

CALIFORNIA COASTAL COMMISSION

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Th10a



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APPEAL SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Application numberA-3-SLO-06-016, SBC/AT&T Standby Power Generator

Applicant.....SBC/AT&T, Attn: David Wagner

AppellantsCharles R. Gillem

Project location65 13th Street, Cayucos, San Luis Obispo County (APN(s) 064-163-016).

Project description.....Installation of a replacement standby power generator in support of an existing telephone switching facility.

Local approval.....The San Luis Obispo County Board of Supervisors approved Development Plan/Variance/Coastal Development Permits DRC2004-00060 and DRC2005-00041 (January 24, 2006).

File documents.....San Luis Obispo County certified Local Coastal Program; Final Local Action Notice 3-SLO-06-093; additional documents, materials, and correspondence provided by applicant and interested parties.

Staff recommendation ...Substantial Issue; Approval with Conditions

Summary: The County of San Luis Obispo approved the installation of a replacement standby power generator in support of an existing telephone switching facility located in the community of Cayucos, in the Estero Planning Area. The SBC switching facility was originally constructed in the 1960's and has two sources of power. The primary source of power comes from PG&E power lines. The secondary source is the standby generator, which provides backup power in the event of a power outage. The existing standby power generator is in excess of 30 years old and is no longer considered reliable to provide power to the switching facility in the event of a power outage. The County approved the project subject to 22 conditions, finding it consistent with the certified Local Coastal Program (LCP). The County approval also includes a variance because the standby generator encroaches into the LCP required 15-foot front setback.

The adjacent property owner has appealed the project citing a wide variety of neighborhood concerns. The appellant's contentions can be grouped into two major issue areas: 1) Health and Safety related to noise, hazardous waste, and the storage of combustible liquids; and 2) Neighborhood Character.

Regarding health and safety issues, Staff recommends that the Commission find no substantial issue. Coastal Zone Land Use Ordinance (CZLUO) Section 23.06.042 establishes standards for acceptable



California Coastal Commission

August 2006 Meeting in San Pedro

Staff: Jonathan Bishop Approved by:

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exterior noise levels. The applicant has adequately measured noise levels and ensured that acceptable exterior noise levels will not be exceeded. In response to neighborhood concerns, the County imposed special conditions on the project to further reduce the possibility of noise disturbances. These include limiting the time and frequency of power generator testing, as well as a program to notify and coordinate testing with the surrounding neighbors. Permit applications for Public Utility Facilities, such as this, are required to include an oil and hazardous material spill contingency plan, including a demonstration that all materials can be safely contained on-site (CZLUO Section 23.08.288(b)(4)). The applicant has fulfilled this permit requirement. The County has taken further steps to address hazardous waste by requiring the hazardous material plans to be updated and maintained overtime with the County Department of Environmental Health. The new power generator runs on diesel fuel stored in underground tanks. The LCP defines diesel fuel as a combustible liquid and includes storage and handling requirements (CZLUO Section 23.06.126). The project meets the LCP requirements addressing combustible liquid storage.

Regarding neighborhood character, Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeal was filed. The substantial issue relates to the fact that an alternative design is available that meets the LCP required front setback without the need for a variance. The proposed development is located within an LCP designated residential Community Small Scale Design Neighborhood (CSSDN). The LCP allows Public Utility Facilities within a residential CSSDN, but requires strict adherence to development design guidelines, including setbacks. In this case, the LCP requires a 15-foot front setback. The County granted a variance to this standard and approved the project with a lesser 12.5-foot front setback. Under CZLUO Section 23.01.045(d)(1) a variance may only be granted when certain required findings are made. Staff has reviewed the County's findings and believes that the variance fails to meet all ordinance criteria because the applicant has indicated that the standby generator can be redesigned to meet the 15-foot front setback requirement, rendering the variance unnecessary.

To resolve this issue and achieve LCP consistency, Staff recommends that the Commission approve the project with a single new special condition. The special condition requires the applicant to submit revised plans showing the standby generator setback 15 feet from the front property line. Only with this condition is the project consistent with the certified LCP. All other conditions imposed by the County of San Luis Obispo are retained as conditions of this permit.

Therefore, as conditioned, Staff recommends approval.

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Use the link at left to go to the exhibits.

1. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

On January 24, 2006 the County of San Luis Obispo approved the Development Plan/Variance/Coastal Development Permit DRC2004-00060 and DRC2005-00041 for a new standby power generator, subject to 22 conditions. (See Exhibit C for the County's adopted findings and conditions of approval on the project). The County's approval was by the Board of Supervisors following an appeal of the Planning Commission's original approval. The County also approved a Negative Declaration (of no significant environmental impacts) under the California Environmental Quality Act. Notice of the Board of Supervisor's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on March 13, 2006. The Coastal Commission's ten-working day appeal period for this action began on March 14, 2006 and concluded at 5pm on March 27, 2006. One valid appeal (see below) 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 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 involves development not designated as the principal permitted use under the zoning ordinance; specifically, a Public Utility Facility such as this is a “Special S-13” use in the Residential Single Family land use category of the LCP.

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

C. Summary of Appellants’ Contentions

In summary, the Appellant Charles Gillem, has appealed the final action taken by the County Board of Supervisors on the basis that approval of the project is inconsistent with provisions of the San Luis Obispo County certified LCP regarding neighborhood health and safety and community character. Implicit in his appeal is the contention that the County inappropriately granted a variance to the CZLUO 15-foot front setback requirement for projects within a Community Small Scale Design Neighborhood (CSSDN). The Appellant has also raised a number of issues that are not related to consistency with the LCP. For example, the appellant has raised issue with respect to the property values of area residents as a result of the development. This subject is not a valid ground for an appeal to the Commission. Grounds for an appeal of a local government decision to the Commission are limited to an assertion that the development (in this case, the installation of a backup power generator) does not conform to the certified LCP. As such, appeal contentions not related to conformance with the LCP are not analyzed in this staff report. For the full text of the appellants’ contentions, please refer to Exhibit D.



2. Staff Recommendation

A. Staff Recommendation on Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-06-016 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 **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 by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-SLO-06-016 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.

B. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-SLO-06-016 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.



3. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Revised Project Plans to the Executive Director for review and approval. The final project plan shall be consistent with the following requirements:

- (a) **Front Setback.** The standby generator shall show a 15-foot front setback and shall be in substantial conformance with submitted plans entitled *New Stand-by Engine and Site Improvements* (dated 7/27/05 by GWA).

The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **County Conditions.** Except for Condition #1(a), all conditions of San Luis Obispo County approval DRC2004-00060 become conditions of this permit. All conditions of San Luis Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply.



Recommended Findings and Declarations

The Commission finds and declares as follows:

4. Project Description

A. Project Location

The proposed project is located in the “Pacific Avenue Neighborhood” at 65 13th Street in the community of Cayucos, in the Estero Planning Area. This neighborhood is located between Highway One and the ocean and is designated a Community Small Scale Design Neighborhood (CSSDN) under the LCP. The property is level, roughly 6,000 square feet in size, and is zoned Residential Single Family (RSF). The property contains an existing telephone switching facility and is surrounded by other single-family residences. See Exhibit A for project location maps.

B. County Approved Project

The County approval is for a new standby power generator in support of an existing telephone switching facility. The SBC switching facility was originally constructed in the 1960’s and has two sources of power. The primary source of power comes from PG&E power lines. The secondary source is the standby generator, which provides backup power in the event of a power outage. The existing stand-by engine is in excess of 30 years old and is no longer considered reliable to provide power in the event of an emergency. The County approved standby power generator is a 125kw engine and is approximately 1,980 cubic feet in size. The generator is located in the front of the existing building on the property and is set within an acoustical enclosure. The County granted a variance to the front setback requirement finding that locating the generator in the front setback would allow for an increased buffer for all surrounding residential properties. The County approval requires coloring, landscape screening, and fencing to integrate the generator with the existing building. The site plans, elevations, and visual simulations of the project are attached as Exhibit B.

5. Substantial Issue Findings

1. Neighborhood Health and Safety

The appellant has raised concerns related to the health and safety of area residents as it relates to noise, hazardous material handling, and the storage of flammable and combustible liquids (diesel fuel). As described in the findings below, no substantial issue is raised with respect to neighborhood health and safety.



a. Relevant Local Coastal Program Provisions

Noise

23.06.040 - Noise Standards: Sections 23.06.044-050 establish standards for acceptable exterior and interior noise levels and describe how noise is to be measured. These standards are intended to protect persons from excessive noise levels, which are detrimental to the public health, welfare and safety and contrary to the public interest because they can: interfere with sleep, communication, relaxation and the full enjoyment of one's property; contribute to hearing impairment and a wide range of adverse physiological stress conditions; and adversely affect the value of real property. It is the intent of this chapter to protect persons from excessive levels of noise within or near various residential development and other specified noise-sensitive land uses.

23.06.042 - Exceptions to Noise Standards: The standards of Sections 23.06.044-050 are not applicable to noise from the following sources:

a. Activities conducted in public parks, public playgrounds and public or private school grounds, including but not limited to school athletic and school entertainment events;

b. The use of any mechanical device, apparatus or equipment related to or connected with emergency activities or emergency work to protect life or property;

c. Safety signals, warning devices, and emergency pressure relief valves;

d. Noise sources associated with construction, provided such activities do not take place before seven a.m. or after nine p.m. any day except Saturday or Sunday, or before eight a.m. or after five p.m. on Saturday or Sunday;

e. Noise sources associated with the maintenance of a residential use as listed in Table O, Framework for Planning of the Land Use Element and Local Coastal Plan, provided that such activities take place between the hours of seven a.m. and nine p.m.;

f. Noise sources associated with agricultural land uses as listed in Table O, Framework for Planning of the Land Use Element and Local Coastal Plan, including but not limited to wind machines used for direct climate control, water well pumps and pest-repelling devices, provided that such pest-repelling devices are used in accordance with accepted standards and practices;

g. Noise sources associated with a lawful use which is other than a residential use as listed in Table O, Framework for Planning of the Land Use Element and Local Coastal Plan, caused by mechanical devices or equipment, including air conditioning or refrigeration systems, installed prior to the effective date of this chapter; this exemption shall expire one year after the effective date of this chapter;

h. Noise sources associated with work performed by private or public utilities in the maintenance or modification of its facilities;



i. Noise sources associated with the collection of waste or garbage from property devoted to other than residential uses listed in Table O, Framework for Planning of the Land Use Element and Local Coastal Plan.

j. Traffic on public roadways, railroad line operations, aircraft in flight, and any other activity to the extent regulation thereof has been preempted by state or federal law.

23.06.044 - Exterior Noise Level Standards: *The exterior noise level standards of this section are applicable when a land use affected by noise is one of the following noise-sensitive uses which are defined in the Land Use Element and Local Coastal Plan: residential uses listed in Table O, Framework for Planning, except for residential accessory uses and temporary dwellings; health care services (hospitals and similar establishments only); hotels and motels; bed and breakfast facilities; schools (preschool to secondary, college and university, specialized education and training); churches; libraries and museums; public assembly and entertainment; offices, and outdoor sports and recreation.*

a. No person shall create any noise or allow the creation of any noise at any location within the unincorporated areas of the county on property owned, leased, occupied or otherwise controlled by such person which causes the exterior noise level when measured at any of the preceding noise-sensitive land uses situated in either the incorporated or unincorporated areas to exceed the noise level standards in the following table. When the receiving noise-sensitive land use is outdoor sports and recreation, the following noise level standards shall be increased by 10dB.

EXTERIOR NOISE LEVEL STANDARDS		
	<i>Daytime (7 a.m. to 10 p.m.)</i>	<i>Nighttime (1) (10 p.m. to 7 a.m.)</i>
<i>Hourly Equivalent Sound Level (Leq, dB)</i>	50	45
<i>Maximum level, dB</i>	70	65

Notes: (1) Applies only to uses that operate or are occupied during nighttime hours

b. In the event the measured ambient noise level exceeds the applicable exterior noise level standard in subsection (a), the applicable standard shall be adjusted so as to equal the ambient noise level plus one dB.

c. Each of the exterior noise level standards specified in subsection (a) shall be reduced by five dB for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.

d. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the noise level measured



while the source is in operation shall be compared directly to the exterior noise level standards.

Hazardous Materials Handling

23.08.288 - Public Utility Facilities: *The requirements of this section apply to Public Utility Facilities where designated as S-13 uses by Coastal Table 'O', Part I of the Land Use Element. Public Utility Facilities for other than electric and communications transmission and natural gas regulation and distribution, require Development Plan approval pursuant to Section 23.02.034 (Development Plan).*

...

b. Application contents. *In addition to the application materials required by Chapter 23.02 (Permit applications), permit applications shall also include descriptions of:*

...

(4) *An oil and hazardous material spill contingency plan, including a demonstration that all materials can be contained on-site.*

Flammable and Combustible Liquids Storage

23.06.126 - Flammable and Combustible Liquids Storage: *Any storage of flammable or combustible liquids (those with flash points below 140oF) is subject to the following standards:*

a. Permit requirements:

(1) Health Department permit. *Facilities used for the underground storage of hazardous substances, including but not limited to gasoline and diesel fuel, are subject to the permit requirements of Chapter 8.14 of this code.*

(2) Land use permit. *No land use permit is required for the storage of flammable or combustible liquids, except that where the quantity stored exceeds the limitations specified in subsection c. of this section, Minor Use Permit approval is required unless the land use involving the storage of flammable or combustible liquids would otherwise be required by this title to have Development Plan approval.*

...

c. Limitations on quantity: *The quantity of flammable or combustible liquids stored on a site is to be limited as follows:*

(1) Residential areas: *Five gallons, unless authorized through Development Plan approval.*

(2) Other areas: *Storage is to be limited to the following quantities on any single building site, unless greater quantities are authorized through Development Plan or Minor Use Permit approval:*



	<i>QUANTITY ALLOWED (GALLONS)</i>	
	<i>Type of Storage</i>	
<i>TYPE OF LIQUID</i>	<i>Aboveground</i>	<i>Underground</i>
<i>Combustible</i>	<i>20,000</i>	<i>Unlimited</i>
<i>Flammable</i>	<i>2,000</i>	<i>20,000</i>

b. Substantial Issue Analysis

Noise

CZLUO Section 23.06.040 establishes standards for acceptable exterior and interior noise levels and describes how noise is to be measured. CZLUO Section 23.06.042(b) provides an exception to the noise standards if the equipment is related to or connected with emergency activities or emergency work to protect life or property. In this case, the switching facility is a hub for basic telephone service and supports emergency 911 calls. To protect life and property in the event of an emergency or natural disaster, the standby generator is necessary to ensure uninterrupted service. Thus, the project is related to emergency activities and is not subject to the noise standards of the LCP.

Regardless, and even if exception to the noise standard was not allowed (which it is), the project remains consistent with the noise ordinance of the LCP. The project has undergone a thorough review of exterior noise levels and the County has applied additional conditions to further reduce neighborhood noise impacts. CZLUO Section 23.06.044 requires that the project not increase the ambient noise level by more than 1dBA. In response to concerns about the noise levels generated by the project, the applicant must demonstrate (by a report from qualified acoustical engineer) prior to testing or operation that the generator meets CZLUO noise standards (see County condition #16). The County has also conditioned the generator to be enclosed by a sound attenuation module that will reduce the noise level (day and night) to no more than 1dBA above ambient noise level (see County condition #17). In addition, the County has conditioned the generator to only be operated for emergency purposes and testing can occur only once a month for one hour and once a year, for five hours, for annual maintenance. Generator testing can only occur between the hours of 8 a.m. and 5 p.m. (see County condition #18). For these reasons, no substantial issue is raised with respect to noise.

Hazardous Materials

The Appellant has raised concerns regarding public health hazards associated with the storage and handling of hazardous materials on the site. CZLUO Section 23.08.288(b)(4) requires that applications for Public Utility Facilities, such as this, submit an oil and hazardous material spill contingency plan, including a demonstration that all materials can be safely contained on-site. The applicant has provided this information to the County in the permit application consistent with the LCP ordinance. To ensure that hazardous materials are handled and stored safely for the life of the project, the County has



conditioned the project to update and maintain the hazardous materials plans through the County Department of Environmental Health (see County condition #7). For these reasons, no substantial issue is raised with respect to hazardous materials.

Combustible Liquid Storage

The County approved a standby power generator that runs on diesel fuel stored in a 1,500-gallon underground tank. The LCP defines diesel fuel as a combustible liquid subject to quantity and storage requirements of CZLUO Section 23.06.126. While the appellant has not cited this specific ordinance section in his appeal, Commission staff has nonetheless analyzed the project for consistency with this section. CZLUO Section 23.06.126(a)(2) requires that a Development Plan be processed for the storage of this quantity of diesel fuel. The County approved a Development Plan consistent with this standard. In residential areas, the CZLUO limits the amount of diesel fuel stored onsite to 5 gallons. If stored underground, the CZLUO allows an unlimited quantity of diesel fuel to be stored onsite (see 23.06.126(c)(2) and the table above). In this case, the County approved project meets the quantity of fuel storage allowed under the ordinance. In addition, the project is consistent with the setback requirements of 23.06.126(d) because the tank is located below ground and therefore is not subject to the setback requirement. For these reasons, no substantial issue is raised with respect to the storage of combustible liquid.

c. Substantial Issue Conclusion

The standby generator has been designed and conditioned in a manner that addresses neighborhood health and safety issues consistent with the requirements of the LCP. Staff recommends that no substantial issue exists with respect to grounds on which the appeal was filed.

2. Community Character

The appeal contends that approval of the backup power generator will significantly disrupt the adjacent property owners and adversely impact the character of the residential neighborhood. The project is located in a Community Small Scale Design Neighborhood (CSSDN) and is subject to design guidelines, including setbacks, intended to maintain the small-scale character of the neighborhood. As shown in the findings below, a substantial issue is raised regarding community character due to the fact that an alternative generator design is available that meets the LCP front setback requirement without the need for a variance (see Exhibit E).

a. Relevant Local Coastal Program Provisions

The Estero Area Plan includes standards for projects located within a designated Community Small Scale Design Neighborhood, and states in relevant part:

- 2. Location of Community Small Scale Design Neighborhoods.** *Two neighborhoods are subject to the following standards (3, 4, and 6), and guidelines (5).*



Pacific Avenue Neighborhood – That area designated Residential Single Family between Ocean Avenue, 13th Street, Cass Avenue, Circle Drive, Highway One, Old Creek, and the ocean.

3. Permit Requirements and Findings.

a. Plot Plan Permit:

(1) Development with proposed structures that are one-story and do not exceed 15 feet in height, where all the development is located at least 100 feet from any wetland, estuary or stream, and at least 300 feet from the ocean bluff-top.

(2) Development with proposed structures between 15 feet and 24 feet in height, where all the development is located at least 100 feet from any wetland, estuary or stream, and at least 300 feet from the ocean bluff-top may be approved subject to a maximum gross structural area (including the floor area of all garages) of 45% of usable site area, provided it complies with standards 4a, b, c, e, f(1), and g; and with guideline 5b and finding c.(2), listed below:

b. Minor Use Permit:

(1) Development that is within 100 feet of any wetland, estuary or stream, or within 300 feet of the edge of the ocean bluff-top. In addition such development is subject to standards, guidelines and findings listed below.

(2) Development with proposed structures between 15 feet and 24 feet in height except as provided in 3a.(2) above. In addition such development is subject to standards, guidelines and findings listed below.

c. Required Findings:

(1) The proposed project meets the community small scale design neighborhood standards and is therefore consistent with the character and intent of the Cayucos community small scale design neighborhood.

(2) For any proposed structure that exceeds 15 feet in height, public view of the ocean from Highway One or the respective neighborhood is not being further limited.

4. Standards.

a. Front Setbacks - The ground level floor shall have setbacks as provided in Cayucos Communitywide Standard 2 and at no point shall a lower story wall exceed 12 feet in height including its above ground foundation. The second floor of proposed two-story construction shall have an additional front setback of at least three feet from the front of the lower wall, except open rail, uncovered decks are excluded from this additional setback and may extend to the lower front wall.



b. Side Setbacks - Single story dwellings shall have setbacks as provided in Cayucos Communitywide Standard 2. Proposed two-story construction (including decks) shall have a lower floor setback on each side of not less than four feet, nor less than the required corner side setback if applicable. An upper story wall setback on each side yard of a minimum of two-and-one-half (2 1/2) feet greater than the lower story wall shall also be required. At no point shall a lower story wall exceed 12 feet in height including its above ground foundation. Thirty percent of the upper story side wall may align with the lower floor wall provided it is within the rear two-thirds of the structure.

c. Building Height Limitations. Heights shall be measured from the center line of the fronting street (narrowest side for corner lots) at a point midway between the two side property lines projected to the street center line, to the highest point of the roof. In the community small scale design neighborhood area defined in Standard 2, upslope lots shall use average natural grade. All proposed development including remodeling and building replacement is subject to the following limitations:

(1) Ocean Front Lots. 15 feet maximum.

(2) Remainder of Community Small Scale Design Neighborhood lots. Proposed structures, exclusive of chimneys and mechanical vents, are not to exceed 24 feet in height measured as provided above. Sloped (pitched) roofs are encouraged in all structures; however roof heights up to 18 feet shall not be required to have sloped roofs, roof heights exceeding 18 feet but not exceeding 22 feet shall have a roof pitch of at least 4:12 (4 inches of rise per 12 inches of run) and roof heights exceeding 22 feet but not exceeding the maximum height allowed (24 feet) shall have a roof pitch of at least 5:12 (5 inches of rise per 12 inches of run). Mansard or other flat style roofs on buildings over 18 feet are not permitted. Existing residences completed prior to April 25, 1995, with a roof pitch of at least 3:12 (3 inches of rise per 12 inches of run) may have second story roof slopes matching the existing slope where the building height does not exceed 22 feet.

d. Gross structural area (GSA). One-story development, and all development on bluff top sites, is limited to a maximum gross structural area, including the area of all garages, of 3,500 square feet. Other new development or additions, exceeding one story or 15 feet in height, shall not exceed GSA's as provided in Table 8-1 below:

Lot Size	Percent of Usable Lot	Max. Gross Structural Area
Up to 2899	60%	1595 square feet
2900 - 4999	55%	2500 square feet
5000 +	50%	3500 square feet



(2) *The second story square footage shall be no greater than 60 percent of the first floor square footage.*

e. Deck rail height - *Rail heights for decks above the ground floor shall not exceed 36 inches. A maximum additional height of 36 inches of untinted, transparent material with minimal support members is allowable except as restricted in 4a above.*

f. Parking - *New development parking spaces shall comply with the CZLUO for required parking spaces except as follows:*

(1) *At least one off-street parking space shall be enclosed with an interior space a minimum size of 10 feet by 20 feet.*

(2) *A maximum of one required off-street parking space may be located in the driveway within the required front yard setback area. However, the minimum front yard setback from the property line to the garage is 20 feet if this design is used.*

g. Driveway Widths - *Driveway widths for proposed development may not exceed 18 feet.*

h. Streetscape Plan - *A scale drawing showing the front exterior elevation (view) of the proposed project, and the front elevations of the adjacent buildings, is required as part of the application submittal.*

{Figure 8-4: Parking Space Shown in Front Yard Area with Minimum 20' Setback to Building}.

i. Topographic Map - *A topographic map including the elevation of the fronting street, site contours, and existing and proposed drainage patterns is required as part of the application submittal.*

5. Guidelines. *The following are guidelines that should be considered when designing any proposed project within the subject areas. A project subject to a Minor Use Permit approval will consider how the design complies with the following objectives:*

a. Site Layout - *Locate the structure so that it minimizes its impact on adjacent residential structures (such as significantly reducing access to light and air).*

b. Building Design - *The design should incorporate architectural details and varied materials to reduce the apparent mass of structures. Such scale reducing design devices include porches, covered entries, dormer windows, oriel and bay windows, multi-pane windows, varying roof profiles, moldings, masonry, stone, brickwork, and wood siding materials. Expansive building facades should be broken up by varied rooflines, offsets, and building elements in order to avoid a box-like appearance. Variations in wall planes, roof lines, detailing, materials and siding should be utilized to create interest and promote a small scale appearance. Roof styles and roof lines for first and second stories should match.*



c. Landscaping and Fencing - *The site design should incorporate landscaping materials that help reduce the scale of the proposed structure. This can be done by proper selection and placement of trees, shrubs and other vegetation capable of screening portions of the structure from public viewpoints. The design should consider the use of decorative paving materials, such as aggregate concrete, stamped and/or colored concrete. The site design should consider effective use of small scale fencing materials in the front yard area to help soften the massing of the building. Fences which present a solid barrier should be avoided except where privacy is desired.*

The County of San Luis Obispo granted a variance to the front setback requirement (Standard 4(a) above) to accommodate the project and minimize neighborhood disruptions. The CZLUO variance ordinance states in relevant part:

d. Action on a variance. *The Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection. Such decision may be appealed to the Board of Supervisors as set forth in Section 23.01.042 (Appeal).*

(1) Findings. Approval or conditional approval may be granted only when the Planning Commission first determines that the variance satisfies the criteria set forth in Government Code Section 65906 by finding that:

(i) The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situation; and

(ii) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and

(iii) The variance does not authorize a use that is not otherwise authorized in the land use category; and

(iv) The variance is consistent with the provisions of the Local Coastal Program; and

(v) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

b. Substantial Issue Analysis

The appellant has raised concerns regarding the project's impact on neighborhood character. The project is located within the "Pacific Avenue Neighborhood", an LCP designated Community Small Scale Design Neighborhood (CSSDN). Due to the project location, the LCP contains two required findings that must be made in order to approve the project. These include: (1) The project meets the



CSSDN standards and is therefore consistent with the character and intent of the Cayucos CSSDN; and (2) For any proposed structure that exceeds 15 feet in height, public view of the ocean from Highway One or the respective neighborhood is not being further limited.

To be consistent with required finding (1), nine separate standards must be met. In this case, the proposed project meets eight of the nine standards. The proposed project fails to meet Standard 4(a) regarding front setbacks. The LCP requires a 15-foot front setback. The project is inconsistent with this standard because it was approved with a lesser 12.5-foot setback. However, the County can grant a variance to the setback requirement if it determines that the variance satisfies five criteria. As discussed below, the variance does not adequately satisfy all of the required criteria. Each variance criteria is analyzed in order below:

(1) The variance authorized does not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and land use category in which such property is situated.

The purpose of this standard is to ensure that fair treatment is given to all projects and that the application of the variance is consistent throughout the neighborhood. This project is unique in that it is an industrial type project in a residential neighborhood. Thus, it is difficult to make direct correlations between this project and other residential projects in the vicinity. For the sake of comparison, a residential project that proposed to add a room onto the front of the house would be required to meet strict application of the front setback, particularly the case when a feasible alternative is available. The County record does not show that this limitation has been waived, nor does it show that front setback variances have been granted for other projects in the vicinity.

(2) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category.

The special circumstance applicable to the property is that it is an industrial type development surrounded by residential uses. A strict application of the front setback requirement does not deprive the property of privileges enjoyed by surrounding residences because there is a feasible alternative that meets the front setback requirement and still would allow the project to be approved consistent with the LCP. Surrounding residences have not enjoyed the privilege of a reduced front setback. The County premise for granting a variance to the front setback is that it would impact fewer neighbors. The County staff report states: "In order to better fit into the existing residential neighborhood, the applicant proposed locating the emergency generator in the front setback to allow for an increased buffer for all surrounding residential properties". While it was certainly appropriate for the County to lessen noise impacts through buffering, this reasoning alone does not satisfy the variance criteria, and does not address the fact that an alternative design is available that provides an equivalent noise buffer and still meets the front setback requirement. Following the appeal, the applicant has shown that the power generator can be redesigned to meet the front setback (see Exhibit E). As such, the variance is not



necessary to address the special circumstance.

(3) The variance does not authorize a use that is not otherwise authorized in the land use category.

The project meets this variance criteria. The project is a Public Utility Facility and is an allowed “Special S-13” use in the Residential Single Family land use category of the LCP.

(4) The variance is consistent with the provisions of the Local Coastal Program.

As stated previously in this finding, without the variance the project is inconsistent with the front setback provision of the LCP. While the County has the authority to waive such requirements by granting a variance, other LCP provisions must not be overlooked. In particular, granting the variance raises inconsistencies with the required finding of CSSDN Standard 3(c)(1), which states:

c. Required Findings:

- (1) The proposed project meets the community small scale design neighborhood standards and is therefore consistent with the character and intent of the Cayucos community small scale design neighborhood.*

The proposed project does not meet the required findings for a project located in a CSSDN. Granting the variance raises an inconsistency with CSSDN Standard 3(c)(1). If front setback variances were given to other projects in the neighborhood, development would start encroaching into front setbacks and would begin to erode the character of the neighborhood and compromise the intent of the CSSDN standards.

(5) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

The project meets this variance criteria. As shown in the previous findings of this staff report (see Neighborhood Health and Safety findings beginning on page 7 of this staff report), granting a variance would not adversely affect public health or safety, is not detrimental to public welfare, nor injurious to nearby property.

c. Substantial Issue Conclusion

The County approved project is inconsistent with LCP design standards related to the front setback requirement for projects located in the Pacific Avenue CSSDN. In order to accommodate the development the County granted a variance to the front setback requirement. A feasible design alternative is available that meets the required front setback. For this reason, the County unnecessarily granted a variance for the project. Approval of the variance raises inconsistencies with other LCP policies, namely the Cayucos CSSDN standard 3(c)(1). **For these reasons, a substantial issue is raised.**



7. Coastal Development Permit Findings

By finding a substantial issue with respect to neighborhood character and the County's application of the LCP variance ordinance, the Commission takes jurisdiction over the CDP for the proposed project. The standard of review for this CDP determination is the County LCP. See the Substantial Issue Community Character findings, incorporated herein by reference, for more detail.

A. Analysis of Consistency with Applicable Policies

1. Neighborhood Character

Project Modifications Necessary For LCP Consistency

To carry out the requirements of the Estero Area Plan related to Community Small Scale Design Neighborhoods (Residential Single Family Standards 2, 3, 4 and 5) and the CZLUO variance ordinance (Section 23.01.045(d)(1)), it is necessary that the project be modified to meet the front setback requirement. Special Condition 1 requires the applicant to submit revised project plans showing the specific location of the standby generator with a 15-foot front setback. As conditioned, the installation of the standby power generator is consistent with the LCP.

B. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. All public comments received to date have been addressed in the findings above. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

