part of
his permit

SITE PLAN
1/4" = 1'-0"

Dettmer Architecture
 663 Hill Street San Luis Obispo, Ca. 93405
 805 541 4864 Fax 541 4865

Project Area
 OF Consideration

SITE PLAN REVISIONS
WINDOW REMODEL
488 SEACLIFF, SHELL BEACH, CA
 SEPTEMBER 3, 2004

A-3-PSB-05-002

CALIFORNIA COASTAL COMMISSION

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

www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: January 28, 2005
TO: Carolyn Johnson, Planning Manager
City of Pismo Beach, Community Development Department
760 Mattie Road
Pismo Beach, CA 93449
FROM: Steve Monowitz, Permit Supervisor
RE: **Commission Appeal No. A-3-PSB-05-002**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: 04-0167
Applicant(s): Mark S. & Sandra L. Yandow
Description: Approval of a major modification of Coastal Development Permit 03-0177 to expand the garage in the northwest portion of the property to within 5 ft. of the property line and within or on top of an existing vertical access path.
Location: 188 Seacliff, Pismo Beach (San Luis Obispo County) (APN(s) 010-505-014)
Local Decision: Approved w/ Conditions
Appellant(s): Tim Page
Date Appeal Filed: 1/28/2005

The Commission appeal number assigned to this appeal is A-3-PSB-05-002. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Pismo Beach's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Mike Watson at the Central Coast District office.

CCC Exhibit 4
(page 1 of 14 pages)
A-3-PSB-05-002

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
HEARING IMPAIRED: (415) 904-5200



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s):

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

Meg Caldwell, Chair

Sara J. Wan

California Coastal Commission

California Coastal Commission

45 Fremont Street, Suite 2000

45 Fremont Street, Suite 2000

San Francisco, CA 94105-2219

San Francisco, CA 94105-2219

(415) 904-5200

(415) 904-5200

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed:

Approval of a major modification of Coastal Development Permit 03-0177 to expand the garage in the northwest portion of the property to within 5' of the property line and within or on top of an existing vertical access path (APN 010-505-014).

3. Development's location (street address, assessor's parcel number, cross street, etc.):
188 Seacliff, Pismo Beach (San Luis Obispo County).
APN 010-505-014

4. Description of decision being appealed:

- a. Approval; no special conditions: XX
b. Approval with special conditions:
c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: **A-3-PSB-05-002**

DATE FILED: **1/28/05**

DISTRICT: **Central**

RECEIVED

JAN 28 2005

Exhibit 4

Page 2 of 14 pages

A-3-PSB-05-002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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: January 4, 2005

7. Local government's file number: 04-0167

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:

Mark & Sandra Yandow
462 Porter Lane
San Jose, CA 95123

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) Tim Page
129 Baker Avenue
Shell Beach, CA 93449

(2) Carolyn Johnson, Planning Manager
City of Pismo Beach
760 Mattie Rd., Pismo Beach, CA 93449

(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.

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

See Attached.

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

SECTION V. Certification

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

Signed: MR Caldwell
Appellant or Agent

Date: January 28, 2005

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

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

See Attached.

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

SECTION V. Certification

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

Signed: *Scott J. Wain*
Appellant or Agent

Date: January 28, 2005

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A: Reasons for Appeal of Coastal Development Permit 04-0167

The City's approval of Coastal Permit 04-0167 authorizes development that encroaches within an existing coastal access path that has historically been used by the public and is therefore inconsistent with the policies and standards of the City of Pismo Beach certified Local Coastal Program that protect public access and the public's right to gain access from the first public road to the sea. The approval of the new development is inconsistent with the following LCP policies and standards:

- The stated purpose of the General Plan Access Component and section 17.066.010 of the Zoning Ordinance is to carry out the requirements of Section 4 of Article X of the California Constitution to ensure the public's right to gain access from the nearest public roadway to the sea. This section requires that vertical access be provided as a condition of development pursuant to the requirements of the certified LCP. (See PR-24 below). The City approved development that may adversely impact coastal access historically used by the public. The project did not include provision of access and the City's action did not include special conditions to ensure the public's right to gain access from the nearest public road to the sea would be protected. In addition to providing public vertical access to Spyglass Park, the coastal access path provides an important lateral link between Spyglass Park and two additional blufftop parks (Memory Park and the Seacliff Vista Point). The access path is identified in the California Coastal Access Guide (1st - 6th Editions, 1981 – current, California Coastal Commission) and may prove to be a logical segment in the California Coastal Trail.
- Coastal Act Section 30211 prohibits development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. In February of 1978, the Commission issued Coastal Development Permit 152-01 authorizing construction of a single-family residence at 188 Seacliff Drive. At that time, public vertical access to Spyglass Park and the beach and surf below was an important issue related to development of the site. The Commission's original approval included an offer to dedicate a 5' wide public vertical access path along the western boundary of the property for public access to the beach. The residence was constructed in 1978 with a 10' wide sideyard setback to allow public access across the property. The offer of dedication expired in the early 1990's, nevertheless, public use of the coastal access path along the northwestern property line (current location) has continued unabated. The City's approval will interfere with the public's ability to use this well established beach access route. The access path was recently fenced off and the owner has indicated that the path will be permanently closed.
- GP/LUP Policy PR-24, Zoning Ordinance section 17.066.020.8, and Coastal Act section 30212 all require that vertical public access from the first public road to the sea be provided in all new development except where fragile coastal resources prevents access or adequate public access exists nearby. There are no fragile resources located on the site. The City-approved expansion of an existing single family residence encroaches 5' within a 10' wide well-known and utilized vertical coastal access path to Spyglass [bluff top] Park. As evidenced by the recent erection

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Page 6 of 14
A-2-PSB-05-002

of fencing across this accessway, the development may permanently preclude public access to the park and the ocean below. The nearest alternate access to Spyglass Park and the beach access path requires a 0.25 mile detour through the Seacliff neighborhood and is located on private property. Formal public access to Spyglass Park can be gained about 1 mile from the historic access path at 188 Seacliff Drive. The approved project did not include provision of a public vertical access or require specific measures/conditions to safeguard public access during and after construction.

- Zoning Ordinance Section 17.066.020.10 specifies that public vertical accessways shall be 10' in width and sited no closer than 10' to any existing or proposed residential structure. The existing coastal access path is located between the northwesterly property line and the residence at 188 Seacliff. Original construction of the residence was setback 10' along the sideyard to accommodate the access. The City's approval authorizes construction in the northwest sideyard to within 5' of the property line. There are trees, vegetation, and other improvements that may preclude access in this alignment.
- GP/LUP Policy PR-33 restricts development in areas reserved for public blufftop access to structures or facilities designed to accommodate recreational use of the area. This policy prohibits all non-access/recreation development within the bluff retreat setback area. The applicant has constructed a fence in the bluff retreat setback, in conflict with this standard.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Tim Page

Mailing Address: 129 Baker Ave.

City: Shell Beach

Zip Code: 93449

Phone: (805) 773-6665

SECTION II. Decision Being Appealed

1. Name of local/port government:

Pismo Beach City Council

2. Brief description of development being appealed:

Property owners intend to build in such a manner as to encroach upon a public access pathway that has consistently been used (since approximately 1960) as public access to the bluffs, beach and to open space leading to Spyglass Park in Shell Beach. The public access path is approximately 10' wide, and runs from the sidewalk on the Northwest side of this property approximately 135' leading to the bluff top and open space to the rear of the property. The public access pathway runs alongside and between two properties that until late 2004 were fenced, leaving the pathway free and clear for the public's use. The planned development of the property owner's garage will seriously impede - and perhaps totally block - this access. This path is listed in the California Coastal Access Guide, Sixth Edition, on page 171, as SPYGLASS CITY PARK.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

188 Seacliff Drive, Shell Beach, CA, 93449 APN# 010-505-014

4. Description of decision being appealed (check one.):

- Approval; no special conditions
Approval with special conditions:
Denial

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CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-05-002

DATE FILED: 1-28-05

Handwritten notes and signatures including '4', '8 of 14', and 'A-3-PSB-05-002'.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4508

VOICE (831) 427-4863 FAX (831) 427-4877



DISTRICT: *Central Coast*

Page 9 of 14 pages
A-3-PSB-05-002

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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: Pln'g Co. 9-28-04 City Coun. 1-4-05

7. Local government's file number (if any): Permit # 04-0167 and 03-0177

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:

Mark Yandow
462 Porter Lane
San Jose, CA, 95127

(this is the address listed with the Pismo Beach Planning Department. Owner's may live in San Luis Obispo but address is not known.

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

(1) Tim Page 129 Baker Ave, Shell Beach, CA, 93449

(2) John Duffy 128 Baker Ave, Shell Beach, CA, 93449

(3) Matt Kraut, 123 Paddock Ave, Shell Beach, CA, 93449

(4) Jim Blecha, 158 Baker Ave, Shell Beach, CA, 93449

(5) Mark Burnes, 791 Price St #140, Pismo Beach, CA, 93449

SEARCHED _____ 4
INDEXED _____
SERIALIZED _____
FILED _____
OCT 10 2004
A-3-PSB

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

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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 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.

The proposed project as approved by the City does not conform to the specific policy language contained in the City of Pismo Beach General Plan ("General Plan"), the Coastal Act or the California Constitution because it does not require provision, maintenance, or improvement of the existing public access path. In addition, it interferes with the public's right of access to the sea, which access was acquired through continuous use that has been open, notorious and adverse for over forty years.

CITY OF PISMO BEACH GENERAL PLAN

The General Plan is a legal mandate that governs both private and public access. It is atop the hierarchy of local government law regulating land use. Accordingly, it must be adhered to.

The General Plan provides that "[t]he City of Pismo Beach has a tradition of shoreline access. The purpose of this shoreline access component [of the Plan] is to implement the State Coastal Act shoreline access policies, thus continuing to ensure the public's right to gain access to the shoreline." (Access Component of Parks, recreation and Access Element.) More specifically, "[t]he continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the city's parks and recreation program." (P-22 at PR-8.)

The Conservation and Open Space Element of the General Plan (CO-1-16) recognizes the ocean as one of the "Big Three" primary resources and open space for Pismo Beach. It states: "The ocean, coastal cliffs, and shoreline resources are vital to Pismo Beach for their wildlife habitat, recreational use, open space, scenic value and the city's overall economy. These natural assets will be protected and made available to all." (CO-5, emphasis added.) More specifically, "[o]cean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource." (P-15, at CO-18.) Additionally, the General Plan under (PR-24) requires Public Access perpendicularly from the nearest public roadway to the shoreline. 188 Seacliff Drive has a lot over 10,000 sq. feet and access is required on this project.

The Growth Management Element of the General Plan also recognizes the importance of maintaining public access to the coast. "The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. . . . The purpose of the beach is to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural and recreational resources of the ocean, beach and related uplands." (P-13 at LU-6.) Even more specifically, "Pismo Beach contains the historic ambiance

11/14 4

of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambience is important and the city shall encourage its preservation." (P-16 at LU-6.)

The City in this case has acted in complete contravention of its own principles and policies. It has permitted a private property owner to close off a public access pathway to the coastline that has been in existence – and well used – since at least 1960. There is no reasonable justification for its decision. The pathway runs alongside and between two fenced properties. Neither property owner has until recently ever made any attempt to restrict or prohibit the public's use of this pathway. Indeed, the City itself has maintained the pathway over the years by clearing brush and other fire hazards. Recently, however, the current owner of the property located at 188 Seacliff, adjacent to the public access pathway, erected a fence across both ends of the pathway in an apparent attempt to assert some ownership rights that were long ago relinquished to the public. The City has allowed this owner to do so, and has refused to undertake any efforts to maintain the public access to the Pismo Beach coastline. In so doing, it has failed to follow its own mandates, policies and procedures as set forth in the General Plan.

CALIFORNIA CONSTITUTION AND COASTAL ACT

The California Constitution, at section 4, Article 10, provides:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The California Coastal Act, in carrying out this requirement, provides that "[d]evelopment 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." Coastal Act, at section 30211. Section 30212 sets forth further specifications relating to the maintenance of public access to the coast.

There is simply no question that this path has been a public access pathway, providing a right of way to the California coastline for over forty years. Neither can there be any real question that this right of access was acquired by the public through use that was continuous, open, notorious and adverse to the rights of any private owner. Indeed, this public access pathway is listed in the California Coastal Access Guide, Sixth Edition, on page 171. There is simply no reasonable justification for permitting an adjacent property owner to interfere with the public's continued right to use this pathway for access to the sea.

This public access pathway was acquired by continued and consistent use that has been open, notorious and adverse since at least 1960. It has in fact been maintained by the city for the public's continued enjoyment. No owner has ever attempted to restrict or prevent the public's use of this pathway until recently. As a result of the City's decision to permit the current owners of the adjacent property to both build along and fence off this pathway, it is no

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longer usable by the public to which it belongs. The pathway has been significantly altered and for the most case destroyed by the contractors during this re-model project. Even as this appeal is being considered, new excavation is taking place with the construction of a drainage system being installed directly in the path. We ask that the commission immediately put a halt to construction activity at this address and order the owners to make restitution which should start with putting the pathway back to it's original condition, which will require removal of newly installed fixtures and permanent closure of all newly excavated areas on or near the access path. The City of Pismo Beach was asked on 1-13-05 to have the new excavation work stopped, but they would not get involved, and said that the work is allowed under the current permit. The adjacent property owner has attempted to argue that closure of the pathway and the City's issuance of a building permit are two separate issues. They are not. The public access pathway is approximately 10 feet wide. The adjacent owners are attempting to argue that their building will only encroach upon five feet of the pathway, leaving approximately five feet clear for public use. These adjacent owners have, however, attempted to "move" this five feet of pathway onto the property of the other adjacent property owner, thereby creating a legal morass that may never be resolved.

The fact remains that this public access pathway runs alongside and between two properties that until late 2004 were both fenced, leaving a full ten-foot wide pathway free and clear for public access. Neither adjacent property owner made any attempt to restrict or prohibit the public's unfettered use of this pathway from approximately 1960 until late 2004. The full ten feet of width is necessary for those members of the public who must use mobility scooters, wheelchairs or other mobility aids.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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

Jim Page

Signature of Appellant(s) or Authorized Agent

Date: January 13, 2005

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: _____

CCC-EXHIBIT 4
(Page 14 of 14 pages)
A-3-PSB-05-002



City of Pismo Beach, California
Planning Commission Agenda Report

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JAN 25 2005

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

SUBJECT: 188 Seacliff, Mark Yandow, Applicant, Project No. 04-0167

Major modification to Coastal Development Permit 03-0177 for a 500 square foot addition to an existing single-family residence. The site is in a single-family residential (R-1) zone and in the St. Andrews Tract, Planning Area E. APN 010-505-014

RECOMMENDATION: Adopt Resolution # 04-0167 approving the major modification.

EXECUTIVE SUMMARY:

On January 27, 2004, the Planning Commission approved an addition on this bluff top lot. The improvements included:

- A new 16' wide concrete driveway with rock salt finish
- A concrete block garden wall with stone veneer and cast stone cap
- An additional 500 s.f. addition on the south side of the property
- Repair of an existing wood deck at the rear of the property
- A 16" x 16" yard drain and sump pump with pipe to face of street curb, with overflow pipe to connect to the existing corrugated metal pipe at the blufftop
- Flag stone pavers at the rear of the site in the blufftop area

Construction commenced on the project in the summer of 2004; however problems were encountered regarding the location of the property line on the south side of the lot. The lot was actually located 2' closer to the location of the addition than previously assumed and approved, resulting in a situation where if the project was built as approved, the 5' setback could not be met. Thus the applicant modified his plans along the south side of the house to meet the setback requirements. However, the configuration of the new design did not provide the type of living space desired by the applicant. Consequently the applicant applied for approval to add onto the garage on the north side of the house. This request triggered an examination of the property and whether there was a recorded public access easement between 188 and 182 Seacliff leading to Spyglass Park. These issues are expanded upon in exhibit 2.

Prepared by: Carolyn Johnson, Planning Manager

Date: September 28, 2004

Approved by: Randy Bloom, Community Development Director

Exhibits:

1. Resolution 04-0167
2. Discussion
3. City Attorney e-mail 09/23/04
4. Project plans

CCC Exhibit 5
 (page 1 of 13 pages)

A-3-PSB-05-002

AGENDA ITEM:

Agenda Item 1B
 Page 1 of 9

**EXHIBIT 1
RESOLUTION NO. 04-0167**

A Resolution of the Pismo Beach Planning Commission approving a major modification to Coastal Development Permit 03-01777 for a 107 s.f. addition to a previously approved addition/ related improvements at 188 Seacliff.

WHEREAS, Mark Yadow ("Applicant") has submitted an application to the City of Pismo Beach for a major modification to coastal development permit 03-0177 to expand the garage in the northwest portion of the property 5' and 107 square feet into an area not previously approved at an existing single family residence at 188 Seacliff; and

WHEREAS, the Planning Commission approved coastal development permit 03-0177 on January 27, 2004 per resolution 03-0177; and,

WHEREAS, the Planning Commission held a duly noticed public hearing on September 28, 2004 for a major modification (04-0167) to coastal development permit 03-0177 at which all interested persons were given the opportunity to be heard; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Pismo Beach, California as follows for the major modification 04-0167:

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

1. The project consists of construction of a single-family residence.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the project.
3. The project is exempt from CEQA

B. FINDINGS FOR APPROVAL OF THE MAJOR MODIFICATION (04-0167) TO COASTAL DEVELOPMENT PERMIT 03-0177:

1. The design and general appearance of the project is in keeping with the character of the neighborhood.
2. The proposed addition and related improvements are consistent with the General Plan/Local Coastal Plan and the Zoning Code/Local Coastal Land Use Plan.
3. The proposed addition and 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 project.

4. The proposed addition and 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.
5. The proposed addition and related improvements will not impair the desirability of investment or occupation in the neighborhood.

The Planning Commission does hereby approve the Major modification 04-1777 (as noted on exhibit A).

UPON MOTION of Commissioner _____, seconded by Commissioner _____ the foregoing Resolution is hereby approved and adopted the 28th day of September, 2004 by the following role call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Chairman Sorgenfrei

ATTEST: _____
Elsa Perez, Deputy City Clerk

CCC Exhibit 5
(page 3 of 13 pages)
A-3-PSB-05-002

EXHIBIT A
PERMIT NO. 04-0167
MAJOR MODIFICATION OF PERMIT NO. 03-0177
PLANNING COMMISSION MEETING OF SEPTEMBER 28, 2004
188 Seacliff , APN: 010-505-014

The property owner and the applicant (if different) shall sign this permit within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant. The conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner and applicant, 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.

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.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit 04-0167 grants planning permits for a single family home to allow a 107 square foot addition and related improvements to a previously approved 500 square foot addition which was reduced to 480 square feet due to an error in survey, as shown on the approved plans with City of Pismo Beach stamp of September 28, 2004. 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 10 days following the receipt of the Notice of Action by the California Coastal Commission, provided that an appeal has not been filed to the City Council within 10 working days of the action or to the Coastal Commission within ten days of receipt of the Notice of Action. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The permits will expire on September 28, 2006 unless inaugurated (i.e. building permits issued and construction begun) prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

CCC Exhibit 5
Page 4 of 13 (pages)

A-3-PSB-05-002

AGREEMENT AND HOLD HARMLESS: I have read and understood, and I will comply with all required standard and special conditions of permit 03-01777. I hereby agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of project #04-0167 located at 188 Seacliff; or my failure to comply with conditions of approval. This agreement shall be binding on all my successors and heirs, administrators, executors, successors and assigns.

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

Applicant

Date

Property Owner

Date

CCC Exhibit 5
(page 5 of 13 pages)

A-3-PSB-05-002

Exhibit 2 Discussion

Issue: Southerly side yard setback

As noted in correspondence from the project architect, Randy Dettmer, during the preparation of the site for construction, "a survey was ordered for the purpose of locating property lines and corners, so that the City approved construction work could be completed with the proper setbacks . . . The results of the survey indicated that the house had been located differently than shown on the building plans during its construction in 1978, and not as reviewed and approved the City for this remodel project. The actual side yard on the northerly property line is 10', instead of 8'" (8' is noted on the January 27, 2004 approved plans)

Issue: Modification of the originally approved plan

As a result of the survey, "it is the intention of the owner at this time to only modify the originally approved site plan, so that the garage can be extended in a manner consistent with the City allowed 5' setback" (to the north). "This situation will provide a 5' space between the garage and the property line." The actual modifications to the plan included a net reduction of 20 s.f. on the south side of the house from the 500 square feet approved by the Planning Commission in January of this year. The applicant now seeks a major modification to the original approval to add a net 107 s.f. onto the garage area.

Issue: Public access easement

The requested modification and premature closing off of the northerly side yard setback for garage addition construction prompted the discussion on the existence of a public access easement leading to Spyglass park located between 188 and 182 Seacliff. If the Planning Commission approves the major modification, there will still be 5' between 188 Seacliff and the property line. Historically this area has been used for public access to Spyglass Park. Research of the sideyard setback area revealed that in 1978 the California Coastal Commission approved the house at 188 Seacliff because the City did not have local coastal jurisdiction at that time. The Coastal Commission approved the project with a requirement for an offer to dedicate a 5' access easement along the northerly property line. The requirement noted the offer to dedicate this access easement was to be accepted by the State or the City. Subsequently in 1978 following the approval, the property owner at that time recorded over the property an offer to dedicate the public access easement. The offer was good until 1990.

Research with the California Coastal Commission indicates that from 1978 – 1982, the Coastal Commission could have accepted the offer to dedicate the public access easement as Coastal Commission jurisdiction continued until 1982. From 1982 to 1990, the offer to dedicate could have but was not accepted by the City. The offer to dedicate the public access easement expired 14 years ago, in 1990.

History notwithstanding, the house at 188 Seacliff was constructed with room for public access that has been used since 1978 when the house was built. The offer to dedicate

the public access easement is noted in the City's 1982 Local Coastal Plan. It is not noted in the 1992 LCP update, as the offer to dedicate the area had expired by that time.

The City Attorney has reviewed the expired 1978 Offer to Dedicate (See exhibit 3) and does not recommend the Commission require a new offer as there does not appear to be a nexus between the project and the requirement. Should the Commission (and ultimately City Council if the project is appealed) concur with this position and approve the project without a new requirement to offer to dedicate an access easement, the project can be appealed to the California Coastal Commission.

COO Exhibit 5
(Page 7 of 13 pages)

A-3-PSB-05-002



PISMO BEACH COUNCIL AGENDA REPORT

SUBJECT/TITLE: 188 SEA CLIFF, TIM PAGE, APPELLANT, PROJECT NO. 04-0167
APPEAL OF SEPTEMBER 28, 2004 PLANNING COMMISSION DETERMINATION TO
APPROVE A MAJOR MODIFICATION TO COASTAL DEVELOPMENT PERMIT 03-0177
FOR A 500 SQUARE FOOT ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE.
THE SITE IS IN A SINGLE-FAMILY RESIDENTIAL (R-1) ZONE AND IN THE ST. ANDREWS
TRACT, PLANNING AREA E. APN 010-505-014

RECOMMENDATION: DENY THE APPEAL AND ADOPT RESOLUTION, (attachment 1)
UPHOLDING THE PLANNING COMMISSION DECISION ON THE COASTAL
DEVELOPMENT PERMIT

EXECUTIVE SUMMARY:

An Appeal of a September 28, 2004 Planning Commission determination on the project
(Attachment) was filed on September 30, 2004 by Tim Page. (Attachment 5)
Discussion of the project and the appeal is found on attachment 2.

FISCAL IMPACT:

Upholding the appeal and overturning the Planning Commission determination could result in
legal fees related to the property owner litigation against the City.
Denying the appeal will minimize City legal costs

OPTIONS:

1. Deny the Appeal upholding the Planning Commission determination (Attachment 1).
 2. As requested by the applicant, uphold the appeal until an access easement between 188
and 182 Seacliff can be secured.
-

ATTACHMENTS:

- 1) Resolution upholding the Planning Commission determination
 - 2) Discussion
 - 3) Planning Commission minutes, September 28, 2004
 - 4) Appeal
 - 5) City Attorney opinion
 - 6) Project plans (attached under separate cover)
-

Prepared by: Carolyn Johnson, Planning Manager

Meeting Date: December 21, 2004

Reviewed and approved by: Randy Bloom, Community Development Director

City Manager Approval: _____

Agenda Item: 5.A
Page 1

**ATTACHMENT 1
RESOLUTION NO. R-04-_____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH UPHOLDING A
PLANNING COMMISSION ACTION APPROVING A MAJOR MODIFICATION TO COASTAL
DEVELOPMENT PERMIT 04-0167 FOR A 500 SQUARE FOOT ADDITION TO AN
EXISTING SINGLE-FAMILY RESIDENCE AT 188 SEACLIFF, APN: 010-505-014**

WHEREAS, Mark Yandow ("Applicant") submitted application(s) 04-0167 to the City of Pismo Beach for approval of a Major Modification to a Coastal Development Permit for a 500 square foot addition to an existing single family residence; and,

WHEREAS, the Planning Commission held a duly noticed public hearing consistent with Zoning Code section 17.54.020 on September 28, 2004, at which all interested persons were given the opportunity to be heard; and,

WHEREAS, On September 28, 2004, the Planning Commission approved the Major Modification to the Coastal Development Permit; and

WHEREAS, Tim Page ("Appellant") filed an appeal of the Planning Commission's September 28, 2004 determination on September 30, 2004 to the City Council; and

WHEREAS, on December 21, 2004, the City Council held a duly notice public hearing to review 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 hereby upholds the action by the Planning Commission approving the Major Modification subject to the Conditions of the Planning Commission approved Coastal Development Permit No. 04-016 and the following findings:

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

1. The project consists of construction of a single-family residence.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the project.
3. The project is exempt from CEQA

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B. FINDINGS FOR APPROVAL OF THE MAJOR MODIFICATION (04-0167) TO COASTAL DEVELOPMENT PERMIT 03-0177:

1. The design and general appearance of the project is in keeping with the character of the neighborhood.
2. The proposed addition and related improvements are consistent with the General Plan/Local Coastal Plan and the Zoning Code/Local Coastal Land Use Plan.
3. The proposed addition and 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 project.
4. The proposed addition and 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.
5. The proposed addition and related improvements will not impair the desirability of investment or occupation in the neighborhood.

UPON MOTION of Councilmember _____ seconded by Councilmember _____ the foregoing Resolution is hereby approved and adopted the 21st day of December, 2004, by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Mayor, Mary Ann Reiss

City Clerk, Lori Grigsby

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Attachment 2 Discussion

The appeal of the Planning Commission's approve is found on attachment 4. The appeal is

"asking the Council to overturn the Planning Commission ruling until a mutually agreed on arrangement is reached regarding this situation. Our intent is to claim prescriptive easement to the access path or to reach other agreement with the property owners at 188 Seacliff Drive that would allow continued and uninterrupted access to our bluff top, beaches and to the open space leading to Spyglass Park using this path. It is also our intent to appeal this decision to the California Coastal Commission if required although we believe that a local agreement can be reached on this matter."

Background:

As noted in the September 28, 2004 Planning Commission staff report, on January 27, 2004, the Planning Commission approved an addition on this bluff top lot. The improvements included:

- A new 16' wide concrete driveway with rock salt finish
- A concrete block garden wall with stone veneer and cast stone cap
- An additional 500 s.f. addition on the south side of the property
- Repair of an existing wood deck at the rear of the property
- A 16" x 16" yard drain and sump pump with pipe to face of street curb, with overflow pipe to connect to the existing corrugated metal pipe at the blufftop
- Flag stone pavers at the rear of the site in the blufftop area

Construction commenced on the project in the summer of 2004; however problems were encountered regarding the location of the property line on the south side of the lot. The lot was actually located 2' closer to the location of the addition than previously assumed and approved, resulting in a situation where if the project was built as approved, the 5' setback could not be met. Thus the applicant modified his plans along the south side of the house to meet the setback requirements. However, the configuration of the new design did not provide the type of living space desired by the applicant. Consequently the applicant applied for approval to add onto the garage on the north side of the house. This request triggered an examination of the property and whether there was a recorded public access easement between 188' and 182 Seacliff leading to Spyglass Park.

Subsequently a survey was conducted to determine correct property lines so the construction would meet the City required setbacks. The survey results indicated that the house had been located differently than shown on the building plans during its construction in 1978, and not as reviewed and approved by the City for this remodel project. The actual side yard on the northerly property line is 10', instead of 8'" (8' is noted on the January 27, 2004 approved plans)

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As a result of the survey, the applicant's representative advised that "it is the intention of the owner at this time to only modify the originally approved site plan, so that the garage can be extended in a manner consistent with the City allowed 5' setback" (to the north). "This situation will provide a 5' space between the garage and the property line." The actual modifications to the plan included a net reduction of 20 s.f. on the south side of the house from the 500 square feet approved by the Planning Commission in January of this year. The applicant now seeks a major modification to the original approval to add a net 107 s.f. onto the garage area.

The requested modification and premature closing off of the northerly side yard setback for garage addition construction prompted the discussion on the existence of a public access easement leading to Spyglass park located between 188 and 182 Seacliff. With the Planning Commission approval of the major modification, there still will be 5' between 188 Seacliff and the property line. Historically this area has been used for public access to Spyglass Park. Research of the sideyard setback area revealed that in 1978 the California Coastal Commission approved the house at 188 Seacliff because the City did not have local coastal jurisdiction at that time. The Coastal Commission approved the project with a requirement for an offer to dedicate a 5' access easement along the northerly property line. The requirement noted the offer to dedicate this access easement was to be accepted by the State or the City. Subsequently in 1978 following the approval, the property owner at that time recorded over the property an offer to dedicate the public access easement. The offer was good until 1990.

Research with the California Coastal Commission indicates that from 1978 – 1982, the Coastal Commission could have accepted the offer to dedicate the public access easement as Coastal Commission jurisdiction continued until 1982. From 1982 to 1990, the offer to dedicate could have but was not accepted by the City. The offer to dedicate the public access easement expired 14 years ago, in 1990.

History notwithstanding, the house at 188 Seacliff was constructed with room for public access that has been used since 1978 when the house was built. The offer to dedicate the public access easement is noted in the City's 1982 Local Coastal Plan. It is not noted in the 1992 LCP update, as the offer to dedicate the area had expired by that time.

City Attorney Opinion

The City Attorney has reviewed the expired 1978 Offer to Dedicate and did not recommend the Planning Commission require a new offer as there does not appear to be a nexus between the project and the requirement. The text of his opinion is noted in attachment 5.

Should the Council concur with the City Attorney's position and uphold the Planning Commission's determination approving the project and denying the appeal without a new requirement to offer to dedicate an access easement, the project can be appealed to the California Coastal Commission.

Conclusion

The City attorney's opinion is very specific. He states, in part: "*I don't think there is a sufficient nexus between the project and its impacts on coastal access to impose a requirement of re-*

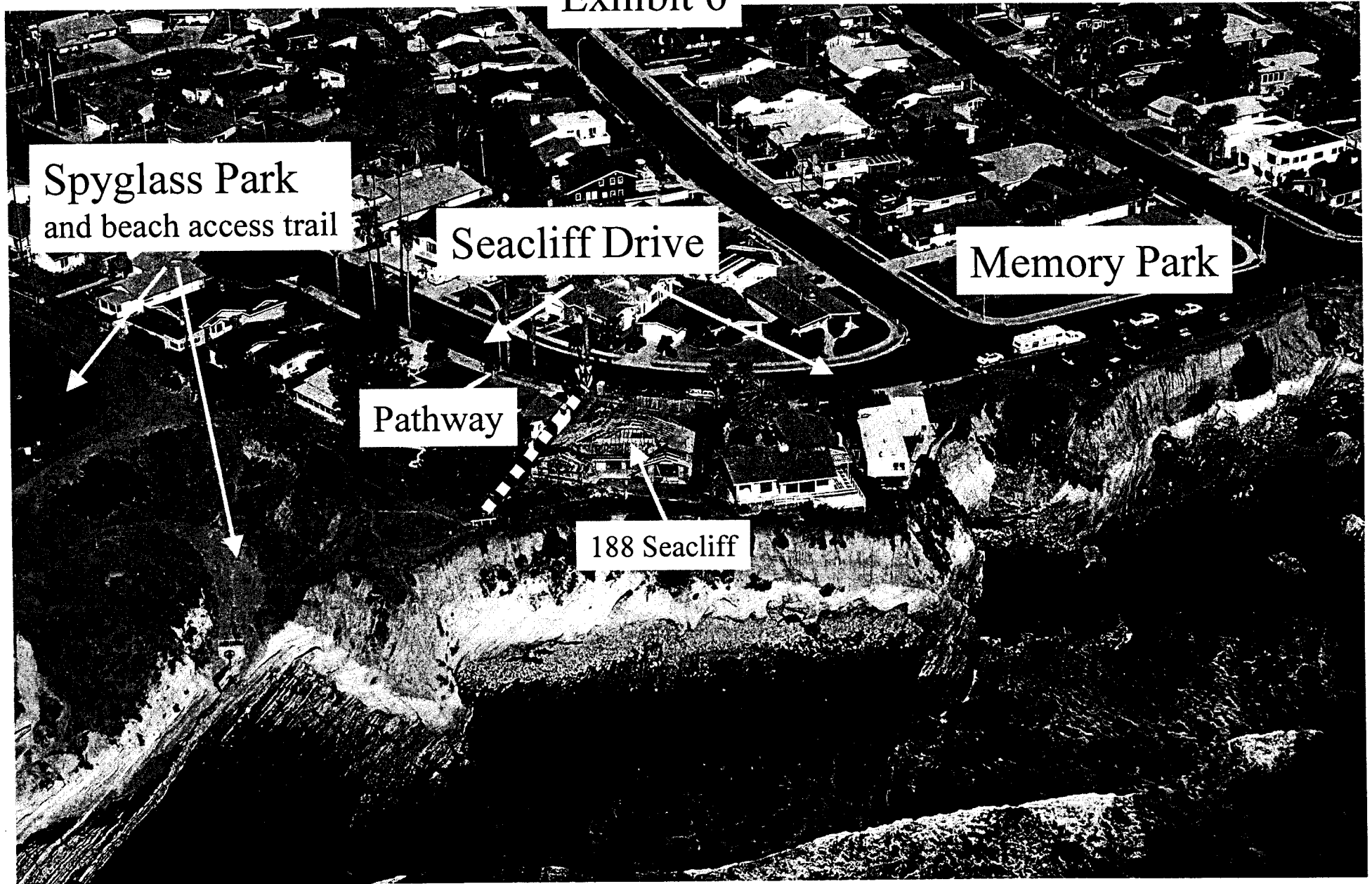
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dedicating a public access easement where the original access was required in the 70's. If the City were to impose such an access easement requirement without the sufficient showing of a nexus, I believe the City could be subject to litigation by the property owner. "
With this advisement, it is recommended the Council uphold the Planning Commission's determination and deny the appeal.

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Exhibit 6



Spyglass Park
and beach access trail

Seacliff Drive

Memory Park

Pathway

188 Seacliff

Exhibit 6

Exclusionary fencing at the front (Seacliff Drive) and rear of property.

