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Filed: 02/21/06
49-day waiver: 02/21/06
Staff: MW-SC
Staff report prepared: 06/22/06
Hearing date: 07/13/06

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-PSB-06-011, Freeland SFR Demolition / Rebuild
ApplicantsMatthew Freeland
Appellant.....Mary Chalmers
Local governmentCity of Pismo Beach
Local decisionApproved with conditions (January 17, 2006)
Project location334 Indio Drive (landward side of Indio Drive) in the Sunset Palisades planning area of the City of Pismo Beach (APN 010-191-02).
Project descriptionDemolition of an existing 1,615 square foot single-story residence and garage. Construction of a 3,740 square foot two-story residence with 925 square foot garage on a 6,604 square foot lot.
File documents.....City of Pismo Beach Certified Local Coastal Program; City of Pismo Beach Coastal Development Permit Application File 05-0162.
Staff recommendation ...**No Substantial Issue**

Summary of Staff Recommendation: This is the substantial issue determination for appeal number A-3-PSB-06-011. The City of Pismo Beach conditionally approved a project to demolish an existing 1,615 square foot single story residence with garage and construct a roughly 3,740 square foot two story residence with 925 square foot garage on a 6,604 square foot lot. A single-family residence with garage is a principally permitted use in the R-1 (Single Family Residential) zone and is consistent with the LCP low-density land use designation (1 to 4 units per acre). The project is located landward of the first public road at 334 Indio Drive in the Sunset Palisades planning area of the City of Pismo Beach, San Luis Obispo County (location map attached as Exhibit 1), and is appealable to the Commission because it is within 300 feet of the coastal bluff.

The Appellant contends that the City-approved project is not consistent with LCP development standards regarding maximum height and design, and thus will not adequately protect the community and visual character of the Sunset Palisades neighborhood. The Appellant further contends that the City's approval is inconsistent with LCP standards protecting archaeological and marine resources, and fails to comply with LCP laws regulating development in hazardous areas and along coastal bluffs.



**California Coastal Commission
July 13, 2006 Meeting in San Diego**

Staff: M. Watson Approved by:

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These contentions do not raise a substantial issue for the following reasons:

1. Scenic and Visual Resources / Community Character Issues. The proposed two story residential dwelling is of modern architectural design that meets the LCP standards for mass/scale, floor area, lot coverage, and height requirements. The City conditioned its approval to require a licensed surveyor / engineer verify pad elevations, setbacks, and roof elevations. Prior to obtaining a framing inspection, a certified survey of the height of the building including finishing materials must be submitted to the City that is in conformance with the approved plans. The proposed Mediterranean style design and earth-tone coloration and finish materials are compatible with the style and design of many newer homes in the Sunset Palisades neighborhood. The project has been designed to add offsets and articulation that break up mass, add visual interest, and minimize visual impacts. The project will join an eclectic mix of neighborhood residences and will not adversely impact the character of the surrounding area, or block or degrade views of the coast available to the public. Therefore, the appeal does not raise a substantial issue regarding the protection of community character or scenic coastal views.

2. Archaeological Resources. The site of the proposed residence was part of an oil refinery in the early 20th century. More recently, the area has been subdivided and developed with single-family residences. The lot, as well as those directly adjacent have undergone grading and disturbance that has compromised the integrity of any potential archaeological / cultural resources. A phase one archaeological survey of the lot at 334 Indio Drive found there were no intact prehistoric or historic cultural materials anywhere on site, though it identified the presence of displaced archaeological / cultural materials. The principal archaeologist recommended that an archaeological monitor be present during demolition of the residence and excavation of the lot in the event any isolated cultural materials are uncovered. The monitor will be required to follow standard protocols of stopping work to record the finds and making further recommendations on how to treat the materials. The City followed the recommendations of the archaeological report and conditioned the permit to require evidence of a contract for archaeological monitoring with both an archaeological monitor and a Native American monitor consistent with LCP requirements. Therefore, the appeal does not raise a substantial issue.

3. Marine Resources. The site of the proposed development is located on the inland side of Indio Drive – the first public road paralleling the blufftop. To ensure that construction debris, sediment, and other pollutants do not make their way into watercourses and ultimately the marine environment, the City has conditioned its permit to require implementation of construction best management practices during demolition, excavation, and reconstruction of the new residence. Grading will only be allowed during summer months and the applicant must have an approved erosion and sediment control plan prior to commencing construction. Post-construction conveyance of all surface and subsurface water will be through downspouts and subdrains that extend into discharge areas away from the structural foundation. Storm water overflow will ultimately find its way to the City's storm drain system for conveyance in a non-erosive manner. Accordingly, the appeal does not raise a substantial issue.

4. Hazards. As noted above, the site of the proposed development is located on the inland side of Indio



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Drive, more than 200 feet from the coastal bluff top edge. The bluff at this location is mainly comprised of Monterey Shale formation overlaid with a shallow marine terrace deposit. The 1992 Fugro West Bluff Study Update (August 2002) estimated a long-term annual bluff erosion rate of 4 inches per year (33 feet in 100 years) at this location. The project site is not located on an unstable slope or bluff top edge and will not be subject to wave attack. All construction activities will occur well outside the 100-year bluff retreat zone and pose no threat to the stability of the bluff and are consistent with LCP hazard provisions. As a result, the contentions do not raise a substantial issue.

Therefore, Staff recommends that the Commission find that no substantial issue exists with respect to this projects conformance with the certified City of Pismo Beach LCP and thereby decline to take jurisdiction over the coastal development permit for the project.

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1. Appeal of City of Pismo Beach Decision

A. Local Government Action

On January 17, 2006 the Pismo Beach City Council upheld the Planning Commission decision (denied



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an appeal by Mary Chalmers) on City permit Application No. 05-0162 and approved the proposed project subject to multiple conditions (see Exhibit 2 for the City's Final Local Action Notice including staff report findings and conditions). Notice of the final City action on the Coastal Development Permit was received in the Coastal Commission's Central Coast District Office on February 3, 2006. The Commission's ten-working day appeal period for this action began on February 6, 2006 and concluded at 5:00 P.M. on February 21, 2006. A valid appeal by Mary Chalmers was received during the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 300 feet of the coastal 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 LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea, and thus this additional finding need not be made in a de novo review in this case.

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

C. Appellant's Contentions

In summary, the Appellant contends that the project does not conform to LCP development standards regarding height and building design, and as a consequence impacts visual resources and community character. The Appellant also maintains that the City approval fails to adequately protect archaeological



and marine resources, and authorizes development within a known hazards area. Please see Exhibit 3 for the Appellant's complete appeal document.

2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-PSB-06-011 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. 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 Number A-3-SCO-05-073 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Description

A. Project Location

The project is located at 334 Indio Drive in the Sunset Palisades planning area of the City of Pismo Beach. The Sunset Palisades planning area is an ocean-oriented neighborhood with a backdrop of the coastal foothills. It is one of the older beachside subdivisions and located at the northern edge of town. This is the first planning neighborhood within the City as seen from the north and it offers the first glimpse of the ocean in more than 100 miles for southbound Highway 101 travelers.

The planning area is almost totally developed in low-density residential use with only a few scattered vacant residential lots. Development in the Sunset Palisades ranges between older single-story ranch-



style homes to fairly large modern two-story residences on lots ranging between 6,500 square feet and roughly 15,000 square feet. Scarcity of vacant lots and the desirability of the quiet scenic neighborhood will likely continue to drive the current trend of demolition and rebuild.

B. County Approved Project

The City of Pismo Beach approved a coastal development permit to demolish an existing 1,615 square foot residence with garage and construct a 3,740 square foot two-story residence with 925 square foot garage. The proposed new residence will be constructed on a 6,604 square foot lot directly inland of Indio Drive, the first public road parallel to the sea. The proposed structure incorporates a modern Mediterranean design with a tile roof, columns at the entry, and earth-tone stucco finishing. Exterior materials include copper rain gutters, downspouts, and chimney shrouds. The applicant also proposes large glass-paneled tinted windows, wood entry door, and wood sectional roll-up garage door. The second story is setback from the first and the architect has included offsets and articulations to breakup overall massing. Please see Exhibit 5 for exterior elevations and renditions.

4. Substantial Issue Findings

A. Policies Cited by Appeal

The Appellant has identified numerous LCP policies as the basis for the appeal, but generally refers to the project not meeting the goals of the LCP, as it relates to site design, character of the community, and visual resource impacts. See exhibit C for the Appellants complete appeal documents.

B. Analysis of Consistency with Cited Policies

1. Visual Resources / Community Character Issues

a. LCP Policies

The following LCP design policies and standards are protective of visual resources and require visual compatibility with the developed character of neighborhoods and adjacent areas. The LCP site design and visual resource policies applicable to the Appellant's visual and community character contentions include:

The General Plan/Local Coastal Plan

The Pismo Beach General Plan/Local Coast Program is the City's constitution for physical development and change within the existing and future city limits. The Plan is a legal mandate that governs both private and public actions.

The general plan is atop the hierarchy of local government law regulating land use. Subordinate to the general plan are specific plans, ordinances and zoning laws. Zoning laws must conform to the adopted general plan.



17.006.0460 Fill: *The depositing of earth or any other substance or material by artificial means, including new pilings (except for replacement pilings) placed for the purposes of erecting structures thereon placed in a submerged area, any action by which earth, sand, gravel, rock or any other material is placed, pushed, pumped, pulled, transported, or moved to a new location above the natural surface of the ground or on top of the stripped surface and shall include the conditions resulting therefrom.*

17.006.0908 Site Grade: *Phrase used in the Zoning Code ordinance to establish lot grade for the purpose of determining building heights and other development criteria. Site grade is determined as follows:*

- a. *For subdivided properties existing as of the time of adopting of the October 12, 1976 Zoning Ordinance, site grade shall be the existing topography of each parcel as of October 12, 1976.*

17.081 Height Limitations (HL) Overlay Zone

17.081.010 Purpose of Zone. *The Height Limitations (HL) Overlay Zone is intended to set special restrictions on maximum building heights in designated areas of the City in order to preserve access to extraordinary scenic views and vistas, as well as to preserve and maintain bulk and scale relationships for selected areas. These regulations are intended to preserve and protect the existing character of certain districts, according to stipulations established in the General Plan/ Local Coastal Program Land Use Plan.*

17.081.020 Criteria and Standards.

HL-1: *In all low density areas identified in the HL Overlay Zone Map, except the Central Sunset Palisades Planning Area, no structures shall exceed 15 feet in height when measured from the highest point on the roof to the highest point of the site grade, nor shall any such structure exceed 25 feet when measured from the highest point of the roof above the center of the building footprint at site grade.*

GP/LUP Principle P-7 Visual Quality is Important

The visual quality of the city's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the sea should be emphasized even when it is not visible. Designs reflective of a traditional California seaside community should be encouraged.

GP/LUP Policy D-2 Building and Site Design Criteria

a. Small Scale



New development should be designed to reflect the small scale image of the city rather than create large monolithic buildings. Apartment, condominium and hotel buildings should preferably be contained in several smaller massed buildings rather than one large building. Building mass and building surfaces such as roofs and exterior wall shall be highly articulated to maintain a rich visual texture and an intimate building scale.

Maximum height, setback and site coverage standards to achieve the desired small scale character will be regulated by City ordinance. Except where specified otherwise by this Plan or further limited by the implementing ordinance, the maximum height standard for new buildings shall not be more than 25 feet above existing natural grade in Neighborhood Planning Areas A through J, and Q; and not more than 35 feet above existing natural grade in the remaining portions of the Coastal Zone.

...

c. Views

Views to the ocean, creeks, marsh and surrounding hills should be preserved and enhanced whenever possible. The feeling of being near the sea should be emphasized, even when it is not visible.

GP/LUP Policy P-16 Historic Ambiance

Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in the downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation. This ambiance provides a link with the past, creates a pleasant experience, and adds to community diversity.

GP/LUP Neighborhood Planning Areas Background

The City has been divided into 18 Neighborhood Planning Areas as shown on Figure LU-3. Specific background and policies applying to each area are indicated in the following sections.

**Sunset Palisades/Ontario Ridge: Planning Area A
Background**

The Sunset Palisades area is an ocean oriented, low profile residential neighborhood with a backdrop of the coastal foothills. The planning area is almost totally developed in low density residential use with only a few scattered vacant residential lots. It includes the Ontario Ridge area which was annexed to the City in 1990 and was being developed as of 1992. The bluff tops along the Sunset Palisades stretch of coast are primarily under private ownership. The bluff tops in Ontario Ridge consists of a 9 acre open space/recreational parcel under ownership of the homeowners association but with public access rights.

The base of the bluffs is an intertidal habitat, natural resource area, which should be protected. Public access to this sensitive area should be limited. Damage by wave conditions is possible and bluff erosion is an ongoing process. Some residences along the bluffs have provided their own stairways to small beaches. Some of these have been damaged in past storms. Seawalls to



protect an existing structure are permitted only if there is no other less environmentally damaging alternative.

The Sunset Palisades area contains 6 acres of private open space in a gated community as well as the 5.7 acre Palisades public park. Fifty three acres of land on the upper slopes of Ontario Ridge are in permanent open space. ... Archaeological resources are evident in the area.

GP/ LUP Policy LU-A-6 Concept

Sunset Palisades, an area of existing homes with scattered vacant lots, shall be designated for Low Density Residential. The emphasis is on maintaining coastal views, open space and protecting the coastal bluff and intertidal habitat area. Infill development shall be compatible with the existing community.

GP/ LUP Policy LU-A-7 Height of Structures

a. El Portal Drive, Indio Drive

No structure shall exceed 15 feet in height when measured from the highest point of the site natural grade to the highest point of the structure; nor shall any such structure exceed 25 feet, in height, when measured from the highest point of the roof above the center of the building foot print to the elevation of the natural grade directly below that point.

b. Remainder of Planning Area

No structure shall exceed 15 feet in height as measured from the height of the center of the finished building pad grade as designated in the final tract Grading Plan at the time of recordation.

17.105.080 Views. *It shall be the responsibility of the City to protect scenic views consistent with the General Plan/Local Coastal Program Land Use Plan and all of its Elements.*

17.105.130 Architectural Review. *Drawings, sketches and site plans for applications required for Architectural Review under the provisions of Chapter 17.121 shall be considered in an endeavor to provide that the architectural and general appearance of such buildings or structures and grounds be in keeping with the character of the neighborhood and such as not to be detrimental to the orderly and harmonious development of the City, or to impair the desirability of investment or occupation in the neighborhood, and that the project is consistent with the goals, policies and programs of the Local Coastal Program Land Use Plan.*

b. Analysis

The Appellant contends that the city-approved project does not conform to LCP development standards regarding height and building design, and as a consequence, will negatively impact visual resources and the character of the Sunset Palisades planning area. Specifically, the Appellant disputes the City's practice of measuring overall height from site grade. The appellant contends the method is flawed because it does not take into account potential changes in site grade elevation brought about by



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migrating soils and/or fill. Both the general and specific LCP height standards limit overall height to 15 feet above the highest point of site grade (17.081.020, LU-A-7.a) and further limit all structures to 25 feet as measured from the highest point of the roof above the center of the building footprint at site grade. Site grade, as defined by section 17.006.0908, is a phrase used to establish lot grade for the purposes of determining building height. The LCP requires all existing subdivided properties as of October 12, 1976 to use the topography (site grade) as it existed at that time (17.006.0908.a). However, in situations where no records exist as to site grade in 1976, the City's long standing practice is to establish site grade as the grade currently exists on the site. The Appellant contends that excess soils from grading in the central portion of the planning area have migrated onsite and artificially elevated the current site grade, which in turn, results in an overall height of the new residence that exceeds LCP maximums. The Appellant further maintains that the City has refused repeated requests to investigate the location of the 1976 site grade.

Since no records were available establishing the site grade in 1976, the project Applicant was required to submit a topographic survey of the entire site in order to establish current site grade. The survey established the high point of the lot at 105.5 feet elevation. The proposed project elevations indicate the upper ridgeline of the new residence (120.5 feet) is consistent with LCP standards that allow 15 feet above the high point on the lot. In addition, the project plans further indicate that overall height as measured from the highest point on the roof to the center of the building footprint at site grade to be 22.5 feet, under the 25-foot allowance. To ensure that the residence is built to the specifications on the plans, the City conditioned its approval to require a licensed surveyor / engineer verify pad elevations, setbacks, and roof elevations. Furthermore, prior to obtaining a framing inspection, a certified survey of the height of the building including finishing materials must be submitted to the City that demonstrates conformance with the approved plans.

With further respect to the Appellants contention that soil has migrated onto the property, a soils report was prepared by GSI Soils Inc. on August 22, 2005. The report makes no mention of a slope stability issue at the rear of the lot (in the area of the high point), nor does it make any reference to a soils migration problem from adjacent lots.

Secondly, the Appellant contends that the new residence will replace a low profile home and alter the harmony of the neighborhood by creating a significant change in the spatial relationships and architectural character of the neighborhood. She maintains that the new structure is almost three-times the size of the existing residence and does not appear to be properly scaled to the adjacent properties.

The Appellant is correct to point out that the certified LCP directs new development to maintain the small scale image of the city and not create large monolithic buildings (General Plan / Land Use Plan Policy D-2). These same principals and standards also state that development should be visually pleasing, rich in variety, and reflective of a traditional California seaside community (GP Principle P-7). In order to achieve these goals, both general and specific policies were crafted to establish building and design standards and to ensure adequate architectural review of all proposals (GP/LUP policies P-7, D-2, and implementing ordinances 17.105.130, 17.081.020). The planning area standards for the Sunset



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Palisades area further establish more specific guidelines for new development within the neighborhood planning area. Other areas of the LCP establish lot coverage allowance, maximum building area, minimum planting area, etc. The Applicant is proposing one single-family dwelling on a 6,604 square foot lot. Overall height of the structure is limited to 22.5 feet above the centerline of the footprint at site grade and no greater than 15 feet above the highest point on the lot consistent with LCP height requirements. The proposed project also conforms to LCP standards for minimum lot area, building area, lot coverage, setbacks, planting area, and floor area ratio. In general, the Sunset Palisades planning area is a developed urban neighborhood containing an assortment of styles and sizes of homes ranging from older single story ranch style homes, split-levels, Spanish colonial revival, Mediterranean, and some with a mixture of these elements. Both one and two story homes are present in a variety of sizes and massing. The neighborhood lacks any defining architectural character or design and there are a number of dwellings that could individually be considered unique in their size, scale, or design. Thus, the proposed design is in scale and compatible with other residences in the Sunset Palisades neighborhood, an consistent with LCP design criteria.

Appellant complains the City-approval failed to evaluate whether the residence proposed for demolition is a historic resource. She maintains that the residence was originally constructed in the early 1950's, and is "an excellent example of mid-century low rise, unpretentious California coastal development in the post World War II years." Though she acknowledges that the structure does not exhibit any architectural significance by itself, she argues that it does contribute to the historic ambiance of the neighborhood by maintaining the appropriate scale and mass that the LCP identifies.

At this time, the City of Pismo Beach has not undertaken the task of defining the historic character of the beachside town. In part, this is due to the fact that much of the City is relatively young and many of the older parts of town do not appear to have a consistent architectural theme to provide the context for establishing a historic district and/or program. For a residence to be noteworthy individually as a historic resource, it must meet at least one of the criteria identified in the California Register of Historic Resources for establishing historic significance. These are: 1) the structure is associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or U.S.; 2) the resource is associated with persons important to local, statewide, or national history; 3) the structure embodies distinctive architectural characteristics, is the work of a master architect or builder, or possess high artistic values; and 4) the structure is important to the prehistory or history of the local area, state, or nation. It is not sufficient to be merely single-story and constructed in 1950. As a consequence, the residence proposed for demolition is not a historic resource and its removal will not adversely impact the historic character of the community.

Finally, the Appellant contends that the City did not evaluate the financial impact on the homeowners whose views will be blocked by the project. She notes that LCP requires architectural review for all new development to ensure that it is harmonious with the character of the neighborhood and will not impair the desirability of investment in the neighborhood. Appellant is concerned that the new residence will block private coastal views and devalue the homes directly inland and adjacent on Encanto Avenue and La Paloma.



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In response to this contention, it is important to note that the City's LCP was certified as being consistent with and adequate to carryout Coastal Act policies designed to protect scenic and visual resources available to the general public. The certified LCP contains other development standards such as height requirements, yard setbacks, floor area ratios, etc., as a means to address private views. As mentioned in the findings above, the proposed new development is consistent with all LCP design and planning area standards. Thus, there is no substantial issue raised by these appeal contentions.

c. Conclusion

As approved by the City, the proposed demolition and rebuild is consistent with LCP design and specific planning area policies and standards protecting the scenic and visual character of the neighborhood. The LCP requires new development to be sited, designed, and landscaped to be visually compatible and integrated with the character of the surrounding neighborhoods or areas. The design of the proposed residence includes a varied roofline, numerous offsets, articulations, and coloring scheme all intended to add visual interest and breakup mass. The design includes the use of natural materials and the project has been conditioned to require verification of pad elevations, setbacks, and roof height by a licensed surveyor or engineer. Accordingly, the city-approved development is consistent with LCP design criteria and development standards, and will join an eclectic mix of existing neighborhood residences without adverse impact to the character of the surrounding area or the scenic coastal views currently available to the public. Therefore, the appeal does not raise a substantial issue regarding the project's conformance to the City of Pismo Beach certified LCP.

2. Archaeology

a. LCP Policies

GP/LUP Policy CO-5 Protect Archaeological Resources

Archaeological and paleontological resources are declared to be important to be conserved. The City shall have available a map that identifies the possible location of archeological resources.

As part of the CEQA process for all new development projects, all known or potential archaeological resources shall be fully investigated by a qualified archaeologist recognized by the state Historic Preservation Office. Appropriate protection shall be determined as part of the review process including:

c. Specific recommendations prepared by the archaeologist shall be incorporated into project approval including: avoidance of portions of sites containing resources, minimizing the impacts of the development on the archaeological resources, preserving a full archaeological record, and/or partial site dedication, and providing a native American monitor onsite to observe excavation in location where there is a possibility of discovery of human remains.

17.063.010 Purpose of Zone



The Archaeology—Historic Sites (A) Overlay Zone is established to preserve, protect and maintain land and water areas, structures and other sites which have significant historical, archaeological or cultural importance and provide for the designation of areas which may be of unique value for scientific or educational purposes.

17.063.020 Criteria and Standards ...

2. *Any archaeological surface survey of each site shall be conducted by a qualified archaeologist as a condition of development review for any proposed project within the Archaeology—Historic Sites Overlay Zone in areas of unknown significance based upon a written determination of the Public Services Department. The results of this survey shall be submitted as part of the development application. Included with this survey will be an evaluation as to the presence of cultural resources based on supportable evidence and shall also include appropriate mitigation measures, as necessary, for the project. Any site which is surveyed pursuant to the requirements of this ordinance shall not be required to be further surveyed unless specified by the findings of the survey.*

...

4. a. *Any mitigation measures included in archaeological studies shall be appropriately incorporated into the design of the project, including construction techniques which will minimize impact to the archaeological resources.*

b. Analysis

Appellant contends that the City's approval is inadequate because it does not contain specific recommendations to protect / preserve archaeological resources as require by LCP section 17.063.020. The Appellant objects to the City's conditions of approval which require hiring of a monitor to oversee development, particularly during excavation. She notes that quite a large amount of grading will be necessary to accommodate the subbasement and lower levels of the new residence, and questions the ability of the monitors to effectively sift through many cubic yards of material.

The project site is located in an archaeological overlay zone due to the vast amount of cultural deposits that have been found in and around this area. However, it also known that the site of the proposed development was part of an oil refinery complex in the early 20th century. The area was developed with underground pipelines, storage tanks, refiners, etc. More recently, the area has been subdivided and developed with single-family residences. The lot, as well as those directly adjacent, have undergone grading and similar disturbances associated with residential construction.

The Sunset Palisades area contains a very large archaeological site that was deemed unique and significant by two archaeologists in the early 1980's. A phase one archaeological survey of the lot at 334 Indio Drive, however, found there were no intact prehistoric or historic cultural materials anywhere on site, though it did identify the presence of displaced archaeological / cultural materials. The report concluded that the displaced materials were imported from another location in the Sunset Palisades, but did not rule out the possibility of intact cultural materials further beneath the surface. As such, the principal archaeologist recommended that an archaeological monitor be present during demolition and



excavation of the lot in the event any isolated cultural materials are uncovered. The monitor will have authority to stop work in the event materials are uncovered and record the finds before making further recommendations on how to treat the materials. The City embraced the recommendations of the archaeological report and conditioned the permit to require evidence of a contract for archaeological monitoring with both an archaeological monitor and a Native American monitor. If archaeological resources are uncovered during construction, the City's conditions authorize the monitors to temporarily halt work to record the finds and craft recommendations for dealing with these sensitive cultural resources. Therefore, the appeal does not raise a substantial issue.

C. Conclusion

With these conditions, the City approved project is consistent with LCP requirements regarding the protection of archaeological resources. Therefore, **no substantial issue** regarding LCP compliance is raised by the appeal.

3. Marine Resources

a. LCP Policies

The certified LCP states:

GP/LUP Policy P-2 Natural Resources—Key Foundation of the City

Pismo Beach is the ocean, beaches, hills, weather and related eco-systems. Conservation and protection of these resources shall be the key focus of the General Plan. The unique geographical character of Pismo Beach is recognized as the foundation for all other aspects of the community. These physiographic characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.

GP/LUP Policy P-6 The Ocean--A Resource for Everyone

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. This natural asset will be protected and made available to all.

Pacific Ocean, Beach and Coastal Cliffs Background (see Principle P-6)

The Pacific Ocean is the most significant single natural resource and open space for Pismo Beach. The city's shoreline can be divided into four tidal zones as described as follows.

...

2. Northern Rocky Beach Areas

The rocky beach areas, cliffs and rocky points extend from northwest of the pier to the northern city limits...

Proceeding northerly from the Dinosaur Caves area to the Sunset Palisades area and including Shell Beach are marine terraces. These are actually old wave-cut platforms that have been



uplifted. Beaches in this area have been formed by sand being deposited on top of the wave-cut platforms by the ocean currents. The more resistant rock that has withstood the effects of the waves also remains...

The rocky points and reefs along the Sunset Palisades area is particularly valuable habitat for shorebirds, invertebrates and vertebrates.

Potential conflicts exist between recreational use of the rocky beach area and the wildlife. Habitat preservation is of importance for the rocky islets and reefs in the Dinosaur Caves area, some of the coastline along Shell Beach, and the coastline in the Sunset Palisades area north of Florin Circle.

3. Intertidal Zone

...Within the boundaries of Pismo Beach, the intertidal zone is owned by the State Lands Commission, which has jurisdiction over all matters concerning the area's wildlife populations, most notably the populations of the Pismo clam. A variety of bird species also feed in the intertidal zone...

Some conflict exists between utilization of the rocky intertidal zone for recreational uses, and preservation of the natural resources. Currently, it appears that the resources are not in jeopardy because the more sensitive intertidal areas are located where public access is limited.

4. Subtidal Zone

...In the northern half of the city, the subtidal area is rocky near the shore. In this location are kelp beds, which are recognized for their prime habitat value. Although the subtidal zone is beyond city jurisdiction from a legal standpoint, the city nevertheless has an indirect responsibility for activities that affect the natural resources of the area....

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.

b. Analysis

The main concern of the Appellant appears to be discharge of runoff from the site into the marine environment. Appellant claims that the quality of the runoff is a concern because testing of the water in other areas has shown the water to be unsuitable for irrigation. Appellant extrapolates that if the water is unsuitable for irrigation, it is likewise unsuitable for the marine environment. Appellant speculates that the source of the poor water quality may be discharges from the old oil refinery or possibly runoff from Highway 101.

Testing of the quality of the runoff from this particular site has not been performed and so staff is unable to comment on the suitability of the runoff for irrigation or other purposes. However, the proposed development is located on the inland side of Indio Drive –the first public road paralleling the blufftop. It has been developed with a single family residence for more than 50 years and is proposed to be replaced with another single family residence. To ensure that construction debris, sediment, and other pollutants associated with the project do not make their way into the marine environment, the City has conditioned its permit to require implementation of construction best management practices during demolition,



excavation, and reconstruction of the new residence. Permit conditions also require grading and drainage improvements to be designed and constructed in accordance with the City's Grading Ordinance. Grading will only be allowed during summer months and the applicant must have an approved erosion and sediment control plan prior to commencing. Post-construction conveyance of all surface and subsurface water will be through downspouts and subdrains that extend into discharge areas away from the structural foundation. Storm water overflow that does not infiltrate onsite will ultimately find its way to the City's storm drain system for conveyance in a non-erosive manner. Accordingly, the appeal does not raise a substantial issue.

c. Conclusion

As conditioned to require implementation of best management practices and conformance with the City's grading ordinance during construction and excavation, the City-approved project adequately addresses LCP requirements regarding protection of marine resources. Therefore, **no substantial issue** regarding LCP compliance is raised.

4. Hazards

a. LCP Policies

GP/LUP Geological/Seismic Hazard Background

...The potential for liquefaction and landslides is present within and surrounding the city. Liquefaction areas are limited, however, to soils having relatively low compaction underlain by shallow groundwater...

GP/LUP Policy S-11 Development Review in Hazardous Overlay Zone

Geologic reports may be required and shall be reviewed by the appropriate decision-making body, prior to approval of any development permits for projects located within the Hazardous Overlay Zone.

17.078.010 Hazards and Protection (H) Overlay Zone: Purpose of Zone

The Hazards and Protection (H) Overlay Zone is intended to prevent unsafe development of hazardous areas; to minimize damages to public and private property; and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage. This overlay zone includes those area unsafe for development which are (1) prone to downslope movement or severe land slippage (i.e., slump, landslide areas); (2) in direct contact with known active or potentially active faults or fault zones; and (3) located in areas of high liquefaction potential, unstable slopes, retreating ocean bluffs or easily erodible areas. This overlay zone is intended to maintain and enhance land and watershed management, control storm drainage and erosion and control the water quality of both urban runoff and natural water bodies by regulating development within those areas with slopes of 10 percent or greater. [not applicable] This Overlay Zone is intended to also protect and enhance the shoreline bluffs and beaches of the City from visual as well as physical deterioration or erosion.



17.121.005 Permit Approvals

All permits granted pursuant to this ordinance shall be supported by explicit findings describing the consistency with all Code requirements and General Plan/Local Coastal Program Land Use Plan Policies and Programs.

b. Analysis

Appellant contends the City approved project does not conform to the certified LCP standards regarding development within known hazards areas because it did not evaluate hazards or explicitly make hazard findings. Additionally, the Appellant contends the City did not evaluate the impacts of construction on the coastal bluff. Of concern is the use of heavy equipment to excavate and compact the soils.

As noted elsewhere in the report, the site of the proposed development is located on the inland side of Indio Drive, more than 200 feet from the coastal bluff top edge. The bluff at this location is mainly comprised of Monterey Shale formation overlaid with a shallow marine terrace deposit. The 1992 Fugro West Bluff Study Update (August 2002) estimated a long-term annual bluff erosion rate of 4 inches per year (33 feet in 100 years) at this location. The purpose of the LCP Hazards policies/standards are to prevent unsafe development in hazardous areas and minimize damages to public and private property. The project site is not located on an unstable slope or bluff top edge and will not be subject to wave attack. Construction activities for the new residence will occur well outside the 100-year bluff retreat zone and pose no threat to the stability of the bluff or to any public or private property. As a result, **the appeal contentions do not raise a substantial issue** regarding project consistency with LCP hazard provisions.

