

Item Fr 5a

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Appeal Filed: 12/9/05
49th Day: 1/27/06
Staff: Carey
Staff Report: 12/29/05
Hearing Date: 1/13/06



STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Malibu
LOCAL DECISION: Approval with Conditions
APPEAL NO.: A-4-MAL-05-196
APPLICANT: Arnold Klein
APPELLANTS: 1) Patt Healy and Malibu Coalition for Slow Growth, and 2) David Schack and Jordan Tarlow
PROJECT LOCATION: 6551 Portshhead Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a new 14,950 sq. ft., one-story office building, parking, sign, landscaping, hardscape, alternative on-site wastewater treatment system, off-site improvements, and grading.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 04-005/Variances No. 01-001 and 01-015; City of Malibu Planning Commission Resolution No. 05-48; City of Malibu City Council Appeal 05-007

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the ESHA, streams, environmental review board, grading, and development (setbacks, heights, etc.) provisions of the certified Local Coastal Program (LCP). Motion and resolution can be found on **Pages 3 and 4**.

I. APPEAL JURISDICTION

The project site is located on Point Dume, near Pacific Coast Highway. (Exhibit 1). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends to 100 feet from the stream that is located just offsite, along the western boundary of the site. The proposed project site is within this appeal area. As such, the City's coastal development permit for the subject project is appealable to the Commission.

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5]).

2. Grounds for Appeal

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds

on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on substantial issue. A majority vote of the members of the Commission is required to determine that the Commission will not hear an appeal. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that substantial issue does exist, the Commission will consider the application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On September 6, 2005, the City of Malibu Planning Commission approved Coastal Development Permit 04-005, Variances 01-001 and 01-015, and Site Plan Review 01-002 for the office building project. The permit was appealed by David Schack and Jordan Tarlow to the City of Malibu City Council. The City Council denied Appeal 05-007 on November 28, 2005. The Notice of Final Action for the project was received by Commission staff on December 2, 2005. A ten working day appeal period was set and notice provided beginning December 5, 2005, and extending to December 16, 2005.

Two separate appeals of the City's action were filed by 1) Patt Healy and Malibu Coalition for Slow Growth (December 9, 2005), and 2) David Schack and Jordan Tarlow (December 15, 2005), both during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeals and requested that the City provide its administrative record for the permit. The administrative record was received on December 22, 2005.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-05-196 raises NO substantial issue with respect to the grounds on which the appeals have 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 NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-05-196 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 04-005 (including Variances Nos. 01-001 and 01-015, and Sign Permit 01-002) for the construction of a new 14,950 sq. ft., one-story office building, 60 parking spaces, sign, landscaping, hardscape, alternative on-site wastewater treatment system, off-site improvements, and grading (including 11,840 cu. yds. of removal and recompaction, 2,360 cu. yds. of understructure grading for foundations, 750 cu. yds. of grading for safety improvements, and 2,150 cu. yds. of non-exempt grading). The office building, as shown on Exhibit 4, is comprised of six linked structures (designated "A" through "F").

The approved project site is a 2.29-acre parcel located at the southwest corner of Pacific Coast Highway and Portshhead Road, in the Point Dume area of Malibu (Exhibit 2). There is a Caltrans right-of-way area located between the site and Pacific Coast Highway and the site is lower in elevation than the highway. The site slopes down from Portshhead Road toward the west. There is a stream just offsite that runs parallel to the western property line. This un-named stream is shown as a blue-line stream on the United States Geologic Survey map of the area. The stream extends through a pipe under Pacific Coast Highway for a short stretch north of the highway. Although not specifically addressed in the City's CDP staff report, earlier City actions on the project site identified the presence of willow and other riparian plant species within the drainage and extending onto the project site. As approved, the plans show that a setback of 50 feet is provided from all of the structures to the riparian canopy. The proposed parking lot does not extend closer than 50 feet from the riparian canopy in the northern area of the site. The parking lot is proposed to be constructed of turf blocks to maximize permeability and all runoff is to be collected and treated.

The approved project site is designated as “Commercial Neighborhood” (CN) by the Malibu LCP. Professional offices are a permitted use within this zone. The LIP states that:

The CN District is intended to provide for low intensity commercial activity emphasizing service to the residents in the surrounding neighborhoods. This District establishes standards which ensure that the types of uses and development pattern maintain compatibility with nearby and adjacent residential areas.

Professional offices are a permitted use within this zone. There are several parcels along the south side of Pacific Coast Highway in this area that are zoned for neighborhood commercial, community commercial, or visitor serving commercial uses. Many of these parcels are already developed with such uses. There is an existing office building right across the street from the project site, on the southeast corner of Pacific Coast Highway and Portshhead Road. South of this strip of commercially-designated parcels, the primary land use is residential.

B. APPELLANTS’ CONTENTIONS

The City’s action was appealed by 1) Patt Healy and Malibu Coalition for Slow Growth, and 2) David Schack and Jordan Tarlow. The contentions of each appellant are described separately below.

Patt Healy and Malibu Coalition for Slow Growth

The appeal filed by Patt Healy and Malibu Coalition for Slow Growth is attached as Exhibit 11. This appeal contends that the approved project, as conditioned, does not meet requirements of the Malibu LCP and gives 6 grounds for the appeal. None of the contentions reference specific policies or standards of the Malibu LCP. Four of the grounds are closely related and concern the blueline stream that is located just offsite along the western property line, as follows.

1. Blueline Stream. Streams are ESHA whether or not they are mapped. The project is too close to the stream.
2. Riparian Habitat. When this project was first reviewed for conformance to the zoning code, the City biologist identified this as a willow riparian woodland and required 50-foot setback from the outer riparian habitat.
3. Setback. Under the LCP streams require 100-foot project setback from streams and if there is riparian habitat from the outer riparian canopy. The City required construction fencing to be placed 35 feet from the outer edge of the riparian habitat to protect the site’s sensitive habitat areas.
4. Slope. In addition to the required 100-foot setback, on Point Dume there can be no encroachment on slopes of 25 percent or greater. It appears that this project could be on a slope greater than 25%.

The other two assertions are that the project did not receive review by the ERB, and that the grading approved far exceeds the allowable 1,000 cu. yds.

David Schack and Jordan Tarlow

This appeal is attached as Exhibit 12. The appeal of David Schack and Jordan Tarlow asserts that the project, as approved, is not consistent with five specific sections of the Malibu LIP, as follows.

5. LIP Section 4.6.1. The 100-foot buffer from the outer edge of riparian vegetation required by this section is not met in that improvements would be located within 100 feet of the stream and riparian vegetation.
6. LIP Section 3.12.5 A, 2. The project violates this section by locating all parking (60 spaces) in the required front yard setback. The parking is across the street from, and injurious to a residential neighborhood. The City approved a variance from this standard without justification.
7. LIP Section 3.8, A, 1, b. The project's height of 23 feet exceeds this standard of 18 feet. The City approved the height notwithstanding the fact that the project blocks public and private views and was not justified.
8. LIP Section 3.8, A, 2. The project does not meet this front yard setback standard 20 percent of the total lot depth. The City approved a modification of this standard without regard to the effect on the neighborhood and without justification.
9. LIP Section 8.3 B. The project exceeds the maximum grading. The City approved a variance without justification.

In addition, two other reasons the project does not conform to the Malibu LCP are listed, but no specific policies or standards of the LCP are identified. One is that the proposed project creates a traffic safety hazard at Portshead Road and Pacific Coast Highway, and the other is that the necessary findings to support the project were not and cannot be made.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as a ground for appeal.

The appeals raise no substantial issue with regard to the grounds on which the appeals has been filed, as discussed below.

1. Streams and Environmentally Sensitive Habitat Areas

Both appeals contend that the project does not provide an adequate setback or buffer between the approved structures and the stream/riparian vegetation. David Schack and Jordan Tarlow assert that the project does not comply with LIP Section 4.6.1 by not providing a 100-foot buffer. Patt Healy and Malibu Coalition for Slow Growth state that streams are ESHA whether or not they are mapped, that the project is too close to the stream, and that the LCP requires 100 foot setback from streams, and if there is riparian vegetation, from the outer riparian canopy. Finally, Patt Healy and Malibu Coalition for Slow Growth state that in addition to the 100 foot setback, on Point Dume there can be no encroachment on slopes of 25 % or greater and that it appears that the project may be on a slope greater than 25 percent.

The Malibu LUP contains the following policy regarding streams:

3.35 Development in the Point Dume area shall be designed to avoid encroachment on slopes of 25 percent grade or steeper.

Additionally, Section 4.6.1 of the Malibu LIP states, in part, the following with regard to buffers:

4.6.1. Buffers

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

However, in the Point Dume area, new development shall be designed to avoid encroachment on slopes of 25 percent grade or steeper.

...

There are additional policies and standards contained in the Malibu LCP that pertain to the protection of ESHAs. However, the stream canyons on Point Dume are not designated ESHA (with the exception of one canyon on the west side near Birdview

Avenue), as shown on the ESHA Map. The stream that abuts the subject site is not designated ESHA.

The LCP does recognize that the ESHA Map is meant to generally depict the location of habitat that meets the definition of "ESHA". The LCP policies and standards provide for the protection of habitat that is determined through site specific study to meet the definition of ESHA, even if it is not shown as such on the ESHA Map. Further, the LCP provides for a 100-foot buffer around streams, regardless of whether they are designated as ESHA.

However, in adopting the City of Malibu LCP, the Commission specifically determined that the stream canyons on Point Dume do not meet the definition of ESHA and that a different buffer requirement was provided for these streams (Exhibit 13 contains a portion of a draft transcript of the LCP hearing where this modification was made). As stated in LUP Policy 3.35 and LIP Section 4.6.1A, the appropriate buffer is to be provided by requiring development to avoid encroachment on slopes of 25 percent grade or steeper. The revised findings adopted for the Commission's adoption of the City of Malibu LCP state that:

In the case of canyons on Point Dume, the LUP requires (Policy 3.35) that all new development is designed to avoid encroachment on slopes of 25 percent or steeper. The steeper portions of the canyon slope will function as a buffer to development, minimizing human intrusion, and protecting stream and riparian habitats by providing area for infiltration of runoff, and minimizing erosion and sedimentation. However, it is recognized that given the existing pattern of development and lot configurations, it is not, in most cases, possible to provide a buffer where no fuel modification will occur. Even with development designed to avoid encroachment on slopes of 25 percent or greater, it is likely that at least some fuel modification measures will be required on canyon slopes. However, the complete vegetation clearance required in the fuel modification zone nearest structures will be located above or near the top of the canyon slope. Additionally, some distance will be provided for runoff infiltration and separation of human intrusions such as noise and night lighting. In this way, impacts to the stream and riparian habitat will be minimized.

Based on this record of the Commission's action to adopt the Malibu LCP, it is clear that the intent behind the policies that relate to the stream canyons on Point Dume was that they are not to be considered ESHA, but a buffer is still required to minimize human intrusion and impacts to water quality. The required buffer around these streams is provided by avoiding development on slopes of 25 percent grade or steeper.

In this case, no ESHA is designated on the site. There is however, a stream that is located just offsite that runs parallel to the west (rear) property boundary. This unnamed stream is shown as a blue-line stream on the United States Geologic Survey map of the area. The stream extends through a pipe under Pacific Coast Highway for a short stretch north of the highway. Although not specifically addressed in the City's CDP staff report, earlier City actions on the project site identified the presence of willow and other riparian plant species within the drainage and extending onto the project site. As approved, the plans show that a setback of 50 feet is provided from all of the structures

to the riparian canopy. The proposed parking lot does not extend closer than 50 feet from the riparian canopy in the northern area of the site.

In approving the CDP, the City applied the standard of LIP Section 4.6.1 A and found that the project did not include any structures on slopes exceeding 4:1 (staff would note that 4:1 grade and 25 percent grade represent the same slope). Staff has reviewed a topographic map of the site, along with a slope analysis provided to the City by the project applicant. It is clear that no structures were approved in any area with slopes of 25 percent grade or steeper. The only areas that contain slopes which are that steep is: 1) very near the western property line, right above the stream bank; and 2) a small area at the southern edge of the site. The remainder of the site contains slopes that are less steep than 25 percent. None of the approved structures will be located on these areas of 25 percent grade. As such, the approved project is consistent with the buffer requirements of the LCP.

Therefore, the offsite stream and riparian canopy are not designated ESHA by the Malibu LCP, the stream buffer required for this area by the LCP is the avoidance of building on slopes that 25 percent grade or steeper, and the project meets the stream buffer standard. As such, the appellants' contentions regarding ESHA and buffers raise no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Environmental Review Board

The appeal filed by Patt Healy and Malibu Coalition for Slow Growth contends that the project is not consistent with the LCP in that it was not reviewed by the ERB (Environmental Review Board). Policy 3.39 of the Malibu LUP requires that the ERB, in consultation with the City Biologist, review development: "within or adjacent to designated ESHA or other areas containing ESHA identified through a biological study..."

In this case, as described above, the project site is not located within or adjacent to ESHA. As such, no City ERB review is required by the policies or provisions of the LCP. Therefore, this contention raises no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Grading

Both the appeal filed by Patt Healy and Malibu Coalition for Slow Growth and the appeal of David Schack and Jordan Tarlow assert that the approved project includes grading in excess of that allowed by the Malibu LCP. David Schack and Jordan Tarlow further note that although the City approved a variance to allow more grading than the maximum, the variance was without justification.

Section 8.3 B of the Malibu LIP states that:

B. Maximum Quantity of Grading.

Notwithstanding any other provisions of the Malibu LIP, grading within a residential lot or per acre of commercial development (total cut and fill) is limited to 1,000 cubic yards as follows.

1. In conjunction with any grading, so that the maximum is not greater than 1,000 cubic yards (exclusive of remedial grading) cut and fill may be allocated as follows:
 - a. Balanced cut and fill up to 1,000 cubic yards; or
 - b. Export of no more than 1,000 cubic yards; or
 - c. Import of no more than 500 cubic yards, where additional grading on site does not exceed 500 cubic yards in conjunction with any landform alteration so that the maximum is no greater than 1,000 cubic yards; or
 - d. Any combination of the above that does not exceed 1,000 cubic yards.
2. The export of cut material may be required to preserve the natural topography of the project site. Cut material may only be exported to an appropriate landfill or a site permitted to accept material.

Sections 8.3 G, H, and I provide that remedial grading to stabilize geologic hazards, grading for installation of water quality best management practices, and grading for foundations, basements, or safety purposes is not be included in the 1,000 cu. yd. Maximum.

As described above, the approved project involves grading (including 11,840 cu. yds. of removal and recompaction, 2,360 cu. yds. of understructure grading for foundations, 750 cu. yds. of grading for safety improvements, and 2,150 cu. yds. of non-exempt grading). As provided in Section 8.3 of the LIP, the grading approved for removal and recompaction, understructure, and safety improvements is not counted towards the maximum grading limitation. LIP Section 8.3 B provides that the maximum grading volume is 1,000 cu. yds. for a residential lot or 1,000 cu. yds. for each acre of commercial development. As the project site is 2.29-acres in size, this standard could be interpreted to allow for up to 2,290 cu. yds. of grading. It would seem that the project's 2,150 cu. yds. of "non-exempt" grading is consistent with the maximum standard. However, the City applied a standard of 1,000 cu. yds. for the whole project and approved a variance to permit the 2,150 cu. yds. of grading. The City did provide the findings required by the LIP to grant a variance for the grading over 1,000 cu. yds. The staff report states that the grading is necessary to provide a level portion of the site to provide for parking and connectivity throughout the complex as well as to minimize the project's visibility from PCH and Portshead Road. Additionally, the City found that not approving the grading variance could result in pushing the development closer towards the stream offsite to the west.

It is clear that the grading on the site is proposed in order to set the buildings and parking into the slope, below the grade of Pacific Coast Highway and Portshead Road. In so doing, impacts to visual resources will be minimized. Although the City processed a variance for grading over 1,000 cu. yds., it seems that the proposed project could be considered to comply with Section 8.3 of the LIP. The City's CDP is conditioned to require the applicant to landscape all graded or disturbed areas with native plants, to grade the project only during the dry season, and to fence the site 35 feet from the outer edge of the riparian canopy. These provisions will serve to minimize the impacts of grading on the stream. As such, the assertion of the appeals that the grading is in excess of what is allowed under the LCP raises no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Front Yard Setbacks

David Schack and Jordan Tarlow assert that the project does not comply with the LIP with regard to the required front yard setback and the requirement to not locate parking spaces within the setback area.

LUP Policies 3.29 and 3.30 state that:

3.29 Modifications to required development standards that are not related to ESHA protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA

3.30 Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

LIP Section 3.8 A2 states, in part, that:

2. Non-Beachfront Yards/Setbacks. The following yard/setback requirements apply to all lots, except beachfront lots:

a. Front yard setbacks shall be at least 20% of the total depth of the lot.

Section 3.12.5 A2 of the Malibu LIP states that:

2. The required parking spaces may be located in interior side and rear setbacks. No parking space, either required or otherwise, shall be located in any required front or street-side setback area, unless regulations provide otherwise.

As part of the subject CDP, the City approved a minor modification to reduce the required front yard setback from 77.4 feet to 59 feet. The City found, in approving this request, that reducing the front yard setback would allow for provision of a larger setback area from the stream located just offsite of the rear property line. The reduction

in the setback will not adversely impact visual resources or neighborhood character because the structures are designed to be below the existing grade of the adjacent roadways. In addition to the reduced front yard setback, the City approved a variance to allow the off-street parking for the project to be located within the front yard setback area. The City found that allowing the parking to be located in this area would minimize grading and allow the development to be located further away from the stream, would be consistent with other existing commercial development in the area, and would not confer a special privilege on this project.

Staff would note that Policies 3.29 and 3.30 of the LUP require the City to grant modifications to general development standards like setbacks where doing so will reduce or minimize impacts to ESHA. Although the riparian vegetation on the project site is not considered ESHA (as discussed above), the purpose is the same. Providing a larger setback at the rear of the site where the riparian vegetation is located will serve to reduce human intrusion and impacts to water quality. In approving the minor modification and variance to reduce the front yard setback and to allow the parking to be located within the setback, the City has met the resource protection intent of LUP Policies 3.29 and 3.30. The City made the required findings for granting such approvals. As such, this contention raises no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Building Height

The David Schack and Jordan Tarlow appeal contends that the City's approval of a maximum building height for the project of 23 feet exceeds the LIP standard of 18 feet, will block public and private views and is not justified under LIP Section 13.27. The appellants do not specify how the proposed project will block views or if the views they believe will be blocked are of the ocean, coast, or other features.

Section 13.27 of the Malibu LIP provides that a site plan review may be approved to permit an increase in height over 18 feet, not to exceed 28 feet in height if certain findings can be made. Following are the applicable findings:

13.27.5 Findings

(A) The Planning Director may approve or conditionally approve a site plan review application only if the Planning Director affirmatively finds that the proposal meets all of the following:

1. That the project is consistent with policies and provisions of the Malibu LCP.
2. That the project does not adversely affect neighborhood character.
3. That the project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The City approved a site plan review as part of the subject CDP to allow a portion of the proposed development to exceed 18 feet in height. Building E (as shown on Exhibit 8) at the southern area of the site is the only part of the project that will be over 18 feet in height from existing grade. This building is approved for a maximum height of 23 feet. In approving the site plan review request, the City made the findings (Exhibit 9) required under LIP Section 13.27.5. Specifically, the City found that the office buildings will be partially below grade to limit their visibility and will not adversely impact neighborhood character, which includes a mix of commercial and residential development.

Although the LCP does not provide for protection of private views, given the location of the proposed project relative to existing development, it is clear that the structures will not be located between existing structures and their view of the ocean or coast. Further, the project site is well inland on the northern edge of Point Dume. As such, no views of the ocean or coast would be available to the public from Pacific Coast Highway or other public streets in the area. The proposed project would therefore not block public views of the ocean or coast. There are no public parklands or trails in the immediate area where views would be impacted by the proposed project. Finally, project has been designed to take advantage of the topography of the site and to sink the development into the grade. The rooftop of the proposed structures will be lower than the elevations of Pacific Coast Highway or Portshead Road adjacent to the project site. So, not only will no public views be blocked, any potential impacts to visual resources will be minimized. As such, this contention raises no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Other Issues

The David Schack and Jordan Tarlow appeal states that the project will create a traffic safety hazard at the corner of Portshead Road and Pacific Coast Highway and that the City failed to require any traffic study. Further, this appeal asserts that the necessary findings to support the project were not and cannot be made, including that the project is the least environmentally damaging alternative. The appeal does not provide specific LCP policies or provisions that are pertinent to these contentions. Staff would note that the City made findings regarding the potential environmental impacts of the approved project, including alternatives. As discussed in the City staff report, and as described above, the project was designed to minimize impacts to coastal resources, including stream and riparian habitat and visual resources. The findings required by the LCP were made.

The LCP does not have specific policies or provisions regarding traffic or traffic safety, with the exception of several that require adequate provision of transit services and off-street parking in order to minimize impacts to routes that the public uses to gain coastal access. The appellants have not asserted that the approved project will impact the public's ability to access the coast. Staff cannot identify any potential impacts to public access as Portshead Road is not a main route used by the public for coastal access.

As such, these contentions raise no substantial issue with regard to consistency of the approved project with the policies and provisions of the certified LCP.

D. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the City's certified LCP regarding ESHA, streams, environmental review board, grading, development standards, including setbacks, height, and parking. Therefore, the Commission finds that the appeals do not raise a substantial issue as to the City's application of the policies of the LCP in approving the proposed development.