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Original to Follow

August 13, 2013

Ms. Jeannine Manna
Coastal Program Analyst
Central Coast Area Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

RECEIVED

AUG 13 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: Application Number: A-3-PSB-10-062
Vaughn and Mary Ann Koligian
140 Addie Street
Pismo Beach, California

Dear Ms. Manna:

I am writing this letter on behalf of my clients, Vaughn and Mary Ann Koligian, with our comments for consideration by the Commission and inclusion in the record on the Revised Findings to be heard by the Coastal Commission at its meeting on August 15, 2013.

I would like to begin by stating that my client appreciates the repeated emphasis in the Revised Findings on the Commission advising the Applicants to work with Commission staff to develop an alternative proposal for development of this property. My clients have been working with Commission staff in an effort to reach a consensus on a mutually agreeable project. Towards that end, my clients have provided additional financial analysis regarding the feasibility of a visitor-serving use on the site. We hope to meet with Commission staff in the very near future to further discuss acceptable alternative development scenarios.

A basic concern we have with the Revised Findings is the statement "such as a more minor development that proposes a visitor-serving use." This statement appears on pages 3, 58, 61, and 65. In reviewing the transcript of the meeting, this statement was not made by any Commissioner during the Public Hearing and should not be included in the Revised Findings. Although it may be Commission staff's interpretation of the intent of the Commissioners in their vote denying the Staff recommended project, there is no factual data to support such a conclusion. We therefore request that these references be struck from the Revised Findings.

Ms. Jeannine Manna
Application Number: A-3-PSB-10-062
Vaughn and Mary Ann Koligian
140 Addie Street
Pismo Beach, California
August 13, 2013

We continue to disagree with first sentence of **Section K. CDP Determination Conclusion – Denial** on page 64 which states “As discussed in the above findings, the proposed project is inconsistent with the LCP and the public access and recreation policies of the Coastal Act”; and the first sentence of the following paragraph on page 65 which states “In this case, the proposed project is significantly out of conformance with the Coastal Act and LCP because the entire project site is subject to severe hazards, within and adjacent to ESHA, located in the middle of a significant public recreational access area, and the proposed project would be extremely prominent in an important public viewshed.” We believe that the documentation, including expert analysis, previously submitted by the Applicants confirms the consistency of the Applicants’ proposed project with the City of Pismo Beach’s LCP and all policies of the Coastal Act.

In addition to the foregoing, please note that we are incorporating by reference all previous correspondence and all previously submitted documentation related to this Application.

Thank you for your consideration. If you have any questions or require additional information please contact me directly.

Sincerely,



Marshall E. Ochylski,
Principal Attorney

cc: Mr. Dan Carl
Vaughn and Mary Ann Koligian
Steve Puglisi

CALIFORNIA COASTAL COMMISSION

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CDP Denied:	1/10/2013
Staff:	J.Manna - SF
Staff Report:	7/25/2013
Hearing Date:	8/15/2013

REVISED FINDINGS

Application No.:	A-3-PSB-10-062
Applicants:	Vaughn and Mary Ann Koligian
Location:	Between Addie Street and Pismo Creek (140 Addie Street) in Pismo Beach, San Luis Obispo County.
Project Description:	Construction of a 3,651 square-foot two-story duplex (two residential units within one structure) with two attached two-car garages on top of exposed piles, and related development, including demolition of a portion of the neighboring vacation rental house (that extends across the property line onto the project site), construction of a driveway bridge, utility and right-of-way improvements, and front yard fencing.
Commission Action:	Denial
Staff Recommendation:	Adopt Revised Findings

STAFF NOTE

On December 8, 2011, the Coastal Commission found that the City of Pismo Beach's approval of a coastal development permit (CDP) for the proposed project raised substantial LCP conformance issues and took jurisdiction over the CDP application for the proposed project. On January 10, 2013, following a public hearing, the Commission then denied a CDP for the proposed project by a vote of 9-0. Because the staff recommendation had been for approval with conditions, this report contains revised findings reflecting the Commission's action. For this same reason, the findings have been modified throughout from the previous version of the staff

report. Deletions to the previous report text are shown in ~~strike-through~~ text format, and additions are shown in underlined text format. Commissioners who are eligible to vote on the revised findings are those from the prevailing side who were present at the January 10, 2013 hearing (i.e., Commissioners Blank, Bochco, Groom, McClure, Mitchell, Sanchez, Zimmer, Vice-Chair Kinsey, and Chair Shallenberger).

STAFF RECOMMENDATION ON REVISED FINDINGS

Staff recommends that the Commission adopt the following revised findings in support of its denial of a CDP for the proposed project on January 10, 2013. To implement this recommendation, staff recommends a YES vote on the following motion. Pursuant to Section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members of the prevailing side present at the January 10, 2013, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote. Passage of this motion will result in approval of the revised findings and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission adopt the revised findings in support of the Commission's action on January 10, 2013 denying the development proposed under CDP Application Number A-3-PSB-10-062 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Adopt Revised Findings: *The Commission hereby adopts the findings set forth below for denial of a coastal development permit for the development proposed under CDP Application Number A-3-PSB-10-062 on the grounds that the findings support the Commission's decision on January 10, 2013 and accurately reflect reasons for it.*

SUMMARY OF ~~STAFF RECOMMENDATION~~ COMMISSION ACTION

The Applicants propose to construct a new 3,651 square-foot duplex with two attached two-car garages elevated on piles on a lot located within sand dunes in the backbeach area directly adjacent to the mouth of Pismo Creek and the Pismo Creek Estuary in the City of Pismo Beach. The proposed duplex would consist of a 1,969 square-foot residence on the upper level, and a 749 square-foot vacation rental residence on the lower level. The project site is subject to significant development constraints due to shoreline hazards and flooding, as well as the presence of environmentally sensitive habitat both onsite and extending offsite. The site is also located within a significant public viewshed along the shoreline where it transitions to dunes and Pismo Creek. In addition, the site is located in the City's core visitor-serving commercial area that is protected by the Pismo Beach Local Coastal Program (LCP) for visitor-serving uses that can appropriately respond to such constraints. As such, the project raises numerous LCP and Coastal Act issues.

The LCP only allows for residential uses on the visitor-serving project site if the Applicant can conclusively show that visitor-serving uses are infeasible due to the size, shape or location of the parcel. ~~Staff~~ The Commission does not believe that the project meets the LCP test for allowing residential uses in this visitor-serving district, therefore the project would place a residential use in an area protected for visitor-serving uses inconsistent with this LCP provision and the public access and recreation policies of the LCP and Coastal Act. The proposed project would also place new development on the beach dunes seaward of the coastal bluff and on the bluff face, would require a pile support structure to protect it from shoreline and flooding hazards, and includes a driveway bridge and utilities located below the 100-year flood elevation, all of which are inconsistent with the hazards policies of the LCP. In addition, construction of the project would directly impact sensitive habitat considered ESHA on the project site, is not an allowed use in such areas, and would not provide for adequate setbacks for ESHA adjacent to the project area as required by the LCP. Lastly, the mass, scale, and bulky design of the development would not blend with the surrounding natural environment and the small-scale character of the City, and would impact significant views from public areas to and along the estuary and shoreline.

As a result, the project cannot be found consistent with the hazards, ESHA, visual resources, public recreational access, and visitor-serving policies of the LCP, and cannot be found consistent with the public recreational access policies of the Coastal Act. The Commission has determined that the project as designed is inconsistent with the LCP and Coastal Act policies and does not believe the project can move forward without significant modifications. Although Commission staff identified certain modifications that could possibly result in an approvable project, the Applicants are not willing to make such modifications. Therefore, the Commission has denied the coastal development permit application, and encourages the Applicants to develop an alternative project that can address LCP inconsistencies. The denial is not a final adjudication by the Commission of the potential for development on this parcel, as it does not preclude the Applicants from applying for some other development or use of the site, such as a more minor development that proposes a visitor-serving use and more carefully addresses the site's constraints.

~~However, consistent with the mandate of Coastal Act section 30010, and since any economic use of the subject property would result in some form of LCP inconsistencies, staff recommends approval of some development here to provide for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.~~

~~In order to comply with the otherwise applicable requirements of the LCP and the Coastal Act, staff recommends special conditions necessary to mitigate all significant adverse environmental effects in and adjacent to the project site to the greatest extent feasible. Such conditions are necessary to find the proposed development consistent with the otherwise applicable policies of the LCP and Coastal Act. Thus the modified approvable project allows for the development of only a one-story vacation rental unit consistent with the zoning provisions, reduced in size and scale, and redesigned to better blend with the surrounding area and natural environment. The project as conditioned would will also reduce development on the bluff face and in the floodway, be built to withstand the forces of tsunami and flooding, and does not allow any form of future shoreline development or related hazard response, but rather removal of the development in the face of additional hazards. The conditions also require construction best management practices and mitigation measures to reduce impacts to ESHA.~~

~~As conditioned, staff believes that the project is a visitor serving use that will maximize public access and recreation to the coast, and appropriately respond to the unique circumstances of this case. Thus, staff recommends that the Commission approve the coastal development permit subject to the recommended conditions. The motion is found on page 4 below.~~

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Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Current Project Site Photographs

Exhibit 3 – Historic Shoreline Photographs

Exhibit 4 – Site Flooding Photographs

Exhibit 5 – Project Plans and Visual Simulations

Exhibit 6 – Biological Figures

Exhibit 7 – California Department of Fish & Game Correspondence

Exhibit 8 – U.S. Fish & Wildlife Service Correspondence

Exhibit 9 – California Department of Fish & Game Email Correspondence

Exhibit 10 – Appraisal of Real Property & Economic Feasibility Analysis

~~I. MOTIONS AND RESOLUTIONS~~

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-PSB-10-062 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-PSB-10-062 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with City of Pismo Beach Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

~~II. STANDARD CONDITIONS~~

This permit is granted subject to the following 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 Permittees 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 Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. ~~Special conditions~~

This permit is ~~granted~~ subject to the following special conditions:

1. ~~Revised Project Plans.~~ PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit two full size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's Central Coast District Office on May 18, 2011 and titled Koligian Duplex-Project Data Site Plan) except that they shall be revised and supplemented to comply with the following requirements:
 - a. ~~Visitor Serving Use.~~ The residential component of the project shall be removed. Only a one-story visitor serving vacation rental unit shall be allowed at the site.
 - b. ~~Size and Scale.~~ The plans shall depict a vacation rental unit that is one-story, with a maximum height of 25 feet above existing grade, and a maximum building footprint of 1,100 square feet.
 - c. ~~Blufftop Development.~~ No development shall be permitted on the bluff and blufftop on and adjacent to Addie Street except a pedestrian accessway and utilities in a free span bridge of the minimum required dimensions and design to provide required access to the rental unit.
 - d. ~~Frontyard Setback.~~ The frontyard property setback (to the Addie Street right of way) shall be reduced to 5 feet or, if required to be more than 5 feet to comply with ADA requirements, the distance necessary for such compliance. Only the pedestrian accessway and utilities in a free span bridge shall be allowed within this setback area.
 - e. ~~Sidyard Setback.~~ The sidyard property setback adjacent to the neighboring "beach house" (at 136 Addie Street) shall be 5 feet.
 - f. ~~Riparian Setback.~~ The development shall be set back 25 feet from the edge of riparian vegetation along Pismo Creek. The plans shall be submitted with evidence of a current biological survey, prepared by a certified biologist or ecologist, that clearly identifies the extent of riparian vegetation on the property and adjacent to the rear property line demonstrating compliance with this setback requirement.
 - g. ~~Landscaping.~~ All non-native plants shall be removed, including palm trees and iceplant, and only native plants species used (see also Special Condition 2 below).
 - h. ~~Parking.~~ On-site parking shall be removed from the project plans, and the plans shall instead identify offsite parking for all required parking spaces (1 parking space per sleeping room), including documentation that clearly identifies where and how site users will make use of such parking (including but not limited to contractual agreements with private parking areas, valet service, shuttles, etc.). Such offsite parking shall not be allowed to reduce general public coastal access parking.

- i. ~~**Building Articulation.** The front side of the development facing Addie Street shall be articulated in way that the pedestrian accessway and utilities (in a free span bridge) connect to the rental unit as far inland as possible and as close to Addie Street as is allowed under these conditions, and the rest of the Addie Street frontage is further setback from Addie Street in such a way as to articulate toward the corner of the neighboring “beach house” (at 136 Addie Street). The reminder of the development shall incorporate articulation in building design in order to avoid boxiness and increase visual interest and compatibility, including through pitched roof, offsets and projections to increase shadow patterns, and materials and colors designed to blend with the beach and creek aesthetic.~~
- j. ~~**Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements (e.g., lighting, landscaping, railings, etc.) reduces the appearance of bulk and mass and blends with the surrounding natural environment. At a minimum, exterior materials shall appear natural and non-reflective, including through the use of wood, stone, brick, and earth tone colors. Plans shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.). Only native dune and riparian plants shall be used for landscaping.~~
- k. ~~**Demolition.** The plans shall provide detail on all measures to be taken to demolish and reconstruct the inland side of the neighboring “beach house” (at 136 Addie Street) so that it is set back 5 feet from the shared property line with the subject property. All such measures shall be designed to limit coastal resource impacts as much as feasible. The plans shall be submitted with evidence of all permits and approvals necessary for all such activities, including CDP authorization for such development on this neighboring property.~~
- l. ~~**Structural Stability.** Foundation piles shall be limited in size, scale, and number to that required for support and structural stability. Supplemental plans shall be provided that clearly identify all measures to be taken to ensure that the foundation pilings are adequate to provide necessary support and structural stability in light of coastal hazards. The Permittee shall also demonstrate that the pilings are embedded to a sufficient depth in non-liquefiable materials and provide calculations demonstrating a factor of safety against liquefaction of 1.5 pursuant to the guidelines of the Division of Mines and Geology, Special Publication 117.~~

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this coastal development permit. The Permittees shall undertake development in accordance with the approved Revised Project Plans.

- 2. ~~**Dune Restoration Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT, the Permittees shall submit two full size sets of Dune Restoration Plans to the Executive Director for review and approval. The Dune Restoration Plans shall provide for offsite dune habitat restoration and enhancement at a ratio of 2:1 for all dune habitat covered/shaded on the property by the elevated structure and bridge to Addie Street, and shall provide for dune~~

habitat restoration and enhancement on all of the subject property, including the area covered by the elevated structure and bridge. Off site restoration is preferred as close to the subject site as possible (e.g., along Addie Street). For both areas, the Dune Restoration Plans shall include, at a minimum, the following components:

- a. ~~**Objective.**~~ Restoration shall be premised on enhancing habitat so that it is self-functioning, high quality habitat in perpetuity.
- b. ~~**Non-Native and Invasive Removal.**~~ All non native and/or invasive species shall be removed, and continued removal shall occur on an as-needed basis to ensure complete removal over time.
- c. ~~**Native Dune Plants.**~~ All vegetation planted shall consist of dune plants native to Pismo Beach.
- d. ~~**Plant Maintenance.**~~ All required plantings shall be maintained in good growing conditions throughout the life of the project, and whenever necessary shall be replaced with new plant materials to ensure continued compliance with the plan.
- e. ~~**Dune Contours.**~~ Final contours of the restoration shall mimic and seamlessly integrate with natural dune contours present and/or historically present in this area.
- f. ~~**Implementation.**~~ A map shall be provided showing the type, size, and location of all plant materials that would be planted, the irrigation system (if any), topography and finish contours, and all other landscape features. Fencing shall be limited to temporary rope and pole barriers or equivalent, sited and designed to limit visual impacts as much as possible. A schedule for all restoration activities shall be included.
- g. ~~**Monitoring and Maintenance.**~~ A plan for monitoring and maintenance of habitat areas in perpetuity shall be included, including:
 - ~~A schedule out to 5 years.~~
 - ~~A description of field activities, including monitoring studies.~~
 - ~~Monitoring study design, including: goals and objectives of the study; field sampling design; study sites, including experimental/revegetation sites and reference sites; field methods, including specific field sampling techniques to be employed (photo monitoring of experimental/re-vegetation sites and reference sites shall be included); data analysis methods; presentation of results; assessment of progress toward meeting success criteria; recommendations; and monitoring study report content and schedule.~~
 - ~~Adaptive management procedures, including provisions to allow for modifications designed to better restore, enhance, manage, and protect habitat areas.~~
- h. ~~**Reporting and Contingency.**~~ Five years from the date of completion of the project, and every ten years thereafter, the Permittee shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies the restoration is in conformance with the approved plan, along with photographic documentation of plant species and plant coverage beginning the first year

~~after initiation of implementation of the plan, annually for the first five years, and then every ten years after that. If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the Dune Restoration Plans approved pursuant to this permit, the Permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved plan, shall be carried out in coordination with the direction of the Executive Director until the approved plan is established to the Executive Director's satisfaction~~

~~The Permittee shall undertake development in accordance with the approved Dune Restoration Plans, which shall be initiated within 90 days of Executive Director approval of such plans, or within such additional time as the Executive Director allows if there are extenuating circumstances.~~

~~3. Construction Plan.~~ ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:~~

- ~~a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and visual resources as well as to maintain best management practices (BMPs) to protect sensitive coastal dune and riparian resources on site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.~~
- ~~b. **Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from sensitive coastal dune and riparian resources and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work shall take place during daylight hours and all lighting of the creek and dune habitat is prohibited.~~
- ~~c. **Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.~~
- ~~d. **Pre-construction Surveys.** The plan shall include pre-construction surveys for sensitive species including tidewater goby, western snowy plover, and California red-legged frog. If any of these species is identified in the project impact area, the Applicants shall consult~~

with U.S. Fish and Wildlife Service and the Executive Director, and shall implement mitigations as directed by the Executive Director.

- e. ~~**BMPs.**~~ The plan shall clearly identify all BMPs to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into Pismo Creek or the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from entering the creek or beach. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.
- f. ~~**Construction Site Documents.**~~ The plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- g. ~~**Construction Coordinator.**~~ The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible

~~from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.~~

- ~~h. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.~~

~~Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan.~~

- ~~4. **Visitor-Serving Overnight Unit.** By acceptance of this coastal development permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, that:~~

- ~~a. **Length of Stay Provisions.** The vacation rental unit shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 days per year or for more than 14 days between Memorial Day and Labor Day.~~

- ~~b. **Conversion Prohibited.** The conversion of the approved vacation rental unit to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.~~

- ~~5. **Open Space Restriction.** Development, as defined in Section 30106 of the Coastal Act and the City of Pismo Beach LCP, shall be prohibited on all areas of the property outside of the approved elevated rental unit and bridge, except for dune restoration maintenance activities and public recreational access, both subject to Executive Director review and approval. Prior to issuance by the Executive Director of the Notice of Intent to Issue a Coastal Development Permit, the Permittees shall submit to the Executive Director for review and approval, and upon such approval, for attachment as an exhibit to the NOI, a legal description and graphic depiction, prepared by a licensed surveyor, of the area of the property to be restricted to open space uses.~~

- ~~6. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (i) that the site may be subject to hazards from episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this~~

permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. ~~No Additional Protective Structures.~~ By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, that:

- a. **~~Permit Intent.~~** The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards;
- b. **~~Additional Measures Prohibited.~~** No additional protective structures, including but not limited to additional or augmented piers (including additional pier elevation), shall be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from coastal hazards;
- c. **~~Section 30235 Waiver.~~** They waive any rights to construct shoreline/hazards protective structures that may exist pursuant to Public Resources Code Section 30235;
- d. **~~Removal.~~** They shall remove the development including the one-story vacation rental, accessway, utilities, and pilings, authorized by this permit, including the one-story vacation rental, accessway or utilities, if any government agency has ordered that the structures are not to be occupied due to any coastal hazards. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and creek and lawfully dispose of the material in an approved disposal site. Prior to removal, the Permittees shall submit two copies of a Removal Plan to the Executive Director for review and approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources.

8. ~~Future Development Restrictions~~ By acceptance of this permit, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns that this permit is only for the development described in CDP A-3-PSB-10-062. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by CDP A-3-PSB-10-062. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP A-3-PSB-10-062 from the Commission.

9. ~~Other Agency Approval.~~ ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the City of Pismo Beach, California State Lands Commission, California Department of Parks and Recreation, California Department of Fish and Game, and the U.S. Fish and Wildlife Service. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

10. ~~Deed Restriction.~~ ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~, the Permittees shall submit to the Executive Director for review and approval documentation demonstrating that the Permittees have executed and recorded against the property governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the property governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.

11. ~~Archaeological Resources.~~ ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT~~, the Permittee shall submit two copies of an archaeological survey of the site conducted by a qualified archaeologist who is a member of the Register of Professional Archaeologists to the Executive Director for review and approval. Should archaeological resources be identified, the Permittee must submit to the Commission a CDP amendment application to ensure qualified archaeologist and Native American representatives have examined the site and mitigation measures have been developed that address and proportionately offset the impacts of the project on archaeological resources. The CDP amendment application shall include two copies of an archaeological mitigation and monitoring plan prepared by a qualified archaeologist for review and approval of the Executive Director. The Plan shall provide for an archaeological monitor to be present during all ground disturbing activities. The Plan shall also include a description of monitoring methods, including provision for a pre-project survey that includes participation by qualified local Native Americans, frequency of monitoring, procedures for halting work on the site and a description of reporting procedures that will be implemented during ground disturbing activities to ensure that cultural resources are not disturbed. The Plan shall include a list of the personnel involved in the monitoring activities and their qualifications, and shall include qualified local Native Americans as project monitors. At a minimum, the Plan shall provide for the following:

~~DURING ALL GROUND DISTURBING ACTIVITIES FOLLOWING A FUTURE COASTAL DEVELOPMENT PERMIT AMENDMENT~~, the Permittee shall retain a

~~qualified archaeologist, approved by the Executive Director, to monitor all earth-disturbing activities per the approved monitoring plan. The Permittee shall also include qualified local Native Americans as project monitors as applicable. If an area of cultural deposits is discovered during the course of the project, all construction shall cease in the vicinity of the resource, and a new plan shall be submitted that avoids such resources that shall be submitted for the review and approval of the Executive Director.~~

IV. COASTAL DEVELOPMENT PERMIT DETERMINATION

In this de novo review of the proposed CDP application, the standard of review is the City of Pismo Beach certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

A. PROJECT LOCATION

The proposed project is located in the backbeach area between Pismo Creek and Addie Street at 140 Addie Street, about four blocks downcoast of the Pismo Pier in Pismo Beach. The site is at beach and creek elevation about five feet below the elevation of Addie Street. It is currently undeveloped, except that a portion of a vacation rental house that is elevated on exposed wood piles above the beach dunes directly seaward of the site extends across the property line onto this site, and a compacted area¹ that is used for vehicular access (ramping down from Addie Street) and parking for the neighboring vacation rental is also located onsite. Seaward of that is the wide and expansive sand of Pismo State Beach. Inland of the site and also between Addie Street and the Creek there are two vacant lots and then a four-unit vacation rental condominium complex. Downcoast, across the Creek, there is an RV park and the rivermouth/lagoon area (i.e., the mouth of the Pismo Creek Estuary). Upcoast, across Addie Street, there is a City-owned public parking lot, restroom, and the City's "beachwalk" public access promenade that extends from the site upcoast through the Pier. See project location maps and site photos in **Exhibits 1, 2, and 3**.

The project area is located in the upland portion of a significant beach dune complex at the mouth of Pismo Creek, where the Pismo Estuary forms. This area contains four sensitive plant communities, including pioneer dune and beach community, estuarine community, freshwater marsh and coastal salt marsh, as well as related wildlife habitats, including riverine, fresh water emergent wetland, estuarine wetland, pioneer coastal dune and marine. These habitats are relied on by many sensitive species, including: California Tiger Salamander, Coast Range California Newt, California Red-Legged Frog, Southwestern Pond Turtle, California Coast Horned Lizard, Silvery Legless Lizard, Common Loon, Clark's Grebe, Western Grebe, California Brown Pelican, Double-Crested Cormorant, Great Egret, Great Blue Heron, Snowy Egret, Black-Crowned Night Heron, Osprey, American Peregrine Falcon, Western Snowy Plover, Long-Billed Curley, California Gull, California Least Tern, Caspian Tern, Forster's Tern, Tidewater Goby and Steelhead Trout.

In addition to these biological resources, river mouths and dunes such as those at this location are both subject to significant hydrologic and landform changes over time, and the project site has

¹ This area is not paved, and it appears that some sort of rock and/or soil has been deposited here and repeated vehicular use has hardened it to a certain degree.

been and will likely continue to be in the future subject to such changes. For example, rivers migrate depending on watershed changes and storm flows, and estuaries regularly form and reform in different configurations. In addition, dunes can migrate dramatically depending on erosion and accretion of the shoreline, storms and wind patterns. At this site, dune morphology is dynamically affected by these types of influences. The site has historically seen such changes, with aerial photographs from 1961 showing the site largely made up of sand, with minimal vegetation. Over the years, other photos show vegetation gradually overtaking open sand at the site when, other than the compacted area used for access to the adjacent vacation rental house on piles,² the rest of the site is almost entirely covered with what appears to be riparian plant species and invasive iceplant. Likewise, aerial photos show the dunes, river mouth and estuary in various configurations throughout the years. Again, see current site photos in **Exhibit 2**, and historic site photos in **Exhibit 3**.

Given its location at the river's edge where it transitions to the beach, the site is also located within the 100-year floodplain and is subject to coastal flooding and tsunami inundation. In fact, the site has been inundated by significant flooding in recent history. For example, photos taken during the winter storms of 1983 show dramatic flooding at the site (see **Exhibit 4**). According to the City's Hazard Mitigation Plan, the City can expect to see major flooding events every four to six years, given past frequency of flooding occurrences. Given the expectations for increased intensity and frequency of storm activity due to climate change and sea level rise, such major flooding in the City is likely to increase even more over time.

The project is located on a site that is designated by the LCP's Land Use Plan (LUP) as mixed-use, and is located in the LCP Implementation Plan's (IP) Hotel-Motel and Visitor Serving (R-4) district. This district is designed to accommodate and cater to the needs of tourists with lodging and other visitor-serving amenities. The allowed uses are lodging, restaurants and bars and other visitor-serving commercial uses. As a conditional use, residences can be allowed, but only if the applicant can show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use.

The project site and surrounding area seaward of the inland and existing four-unit vacation rental condominium complex is made up of seven lots located between Addie Street and Pismo Creek in the backbeach area where it transitions to Creek/Estuary (see lots identified as Lots 1 through 7 in **Exhibit 1**). Lots 1, 2 and 3 are the most seaward lots, and although they were the subject of previous development proposals,³ they are currently undeveloped sandy beach area indistinguishable from the rest of the sandy beach environs, and no proposals are currently pending.⁴ Just inland of these sandy beach lots, the existing vacation rental house on piles above the dunes is located on lot 4 and immediately seaward of the project site.⁵ This house was originally constructed in the early 1960s prior to CDP requirements, and it actually extends about 6 feet onto lot 5, which is the subject lot. As indicated above, a compacted vehicular parking

² Where this compacted area appears to have been part of a larger open area that was used as a general beach parking area at one time from the 1972 photo.

³ Appeal numbers A-3-PSB-02-063, A-3-PSB-02-064 and A-3-PSB-02-065. The Commission found that all three appeals raised substantial LCP conformance issues on September 11, 2002. The proposed project applications were later withdrawn, and thus the Commission did not take any de novo action on the projects.

⁴ Lots 1, 2, and 3 are owned by ALFAM Ltd.

⁵ Lot 4 is owned by Addie Street Land Group.

area, which is used by occupants of the vacation rental house, is also located on lot 5, which is otherwise sandy substrate covered by riparian and ruderal vegetation, including iceplant.

Just inland of lot 5, lot 6 includes the compacted ramp down from Addie Street to the parking area on lot 5, and this lot shares the same substrate and vegetation characteristics as lot 5. Lot 7 also shares these same characteristics, but it is completely covered with vegetation and otherwise undeveloped.⁶ The Commission's legal division reviewed the history of the Applicants' lot (lot 5) to determine if it is a separate legal lot, and concluded that it is. The owner of lot 4 holds a revocable easement⁷ for the use of a portion of lot 5 that accounts for the current parking use as well as the house encroachment across the property line. The easement would be revoked as part of the proposed project such that the owner and occupants of lot 4 would no longer have a right to use lot 5 for any purpose.⁸

The Applicants' lot, lot 5, is a 4,500 square-foot lot located on backbeach dunes, approximately 30 feet from the current edge of flow of Pismo Creek and about 2 feet above the Creek elevation. The lot is separated from the Addie Street sidewalk by a low bluff, approximately 5 feet high, covered by iceplant. Thus, the site is located within the upland portion of the backbeach dunes where they transition to Creek/Estuary, and it exhibits characteristics of both dune and riparian habitat. It also includes a compacted area and a portion of the adjacent house on piles. See **Exhibits 1, 2, 3, and 4** for location maps and photos, including historic photos going back to 1961.

B. PROJECT DESCRIPTION

The Applicants propose to construct a 3,651 square-foot two-story duplex (i.e., two residential units within one structure). The duplex would include two 2-car garages ((akin to a single four-car garage) and a 749 square-foot vacation rental residential unit on the lower level, and a 1,969 square-foot private residential unit on the upper level. Access from Addie Street to the elevated garage and the two residential units would be via a bridge partially on the City's right-of-way and partially on the site.⁹ The entire structure, including the two residential units, the two garages, and the bridge, would be elevated on piles approximately eight feet above the existing grade at the site,¹⁰ and about three feet above the grade of Addie Street, and it would be 33.5 feet high as measured from site grade. Thus, the structure would extend nearly 30 feet above the Addie Street elevation. The piles would be steel-pipe with a minimum diameter of 14 inches that

⁶ Lots 6 and 7 are owned by ATSCO Ltd.

⁷ The easement may be revoked by the owner of lot 5 at any time.

⁸ The owner of lot 5 is also the owner of the hotel that is located just upcoast of the public parking lot on the other side of Addie Street from this area, and has indicated that users of the vacation rental house on lot 5 would park in the hotel facility and walk to the site.

⁹ The Addie Street sidewalk is about 15 feet from the actual edge of the right of way, and thus the sandy bluff area topped by iceplant that extends down to the compacted parking area on the site is in the Addie Street right-of-way.

¹⁰ The Applicant had initially proposed to elevate the structure so that the finished floor elevation would be approximately seven feet above existing site grade. However, although this elevation was approved by the City, the Applicant has since proposed to raise the structure by an additional foot to better address flooding hazards. Therefore, the 8-foot elevation is what is proposed. Elevations otherwise identified are in relation to the 8-foot elevation.

would be driven 40 to 50 feet into the ground.¹¹ It is not clear from the project materials exactly how many piles would be required and are proposed to support the structure.¹² However, adding together all of the piles shown in the proposed elevations and assuming piles would be evenly distributed underneath the structure to support it, it appears that at least 24 piles are proposed (see project plans in **Exhibit 5**).¹³ The structure would be designed so that it could be elevated further in the future¹⁴ in the event that future sea level rise leads to higher than expected flood elevations.¹⁵ In addition, a wrought iron and pillar fence would be constructed along the Addie Street frontage. The project also includes removal of invasive vegetation and installation of landscaping.

Finally, the project includes demolition and removal of development associated with the neighboring vacation rental house on piles. As described above, the owner of lot 4, which contains the vacation rental house, holds an easement for existing development on lot 5, the subject lot, which can be revoked by the owner of lot 5 at any time. Initially, the proposed project did not include the changes to the existing vacation rental development that would be required before the development of lot 5 could occur, but the City incorporated this into the project because it is needed before the proposed project could be moved forward. However, although the owner of lot 4 has consented to the project, including removal of a portion of the vacation rental unit on lot 4, only very limited information about this portion of the proposal has been provided. A simple site plan shows the proposed plan for demolition (see **Exhibit 5**). It shows that the downcoast corner of that house and its stairway access that extend across the property line would be cut back approximately 11 feet so that the side of the existing house would be about 10 feet from the side of the proposed duplex structure. This would require significant changes to the existing development, including relocation of one pile, installation of additional support beams, and replacement and reconstruction of the walls, roof and interior, resulting in the loss of an existing staircase and entry way, as well as loss of approximately 180 square feet of living space, including portions of a living room, bedroom and bathroom. In addition, the project would result in the loss of the parking area for the existing vacation rental house, but there is currently no proposal to remove the compacted parking area from lot 4 or from lot 6, which contains the driveway entrance.

See proposed project plans and visual simulations (including photos of project staking) in **Exhibit 5**.

C. HAZARDS

The LCP requires new development to avoid and minimize risks due to hazards and it requires

¹¹ The Applicant also originally proposed to install chain link fencing around the perimeter of the piles, but the City conditioned the project to remove the chain link fencing, and the Applicant has since indicated that it is no longer proposed. Thus, although this chain link fencing around the piles is shown in the project plans in Exhibit 5, it is not part of the currently proposed project.

¹² The project materials don't show the total number of piles, and don't otherwise describe how many would be needed.

¹³ And potentially more, including if the geotechnical engineering requirements dictate narrower spans than are identified in the elevation views provided (see Exhibit 5).

¹⁴ The structure has been designed to allow it to be elevated further into the air as a unit so that additional extension piles could be added.

¹⁵ Any such future elevation would be subject to separate CDP processes.

new development to ensure that it will not result in increased hazards. LCP Policy S-2 states:

S-2: New development. *New development within the City's jurisdiction shall be designed to withstand natural and man-made hazards to acceptable levels of risk by: ... (c) Evaluating new development, particularly industrial, commercial or utility development, to ensure that construction or operation of the project will not cause hazardous conditions at an unacceptable level of risk; (d) Requiring new development to avoid portions of sites with high hazard levels.*

The LCP also specifically addresses the risks due to bluff hazards. It defines bluffs and blufftops, it prohibits most new development on bluff faces, it requires adequate setbacks from bluffs, and it addresses the need to ensure long-term stability and structural integrity and avoid landform-altering devices. The LCP also restricts the development of permanent structures on the beach, prohibits new development that would require shoreline protection now or in the future, and provides criteria and standards for the development of shoreline structures, including groins, piers, breakwaters and other similar structures that serve to protect development. Relevant LCP policies include:

IP Chapter 17.006 Definitions. ... ***17.006.0155 Bluff (Ocean):*** *A bank or cliff rising from the beach or coastline.* ... ***17.006.0165 Bluff Top (Ocean):*** *The point at which the slope of the bluff begins to change from near horizontal to more vertical.*

S-3: Bluff Set-Backs. *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City shall determine the required setback based on the following criteria: (a) For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff (blufftop is defined as the point at which the slope begins to change from near horizontal to more vertical). A geological investigation may be required at the discretion of the City Engineer, and a greater setback may be applied as the geologic study would warrant; (b) For all other development, a geologic study shall be required for any development proposed.

S-4: Blufftop Guidelines/Geologic Studies. *Site specific geological reports shall incorporate the information requirements contained in the State Coastal Commission's guidelines for Geological Stability of Blufftop Development, as adopted May 3, 1977 and updated on December 16, 1981. This guideline is included in the Appendix. The report shall consider, describe and analyze the following: (1) A site specific erosion control plan to assure that the development would not contribute to the erosion or failure of any bluff face shall be prepared by a licensed engineer qualified in hydrology and soil mechanics for all bluff top development; (2) Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site; (3) Historic, current and foreseeable cliff erosion, including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs where available and possible changes in*

shore configuration and sand transport; (4) Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults; (5) Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development and the potential effects of the development on landslide activity; (6) Impact of construction activity on the stability of the site and adjacent area; (7) Ground and surface conditions and variations, including hydrologic changes caused by the development (i.e., introduction of irrigation water to the ground water system; alterations in surface drainage); (8) Potential erodability of the site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design); (9) Effects of marine erosion on seacliffs; (10) Potential effects of seismic forces resulting from a maximum credible earthquake, and; (11) Any other factors that might affect slope stability.

S-5: Development on Bluff Face. *No additional development shall be permitted on any bluff face, except engineered staircase or accessways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face, toe and beach.*

S-7: Hazards Overlay Zone. *Areas where blufftop hazards exist shall be included within and subject to the requirements of the Hazards Overlay Zone.*

17.078.060 Shoreline protection criteria and standards.

A. No permanent above ground structures shall be permitted on the dry sandy beach except facilities necessary for public health and safety, such as, but not limited to lifeguard towers and the pier.

...

E. New development shall not be permitted where it is determined that shoreline protection will be necessary for protection of the new structures now or in the future based on a one hundred year geologic projection.

F. Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve coastal dependent uses and that may alter natural shoreline processes shall not be permitted unless the city has determined that when designed and sited, the project will:

- 1. Eliminate or mitigate impacts on local shoreline sand supply;*
- 2. Provide lateral beach access;*
- 3. Avoid significant rocky points and intertidal or subtidal areas; and*
- 4. Enhance public recreational opportunities.*

G. No additional development shall be permitted on any bluff face, except engineered

staircases or accessways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe and beach.

...

The LCP also addresses hazards due to flooding, restricting development in the flood plain and prohibiting new development that in any way obstructs floodwaters or contributes to flooding. Relevant policies state:

S-8: Flood Plain Zoning. Areas subject to flooding shall be mapped within and subject to the requirements of the Flood Plain Overlay zone.

S-9: Restrictions on Development Within the 100-Year Flood Plain. (1) No habitable structure shall be approved for construction within the area of the 100-year flood plain unless the applicant demonstrates that the finished floor elevations are at least one foot above the projected elevation of the 100-year flood, except as allowed by FEMA regulations; (2) No new fill, structure, or other obstruction shall be permitted to be placed or constructed within a floodway unless a detailed hydrologic study has been prepared and approved by the City Engineer ensuring that the proposed project will not obstruct, in any way, passing floodwaters; (3) No new development shall be allowed in the 100-year flood plain which will contribute to or increase flood hazards on the same or other properties or which would require construction of flood control devices; (4) Any application for development on a parcel any portion of which is within the boundary of the 100-year flood plain shall be required to submit a hydrological engineer's report which assesses the nature of the flood risks, identifies the boundary of the 100-year flood plain and specifies the protective measures that should be undertaken to attain compliance with the city's flood plain zoning and with FEMA regulations.

Analysis

Geotechnical Reports

The City did not require the Applicants to prepare a full site-specific geotechnical analysis prior to its approval of the project. Therefore, after the project was appealed to the Commission, staff worked with the Applicants and the Applicants' engineer to ensure adequate reports were prepared to allow the Commission to have the information necessary to act on the project, as required by the City's LCP. In addition to the information included in the City's CDP record for the project, the Applicants have since provided a geotechnical engineering report prepared by Earth Systems Pacific, dated April 19, 2011. Earth Systems Pacific also prepared a response to Commission staff's comments, dated March 29, 2011. This response provided an updated 100-year flood elevation, and evaluated the site's beach erosion and tsunami hazards.

Site Characteristics

As previously described, the project site is located in an area subject to a combination of coastal hazards due to its backbeach location on dunes in a floodplain at the mouth of a major river. The

site is about 2 feet above Pismo Creek at an elevation of +7 feet NGVD¹⁶ and is separated from the paved portion and sidewalk of Addie Street by a coastal bluff in the City right-of way that is approximately five feet high.

The Applicants' 2011 geotechnical reports describe anticipated 100-year flood elevations at the site over the next 100 years using an estimated sea level rise of 42 inches, or 3.5 feet, over that time frame, citing the State of California Sea-Level Rise Interim Guidance Document.¹⁷ This estimate is at the lower end of guidance provided in that document, which ranges from 40 to 55 inches (or approximately 3.3 feet to 4.6 feet). The Commission has typically focused on the higher range when planning for such hazards so as to err on the more conservative side. In any case, based on this lower-range estimate, the Applicants' 2011 reports indicate that the 100-year flood elevation at this site is +12.24 feet NGVD, which is just above the elevation of Addie Street. The Applicants' reports also indicate, again based on the lower-range sea level rise estimate, that the 100-year stillwater elevation,¹⁸ based on 3.5 feet of sea level rise, is +8.14 feet NGVD, meaning that the site will be under water during stillwater conditions (i.e., the site is currently at +7 feet NGVD). Therefore, even based on the lower-end sea level estimate, the Applicants' reports indicate that the site will be inundated with flooding and storm surges, and will be inundated more frequently in the future.

The Applicants' geotechnical reports also provide the subsurface profile for the site. The site consists of sand to a depth of 13 to 19 feet. Below the sand is a layer of clay that extends to a depth of about 28 feet. Between 28 feet and 50 feet, there is another layer of sand, and below 50 feet, additional clay soils were encountered. No bedrock was found, and subsurface water was encountered at a depth of 5 feet.

Clearly, the site is part of an actively changing shoreline. Although the Applicants' shoreline erosion analysis determined that the shoreline near the site appears to be in near-equilibrium state, it only considered the past 46 years of shoreline changes, and did not consider future expected changes, including due to expected sea level rise. Changes due to sea level rise may be especially significant at this site due to its location in sand dunes that are more prone to shifting and are more easily altered by storms than harder substrates, as well as its extremely low elevation and close proximity to the estuary. As such, it is reasonable to predict that the estuary may migrate or widen in the future and that the beach dunes could be reconfigured by coastal flooding, storms, and related processes so that the site could be even more regularly inundated with water.

¹⁶ The Sea Level Datum of 1929 was the vertical control datum established for vertical control surveying in the United States of America by the General Adjustment of 1929. The datum was used to measure elevation (altitude) above, and depression (depth) below, mean sea level (MSL). It was renamed the National Geodetic Vertical Datum of 1929 (NGVD 29) in 1973. The NGVD 29 was subsequently replaced by the North American Vertical Datum of 1988 (NAVD 88) based upon the General Adjustment of the North American Datum of 1988. Thus, +7 feet NGVD is approximately 7 feet above mean sea level.

¹⁷ Coastal and Ocean Working Group of the California Climate Action Team, *State of California Sea-Level Rise Interim Guidance Document*, October 2010.

¹⁸ The design stillwater level in the analysis is the maximum stillwater level under typical 100-year recurrence conditions. Stillwater level is dependent upon several factors, including tide, storm surge, wind set up, inverse barometer, and climatic events (i.e., El Niño and La Niña).

Flooding

The project site is located in the floodplain in an area that is highly susceptible to flooding (see, for example, the photos in **Exhibit 4**). Although the LCP indicates that new development be avoided in high hazard areas like this (LCP Policy S-2), it also allows for such development in floodplain hazard areas if sited and designed appropriately to address such hazards (including through elevation above expected flood levels, no obstruction to floodwaters, etc.). The Applicants have attempted to address the site's flooding hazards by proposing a structure that is raised to an elevation of +15 feet NGVD (and 8 feet above existing grade) on at least 24 piles.¹⁹ To access the pile-borne structure, a bridge would extend from Addie Street (at elevation +12 feet NGVD) rising up three feet to the elevation of the base elevation of the garage and duplex structure. This bridge would contain the utility infrastructure for the project, including water and sewer lines.

Thus, although the bottom of the floor of the duplex/garage part of the structure would be at about +14 feet NGVD and just higher (1.25 feet) than the Applicants' estimated 100-year flood elevation of +12.24 feet NGVD (and the finished floor at least 1-foot above this level as required by LCP Policy S-9), the bridge and utilities would be lower than the 100-year flood elevation, and would not meet the flood elevation requirements of LCP Policy S-9. In addition, a 100-year flood at the Applicants' estimated elevation would intersect with the bridge and utilities, obstructing floodwaters and potentially washing the bridge/utility structure out and leading to other impacts (e.g., gas or sewage leak, materials strewn on the public street and/or beach, lack of access to garage/living space, damage to pile-borne structure where connected to bridge, etc.) that would adversely affect coastal resources (including habitat and public recreational access resources). Further, as described above, the Applicants used a lower-end sea level rise estimate. If a more conservative estimate were used, the 100-year flood elevation would be approximately one foot higher, or +13.24 feet NGVD, only several inches below the bottom of the floor of the duplex/garage part of the proposed structure, exacerbating flooding impacts, including those described above.

To address the potential for additional future sea level rise, the proposed project has been designed so that it can be elevated even higher above the flood plain. Although this option would help address the flooding risks to the pile-borne garage/duplex part of the structure itself, it would create additional complications for the bridge and utilities because its slope and distance from the street would increase. It is not even clear if a satisfactory access could be provided in such scenario. In addition, additional elevation creates other problems with the development, including additional public viewshed impacts (see also Visual Resources section below).

Finally, for both lower-end and more conservative estimates for sea level rise and related issues, the proposed project raises other floodway issues by virtue of the fact that it would introduce a series of 24 or more exposed piles in the floodplain. The LCP prohibits projects that include components, like this, that will "obstruct, in any way, passing floodwaters" (LCP Policy S-9). Thus, the LCP identifies a high bar that must be met for proposed projects in the 100-year floodplain. In this case, the proposed piles would be expected to obstruct passing floodwaters, and contribute to exacerbated flood hazards, both by their own surface area and by trapping

¹⁹ As stated in the project description, it is not clear from the project materials how many piles are required to support the proposed structure, but it appears from the project plans that at least 24 are proposed. More or less piles may be required depending on geotechnical engineering requirements.

debris, including objects such as tree trunks traveling downstream, causing debris jams and impacting the flow of water at and around the site. If even more piles were ultimately required for stability, this impact would be exacerbated. This is inconsistent with the requirements of LCP Policy S-9.

In short, the proposed project is located in the 100-year floodplain and it does not meet the LCP's minimum requirements for addressing this constraint, even based on the lower end sea level rise estimate used in the Applicants' geotechnical report. At higher and more conservative sea level rise estimates, such as are generally used by the Commission, such LCP inconsistencies only increase in number and magnitude. The project includes finished floor components, such as the driveway and utilities, sited below the 100-year flood elevation and includes additional components, such as the piles, that would be expected to further obstruct floodwaters. The project is therefore inconsistent with the LCP's flooding hazard policies.

Shoreline Development

The proposed project is located at the base of the short bluff fronting Addie Street.²⁰ The LCP includes numerous policies directed at this shoreline interface, including policies limiting allowable development on the beach and bluff, requiring siting and design to provide 100 years of stability, and prohibiting certain types of shoreline structures (LCP Policies S-3 and S-5, and Section 17.078.060). The proposed project cannot meet these LCP requirements.

First, the LCP prohibits all structures on dry sandy beach areas except for those necessary for public health and safety (such as lifeguard towers) (LCP Section 17.078.060(A)). As described above, the site is in the backbeach dune area between Addie Street and Pismo Creek. Although it has been compacted in part by vehicular access and parking for the adjacent existing vacation rental, the site is still a backbeach site, and is characterized by sandy soils overlain by vegetation known to colonize sand; in this case iceplant. In fact, as indicated by the Applicants' boring profile described above, the site consists of sand to a depth of 13 to 19 feet. The proposed residential structure, including its piles, is not allowed on the dry sandy beach. Thus, the proposed project is inconsistent with LCP Section 17.078.060(A).

Second, the LCP allows very limited development on the bluff face itself (i.e., public beach staircases/accessways; research or coastal dependent pipelines; and drainpipes in limited circumstances), none of which is residential development (LCP Policy S-5 and Section 17.078.060(G)). The proposed project includes the aforementioned bridge and utilities, as well as driveway columns, a metal rolling entry gate, and related development, that would be constructed on top of the bluff face, when this is not allowed by the LCP. Thus, the proposed project is inconsistent with LCP Policy S-5 and Section 17.078.060(G).

²⁰ This sloped area is a bank rising up from the backbeach elevation to Addie Street (or, put the other way around, sloping down from Addie Street to the backbeach elevation) at the coastline interface between the backbeach dunes and inland development (namely Addie Street itself), and thus it meets the LCP's bluff definition (LCP Section 17.006.0155). As such, this also means that the site itself technically meets the LCP's "bluff top" definition (because it is at "the point at which the slope of the bluff begins to change from near horizontal to more vertical" (LCP Section 17.006.0165)). However, it is clear that the LCP does not envision the backbeach area (such as this site) to be considered a bluff top, rather it envisions bluffs to be the area above the backbeach area. Thus, for the purposes of this analysis, Addie Street (i.e., the actual paved street and sidewalk) are atop the bluff, and the site is at the base of the bluff.

Third, the LCP requires residential development to be set back from bluff edges a sufficient distance as to be safe for at least 100 years, and generally requires a minimum setback of at least 25 feet to meet this requirement for residential development (LCP Policy S-3). Clearly, the intent of this policy is to avoid shoreline hazards (erosion, bluff retreat, flooding, etc.) by siting new development away from the shoreline hazards and far enough back from bluff edges as to be safe for 100 years. As such, the LCP does not even contemplate development on the backbeach at the base of the bluffs, as this area is within the shoreline hazard area that is being avoided through application of such setback policies. Or, put another way, the LCP does not allow development seaward of the required setback. The 100-year (or 25-foot) minimum setback, applied to this case, would extend inland of Addie Street and the public parking lot. Because the proposed project is not sited inland of the required bluff setback, it is inconsistent with LCP Policy S-3.

Fourth, the LCP prohibits development that would require shoreline protection now or within the next 100 years (LCP Section 17.078.060(E)). Typical forms of residential development and construction would place the proposed duplex and related development at or near existing grade. However, at this location, such siting would place the development in significant danger from shoreline hazards (including coastal flooding, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, landslides, earthquakes, bluff and geologic instability, and the interaction of these elements). To address this shoreline hazard problem, the Applicants propose to raise the residential portion of the structure on deep steel piles, creating a pier structure, to protect it from such dangers. Thus, the piles act as protection against shoreline hazards.²¹ Because the LCP defines piers and similar structures as shoreline protection, as discussed in more detail below, and because the proposed project requires such shoreline protection, it is inconsistent with LCP Section 17.078.060(E).²²

Fifth, the LCP limits allowable shoreline protective structures to those that protect existing structures or serve coastal dependent uses, and only subject to exacting shoreline access and landform protection criteria (LCP Policy S-3 and LCP Section 17.078.060(F)). IP Section 17.078.060(F) explicitly identifies piers among other shoreline structures that are subject to this criteria. These limitations emanate from similar Coastal Act requirements related to shoreline protection, and are meant to limit allowable protection projects because this type of development can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics, both on and off site, ultimately resulting in the loss of beach. The piles proposed to be placed directly in the shoreline environment at this location are intended to protect the proposed project from shoreline hazards, and they will both alter shoreline processes (including as described in terms of their effect on flooding, and the way in which they will block and alter nature sand and shoreline dynamics), and substantially alter the natural landform (as described earlier). Because

²¹ Not unlike the way a seawall proposed at the same time as a residence could be proposed to be used in place of a setback.

²² In addition, the setback provisions of LCP Policy S-3 that are not met by the proposed project (as discussed in the preceding paragraph) are required in part to avoid the construction of protective devices that would substantially alter natural landforms along bluffs. The piers in this case, and also the proposed project as a whole (including the duplex/garages above grade, and the bridge on top of the bluff and connecting to Addie Street) would substantially alter the natural landform at this site. The landform would not be able to adjust naturally to the dynamic processes playing out at this transition from backbeach dune to creek estuary, and instead would be unnaturally altered for as long as the development was in place at this location. As a result, the proposed project is inconsistent in this respect with LCP Policy S-3 as well.

the piles are not intended to protect an existing structure or to serve a coastal dependent use, they are categorically prohibited by the LCP. Even if they were allowed, the project does not meet the other LCP criteria that would also be required in order to allow them; namely it does not include components to eliminate or mitigate shoreline sand supply impacts, it does not provide lateral access, and it does not enhance public recreational opportunities (LCP Sections 17.078.060(F)(1-4)). Thus, the proposed project is inconsistent with LCP Policy S-3 and LCP Section 17.078.060(F).

In short, the project proposes LCP-prohibited development on the dry sandy beach and on the bluff face, proposes LCP-prohibited shoreline protection and structures, and proposes development that cannot meet LCP shoreline hazard setback requirements. The project is inconsistent with the LCP's shoreline development policies as cited in this finding.

Conclusion

The proposed project is located at the backbeach dune area where it transitions to creek/estuary habitat in an area subject to significant shoreline hazards (including coastal flooding, episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, landslides, earthquakes, bluff and geologic instability, and the interaction of same). The proposed project is inconsistent with the LCP's shoreline development and flooding policies, and as designed, cannot be approved consistent with the LCP.

D. BIOLOGICAL RESOURCES

The LCP includes strong protections for the City's biological resources. Selected principles from the LCP's Conservation and Open Space element state:

Principle 2: Natural Resources--Key Foundation of the City

Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. 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.

Principle 3: Resources and Open Space Belong to Everyone

Pismo Beach is an integral part of the larger California coastal community, linked by shared resources that are prized by the state, national and even international community. Congenial and cooperative use of these resources by both residents and visitors is recognized. Solutions for cooperative use shall always be based on retaining the area's fragile charm and resources.

Principle 6: The Big Three

The three primary resources and open space for Pismo Beach are: (1) 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. These natural assets will be protected and made available to all.

...

In addition, the LCP defines ESHA broadly and requires it to be preserved and protected within the intent of the Coastal Act's biological resource protection policies. It defines ESHA as follows:

17.006.0435 Environmentally Sensitive Habitat: *Those identifiable resources within the Coastal Zone which, due to their sensitivity or public value must be protected or preserved within the intent of Section 30230, 30231, 30233, 30236 and 30240 of the Coastal Act. Also, see Sensitive Coastal Resources Areas.*

17.006.0895 Sensitive Coastal Resource Areas: *Those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity, including: (1) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designed in the General Plan/Local Coastal Program Land Use Plan...*

The relevant cross-referenced Coastal Act policies state:

Section 30230: *Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231: *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233: *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

(4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource-dependent activities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

...

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236: *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30240: *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas; (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Finally, the LCP specifically requires the protection of Pismo Creek and the riparian areas around Pismo Creek. The LCP requires a minimum setback of at least 25 feet from the inland

extent of these habitat areas.

CO-14: Riparian Habitat. *Riparian habitat is the environment associated with lands adjacent to freshwater sources – perennial and intermittent streams, estuaries, marshes, springs, seeps. The habitat is characterized by plant and animal communities that require high soil moisture in excess of that available from precipitation. Among the major plants associated with riparian habitat in the Pismo Beach area are sycamore, cottonwood, willow and occasionally oak. Large riparian areas occur along the banks of Pismo Creek, Meadow Creek and Pismo Marsh, although smaller areas can be found in the planning area. It is the policy of the City to preserve riparian habitat under the following conditions: (1) As part of discretionary planning permits, a biotic resources management plan shall be required; (2) The biotic resources management plan shall include standards for project development which will avoid habitat disturbance; (3) The standards specified in the biotic resource management plan shall be utilized to determine the extent of development. The minimum standards that may be specified in the biotic plan for the preservation of habitat shall include: ... No significant disruption of riparian vegetation will be permitted. In addition, a minimum riparian buffer area shall be identified for each riparian habitat area at the time of development review. Except as specified in Policy CO-21 for Pismo Creek and policy CO-23 for Pismo Marsh, the minimum width of the buffer area shall be as identified by the biotic resources management plan and generally not less than 25 feet. Development standards for the minor riparian habitat areas and their respective buffer areas shall be the same as provided in Policy CO-21 with respect to kinds and locations of allowable uses.*

CO-21: Pismo Creek Protection. *Pismo Creek shall be retained in its natural state and protected from significant alterations. The following measures shall be employed to accomplish this intent:*

(a) Streamside Protection Zone. *There shall be a minimum streamside protection zone to conserve the environmentally sensitive habitats of the creek. This buffer zone shall be measured from the outer edge of the riparian vegetation or where there is no riparian vegetation, from the top of the creek bank. The minimum width for the buffer shall be as follows: West Bank – 100 feet/Cypress northward to City limits; 25 feet/Cypress to the ocean; East Bank – 100 feet/U.S. 101 northward to City limits; 50 feet/U.S. 101 to Dolliver Street; 25 feet/Dolliver to the ocean. A lesser buffer may be permitted if: 1) the minimum widths set forth above would render a parcel inaccessible or unusable for the purpose designated in the land-use plan; or 2) there is a showing by an applicant through the resource assessment study identified in item ‘h’ that a lesser buffer will not result in loss of, or adverse effects on, streamside vegetation or the biotic quality of the stream. Alternative mitigations shall be required where lesser buffers are authorized. No new construction or vegetation removal, except for normal maintenance, shall be allowed in the buffer zone with the exception of public roadways or bridges identified in the Circulation Element, paths, trails, fences, flood control structures, and other similar structures deemed not to adversely affect the creek.*

(b): Open Space. *The sandspit and channel where Pismo Creek enters the ocean and those portions of parcels located within the creek channel shall remain as open space and no structures or fill shall be permitted thereon.*

*(c): **Conservation Dedication.** Any new development shall be required to dedicate as a condition of any discretionary approval, an easement for the protection of the streamside area consisting of 25 feet or more from the top of the creek bank. In addition, new development shall provide access amenities adjacent to the creek for the city to use as a greenbelt and/or recreation corridor.*

...

*(h): **Resource Protection Plan.** A Resource Assessment and Protection Plan shall be required and approved concurrent with city action on projects located on parcels which have a portion within the streamside protection zone. The plan shall include appropriate measures to protect the creeks biological and visual aspects.*

***CO-31: Grading and Drainage Regulations.** ... (b) Development shall be designed to fit or complement the site topography, soils, geology, and any other existing conditions and be oriented to minimize the extent of grading and other site preparation...*

Thus, the LCP includes strong protections for biological resources and ESHA. The principles in the LCP's Conservation and Open Space element clearly recognize the importance of natural resource protection, and explicitly call out beach and shoreline resources and related ecosystems, including explicitly for open space and wildlife habitat values, for such protection. In addition, the LCP's definition of ESHA requires it to be preserved and protected within the intent of related Coastal Act policies, including Coastal Act Sections 30230, 30231, 30233, 30236 and 30240. These policies require marine and land-based biological resources to be protected, and call for the strict protection of ESHA. Section 30240 prohibits most development in ESHA, and requires new development that is adjacent to ESHA to be sited and designed to prevent impacts to it. Finally, the LCP specifically protects Pismo Creek, including in relation to its riparian habitat values where "no significant disruption of riparian vegetation will be permitted". The LCP requires a minimum 25-foot setback for development adjacent to Pismo Creek as measured from the outer edge of riparian vegetation. The LCP also prohibits structures and fill on the sandspit associated with the Creek.

Analysis

Biological Reports

As was the case for the geotechnical reports, at the time of its approval, the City did not have adequate biological information to rely on in order to analyze the project for consistency with the LCP. In the time since, the Applicants have had an updated biological report prepared.²³ The updated biological report includes an analysis of site biological surveys performed between 2008 and 2011.

Site Characteristics

As previously described, the project is located in a transitional area where beach dunes, coastal salt marsh, riparian vegetation, and the Pismo Creek Estuary all come together (again, see photos in **Exhibits 2 and 3**). This area contains four sensitive plant communities, including pioneer dune and beach community, estuarine community, freshwater marsh and coastal salt marsh, as

²³ Sage Institute, Inc., Wetland Determination & Biological Assessment for Koligian Residence at 140 Addie Street, March 25, 2011.

well as related wildlife habitats, including riverine, fresh water emergent wetland, estuarine wetland, pioneer coastal dune and marine. These habitats are relied on by many sensitive species, including: California Tiger Salamander, Coast Range California Newt, California Red-Legged Frog, Southwestern Pond Turtle, California Coast Horned Lizard, Silvery Legless Lizard, Common Loon, Clark's Grebe, Western Grebe, California Brown Pelican, Double-Crested Cormorant, Great Egret, Great Blue Heron, Snowy Egret, Black-Crowned Night Heron, Osprey, American Peregrine Falcon, Western Snowy Plover, Long-Billed Curley, California Gull, California Least Tern, Caspian Tern, Forster's Tern, Tidewater Goby and Steelhead Trout.²⁴ Although no sensitive wildlife species have been positively identified on the site, there have been no protocol level surveys for such species, and therefore, it is not possible to confirm that the site is not used by sensitive species. Given its location at the estuary/dune interface, it seems likely that the site is used from time to time by certain sensitive species as part of the larger habitat mosaic of which the site is a part.

Backbeach dunes dominate the site closest to Addie Street and closest to the ocean, extending under the adjacent house on piles and through the site. The site generally transitions to riparian vegetation and Pismo Creek proper as it extends away from Addie Street. It is clear that the habitat values of the site have been degraded over time, primarily where the compacted vehicular access/parking area is located in the center of the site (see **Exhibits 2 and 3**), but also close to the existing house on piles that extends over the property line. The site also includes significant areas colonized by weedy and invasive plant species, including primarily ice plant. In addition, the larger inland and creekside habitats of which this site is a part have seen development that has both displaced portions and as a whole degraded these habitats (including the inland four-unit condominium project two lots away, and the existing house on piles). Nonetheless, the site still exhibits dune and transitional riparian habitat characteristics, including being made up of sand to a depth of 13 to 19 feet,²⁵ and including being occupied by native riparian vegetation toward the Creek.²⁶

California Department of Parks and Recreation (DPR, who manages Pismo State Beach at this location), California Department of Fish and Game (CDFG), and U.S. Fish and Wildlife Service (USFWS) have all expressed significant concerns about the proposed project. In letters to the City, dated June 21, 2010 and October 10, 2008, DPR states that the project has the potential to change the hydraulic function of the estuary, resulting in substantial erosion of nearby dunes and beach area. In addition, it states that the creek at this location has no defined bank and that the entire property must be considered as part of the Pismo Creek Estuary (**Exhibit 7**). After conducting site visits in 2008, both USFWS and CDFG provided comment letters to the City expressing similar concerns. In a letter dated October 10, 2008, USFWS indicates concerns about impacts to habitat for Western Snowy Plovers, Tidewater Goby and California Red-Legged Frog. They also indicate that on January 31, 2008, the USFWS designated 18 acres of lower Pismo Creek as critical habitat for the Tidewater Goby. In summarizing their concerns, they state: "We are concerned the proposed construction activities and removal of the dune community would negatively affect the hydrology and morphology of the lagoon and shoreline, thereby reducing the quality and quantity of habitat for the tidewater goby and California red-legged frog as well as migratory birds" (**Exhibit 8**). Similarly, in an e-mail sent on October 8, 2008, CDFG states

²⁴ Id (Revised Initial Study).

²⁵ Geotechnical Engineering Report for Koligian Duplex, Earth Systems Pacific, April 19, 2011.

²⁶ Sage Institute, Inc. (March 25, 2011).

that the project would displace and degrade uplands and potential wetlands used by lagoon species and indirectly degrade aquatic habitat, including habitat for Tidewater Goby, Steelhead Trout, Southwestern Pond Turtle, and migratory waterfowl and shorebirds. In addition, they state that the project footprint is within an area that will likely become part of the main creek channel in the future (**Exhibit 9**)

The Applicants' biological report identifies one group of arroyo willows next to the existing vacation rental house, and patches of native coastal salt marsh and native dune vegetation in the southern fringe of the parcel (see **Exhibit 6**). The report also indicates that the remainder of the on-site vegetation is largely composed of ice plant, and there are no wetlands meeting LCP wetland criteria (i.e., which is consistent with Coastal Act criteria as opposed to a three criterion ACOE model). The report determines that the small group of willows onsite is not riparian habitat because it is over 100 feet from the bank of the river and is separated from other riparian vegetation by the driveway and degraded dune habitat. It concludes that the habitat onsite is degraded, and that the 25-foot buffer (from Pismo Creek habitat that was used by the City in its approval of the project) is adequate for habitat protection purposes.

After the Applicants' biologist performed the final site survey in March 2011 and before Commission staff could visit the site to verify biological report conclusions, the owner of the existing vacation rental house on piles on lot 4, allegedly graded lots 4, 6 and 7 (the latter two both just upstream of the site) with a bulldozer, scraping and removing vegetation without benefit of a CDP.²⁷ It appears that an area on the Applicants' lot and adjacent to the compacted area may also have been directly damaged by the grading, but it is difficult to verify with certainty.²⁸ It is also difficult to verify with certainty to what degree more regular manipulation of this sort may have occurred here to the detriment of habitat values. What is clear, in any case, is that since March 2011 when the Applicants' biologist canvassed the site and took photos, and after the alleged bulldozing episode, significant vegetation growth has occurred on the subject lot (as well as the neighboring lots).²⁹

In addition to the riparian area closest to Pismo Creek, the site itself is composed of dunes, albeit degraded, including both at the compacted area and in the areas covered by invasive iceplant and other weeds. Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply and wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat, and its important ecosystem functions, including that of supporting sensitive species, both now and in the future, especially as the sands shift and dormant seed banks emerge over time.

²⁷ The City is continuing to pursue this alleged activity as a City enforcement matter, and Commission staff has been coordinating with the City regarding its case.

²⁸ This area is shown in the photos taken by CDFG several days after the alleged grading.

²⁹ The change in vegetation can be seen by comparing the current site photos, taken in November 2011, in Exhibit 2, with the site photos taken for the biological report in March 2011, which are included in Exhibit 6.

ESHA Determination

The Commission's senior staff ecologist, Dr. John Dixon, reviewed the relevant biological materials and assessed the project site, and concludes that it meets the LCP's ESHA definition (i.e., that it is a rare and special habitat, albeit degraded in part, pursuant to relevant LCP and Coastal Act policies). He reached this conclusion both because of the importance of dunes in general, as described above, and because of the dune location and relationship to other significant habitats on this site and extending offsite, including native coastal salt marsh, riparian, and estuarine habitats associated with Pismo Creek and the Estuary. As described above, this determination is consistent with DPR, USFWS and CDFG conclusions for this site as well.

Therefore, although the habitat on-site is degraded, and the dunes mostly vegetated with ice plant and other weedy species or compacted, the site is ESHA due to the rarity of dunes and their importance in the ecosystem, including their relationship to creek-related resources both on and offsite. As such, the only development allowed on the site consistent with the LCP (LCP Policy 17.006.0435 (which substantively includes Coastal Act Section 30240) and LCP Policy 17.006.0895) is resource-dependent development that will not significantly disrupt habitat resources. The proposed project cannot meet these LCP requirements.

LCP Consistency

First, the proposed project is a residential project located in ESHA. The proposed residential use is not a resource-dependent use (including the proposed demolition/reconstruction of the side of the adjacent house on piles), and cannot be found consistent with LCP Policies 17.006.0435 and 17.006.0895.

Second, the project site is located where Pismo Creek hits the shoreline and ultimately, at times, enters the Pacific Ocean. This backbeach dune transitional area can be referred to as the sandspit associated with Pismo Creek. LCP Policy CO-21(b)b requires the sandspit (and the channel)³⁰ associated with Pismo Creek to "remain as open space and no structures or fill shall be permitted thereon". The proposed project would place a residential structure on piers on the sandspit (and would include the above-described development for the existing house on piles as well, including the proposed relocation of one of the piles), and thus it cannot be found consistent with LCP Policy CO-21(b).

Third, the proposed project would disturb onsite habitat by covering 2,267 square feet of the site with a large residential structure and a bridge set atop at least 24 piles, and it would disturb habitat off-site, on lot 4, including because at least one existing pile on that site must be relocated. The area where the piles would be installed would directly displace dune habitat, and what appears to be riparian habitat (where vegetation has grown back recently). The dune habitat and any riparian habitat underlying the structure would be almost completely shaded because the residential structures would be about 8 feet above existing grade, thus blocking sunlight. In addition, the introduction of typical residential noise, lights, pets, and related elements would be expected to adversely affect habitat resources, particularly in terms of the effect of such residential development and activity on wildlife nearby (including leading to mortality from pets,

³⁰ Per the LCP, the channel refers to the area occupied by the normal non-flood flow of the creek (LCP Section 17.006.0245). Accordingly, the channel as it is currently understood per that LCP definition is located off of the project site, and the channel portion of LCP Policy CO-21(b) is not applicable to this project.

and harassment due to lights, noise, and activity visible and audible by wildlife receptors associated with the riparian corridor and the Estuary and the potential introduction of non-native plants and invasive species through decorative landscaping associated with the duplex). In addition, development that is too close to the Estuary could draw more domesticated waterfowl such as coots, tame mallards and domestic ducks into the lagoon area, displacing sensitive wild birds in the lagoon. Finally, the presence of the residential development also results in a general impact to the ecological functioning of the habitat communities, including fragmentation of habitat, and in the case of dunes, these impacts could result in the prevention of sand movement that is an on-going feature of these dune habitat systems. In short, the project would disturb a significant amount of habitat on and off the site. LCP Policy CO-14 requires the project to “avoid habitat disturbance”, and thus the proposed project cannot be found consistent with LCP Policy CO-14.

Fourth, even if the proposed project were otherwise approvable in light of the above factors, the LCP requires a minimum 25-foot setback from the edge of riparian vegetation (LCP Policy CO-21(a)). The Applicants’ biological report indicates that northern coastal salt marsh habitat is approximately 25 feet away from the southeastern edge of the proposed development. Although the LCP calls for a minimum buffer of 25 feet from the edge of riparian vegetation at this location, that is only a minimum, and the buffer distance prescribed per the LCP is indicated by habitat sensitivity and the degree to which larger buffers are needed to protect such habitat. For example, the Commission has typically interpreted Coastal Act Section 30240 as requiring at least a 100-foot buffer from ESHA as a starting point, which can be adjusted upwards or downwards depending on the nature of the habitat and its setback needs. In the case of wildlife habitats, like the Pismo Creek Estuary, appropriate buffers are typically larger, in general, than for other habitats (e.g., a plant habitat in certain circumstances). Given the sensitive nature of the Pismo marsh and estuary itself, which contains important habitat for a variety of bird and fish species, including Tidewater Goby and Steelhead Trout, it is clear that a larger buffer appears warranted. As proposed, the creek bank is just 37 feet away from the proposed project to the southeast, and appears even closer than that to the northeast (see **Exhibit 6**).³¹ Similarly, the site is in and adjacent to a significant beach dune complex which is home to a variety of sensitive species, including Western Snowy Plovers.³² To comply with the LCP and related Coastal Act sections, this habitat would also require a buffer, but none is proposed (as the proposed project is in the dunes). Thus, even if the proposed project were otherwise approvable, it is inconsistent with the LCP’s setback and buffer requirements, and cannot be found consistent with LCP Policies 17.006.0435, 17.006.0895, and CO-21(a) in this respect.

Fifth, even if the proposed project were otherwise approvable in light of the above factors, LCP Policy CO-21(c) requires that new development include a conservation easement placed over the area adjacent to the stream where such easement must extend at least 25 feet from the creek bank, and requires it to include public access amenities adjacent to the creek. As with the above-

³¹ The adjacent landowner did not allow the Applicants’ biologist on site, so the bank edge mapping stops at the adjacent property. Based on the geomorphology observed, though, it appears that the creek bank meanders more toward Addie Street near the inland property, and thus the proposed structure would be much closer than 37 feet from the bank, and likely nearer to 20 feet or so at that point.

³² In fact, as described in the City’s Mitigated Negative Declaration for the project, a Western Snowy Plover nest was discovered by California State Parks personnel in 2010, west of the estuary and a few hundred yards south of the end of Addie Street.

described LCP required habitat setbacks, the width of the required easement area is a minimum of 25 feet and might be more depending on the nature, sensitivity and value of the habitat and related resources. As described above, an easement at this location would undoubtedly be for more than the minimum distance, and would be designed to at least encompass riparian vegetation. In terms of the public access component of the LCP requirements, the City has required trail access along the creek at inland projects (e.g., associated with the inland condo project and inland of that). This trail is partially developed, and a continuation of it could be required across these properties for continuity.³³ In any case, the project does not include the required easement and does not include the required public access improvements and cannot be found consistent with Policy CO-21(c) on this point.

Conclusion

The proposed project is located in and adjacent to ESHA, with degraded ESHA on the site transitioning to higher value ESHA off the site, including with respect to the significant habitat resources associated with the Pismo Creek Estuary. The project proposes development that is prohibited in ESHA and the sandspit and that would remove ESHA and adversely affect ESHA not removed, including off-site ESHA, inconsistent with the LCP. Even if the proposed project were otherwise approvable, it does not meet habitat setback, easement, and public access requirements. Therefore, the proposed project is inconsistent with the LCP's biological resource policies, and cannot be approved consistent with the LCP.

E. VISUAL RESOURCES

The LCP provides a series of principles and objectives for protecting the visual resources of the City, highlighting the importance of the beaches and other open space shoreline areas, as well as the small-scale character of the built environment. These principles and objectives call for the protection of scenic views for the benefit of the public and call for new development to blend with the existing open space and built environment. Special emphasis is placed on the feeling of being near the coast. The LCP states:

P-2 Natural Resources--Key Foundation of the City: *Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. 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.*

P-6 The Big Three: *The three primary resources and open space for Pismo Beach are:*

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. These natural assets will be protected and made*

³³ This continuation of the trail would be required by the LCP to be a passive interpretive trail that could be found consistent with ESHA protection policies.

available to all.

...

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.*

P-14 Immediate Ocean Shoreline: *The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. This unique narrow strip of land should receive careful recognition and planning. The purpose of the beach is to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural, and recreational resources of the ocean, beach and related up-lands.*

The LCP also includes specific protections for the visual resources of Pismo Creek, requiring new development to develop a plan to protect the visual aspects of the river, as follows:

CO-21 Pismo Creek Protection: *Pismo Creek shall be retained in its natural state and protected from significant alterations. The following measures shall be employed to accomplish this intent:...* *b. The sandspit and channel where Pismo Creek enters the ocean and those portions of parcels located within the creek channel shall remain as open space and no structures or fill shall be permitted thereon. ...h. Resource Protection Plan: A Resource Assessment and Protection Plan shall be required and approved concurrent with city action on projects located on parcels which have a portion within the streamside protection zone. The plan shall include appropriate measures to protect the creeks biological and visual aspects.*

Finally, the LCP also includes design criteria to ensure development is small in scale and blends with the surrounding environment. Relevant policies state:

CO-31:...b. *Development shall be designed to fit or complement the site topography, soils, geology, and any other existing conditions and be oriented to minimize to the extent of grading and other site preparation...*

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 walls 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.

b. Entrances

To residential buildings, to individual dwelling units within the building, and to commercial structures should be readily identifiable from the street, parking area, or semipublic areas and designed to be of a pedestrian scale.

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.

d. All Facades

Architectural features shall be consistent throughout a development, even when a portion of the development is hidden from public view.

e. Walls

Project perimeter walls should complement surrounding architecture and neighborhood environment and should avoid monotony by utilizing elements of horizontal and vertical articulation.

f. Driveway Widths

Driveway widths shall be kept narrow in order to retain a pedestrian street scale. Minimum and maximum driveway widths shall be as set forth in the Zoning Ordinance.

g. Support Structures

The city shall establish guidelines for architectural review of the appearance of support structures allowable for homes jutting over steep slopes.

D-17 Native and Drought Tolerant Landscaping: *Native and drought tolerant landscaping with drip irrigation shall be required within all new and rehabilitated development requiring discretionary approval in conformance to city water conservation policies.*

Thus, the certified LCP identifies coastal zone scenic values as an irreplaceable asset that must be preserved and enhanced. The LCP explicitly calls out the “ocean, beach, and the immediate abutting land” as “irreplaceable national resources” with open space and ecological resource values demanding “careful recognition and planning”. More specifically, the LCP requires new development to be sited and designed to preserve and enhance views to the ocean, creek, and marsh, and prohibits structures and fill in the Pismo Creek sandspit. Development is required to complement the site and not overwhelm it, and it must reflect the small-scale image of the City, including siting and design that limits heights and that encourages a pedestrian scale. It also requires the City to establish guidelines for the architectural review of the appearance of support structures, such as piles, that extend over steep slopes, and it requires landscaping to be native and drought tolerant. In short, the LCP clearly values coastal viewsheds, particularly those at the

shoreline and creek interface, and requires views at this location to be both protected and enhanced.

The proposed project is located in a highly scenic area. As discussed previously, it is located in a backbeach dune area transitioning into the Pismo Creek Estuary, and adjacent to the wide sandy Pismo State Beach. The site is very visible from Pismo State Beach, Addie Street, the public parking area on Addie Street, the City's beachwalk promenade extending toward the Pismo Pier, and from the RV park located across the river. In addition, the site is located at the edge of Pismo Beach's main downtown area, between the beach and estuary. This unique location provides a noticeable relief from the surrounding urban environment with a distinct open space character and scenic vista that is easily sensed from the road and surrounding public viewpoints. Although the public viewshed at this location is adversely impacted by the existing residence on piles located seaward of the site, the damage that this pre-CDP requirement structure does to the public viewshed still does not eliminate the value of the viewshed associated with the site and the viewshed overall. The site is otherwise framed by the surface level public parking lot, undeveloped lots, and further away, condominium development (2 lots inland), hotel development (about 100 yards upcoast), and the RV park opposite the Creek. Such existing surrounding built environment is relatively open and building heights are generally low.

Several tools are available that are useful for evaluating the proposed project's impact on the public viewshed. These include site visits, site photos, visual simulations, a photograph of the story poles that were erected to approximate the mass of the structure, the project site plans and elevation sheets. **See Exhibits 2 and 5** for photos, visual simulations, story poles analysis, and plans.

The proposed duplex would significantly block public coastal views across the site. It would be a 3,651 square-foot, two-story boxy structure that would occupy more than 50% of the site up to a height of 33.5 feet above existing grade (and almost 30 feet above Addie Street). For reference, the existing house on piles seaward of the site extends to approximately 25 feet above grade, and thus this structure would be approximately nine feet taller than that. As seen from the elevation simulations, it would dwarf this adjacent existing house by comparison (**see Exhibit 5**). In addition, because the first floor would be elevated to about eight feet above existing grade on piles, to avoid flooding hazards, the entire structure would be raised about three feet above the elevation of Addie Street, causing it to further block views across the site. As discussed previously, the duplex elevation could be raised even higher in the future, if sea level rise is more than expected, causing further visual impacts.³⁴ In addition, the project would be a structure and fill in the Pismo Creek sandspit when this is not allowed (see also previous biological resources finding). The project lacks articulation, and it is fairly boxy (e.g., first and second story walls atop one another, etc.), also serving to emphasize rather than deemphasize its massing in this respect. The proposed bridge/driveway would also add to the sense of bulk and massing, including due to the walls and gates associated with same. In addition, the structure would have only a five-foot setback from the side-yard lot line, so that the distance between the existing vacation rental house on piles and the proposed duplex would be only ten feet (once about 11 feet of the existing house were removed), completely blocking the view of the estuary from many vantage points for the entire length of both structures. Views across the site from Pismo

³⁴ As discussed previously, the Applicant's engineer used the lower-range estimate for future sea level rise, making it more likely that this increase in elevation would be necessary in the future.

State Beach, Addie Street, the public parking area on Addie Street, the City's beachwalk promenade extending toward the Pismo Pier, and from the RV park located across the river would be completely blocked by the proposed project (again, **see Exhibit 5**). Commission staff have visited the site on multiple occasions and confirmed that the proposed project would result in significant such view blockage and impacts.

In short, the proposed project would block, would not preserve, and would certainly not enhance, public views, and it cannot be found consistent with LCP Policies P-2, P-6, P-7, P-14, CO-21, and D-2.

In addition, the proposed development would not blend with the surrounding natural environment, nor is it designed to fit the topography of the site, as required by the LCP. Instead, the duplex would appear as a massive and bulky structure with straight lines, hard angles, and minimal articulation. The front-facing driveway columns and rolling metal driveway gate are large and urban in appearance, and the entire building, which would be supported by large steel pipe piles, would not include adequate elements to soften or hide its form. In fact, the piles would be seen clearly in views from the east, west and south. Further, the two proposed palm trees would frame the duplex with additional large simple lines that are perpendicular to the ground. These trees not only conflict with requirements to blend with the surrounding environment, which is better defined by sloping dunes and the meandering estuary, they are also inconsistent with the LCP's requirement for native landscaping in new development. In sum, the proposed development has little regard for the open space setting or the natural features of the estuary, river channel and dunes, and is therefore inconsistent with the LCP policies requiring new development to blend with the surrounding natural environment (including the same LCP policies cited above).

Further, the proposed development would not blend with the surrounding built environment. As discussed above, the proposed duplex would be a large and bulky structure that is two stories atop a third pier story and 33.5 feet above existing grade, with 3,651 square feet of building square footage on top of an elevated platform with gates and walls, in an area that is primarily characterized by open space and smaller scale buildings and other developments that are generally low in height. The majority of the view of the structure from the street at eye level would be taken up by two, two-car garage doors, behind a wrought iron gate with pillars and a lot-spanning bridge/driveway, and it would tower over the neighboring vacation rental house on piles (that currently extends to approximately 25 feet) and completely overwhelm the site and surrounding environment (see visual simulations in **Exhibit 5**). Further, because the structure would be elevated to avoid flood waters, as discussed above, it would be raised to eight feet above grade on piles, which is about three feet higher than the grade of Addie Street, and the structure is designed to be raised even higher in the future to address sea level rise. As such, the mass and scale of the structure as viewed from the public street and the beach would be exacerbated even further. The structure has not been sited and designed to reflect a small-scale image and pedestrian scale (including through a lot-spanning bridge/driveway when the LCP requires driveway widths to be kept narrow to retain such scale) as required, does not include a high degree of design articulation as required "to maintain a rich visual texture and an intimate building scale", does not complement the existing built and natural environment, and does not otherwise preserve and protect the significant public viewshed of which the site is a part. Therefore, the project is inconsistent with the LCP policies requiring new development to

complement and blend with its surroundings (including the same LCP policies cited above).

Conclusion

The proposed project is located in a significant public viewshed, and it would significantly block and degrade all public views associated with it. The proposed project appears to have been sited and designed to maximize its public view impacts in this regard, and represents the antithesis of the type of project envisioned by the LCP for a sensitive visual location like this. The proposed project is inconsistent with the LCP's public view protection policies, and cannot be approved consistent with the LCP.

F. PUBLIC ACCESS AND RECREATION

Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities, including visitor-serving resources. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....*

***Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

***Section 30220.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30223.** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The LCP also includes policies protecting public access and visitor-serving uses. It protects oceanfront land for open space and recreation. It specifically calls for visitor-serving uses in this LCP zoning district, and only allows residential uses if the applicant can show that visitor-serving uses are not feasible at the site. In addition, the LCP requires new development to provide for a public recreation trail along Pismo Creek, and protects parking availability for beach users. Relevant policies include:

CO-15 Ocean Shore – Principal Open Space Resource. *The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Oceanfront land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource.*

17.027.040 Uses Requiring a Conditional Use Permit: ... (2) *Residential and/or non-visitor-serving commercial uses. These residential and/or non-visitor serving uses may be allowed only if the applicant can substantially show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use as stated pursuant to the Local Coastal Program Land Use Plan and Chapter 17.099. Uses prohibited specifically from the zone shall include office space for general or medical businesses and non-retail commercial services.*

LU-K-2 ... b. Pismo Creek Trails. *A creekside trail system shall be developed on both sides of Pismo Creek from its mouth at the ocean inland to the future golf course/recreation area in Price Canyon. Public improvements such as trash cans and seating shall be included with the development of the creek trails. Dedication of a portion of properties adjacent to Pismo Creek for a public pathway shall be required with new development applications. These dedications shall include the buffer zone as identified in the conservation and open space element. Development approvals by the City shall require the installation of trail improvements.*

CO-21(c): Conservation Dedication. *Any new development shall be required to dedicate as a condition of any discretionary approval, an easement for the protection of the streamside area consisting of 25 feet or more from the top of the creek bank. In addition, new development shall provide access amenities adjacent to the creek for the city to use as a greenbelt and/or recreation corridor.*

PR-1 Opportunities For All Ages, Incomes, and Life Styles. *To fully utilize the natural advantages of Pismo Beach's location and climate, park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles. This means that: (a) The beach shall be free to the public; (b) Some parking and/or public transportation access to the beach shall be free to the public...*

P-2 Natural Resources--Key Foundation of the City: *Pismo Beach is the ocean, beaches, hills, weather and related ecosystems. 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.*

The City's LCP and the public access and recreation policies of the Coastal Act require public recreational access opportunities to be maximized, including visitor-serving facilities, especially lower cost visitor facilities and water-oriented activities, and it protects areas at and near the shoreline for these purposes. As previously described, the proposed project is located in a prime, visitor-serving area, steps away from the City's core visitor-serving neighborhood and its most

significant beach, and in and adjacent to its most significant natural resource area. In conflict with the applicable public access and recreation policies, the majority of the proposed development would be occupied by the one larger residential unit and associated garage, resulting in a significant loss of potential for public access and visitor-serving uses at this important, oceanfront site.³⁵ This is inconsistent with the LCP, including because a visitor-serving use is feasible at this location (see findings below that follow on this point).

The City's LCP calls for a trail that would extend along the length of Pismo Creek, through the City and out to the ocean. Properties that develop along the river are required to provide at least 25 feet of public access and public access improvements, to be held by a City easement. The City has made significant progress on this trail between Highway 101 and Dolliver Street, but it has not yet extended the trail out to the ocean. In this case, the City did not require the Applicants to provide an access easement because the lot does not extend all the way to the current bank of the river, and therefore, the Applicants do not have the ability to grant an easement over the land closest to the current river edge.³⁶

The site is located adjacent to the City-owned parking lot across the street from the Applicants' property, which offers free parking. The City lot is meant for beach and other coastal access day use, and is currently the only remaining free parking lot located in downtown Pismo Beach.³⁷ As such, it is specifically protected by LCP Principle PR-2, which requires free public parking to the beach to be provided. Due to its close proximity to the Applicants' development, it is highly likely that occupants would park their cars in the free City lot. Therefore, the potential loss of one or more of these free, public beach access parking spaces to this private use is an unacceptable impact on public access, and is inconsistent with the public access and recreation policies of the Coastal Act and the LCP.

In short, the proposed project does not comply with the public access and visitor serving policies of the LCP and the Coastal Act. In tandem with the inconsistencies identified in previous findings, this inconsistency also means the project cannot be approved as proposed consistent with the public recreational access and visitor-serving protections of the LCP and the Coastal Act.

G. LCP ZONING

APPROVABLE PROJECT

LCP Zoning Provisions

The project is located on a site that is designated by the LCP's LUP as mixed use, and is located in the LCP IP Hotel-Motel and Visitor Serving (R-4) district. The R-4 district is designed to

³⁵ It would also include a vacation rental residential unit, but this unit too would be constructed as a residential unit with a two-car garage, and shares some of the same issues in this regard.

³⁶ The property closest to the northern river bank is a portion of the lot that contains the RV park south of the river. That lot includes the river bed, as well as approximately 30 feet of uplands, from the current bank north to the subject site.

³⁷ The free parking lot at the foot of Pismo Pier was changed to pay parking by the City in 2007. However, because the City did not provide adequate notice of its CDP action on that change, it has not been recognized by a CDP and is currently being tracked by Commission enforcement staff as a violation.

accommodate the needs of tourists by providing a convenient site with lodging and other visitor-serving commercial uses. Residential use is only allowed in this zone if the Applicants can show that the size, shape, or location of the parcel makes it infeasible for a visitor-serving use. While the proposed 749 square-foot vacation rental residential unit on the lower level would serve as a visitor use, the majority of the proposed development, which includes a 1,969 square-foot private residential unit, is designed for residential purposes.

In order to meet the LCP threshold for allowing residential use in the subject zone, the Applicants submitted an economic feasibility analysis conducted by Richardson Properties and a property appraisal conducted by Cook & Associates in March of 2012 (See **Exhibit 10**, Appraisal and Economic Feasibility Analysis). The purpose of these submittals was to show that the size, shape or location of the parcel made it infeasible for the Applicants to establish a visitor-serving use on the property. The Applicants' economic feasibility analysis considered the potential of the property to support a hotel, visitor-serving retail commercial, restaurant, vacation rental, kayak rental, and a mobile food site. Based on the assumptions and economic modeling used by the Applicants' consultants, the economic feasibility analysis concluded that none of these development options would provide a reasonable rate of return, as they did not produce an 8% capitalization rate, and were therefore determined by the analysis to be infeasible (See **Exhibit 10** for the full analysis). The appraisal concluded that the value of the property was \$520,000 and that an elevated residential improvement would be most probable and profitable due to the parcel size and its location in a flood plain and would be the highest and best use of the property.

While a residential improvement may be the most profitable, the conclusions drawn by the appraisal and the economic feasibility analysis do not support that a visitor-serving use is infeasible. First, the Applicants have not explained how the LCP requirement of infeasibility should be read to require an 8% capitalization rate. In fact, there is no reference to rate of return standards in the LCP to define a type of development as infeasible. The City of Pismo Beach Municipal Code defines feasible as, "*Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.*" Therefore, if something is infeasible it would not be capable of being accomplished in a successful manner within a reasonable period of time, accounting for the above factors. The threshold for infeasibility is not whether there is a significant return on investment. In addition, the National Council of Real Estate Investment Fiduciaries' estimate of commercial real estate properties acquired in the private market's rate of return for the western region of the United States in the third quarter of 2012 was 2.65%. Therefore, an 8% capitalization rate is an overly optimistic goal for current real estate investments.

There are also a number of problems with the assumptions made in the economic feasibility analysis and the appraisal submitted by the Applicants. First, the economic feasibility analysis assumes all parking must be provided on site, which can be difficult on small lots given the City's parking requirements, but ignores the fact that the LCP allows for in-lieu parking payments, as well as off-site parking in some circumstances. The report also does not evaluate a parking neutral type of project designed to serve coastal visitors who may have parked and made their way to this location on foot. Therefore, when calculating the costs for construction of a hotel or vacation rentals, they did not consider the potential for off-site parking, which would

reduce construction costs. They also did not consider the alternative costs of construction for a hotel or vacation rental without an elevator. If the unit were on one level, an elevator would not be needed.

With regard to expected business operations, the report assumes specific hotel and vacation rental occupancy rates and operating costs, but provides no information as to how these figures were derived. The neighboring property adjacent to the subject parcel, which is developed as a one-story vacation rental known as the “beach house,” charges an overnight rate of \$450-700 per night, suggesting the room cost for a similar development to be higher than what was estimated (the Applicants’ estimate used \$155 per bedroom, which would equate to \$465 for a 3 bedroom unit, such as the neighboring unit, which is on the low end of what is charged for that unit).³⁸ The website for the “beach house” recommends that reservations be made up to one year in advance, also suggesting a higher occupancy rate for this type of development than what was used in the Applicants’ feasibility analysis (the Applicants estimated approximately 50% occupancy).

In the appraisal, the Applicants’ parcel was compared to other vacant parcels that were inland, in different zoning districts, with far fewer development restrictions. The additional development restrictions on the subject parcel could equate to further costs incurred by the property owners other than just the cost to raise the property out of the floodplain and should have been better evaluated in the appraisal. The existing environmental constraints to development must be accounted for in valuing the vacant parcel. Because it failed to take these constraints into account, the appraisal value for the property appears to be an overestimate of the actual land value. The economic feasibility analysis used a similar land value when establishing the capitalization rate, therefore likely also overestimating the land cost when calculating the capitalization rate.

By altering some of these assumptions, such as using higher occupancy rates, reducing the size of the unit, removing the elevator, using the value of land based on the actual amount paid for the parcel by the Applicants, and adding Applicant estimated costs for podium deck, furniture, fixtures, and equipment (FF&E), soft costs, and off-site parking, and estimates for on- and off-site dune habitat restoration based on the Commission’s experience (e.g., in Pacific Grove dune restoration cases), as would be required pursuant to the special conditions of approval, the capitalization rate increases for a one-unit vacation-rental scenario to a value of about 11.74% as seen in the table below:

Vacation Rental Cost One Unit		Notes
Land	\$180,000	Actual amount paid for the property
1100 sqft * \$200/sqft	\$220,000	Reduced size one-story vacation rental
Podium deck	\$84,000	
FF&E	\$20,000	
Soft costs	\$110,000	
Off-site parking	\$108,000	\$36,000/space

³⁸ BeachHouse. SLO Digital Designs. 2012. Seaventure Resort and Restaurant. December 19, 2012. <http://www.seaventure.com/beach-house/reservations.php?#show>.

Vacation Rental Cost One Unit		Notes
On-site dune restoration	\$4,140	\$0.92/sqft
Off-site dune restoration	\$2,024	\$0.92/sqft
Approximate total cost	\$728,164	
Vacation Rental Income One Unit		
Weekend nights (70% occupancy)	72.8	104 nights
Rate, weekend nights	\$450	Lower end range compared to "beach house"
Total weekends	\$32,760	
Weekday nights (50% occupancy)	130.5	261 nights
Rate, weekdays	\$450	Lower end range compared to "beach house"
Total weekdays	\$58,725	
Total annual income one unit	\$91,485	
Less operating costs \$500/month	\$6,000	
Approximate total annual net income	\$85,485	
Capitalization rate	11.74%	

Even using the Applicants' assumptions for the land value (i.e., not the Applicant's actual land costs from acquisition (\$180,000), but rather their now estimated land value), but using occupancy rates of 70% on weekends and 50% on weeknights and the low end of vacation rental rates, based on the neighboring property, the capitalization rate is still approximately 8%, as shown in the table below:

Vacation Rental Cost One Unit	-	Notes
Land	\$520,000	
1100 sqft * \$200/sqft	\$220,000	Reduced size one story vacation rental
Podium deck	\$84,000	
FF&E	\$20,000	
Soft costs	\$110,000	-
Off site parking	\$108,000	\$36,000/space
On-site dune restoration	\$4,140	\$0.92/sqft
Off-site dune restoration	\$2,024	\$0.92/sqft
Approximate total cost	\$1,068,164	-
Vacation Rental Income One Unit	-	
Weekend nights (70% occupancy)	72.8	104 nights
Rate, weekend nights	\$450	Lower end range compared to "beach house"
Total weekends	\$32,760	-
Weekday nights (50% occupancy)	130.5	261 nights
Rate, weekdays	\$450	Lower end range compared to "beach house"
Total weekdays	\$58,725	-

Vacation Rental Cost One Unit	-	Notes
Total annual income one unit	\$91,485	-
Less operating costs \$500/month	\$6,000	-
Approximate total annual net income	\$85,485	-
Capitalization rate	8.00%	-

Even if the capitalization rate were approximately 8%, as it would be under the assumptions in Table 2, ~~the Applicants have not shown that a capitalization rate below 8% this is sufficient to meet the LCP requirement of infeasibility. The LCP only allows residential use if the size, shape or location of the parcel makes it infeasible for visitor-serving uses. Simply showing one scenario in which such a capitalization rate of 8% might not be achieved is insufficient to show that visitor-serving uses are infeasible. Moreover, such a finding is difficult to make in this case, when a successful one-unit vacation rental property is on the adjacent parcel, which is of a similar size, shape and location to the subject parcel.~~

As such, the economic feasibility analysis and appraisal do not provide adequate evidence to substantially show that the size, shape or location of the parcel makes it infeasible for visitor-serving uses, as is required by the LCP when residential uses are proposed in this visitor-serving zoning district. Therefore, the Commission finds the proposed project is inconsistent with IP Section 17.027.040, because the Applicants have not provided sufficient evidence to substantially show that a visitor-serving use on the site is infeasible, and thus residential uses are not allowed.

In short, based on the record before the Commission, the proposed project does not comply with the LCP's visitor serving requirements associated with this site. In tandem with the inconsistencies identified in previous findings, this inconsistency also means the project cannot be approved as proposed consistent with the LCP.

~~To bring the project into conformance with the LCP's zoning, the Commission requires through **Special Condition 1**, that the Applicants remove the residential portion of the development, leaving only a vacation rental residential unit, and **Special Condition 4** that ensures that the rental unit serves a traditional visitor serving purpose only (and this condition also prohibits the conversion of the vacation rental unit to a limited use overnight visitor accommodation or to full time occupancy condominium). The Commission has also specifies in **Special Condition 1** that the development be reduced in size and scale from a 3,651 square foot duplex to a 1,100 square foot one story vacation rental to conform to the visitor serving development on the adjacent parcel which is 1,091 square feet. Further design specifications and development restrictions also imposed on the approved vacation rental project through **special conditions** include:~~

- ~~▪ All development in the blufftop area (driveway, bridge, and gate) on and adjacent to Addie Street shall be prohibited except a pedestrian accessway and utilities in a free span bridge of the minimum required dimensions and design to provide required access to the rental unit.~~
- ~~▪ The frontyard property setback (to the Addie Street right of way) shall be reduced to 5 feet or, if required to be more than 5 feet to comply with ADA requirements, the distance necessary for such compliance. Only the pedestrian accessway and utilities in a free span~~

~~bridge shall be allowed within this setback area.~~

- ~~▪ The sideyard property setback adjacent to the neighboring “beach house” (at 136 Addie Street) shall be 5 feet which, in tandem the removal of that structure within 5 feet of the property line as proposed results in a ten foot wide corridor between the two.~~
- ~~▪ The development shall be set back 25 feet from the edge of riparian vegetation along Pismo Creek.~~
- ~~▪ The front side of the development facing Addie Street shall be articulated in way that the pedestrian accessway and utilities (in a free span bridge) connect to the rental unit as far inland as possible and as close to Addie Street as is allowed under these conditions, and the rest of the Addie Street frontage is further setback from Addie Street in such a way as to articulate toward the corner of the neighboring “beach house”. The reminder of the development shall incorporate articulation in building design in order to avoid boxiness and increase visual interest and compatibility, including through pitched roof, offsets and projections to increase shadow patterns, and materials and colors designed to blend with the beach and creek aesthetic.~~
- ~~▪ The project design shall be modified to ensure that all project elements work together to reduce the appearance of bulk and mass, and to blend the development with the surrounding natural environment.~~
- ~~▪ On site parking shall be removed from the project, and the plans shall instead identify offsite parking for all required parking spaces (1 parking space per sleeping room).~~
- ~~▪ Measures shall be taken to ensure that the foundation pilings are adequate to provide necessary support and structural stability in light of coastal hazards.~~
- ~~▪ Offsite dune habitat restoration and enhancement at a ratio of 2:1 shall be required for all dune habitat covered/shaded on the property by the elevated structure and bridge to Addie Street, and onsite dune habitat restoration and enhancement on all of the subject property, including the area covered by the elevated structure and bridge, shall be required otherwise.~~
- ~~▪ Areas of the site not disturbed shall be maintained in open space, including for dune restoration maintenance activities and public recreational access.~~
- ~~▪ Construction BMPs shall be required in order to have the least impact on coastal resources.~~
- ~~▪ The Applicants shall be required to assume all risks for developing in an area of known coastal hazards, to forgo additional protective structures and measures in response to hazards in the future (including no additional raising on piles, no armoring, etc.), and to amend this CDP (or obtain another CDP) for future development at this location.~~
- ~~▪ The Applicants shall be required to obtain other agency approvals before the CDP is issued (from the City of Pismo Beach, California State Lands Commission, California Department of Parks and Recreation, California Department of Fish and Game, and the U.S. Fish and Wildlife Service).~~
- ~~▪ To ensure that future property owners are properly informed regarding the terms and~~

~~conditions of this approval, including the visitor-serving use purpose, the Applicants shall be required to record the terms and conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property.~~

The purpose of the design specifications and development restrictions listed above are further discussed in detail below.

Hazards

~~As discussed and cited previously, the LCP requires new development to avoid and minimize risks due to hazards and it requires new development to ensure that it will not result in increased hazards. There are a number of LCP policies which specifically address hazards related to development on the bluff face and in a floodplain, providing guidance and restrictions to ensure long term structural integrity, minimization of future risk, and avoidance of the need for landform altering protective measures in the future.~~

As described earlier, the project is sited in an area subject to significant shoreline hazards, including coastal flooding, episodic and long term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, landslides, earthquakes, bluff and geologic instability, and the interaction of same. The siting of this project is therefore inconsistent with the LCP hazard policies. However, to avoid a taking, some amount of reasonable development must be allowed that is consistent with the LCP to the maximum extent practicable. The Applicants have incorporated design features into the project to reduce the risk of hazards associated with flooding. This includes elevating the structure on piles so that the first habitable finished floor is one foot above the estimated 100-year floodplain. However, the risk of flooding at the project site will increase in the future as sea levels rise and the intensity and frequency of storms also increases. The Applicants' geotechnical analysis predicted a 100-year flood elevation over the next 100 years using a low end estimate for sea level rise, and designed the first floor elevation one foot above this elevation. If sea level rise ends up falling in the higher range of the predictions, as cited in the State of California Sea Level Rise Interim Guidance Document,³⁹ then the structure may be at risk from flooding within the next 100 years. In addition, there are portions of the development including the piles, bridge, and utilities that are located in the 100 year floodplain and floodway. Structures located directly in the floodway have the potential to disrupt floodwaters and result in other potential negative effects on the surrounding development and sensitive habitats.

It is clear that the Applicants understand the potential for increased risks from flooding in the future as they have designed the structure to be able to be elevated even further in the future. However, the re-elevation of the structure in the future would involve the introduction of additional or expanded piles in the floodway, which could increase potential hazards from flooding to the surrounding area. In addition, the LCP prohibits new development that would require shoreline protection now or in the future. Therefore, any development that is allowed at this site would need to be designed and/or conditioned so that there would be no future need for protection measures throughout the life of the project to be consistent with the LCP, included additional or expanded piles. Therefore, **Special Condition 7** prohibits future shoreline armoring, including installation of new or expanded piles, for the project. The proposed project

³⁹ Coastal and Ocean Working Group of the California Climate Action Team, *State of California Sea Level Rise Interim Guidance Document*, October 2010.

may also not be able to withstand future flooding and wave run-up conditions, due to sea level rise. This future risk can be mitigated through a requirement to remove the proposed structures when they are no longer safe to inhabit. Therefore, **Special Condition 7** also requires such removal to occur. For purposes of this condition, the structures would be considered unsafe when any government agency has ordered that the structures are not to be occupied due to any of the hazards at the site. As such, although long term stability cannot be assured, as conditioned, new development would not require additional, more substantial protective measures in the future inconsistent with the LCP.

In order to further minimize the risks due to hazards associated with flooding as a result of sea level rise and ensure the long term structural integrity of a structure at this site while not increasing hazards, a number of additional conditions have been included. First, to further reduce potential impacts of placing development in a floodway, **Special Condition 1** limits piles necessary to support the structure, and allows only a pedestrian access way leading from Addie street onto the property that also contains the utility connection. Reducing the structure to one-story 1,100 square foot development (**Special Condition 1**) would further reduce development in the floodway as fewer piles would be needed to support the structure. In addition, as also specified in **Special Condition 1**, all of the development located in the floodplain (piles, utilities, and pedestrian accessway) must be constructed to withstand the forces of coastal hazards expected here (e.g., flooding, tsunami, and earthquakes). By minimizing the physical development in the 100-year floodplain and floodway and requiring that development be designed to withstand high level forces associated with coastal hazards, the development better conforms to the LCP hazard policies. Lastly, since the LCP also prohibits development on a bluff face and restricts the type of development located in the dry sand, **Special Condition 1** reducing the scale of the project and minimizing development on the bluff face would also help bring the project into better conformance with the LCP hazard policies.

Even with these design measures and special conditions there is still a substantial risk associated with the siting of this development. In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicants to assume all risks for developing at this location (see **Special Condition 6**).

As noted above, natural disaster could result in destruction or partial destruction of the proposed development. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the shore or on an adjacent property. Therefore, the Commission attaches **Special Condition 7**, which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from coastal hazards that impact

~~the site, and agree to remove the structures should the threat from coastal hazards reach the point where a government agency has ordered that the structure not be occupied.~~

~~To ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 10**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.~~

Biological Resources

~~As previously mentioned, there are a number LCP and Coastal Act policies that require strong protections for the City's biological resources, such as sensitive dune habitat, and includes specific policies that address the protection of Pismo Creek and the riparian areas around Pismo Creek.~~

~~While the habitat values of the site have been degraded over time, it is still ESHA as defined in the LCP and thus any development that is not considered a resource dependent use is inconsistent with the LCP. Since some form of development must be allowed to avoid a taking, the Commission has attached a number of conditions to minimize and mitigate for impacts to ESHA on the site as required by the LCP and cross referenced Coastal Act policies. These conditions include design restrictions which would reduce the amount of development in sensitive habitat, construction best management practices, and restoration activities to mitigate for potential impacts to sensitive habitat.~~

~~First, the reduction in size and scale (**Special Condition 1**) will reduce the amount of shading that would occur on the sandy beach and dune habitat below the structure and the number of piles that would directly these habitats. The removal of the driveway component of the development and limitations of the development to occur on the bluff face will also reduce development within these sensitive habitat areas. The reduction in size and scale may also allow for additional setbacks from the riparian habitat adjacent to Pismo Creek. At this point, it is somewhat unclear the exact location of riparian habitat near and adjacent to the rear property line. As mentioned, the current setback used is 25 feet, which is the minimum setback identified in the LCP, but because the habitat on the site has the potential to support sensitive species and is a unique transition zone between dune and estuary habitat, is it essential that the development be setback from the edge of the riparian vegetation. As specified in **Special condition 1**, the Applicant shall submit a biological survey prepared by a certified biologist or ecologist, which assesses riparian habitat on the property and adjacent to the rear property line. In addition, **Special Condition 1** requires that the setback from the rear of the development shall be a minimum of 25 feet from the riparian habitat as identified in the biological survey which will further protect this sensitive habitat from residential type disturbances (noise, light, pets) associated with the vacation rental.~~

~~As mentioned, while there is the potential for sensitive species to occur on the site, there have not been protocol level surveys for such species on this site. The USFWS expressed specific concerns about impacts to habitat for Western snowy plovers, tidewater goby, and California red-legged frog on the site. To minimize potential impacts to these sensitive species, **Special Condition 2** has been included which incorporates pre-construction surveys and construction~~

best management practices to minimize impacts to the beach, dunes, creek, and ocean, including in terms of water quality and its effect on sensitive species. In the event that the surveys identify the afore mentioned sensitive species on site, the special condition requires that the Applicants consult with USFWS and the Executive Director.

The development within ESHA will have permanent and temporary unavoidable impacts to dune habitat. The direct displacement of dune habitat from the pilings and accessway, as well as the indirect impacts from the shading of the structure, will result in impacts of about 1,100 square feet for the reduced size one story vacation rental and additional area for the access bridge.

Special Condition 2 requires that these impacts be mitigated for through on and off site restoration activities. As required in similar cases where dune ESHA is directly impacted, the Commission has required on-site restoration of all areas possible on-site and an additional off-site restoration at a ratio of 2:1 for the total area impacted through the project. As specified in **Special Condition 2**, the Applicants are required to submit a dune restoration plan which includes plans for invasive species removal and re-contouring, planting, monitoring, reporting and contingency measures. The off-site restoration portion of the plan should also include square footage calculations for the any dune habitat created so it can be tracked at a 2:1 ratio for the habitat impacted on-site (i.e., for all dune habitat covered/shaded on the property by the elevated structure and bridge to Addie Street). **Special Condition 5** requires the rest of the property not associated with the elevated vacation rental unit to be retained in open space, and does not allow development and uses otherwise in this area, except for dune restoration/maintenance and public recreational access. Lastly, **Special Condition 10** requires a deed restriction record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Therefore, while the permanent and temporary impacts to ESHA through the construction of the one story vacation rental are unavoidable, the special conditions will help to minimize and mitigate for the impacts and will bring the project into better conformance with the LCP and its referenced Coastal Act policies.

Visual Resources

Although development of the proposed project in the Pismo Creek Sandspit is prohibited under CO-21 of the LCP and the structural design is inconsistent with the visual resources policies of the LCP, a reasonable amount of development much be allowed to avoid a takings. To ensure that the development approved on the site is more in conformance with these policies, the Commission has attached **Special Condition 1**. This special condition establishes a maximum height of 25 feet above the existing grade and maximum square footage for the project of 1,100 square feet, consistent with the scale of the development on the neighboring property, thereby better blending with the size and scale of the surrounding development. It also calls for the redesign to use natural and non-reflective materials and only native vegetation for landscaping to better blend with the surrounding natural environment.

Special Condition 1 also calls for the removal of the bridge, driveway, and gate portion of the development by restricting the development on the bluff face to only include a pedestrian accessway and utilities in a free span bridge. The front yard setback for this property as defined by the LCP is 15 feet. However, a pedestrian accessway extending 15 feet from Addie Street to the front of the property is not possible to construct without having further significant negative

impacts on the public views from the front of the property. As such, **Special Condition 1** specifies that this area be reduced to 5 feet. This reduced setback will provide a shorter distance from the street which is at +12.24 feet NGVD to the front of the elevated property which will most likely be around +15 feet NGVD. While the setback may need to be increased to allow for an appropriate slope for the pedestrian accessway if it needs to be ADA compliant, the reduced length of the accessway will lessen the visual impacts and also reduce the amount of development directly on the bluff face and in the floodway. A variance to setbacks is allowable under the City's variance procedures found below, when the strict application of the code denies the property owner privileges by their property enjoyed by others in the vicinity. Since the beach townhomes upstream of the property have a reduced setback similar to what is set by **Special Condition 1**, the variance would not be out of keeping with surrounding developments. The required findings in this respect can be made:

17.42.070 Variances

A. Purpose. The provisions of this section allow for variances from the development standards of this Zoning Code only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this Zoning Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.

B. Applicability. The commission may grant a Variance from the requirements of this Zoning Code governing only the following development standards:

- 1. Dimensional standards (i.e., distance between structures, parcel area, building coverage, landscape and paving requirements, parcel dimensions, setbacks, and structure heights);*
- 2. Sign regulations (other than prohibited signs); and*
- 3. Number and dimensions of parking areas, loading spaces, landscaping or lighting requirements, except as otherwise provided in this Zoning Code.*

The power to grant variances does not include allowed land uses, or residential density regulations.

C. Application Requirements. An application for a variance shall be filed in compliance with Section 17.40.040 (Application Preparation and Filing). It is the responsibility of the applicant to provide evidence in support of the findings required by subsection E (Findings).

D. Project Review, Notice and Hearing. Each variance application shall be reviewed by the director to ensure that the application is consistent with the purpose and intent of this section. The director provide the commission with a recommendation whether the application should be approved, approved subject to conditions, or disapproved. The commission shall hold a public hearing in compliance with Chapter 17.58 (Public Hearings), and may approve or disapprove the variance in compliance with this section.

E. Findings, Decision. Following a public hearing, the commission may approve, approve

~~subject to conditions, or disapprove the variance, and shall record the decision in writing with the findings upon which the decision is based, in compliance with State law (Government Code Section 65906). The commission may approve an application, with or without conditions, only if the commission first finds that:~~

- ~~1. There are special circumstances applicable to the property (i.e., size, shape, topography, location or surroundings), such that the strict application of the requirements of this Zoning Code deprives the property owner of privileges enjoyed by other property owners in the vicinity and within the same zoning district;~~
- ~~2. Granting the variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the variance is sought;~~
- ~~3. The adjustment authorized by the variance will not constitute a grant of special privileges inconsistent with the limitations on other properties in the vicinity and in the same zoning district;~~
- ~~4. Granting the variance will not be detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district; and~~
- ~~5. The adjustment authorized by the variance is consistent with the general plan and any applicable specific plan.~~

~~F. Conditions. Any variance granted shall be subject to conditions that will ensure that the variance does not grant special privilege(s) inconsistent with the limitations upon other properties in the vicinity and same zoning district.~~

~~G. Expiration. A variance shall be exercised within two years from the date of approval, or the variance shall become void, unless an extension is approved by the director, in compliance with Chapter 17.44 (Permit Implementation, Time Limits, Extensions).~~

In addition, **Special Condition 1** requires that the front of the property be articulated to minimize the bulky appearance of the structure especially since it would be closer to the road due to the reduced front yard setback of 5 feet. As conditioned, the front of the property that connects to Addie Street will be setback 5 feet and this nearest point pushed inland, while the remaining development would be stepped back extending to and to better conforming with the neighboring “beach house” development so as to cluster visual impact and ensure as much through view from the walkway along the beachwalk and Addie Street as much as possible. Finally, **Special Condition 1** also requires that the side yard setback adjacent to the neighboring “beach house” to be 5 feet to balance the need for a visual corridor between the two developments with the need to cluster for overall visual protection otherwise. Therefore, as conditioned the project would be consistent to the maximum extent feasible with the visual resources policy of the LCP.

Public Access and Recreation

With the onsite parking removed from the project to help minimize LCP and Coastal Act inconsistencies, there is the potential for parking associated with the approved vacation rental to impact general public access users, particularly as it relates to the adjacent free public parking

~~lot. To avoid this impact, **Special Condition 1** includes requirements for the Applicants to satisfy parking needs offsite in manner that doesn't impact general public access parking. The Applicants must demonstrate that they have secured long term off site parking for users of the vacation rental, so as not to affect public use of the nearby lot.~~

H. ARCHEOLOGICAL RESOURCES

The LCP declares archaeological resources important and requires these resources to be conserved. LCP policy CO-5 and 17.24.020 state:

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 protections shall be determined as part of the review process including:

- a. Locations within the city known to have a high probability of occurrence of archeological sites shall be zoned in the Archeological Resources overlay district.*
- b. Sites of statewide or national significance shall be nominated for inclusion in the Registry of California Historic Landmarks or National Historic Landmark Program.*
- 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 excavations in locations where there is a possibility of discovery of human remains.*

17.24.020 Archaeological, historical, and paleontological resources

A. Surface Survey Required. Where development is proposed on a site within the areas identified in Figures 3-1 and 3-2 as archaeologically sensitive, a land use permit application shall include an archeological surface survey of the site, prepared by a qualified archaeologist approved by the director.

- 1. The submitted survey shall include an evaluation of the likely presence of cultural resources and their significance based on supportable evidence, and shall also include recommendations for all appropriate mitigation measures for the project.*
- 2. Any site which is surveyed in compliance with this section shall not be required to be further surveyed unless a further survey is recommended by the findings of the original survey.*

B. Construction Practices. In the event that archaeological or paleontological materials/ resources are discovered during any grading, excavation, or other construction, all activities shall cease. The find shall remain untouched, and the Department shall be notified so that a qualified archeologist may evaluate the significance and location of discovered materials, and make recommendations for disposition, mitigation, and/or salvage, in compliance with State and Federal law. The developer shall pay all costs associated with the professional investigation.

C. Limitations on Non-Structural Development and Use. All non-structural development and uses which may damage or destroy archaeological resources are prohibited unless specifically authorized by land use permit. Any such land use permit shall contain conditions which provide for protection of any archaeological resources. Off-road vehicle activity on the site and the unauthorized collection of artifacts shall be prohibited...

As described in the LCP, the Native American Chumash people have inhabited the Central Coast for thousands of years, including Pismo Beach. Therefore, there may be significant archaeological sites and cultural resources in and around the Pismo Beach area. To protect and conserve these resources, the City has created an Archeological Overlay Zone in which specific LCP policies apply. LCP policy CO-5 requires that as part of the CEQA process a qualified archeologist shall survey all known or potential archaeological and determine appropriate protections.

The proposed project site is located in the Archeological Resources overlay zone. The initial study of environmental impact submitted for the proposed project included a discussion on the potential impacts to cultural resources and possible mitigation strategies. According to the initial study of environmental impact, a survey of the site was conducted in September 23, 1990 including a walkover of the site and one soil sample from the most inland portion of the site. This survey did not reveal any cultural materials. However, this survey was conducted more than 20 years ago, and given the changing nature of the landforms at this site, especially due to flooding, it is possible that materials could have surfaced during this long time period. A more recent archeological report could show that such resources now exist on the site. The project, as proposed, therefore may not contain proper mitigation and monitoring measures to protect potential archeological resources on the property, inconsistent with the requirements of the LCP. In tandem with the inconsistencies identified in previous findings, this inconsistency also means the project cannot be approved as proposed consistent with the archeological resource protections of the LCP, although this inconsistency could be addressed through conditions, if the project were otherwise consistent with the LCP. ~~Special Condition 11 requires a pre-construction survey to be performed, and requires a mitigation and monitoring plan to be submitted if any archeological resources are found, in order to protect those resources consistent with the requirements of the LCP.~~

I. TAKINGS

As discussed above, the proposed project is fundamentally inconsistent with the certified LCP and the access and recreation policies of the Coastal Act, and it appears that even reduced scale alternatives that attempted to address such inconsistencies through conditions of approval would lead to similar, albeit lessened, coastal resource impacts that likewise couldn't be found entirely

LCP and Coastal Act consistent. In other words, the appropriate Coastal Act and LCP coastal resource protection outcome ~~would be~~ is denial of the CDP for the proposed project, which is the Commission's decision, as described above. ~~If and when~~ When the Commission denies a project, however, a question may arise as to whether the denial results in an unconstitutional "taking" of the applicant's property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Commission must assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project while still complying with Section 30010. If the Commission concludes that its action might constitute a taking, then Section 30010 requires the Commission to approve some level of development, even if the development is otherwise inconsistent with LCP or Coastal Act policies.⁴⁰ In this situation, the Commission ~~proposes modifications to the development to minimize its LCP inconsistencies, while still allowing some reasonable amount of development~~ finds that some level of development could be allowed on this parcel. The Applicants' proposed project is inconsistent with the LCP, however, and they oppose all aspects of an alternate development proposed by Commission staff. The Commission therefore denies the project as proposed and suggests the Applicants work with staff on an alternative project that is more consistent with LCP requirements.

~~In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, denial of the project would constitute a taking.~~

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."⁴¹ Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner."

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ((1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (see *Yee v. City of*

⁴⁰ For example, in CDP A-3-SCO-00-033 (Hinman), the Commission in 2000 approved residential development on a site that was entirely ESHA even though it was not resource dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

⁴¹ The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

Escondido (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission's actions here would be evaluated under the standards for a regulatory taking.

In recent takings cases, the United States Supreme Court (Court) has identified two circumstances in which a regulatory taking might occur. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved (*Id.*). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (*Id.* at pp. 1016-1017 [emphasis in original]) (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 [regulatory takings occur only under "extreme circumstances"]⁴²).

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the sufficiency of the applicant's property interest, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (see *id.* [rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*]).

Final Government Determination

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property (e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts

⁴² Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald*, *supra*).

In this case, although the Commission denies the project proposed by the Applicants, it believes that some alternative project could be constructed on this site that is more consistent with the LCP than the proposed project. The Commission advises the Applicants to work with Commission staff to develop an alternative proposal for development of this property. and as discussed further below, although the LCP instructs the Commission to deny the proposed development due to its LCP and Coastal Act inconsistencies, application of such policies would preclude the Applicants from siting any new development on the site. In these circumstances, the Applicants might successfully argue that the Commission has not made a final and authoritative decision about the use of the subject property, as it is clear that some development could be allowed. This decision does not preclude the Applicant from applying for some other development or use of the site, such as a more minor development that proposes a visitor-serving use and more carefully addresses the site's constraints. Therefore, the Applicants might be unlikely to be able to successfully argue that the Commission's denial is a taking because a the takings claim is not "ripe."

Unit of Property

As a threshold matter, before a takings claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors, such as unity of ownership, the degree of contiguity, the dates of acquisition, and the extent to which the parcel has been treated as a single unit [*e.g.*, *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 (nine individual lots treated as single parcel for takings purposes); *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318]. In this case, there is only one parcel at issue, so the takings claim would be measured against this parcel.

Development Allowed to Avoid a Taking

Categorical Taking

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, the City of Pismo Beach Certified Local Coastal Plan cannot be read to deny all economically beneficial or productive use of land because LCP Policies CO-14, CO-15, CO-21, CO-31, 17.027.040, LU-K-2, PR-1, P-2, S-2, S-3, S-5, S-7, S-8, S-9, 17.078.060, 17.006.0435, 17.006.0895, P-6, P-7, P-14, D-2, and D-17 cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property of some economically viable use.

As described above, the subject parcel is designated in the City of Pismo Beach zoning regulations for Hotel Motel and Visitor serving uses. The parcel is currently primarily vacant, although a corner of a structure located on the adjacent parcel encroaches onto the subject lot, and a portion of the lot is utilized by the neighboring structure as a private parking area. This use, however, is unlikely to be found to constitute a valid economic use of the property. Thus, under the *Lucas* takings analysis, the Commission's denial of the project might be found to constitute a taking.

Taking under Penn Central

Although the Commission has already determined that it is likely necessary to approve some economic use on this property to avoid a categorical taking under *Lucas*, a court may also consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This *ad hoc* inquiry generally requires an examination into factors such as the sufficiency of the applicant's property interest, the regulation's economic impact, and the regulation's interference with reasonable, investment backed expectations.

Sufficiency of Interest

In the subject case, the Applicants purchased APN 005-163-029 for \$180,000 on May 5, 1999. On that same date, a Grant Deed was recorded as document number 1999-046125 in the Official Records of the San Luis Obispo County Recorder's Office, effectively transferring and vesting fee simple ownership to the Applicants. Based upon an examination of a copy of this document the Commission concludes that the Applicants have demonstrated that they have a sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

Reasonable Investment Backed Expectations

In this case, the Applicants' expectation that they could develop some type of structure on the property was both a reasonable and investment backed expectation. The Applicants purchased the property for \$180,000 in 1999. It was zoned for visitor serving uses, not as open space. Thus, the Applicants did have an investment backed expectation that they had purchased developable property, and their investment reflected that future development could be accommodated on the subject parcel.

The question remains whether the Applicants had an investment backed expectation to construct a two story, two unit residential structure. In order to analyze this question, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the Applicants' proposed use, taking into account all the legal, regulatory, economic, physical, and other restraints that existed when the property was acquired.

When the Applicants purchased the property in 1999, there was no existing development on the site, other than the structural encroachment from the adjacent parcel and the parking area described above. The property was zoned for visitor serving uses, as were the surrounding properties. The adjacent property on the seaward side of the subject lot was developed with a one story vacation rental on elevated pilings. The surrounding inland properties were vacant, with a four unit vacation rental building several lots inland. Thus, the property was zoned for visitor serving uses and was located near visitor serving uses, not residential ones. Consequently, the

~~Applicants may have had a reasonable investment-backed expectation that they had purchased a lot that could be developed, but it was not reasonable to assume that it could be developed with a residence, when the property was zoned for visitor serving uses and neighboring properties were being used for vacation rentals.~~

Economic Impact

~~The *Penn Central* analysis also requires an assessment of the economic impact of the regulatory action on the Applicants' property. Although a landowner is not required to demonstrate that the regulatory action destroyed all of the property's value, the landowner must demonstrate that the value of the property has been very substantially diminished (see *Tahoe-Sierra Pres. Council, Inc., supra*, [citing *William C. Haas v. City and County of San Francisco* (9th Cir. 1979) 605 F.2d 1117 (diminution of property's value by 95% not a taking)]; *Rith Energy v. United States* (Fed.Cir. 2001) 270 F.3d 1347 [applying *Penn Central*, court finds that diminution of property's value by 91% not a taking]).~~

~~If the Commission were to deny all development on the property, consistent with the requirements of the LCP and the Coastal Act, then the Applicants could argue that the economic impact of the Commission's action was significant enough to constitute a taking. To address this potential takings claim and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit therefore allows for development on the subject property, although not precisely the development proposed by the Applicants.~~

Background Principles of State Property Law and Takings

~~Finally, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, "background principles" of state real property law would have permitted government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036). These background principles include a State's traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, there is insufficient evidence at this time for the Commission to determine that any development of the property would constitute a public nuisance, so as to preclude a finding that the Commission's denial of the project would constitute a taking.~~

~~California Civil Code Section 3479 defines a nuisance as follows:~~

~~*Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.*~~

~~California Civil Code Section 3480 defines a public nuisance as follows:~~

~~*A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*~~

Any structure constructed on the subject site will be vulnerable to flooding, sea level rise, tsunami, and other coastal hazards. It therefore could contribute to damage of surrounding areas if debris is caught in any piles at the base of the structure, or if the structure itself is damaged and contributes to floating debris. Such potential damage is somewhat speculative at this time, however, and there is insufficient evidence to determine that construction of a structure on this site would constitute a public health risk or would otherwise be a nuisance. Similarly, it is difficult to speculate to what degree the project might result in what could be considered other types of public nuisances associated with the project.⁴³ Furthermore, the site is zoned for visitor-serving uses, not industrial or other types of uses that are more likely to create noise or odors or otherwise create a public nuisance.

Therefore, the Commission finds that construction of a visitor-serving use on the site would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

Conclusion

The Commission finds that the project as proposed is inconsistent with the LCP and must therefore be denied. The Commission also finds, however, that an alternative project could be approved on this site, but the Applicants disagree with all aspects of the alternative project proposed by Commission staff, so the Commission does not approve that alternative development either. The Commission recommends that the Applicants work with Commission staff to design another project that is more consistent with LCP policies, to preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010. Thus, this denial is not a final adjudication by the Commission of the potential for development on this parcel, as it does not preclude the Applicants from applying for some other development or use of the site, such as a more minor development that proposes a visitor-serving use and more carefully addresses the applicable Coastal Act and LCP policies. This permit approval allows for some development of the site to provide a reasonable economic use of the subject property. In view of the evidence that denying all uses on the property could constitute a categorical taking of the Applicants' property interests and that they had sufficient investment-backed expectations that they could develop their property in some way, there is a reasonable possibility that a court might determine that denial of any development on the site, based on inconsistencies with the LCP and the Coastal Act, would constitute a taking. Therefore, the Commission determines that the Applicants are entitled to some development on their property.

Having reached this conclusion, however, the Commission also finds that the Coastal Act only instructs the Commission to construe the City's LCP and the applicable Coastal Act policies in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise

⁴³ For example, as described, the site is located in the middle of a rich and significant habitat and viewshed environs, and it could be categorized as a public nuisances in terms of such development being 'offensive to the senses' (e.g., sight); one that 'interferes with the comfortable enjoyment of life' (e.g., here, the public's enjoyment associated with views of beach, creek, overall shoreline, and the habitat area and its values); one that 'affects an entire community' and a 'considerable number of persons' (e.g., the public who makes great use of the area, including primarily for the coastal vistas provided); and one that 'obstructs' the 'customary use of the stream' and the 'customary use of the park' (e.g., beach and trail access). This evaluation in terms of public nuisance law is also speculative in this case, including for the same reasons described above.

~~suspend the operation of or ignore the policies of the LCP and the Coastal Act in acting on this application. Thus, the Commission must still comply with the requirements of the LCP and the Coastal Act by and siting the development in a manner that is as consistent with the LCP and the Coastal Act as it can be while avoiding a taking. To achieve better consistency with LCP and the Coastal Act requirements, the project must be reduced in scope from that proposed, and designed for visitor serving uses, consistent with the LCP.~~

J. RESPONSE TO COMMENTS

Takings

The Applicants argues, in a variety of ways, that the denial of the approved modified project would constitute a taking of private property. Some of these arguments are based on the economic analysis done for the use of the property for visitor-serving, as opposed to residential uses. However, the economic analysis related to visitor-serving versus residential uses is necessary to determine whether or not a residential use could be allowed in the hotel-motel district under the zoning regulations of the LCP, not to evaluate takings issues. Therefore, the arguments based on the economic analysis are not relevant to takings issues. The Commission finds that some level of development could be approved on this project, but the proposed project is inconsistent with the LCP and must therefore be denied. This is not, however, a final adjudication of the potential for development on this property. In addition, the Applicant argues that Special Condition 7.d., which requires the structure to be removed “if any government agency has ordered that the structure are not to be occupied due to any coastal hazards,” denies the Applicant all economic value inherent in their property. This condition has been used commonly by the Commission and is meant to ensure that if property is deemed unsafe, it is removed so that it does not cause hazards or harm coastal resources. In addition, at the same time the Applicant argues that the structure would be safe for at least the next 100 years, and therefore it is unlikely that this condition would be triggered in the near future. Thus, the Applicant would have a viable economic use of their property.

Economic Analysis

The Commission has not disregarded the feasibility analysis and property appraisal provided by the Applicants. On the contrary, the Commission has used many of the assumptions provided in the analysis, as well as additional evidence not considered by the Applicants’ analysis. Commission staff reviewed a variety of potential uses of the subject property that would provide a wide range of economic return, from retaining the existing use of the site,⁴⁴ to developing the proposed duplex. With regard to retaining the existing use, as has been detailed earlier, the owner of the adjacent lot currently holds an easement for the existing use and development that can be revoked by the owner of the subject lot at any time. When the easement is revoked, the neighboring property owner would not have a right to use the existing vehicle access or parking area, and therefore, some off-site parking arrangement would need to be developed, leading to new costs to that property owner, as well as an inconvenience to the guests of the existing vacation rental, which could result in lower rental rates. In addition, the portion of the vacation rental that is located on the subject lot would need to be removed, and, as shown in Exhibit 5, this would require the removal of approximately 200 square feet of living space also leading to new costs and further reducing the value of the rental unit, and potentially reducing its rental

⁴⁴ The site currently contains a portion of the neighboring pole house and provides vehicle access and parking for it.

rates even more. Further, the existing vacation rental, known as the ‘beach house’, would be directly adjacent to new development on the subject lot, as opposed to standing alone in the beach sands, which could also have a negative impact on the property value and rental rates.

Given these significant impacts to the owner of the ‘beach house’ property when the easement is revoked and the various changes to the beach house and its parking situation are necessitated, it is possible that the neighboring ‘beach house’ property owner might also be interested in purchasing the subject property to avoid the additional costs and reduction in value associated with the proposed project. This is one possible economic return associated with the property, although it is not clear whether this is something in which the neighboring property owner would be interested. In any case, though, that property owner would clearly benefit from purchasing the subject property. It is not clear what the value of this property may be to that property owner, and staff is not aware that any offers to purchase the property have been made. However, based on the cost of off-site parking alone, as suggested by the Applicants’ economic analysis which estimated the cost of off-site parking to be \$36,000 per space, the parking area on the property alone could be worth approximately \$108,000, or 60% of the purchase price the Applicant paid for the property, by itself. When avoidance costs (for partial demolition and reconstruction) of the beach house and for loss of rental value are also factored in, it seems likely that the value could rise to or above the Applicants’ purchase price. Thus, one of the potential economic return outcomes is potential purchase by the neighboring property owner, particularly given their material interest that would be affected by the development of the site.

In addition to reviewing this option, the Commission has also reviewed the possibility of using the site for seasonal or other temporary development that could be relocated when flooding events are anticipated, such as a kayak rental or food stand. Finally, and as detailed in the staff report, the Commission has reviewed the possibility of using the property for a vacation rental. These options for visitor-serving commercial and overnight development are specifically allowed in the hotel-motel zoning district regulations that the site is subject to.

Biological Resources

The Commission’s determination is consistent with conclusions for this site made by the Department of Parks and Recreation, USFWS, and the Department of Fish and Wildlife (formerly CDFG). The Applicants also argues that the project site is not located in beach dunes. This statement is not supported by the facts. The project site consists of sandy soils and is located in the back dunes of the beach. The dunes at the project site are dominated by ice plant and have been partially covered by the compacted parking area, but although degraded, they are still dunes. See Biological Resources section of the report beginning on page 17.

Although riparian habitat has not been identified on the site itself, it has been identified adjacent to the site, including the coastal salt marsh vegetation that is located approximately 15 feet from the property line. However, the presence of riparian vegetation on the site is not the basis for the Commission’s determination that the site constitutes ESHA (see biological resources finding).

Hazards

The Applicants argues that the area fronting Addie Street is not a coastal bluff as identified in the report, because they argue it is not natural, and instead an artificial riprap fill slope constructed to support Addie Street. They further argue that it does not meet the definition of a coastal bluff taken from the California Coastal Resource Guide published by the Commission in 1987.

However, this project is located in the City of Pismo Beach and the standard of review for the coastal permit is the City's LCP. The area fronting Addie Street meets the LCP definition of a bluff, as previously described.

The Applicants also argues that the site does not contain a dry sandy beach. However, as described in this report, the site consists of sandy soils to a significant depth, it currently does not contain water or wetlands, and it is located in the backdune area of the back beach. Therefore, the Commission maintains that the site does contain dry sandy beach.

The Applicants also argues that the creek mouth is migrating away from the property and there is no evidence that this trend will change. However, the historical evidence provided is only for the past 46 years of shoreline change, and cannot predict future changes, including changes due to the impacts of sea level rise.

Finally, the Applicants argues that piers are not structural pilings and that piers are not protective structures. First, the Commission has regularly used the terms pier and pilings interchangeably, and the LCP does not distinguish between the two. In addition, in this case, the piers are acting as protective structures, as described on pages 22 and 23 of this report.

Visual Resources

With regard to visual resources, the site is located in a particularly scenic setting and the proposed project would dominate the subject lot. Although the proposed project may be within the LCP's maximum height and minimum setback requirements as the Applicants indicates, that is but one tool that is used for determining appropriate mass and scale under the LCP. It is also a tool that prescribes maximum scale attributes. Such maximums are not entitlements, rather they must be understood within the site context and its relative constraints. In this case, given the visual sensitivity of the site, the project, as proposed, is inconsistent with the visual resource protection policies of the LCP. Please refer to visual resources findings.

K. CDP DETERMINATION CONCLUSION-DENIAL

As discussed in the above findings, the proposed project is inconsistent with the LCP and the public access and recreation policies of the Coastal Act. When the Commission reviews a proposed project that is inconsistent with the Coastal Act and LCP, there are several options available to it. In many cases, the Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the Coastal Act. In other cases, the range of possible changes is so significant as to make conditioned approval infeasible. In these situations, the Commission will frequently deny the project and provide guidance to the applicants on the type of development changes that must be made for Coastal Act conformance. These denials are without prejudice inasmuch as applicants are given direction on what they need to do to propose an alternative project that can meet Coastal Act policies. In rare cases, there are no feasible conditions that could bring the project into conformance with the Coastal Act, and there are no obvious feasible alternatives consistent with the Coastal Act that the Commission might suggest to an applicant. When this happens, the Commission might deny the project without further guidance to the applicant at that stage, or it might consider approval of a different project that is the minimum necessary to avoid a taking of private property without just compensation.

In this case, the proposed project is significantly out of conformance with the Coastal Act and LCP because the entire project site is subject to severe hazards, within and adjacent to ESHA, located in the middle of a significant public recreational access area, and the proposed project would be extremely prominent in an important public viewshed. As a result, the proposed project must be denied. This denial, however, is not a final adjudication by the Commission of the potential for development on this parcel, as it does not preclude the Applicants from applying for some other development or use of the site, such as a more minor development that proposes a visitor-serving use and more carefully addresses the site's constraints.

L. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

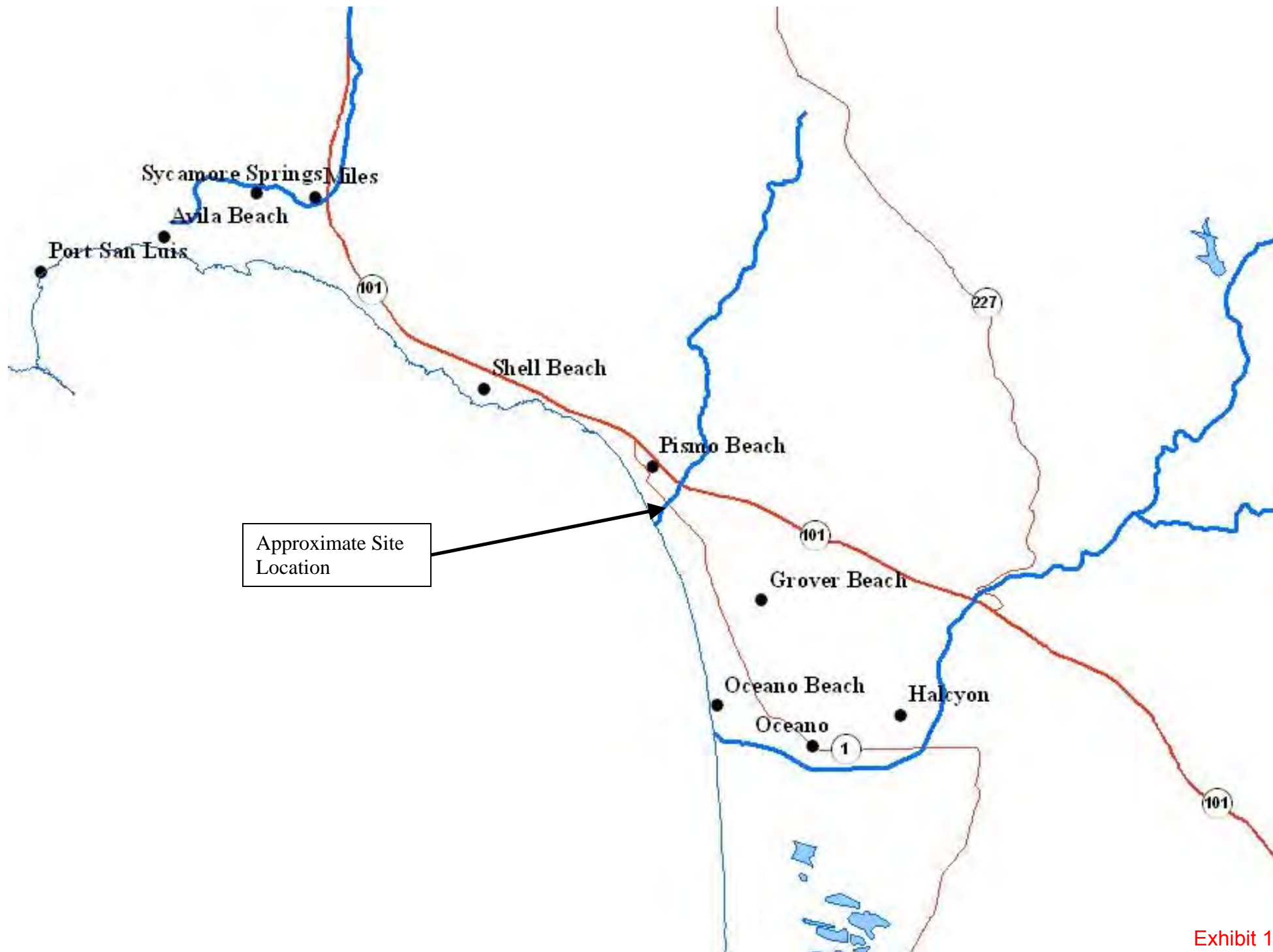
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development 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 City of Pismo Beach, acting as lead agency, adopted a Mitigated Negative Declaration under CEQA. 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. ~~The Commission has reviewed the relevant coastal resource issues associated with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources to the extent allowed while avoiding a taking of private property without just compensation. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.~~ This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

~~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. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).~~

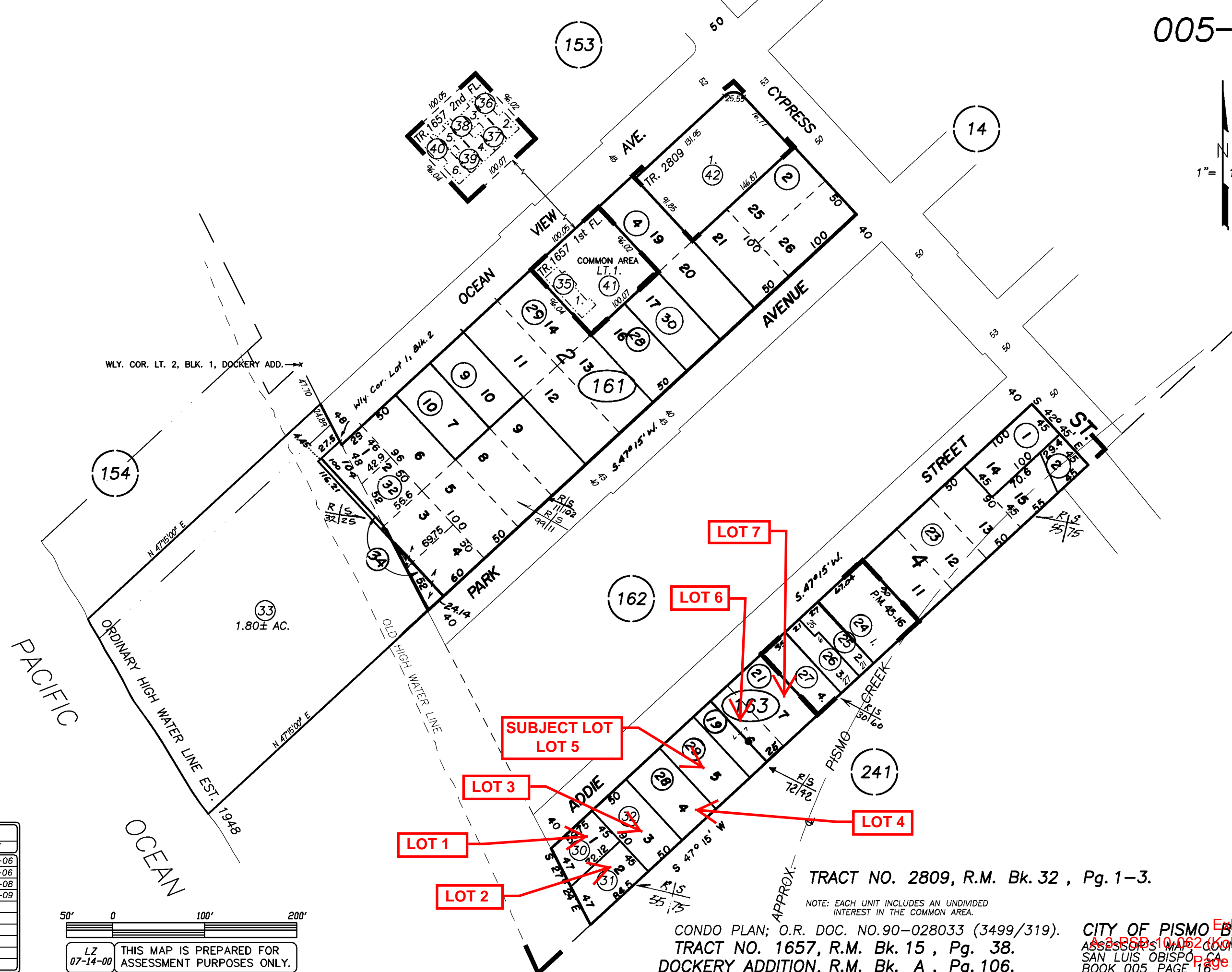
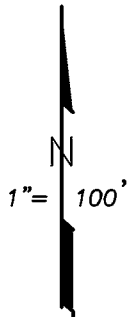
Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources

that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

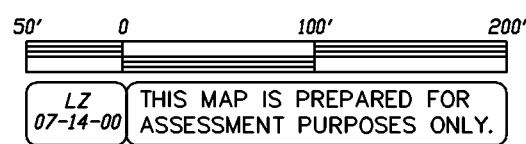




Approximate Site
Location



REVISIONS	
I.S.	DATE
07-080	07-18-06
07-216	10-25-06
NA	07-16-08
09-249	01-09-09



TRACT NO. 2809, R.M. Bk. 32 , Pg. 1-3.

NOTE: EACH UNIT INCLUDES AN UNDIVIDED INTEREST IN THE COMMON AREA.

CONDO PLAN; O.R. DOC. NO.90-028033 (3499/319).
TRACT NO. 1657, R.M. Bk. 15 , Pg. 38.
DOCKERY ADDITION, R.M. Bk. A , Pg. 106.

CITY OF PISMO BEACH
ASSessor's MAP, COUNTY OF
SAN LUIS OBISPO, CA
BOOK 005 PAGE 16
Exhibit 1
As of 07-10-06 (Kojian)
Page 3 of 4



Addie Street

City Parking Lot

Vacation Rental
Condominiums

Beach Promenade

PROJECT SITE

Vacation Rental
House

RV Park

Pismo State Beach



Vacation Rental
House

Existing Vegetation

Compacted Area/
Project Site



1961 COASTAL PHOTOGRAPH

KOLIGIAN DUPLEX

140 Addie Street

Pismo Beach, California



Aerial Photograph 1961 HA-NM-46

Exhibit 3
A-3-PSB-10-062 (Koligian)
Page 1 of 8



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March 2011

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11-01-86

1:12000

CDBW-APU-C

156

PROJECT SITE

Exhibit 3
A-3-PSB-10-062 (Koligian)
Page 4 of 8



PROJECT SITE

8-30-93

EDBW-BBK-C

90-3

WILD 15/4UA8
N: 13040 152.87

PROJECT SITE



PROJECT SITE

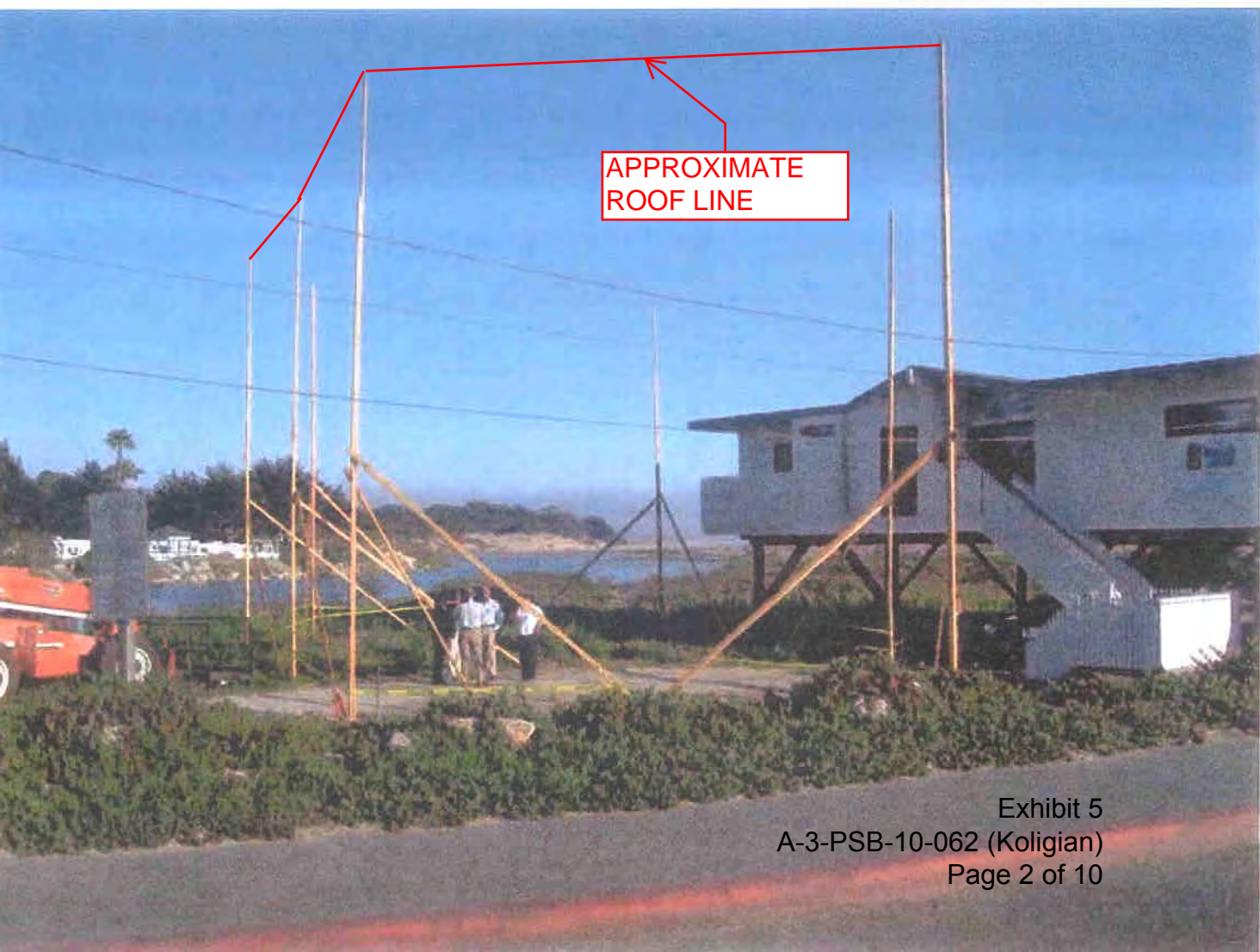


PROJECT SITE





1983 Flooding
140 Addie Street, Pismo Beach CA



APPROXIMATE
ROOF LINE



Exhibit 5
A-3-PSB-10-062 (Koligian)
Page 3 of 10



NORTH ELEVATION

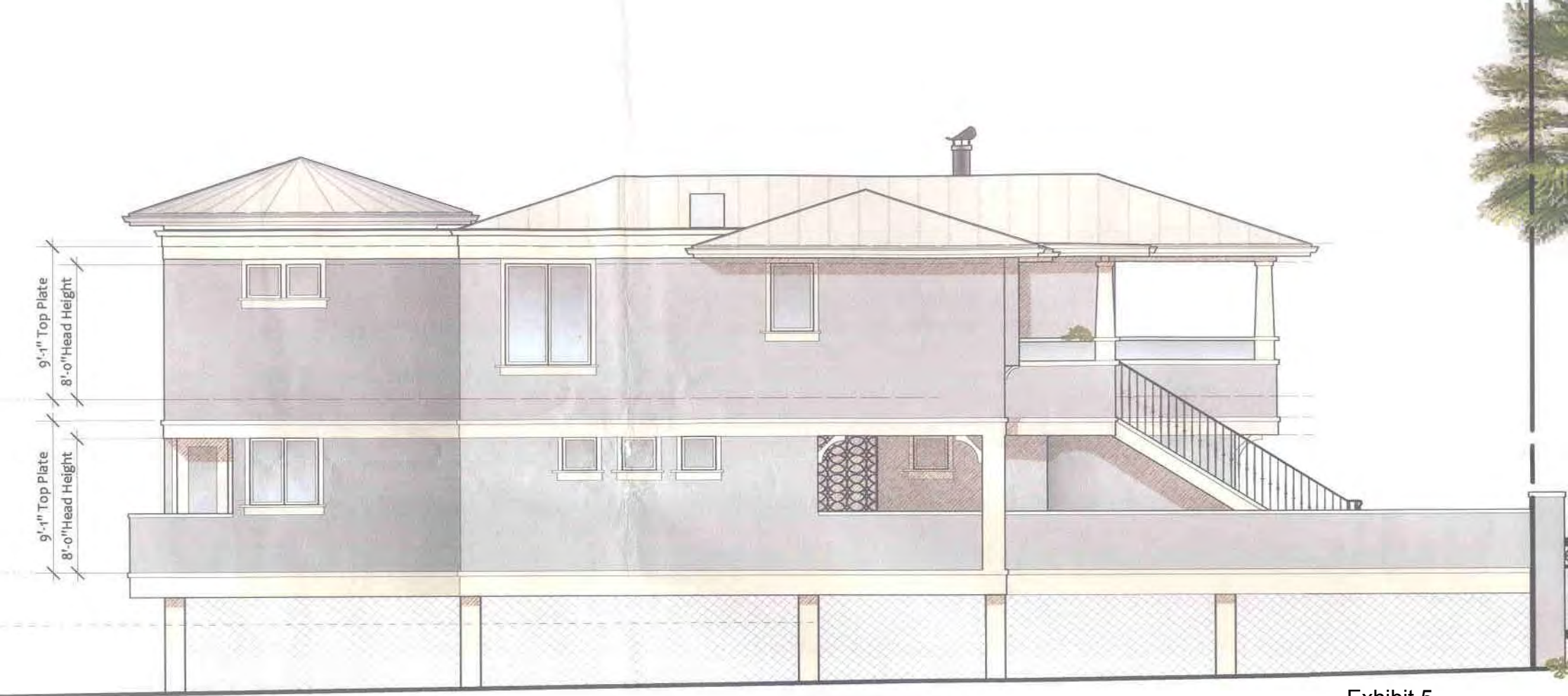
A-3-PSB-10-062 (Koligian)

Page 4 of 10

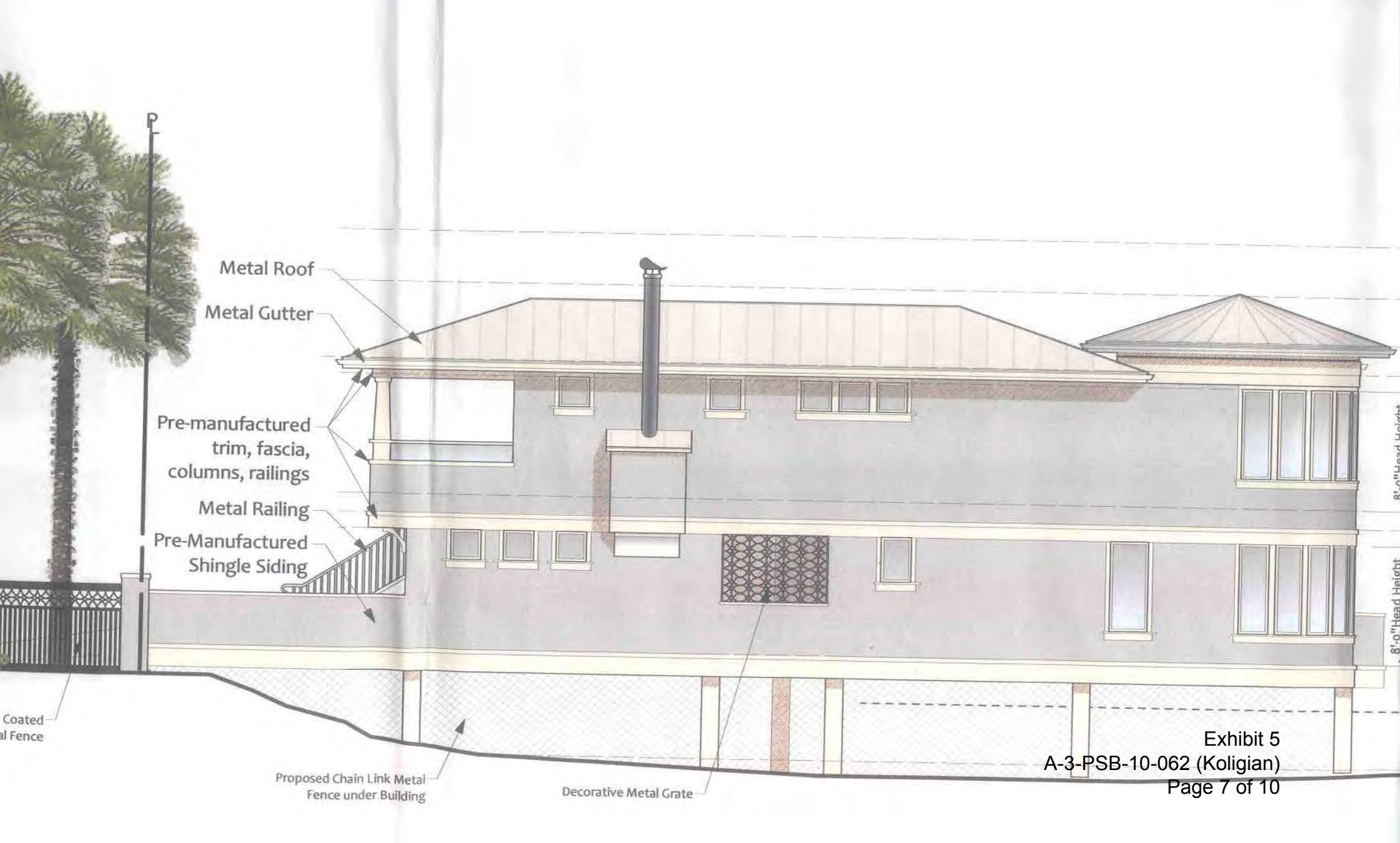
Exhibit 5



SOUTH ELEVATION



EAST ELEVATION



P

Metal Roof

Metal Gutter

Pre-manufactured
trim, fascia,
columns, railings

Metal Railing

Pre-Manufactured
Shingle Siding

Coated
al Fence

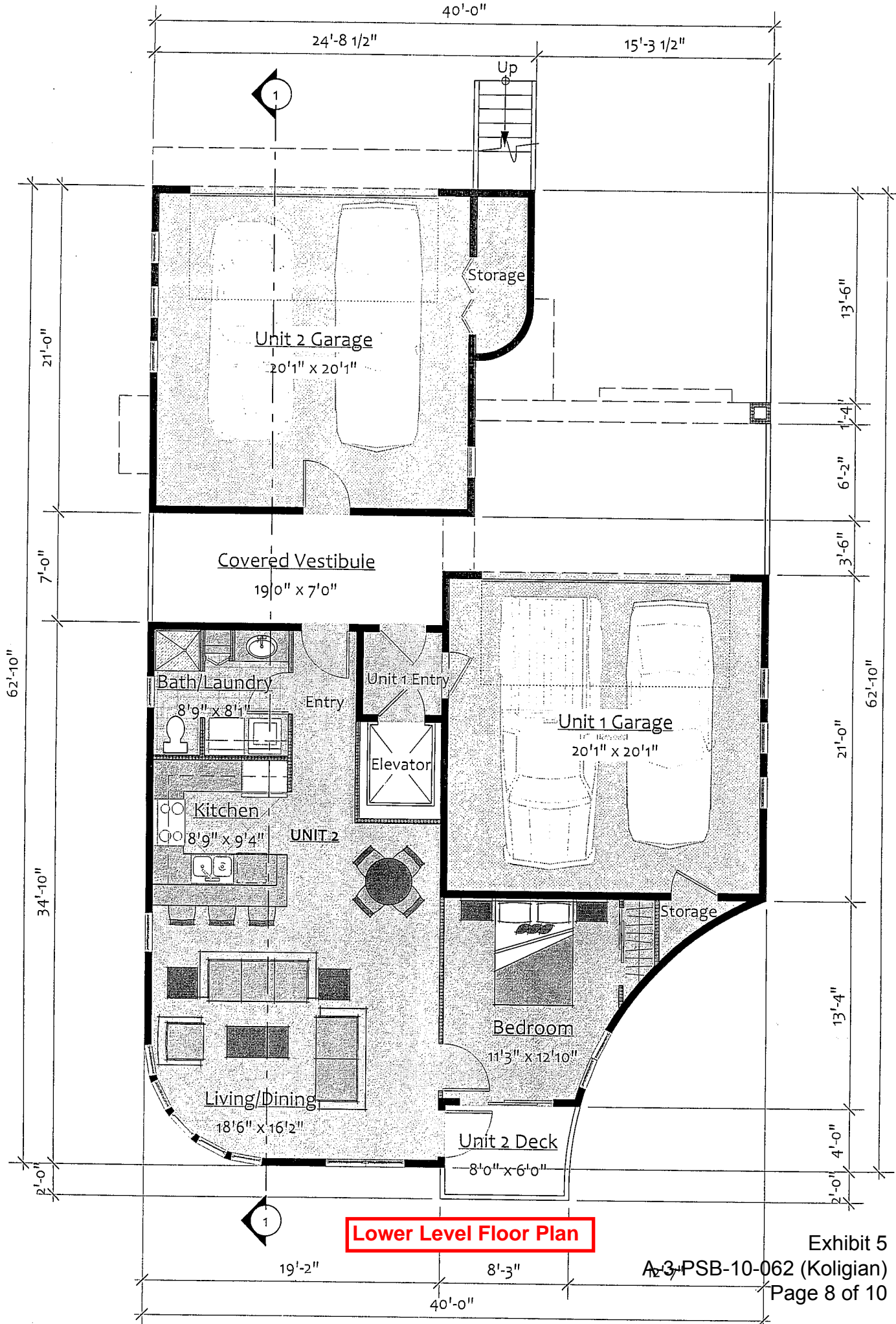
Proposed Chain Link Metal
Fence under Building

Decorative Metal Grate

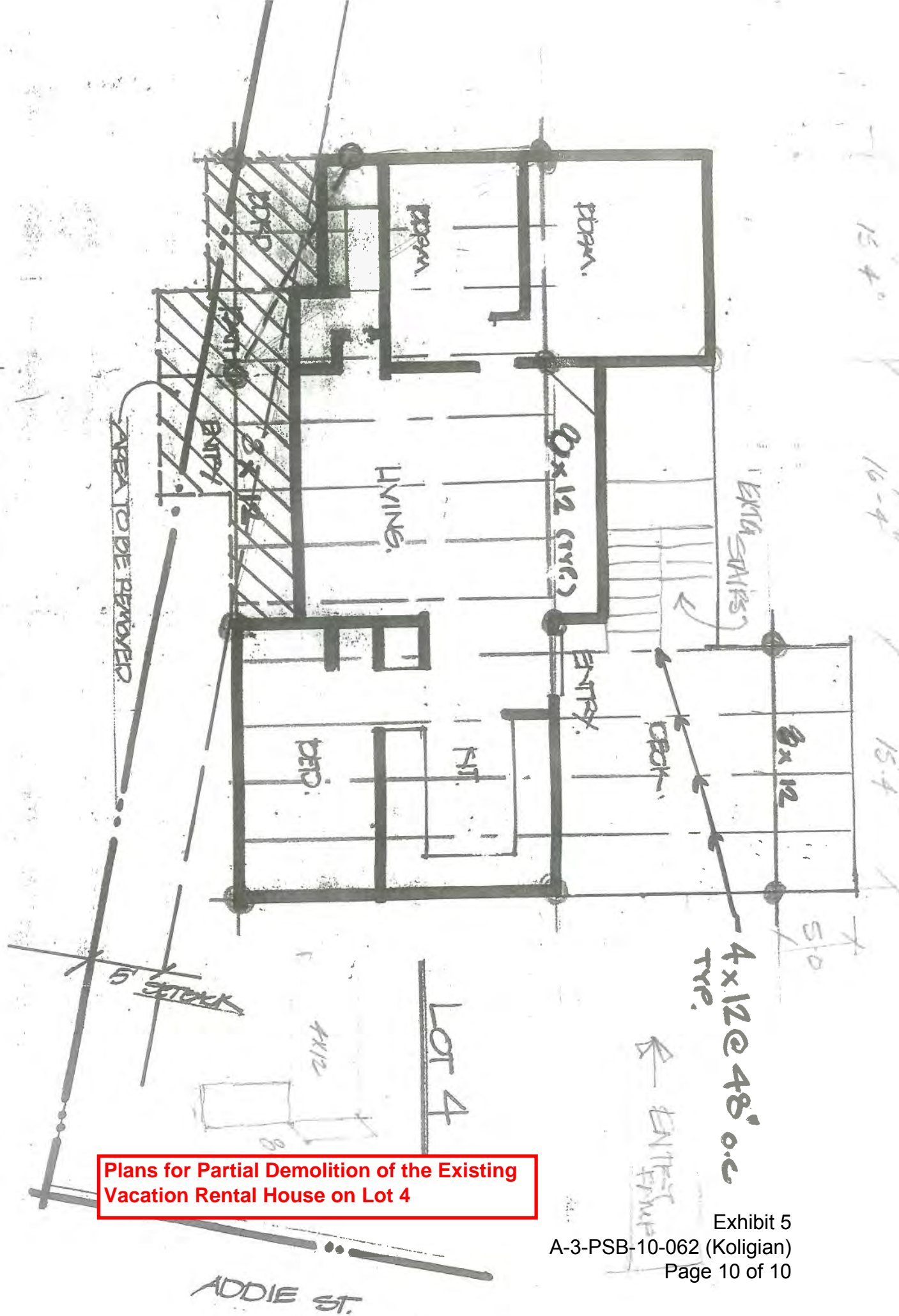
Exhibit 5
A-3-PSB-10-062 (Koligian)
Page 7 of 10

8'-0" Head Unit

8'-0" Head Height



Lower Level Floor Plan



REMODEL OF 136 ADDIE.
SCALE 1/8" = 1'-0"

Plans for Partial Demolition of the Existing Vacation Rental House on Lot 4

source(s):
Puglisi Design, March 2010.
Google Earth Pro, March 2010.

- Approximate Top-of-Bank
- Compacted Driveway
- Ruderal

Addie Street

Ruderal #1 (970 sf)

Ruderal #2 (290 sf)
(arroyo willow)

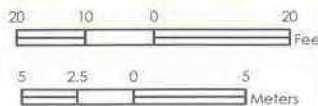
Compacted Driveway / Developed (2,000 sf)

approximate parcel boundary

Ruderal #3 (1,975 sf)

Disturbed / Exotic
Upland Dune Community

Approximate Top-of-Bank
Limits of Coastal Salt Marsh



140 Addie Street, Pismo Beach

Wetland Determination & Biological Assessment

Figure 1



Exhibit 6

A-3-PSB-10-062 (Koligian)

Habitat Map

Page 1 of 4

source(s):
Topo Data, Puglisi Design, March 2010.
Google Earth Pro, March 2010.

 Approximate Top-of-Bank
 Wetland Determination Data Points

approximate parcel boundary

DP-3

DP-2

DP-1

DP-4

DP-5

approx. 37 feet

approx. 107 feet

arroyo willow tree

approximate top-of-bank

Addie Street

Creek Lagoon





Photo 1 – View southwest of the site showing ice plant cover and the approximate location of NE, SE, and SW property corners (red dots). 3/4/2011



Photo 2 – View west of the site along Addie Street showing ice plant cover and the approximate location of NW property corner (red dot). 3/4/2011



Photo 3 – View east showing top of bank on Pismo Creek, and vacant lots and residential development to the east. 3/23/2010



Photo 4 – View south at DP-1 and ruderal vegetation next to compacted driveway. 3/4/2011

FIGURE 2 – REPRESENTATIVE PHOTOGRAPHS



Photo 5 – View south at DP-2 showing sandy soil, vegetation dominated by ice plant, Pismo Creek lagoon in background & SE property corner (dot). 3/4/2011



Photo 6 – View southwest at DP-3 and ruderal vegetation next to compacted driveway. 3/4/2011



Photo 7 – View west at DP-4 at willow shrub and ruderal vegetation and adjacent residence to the west. 3/4/2011



Photo 8 – View north at DP-5 showing sandy soil, ruderal vegetation, and SW property corner (orange flag stake). 3/4/2011

FIGURE 2 – REPRESENTATIVE PHOTOGRAPHS



DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-0001

Ruth Coleman, Director

Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, CA 93449
Telephone (805) 773-7170
FAX (805) 773-7176

RECEIVED

OCT 10 2008

October 10, 2008

City of Pismo Beach
Community Development Department
Planning Division
760 Mattie Road
Pismo Beach, California 93449-2056

CITY OF PISMO BEACH
Community Development Department
Planning Division

Re: 140 Addie Street, Koligian Residential Project – Draft Mitigated Negative Declaration – File No: 08-0163

To Whom It May Concern:

The California Department of Parks and Recreation (CDPR) has reviewed the Draft Mitigated Negative Declaration (DMND) for the 140 Addie Street – Koligian Residential Project. CDPR owns and manages the lands adjacent to this development as part of Pismo State Beach. CDPR has concerns regarding the project's close proximity to a sensitive wetland area and impacts related to hydrology, biology and water quality of the Pismo Creek estuary.

Hydrology

This project will place a structure within a wetland, in an area subject to high tidal storm surges, and within a 100-year flood zone. This project has the potential to change the hydraulic function of the estuary, potentially impacting public lands in the vicinity of the project. As indicated in the DMND, the supportive pilings beneath the house will restrict water flow. Any restriction of water flow is a change in hydrology. CDPR has specific evidence of changes in Pismo Creek's hydrology due to the construction of the condos and installation of rip rap to the east of this proposed project. The change in the directional flow of Pismo Creek has had a dramatic impact on the neighboring Pismo RV Park and CDPR - North Beach Campground properties. Over the past two years, CDPR has evidence that the development to the east of this proposed project caused the Pismo Estuary to migrate south and erode dunes and sandy beachfront.

Based on our experience with changes in hydrology in the Pismo Creek estuary caused by the development of adjacent properties, CDPR believes that this project will create potentially significant impacts from substantial alteration of the existing drainage pattern of the site, including the alteration of the course of a stream and in a manner that would result in substantial erosion of dunes and property to the south and west of

the parcel. Furthermore, this project will create potentially significant impacts by placing within a 100 year flood hazard area a structure that will impede and redirect flood flows. For these reasons, CDPR believes a detailed hydraulic analysis must be conducted on this project to fully analyze potential impacts from this project.

Biology

CDPR staff visited the project site and recorded wetland vegetation within the area proposed for the residential structure. In particular, CDPR staff found Jaumea (*Jaumea carnosa*), saltgrass (*Distichlis spicata*), Cinquefoil (*Potentilla* sp.), and marsh baccharis (*Baccharis douglasiana*) on or near the site of the proposed structure. It does not appear that there was a wetland delineation prepared for this project and this MND does not adequately analyze potential impacts to jurisdictional wetlands from the proposed project. This MND does not adequately address the potentially significant impacts to federally and state protected wetlands through direct removal, filling, hydrological interruption, or shading.

In addition, this home encroaches into the Pismo Creek estuary which is critical habitat for Tidewater Goby and also supports various life stages of Steelhead Trout. The estuary provides vital habitat for terrestrial birds, shorebirds and water fowl. Listed species recorded from this estuary include the American Peregrine falcon, Brown Pelican, Western Snowy Plover and California Least Tern. Silvery legless lizard is also a California Species of Concern that could be found in this area. This residential structure will diminish habitat quality of the Pismo Creek estuary by placing a structure and human activity in extremely close proximity to an important publically owned wildlife habitat area. The proposed 25 foot setback from the top of creek bank is not adequate protection for the wetland plant community. This home needs to be set back a sufficient distance from wetlands and the Pismo Creek estuary to allow the natural dynamic processes in this estuary system to continue in perpetuity.

CDPR does not concur with the conclusion that this proposed development is consistent with the City General Plan requirement for a streamside protection zone. The top of creek bank is not clearly defined on this site. There is a small elevation change from the estuary to the building pad. However, there is no defined stream bank because the estuary is dynamic. It is foreseeable that the elevations in the estuary will change and the area that is identified as creek bank in this DMND will change dramatically, especially in wet years. Additionally, there is wetland vegetation beyond the area identified as top of bank. It would be appropriate to consider the existing wetland vegetation as the extent of the "riparian vegetation" and set the building envelope back a minimum of 25 feet from this wetland vegetation.

Finally, this DMND fails to consider the impacts that domestic pets may have to protected animal populations in the Pismo Creek estuary. Many homeowners have domestic pets that will prey on wildlife found in the estuary. The potential for domestic pets to prey on sensitive wildlife needs to be analyzed given the extremely close proximity of this proposed structure to the Pismo Creek estuary.

Water Quality - Hazards and Hazardous Materials

The dwelling is connected to Addie Street by an elevated driveway. The conceptual designs would appear to place the two car garage within the 100 year flood zone. If a garage is placed in the flood zone, this increases the chance that vehicles and household products (paints, solvents, cleaning agents, etc) would be placed in an area that is subject to flooding and disturbance. This creates a foreseeable risk of upset and accidental conditions involving the release of any number of hazardous materials into the environment. This is a potentially significant impact that was not adequately analyzed in the DMND.

As a public land owner, the CDPR is mandated by law to manage and protect the natural and cultural resources within park boundaries. The proposed structure encroaches into the Pismo Creek estuary and will impact the hydrology, biology and water quality of the site. This DMND needs to better analyze potentially significant impacts that could result from the proposed project.

Thank you for the opportunity to provide comments on this project. If you have any questions, please contact me at (805) 773-7170, or Ronnie Glick, Senior Environmental Scientist at (805) 773-7180.

Sincerely,



Andrew Zilke
District Superintendent



Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, CA 93449
Telephone (805) 773-7170
FAX (805) 773-7176

June 21, 2010

City of Pismo Beach
Community Development Department
Planning Division
760 Mattie Road
Pismo Beach, California 93449-2056

Re: 140 Addie Street, Koligian Residential Project – File No: 08-0163

To Whom It May Concern:

The California Department of Parks and Recreation (CDPR) has reviewed the Planning Commission Staff Report, the Revised Initial Study of Environmental Impacts (SCH 2008091044), and the Wetland Determination and Biological Assessment for the 140 Addie Street – Koligian Residential Project. CDPR owns and manages the lands adjacent to this development as part of Pismo State Beach. CDPR has concerns regarding the project's close proximity to a sensitive wetland area and impacts related to hydrology and biology of the Pismo Creek estuary.

Hydrology

This project will place a structure in within as an area subject to high tidal storm surges and within a 100-year flood zone. This project has the potential to change the hydraulic function of the estuary, potentially impacting public lands in the vicinity of the project. CDPR has specific evidence of changes in Pismo Creek's hydrology due to the construction of the condos and installation of rip rap to the east of this proposed project. The change in the directional flow of Pismo Creek has had a dramatic impact on the neighboring Pismo RV Park and CDPR - North Beach Campground properties. CDPR has evidence that the development to the east of this proposed project caused the Pismo Estuary to migrate south and to erode dunes and sandy beachfront in the past decade.

Based on our experience with changes in hydrology in the Pismo Creek estuary caused by the adjacent developed properties, CDPR believes that this project will create potentially significant impacts from substantial alteration of the existing drainage pattern of the site, including the alteration of the course of a stream and in a manner that would result in substantial erosion of dunes and property to the south and west of the parcel. Furthermore, this project will create potentially significant impacts by placing within a 100 year flood hazard area a structure that will impede and redirect flood flows.

Biology

CDPR had indicated in written, e-mail and verbal communications with City staff that this project fails to protect existing wetland habitat associated with the Pismo Creek Estuary. This project fails to provide a minimum setback of 25 feet from existing wetlands of the Pismo Creek Estuary. Furthermore, the project and associated background documents fail to recognize that estuaries are dynamic systems that change over time. Wetlands are created and altered through normal hydrologic cycles. Even though this site did not support substantial wetland vegetation at the time of the wetland inventory, the site is part of a dynamic estuary. There is no doubt that the site has supported wetland vegetation and characteristics in the recent past and has the potential to support wetlands in the future during normal hydrologic cycles. The City has an obligation to provide sufficient space for the estuary to grow, contract, and change with normal hydrologic cycles. By failing to acknowledge the dynamic nature of the Pismo Creek Estuary, the City is failing to protect important habitats on public lands.

The Revised Initial Study erroneously concludes that this project is consistent with Policy CO-21 Pismo Creek Protection (page 22 – 23). In the absence of riparian vegetation, the policy requires that setback from creek habitats be measured from the top of the creek bank. This site is part of the active estuary and lies at elevations slightly above the existing estuary water level. There is no defined creek bank and the entire property must be considered as part of the Pismo Creek Estuary. Therefore, the project is inconsistent with Policy CO-21.

Ignoring the issues of the creek bank, the structure is within 25 feet of existing wetland habitat on State Parks property and the project cannot be consistent with Policy CO-21.

This residential structure will diminish habitat quality of the Pismo Creek estuary by placing a structure and human activity in extremely close proximity to an important publically owned wildlife habitat area. This project needs to be set back a sufficient distance from wetlands and the Pismo Creek estuary to allow the natural dynamic processes in this estuary system to continue in perpetuity.

Thank you for the opportunity to provide comments on this project. If you have any questions, please contact me at (805) 773-7170, or Ronnie Glick, Senior Environmental Scientist at (805) 773-7180.

Sincerely,



Andrew Zilke
District Superintendent



IN REPLY REFER TO:
2009-FA-0002

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



October 10, 2008

David Foote
Firma Consultants
1034 Mill Street
San Luis Obispo, California 93401

Subject: Request for Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Proposed Koligan Residential Project at 140 Addie Street, San Luis Obispo County, California

Dear Mr. Foote:

We are writing in response to your request for comments on the initial study and notice of intent to adopt the mitigated negative declaration (notice of intent) prepared for the proposed 140 Addie Street, Koligan Residential Project. Your request was dated September 8, 2008, and we received it in our office on September 9, 2008.

The proposed project involves construction of a single-family residence on lot 5 at 140 Addie Street in the city of Pismo Beach, California. Construction activities would include site preparation, widening of Addie Street, and construction of a driveway to access lot 5. The residence would be built on 4-foot-tall pilings and the driveway would be elevated to comply with Federal Emergency Management Agency flood plain regulations.

The initial study identified seven federally listed species that may occur within the project area: the endangered California tiger salamander (*Ambystoma californiense*), tidewater goby (*Eucyclogobius newberryi*), steelhead trout (*Oncorhynchus mykiss*), brown pelican (*Pelecanus occidentalis*), and California least tern (*Sterna antillarum browni*), and the threatened western snowy plover (*Charadrius alexandrinus nivosus*) and California red-legged frog (*Rana aurora draytonii*).

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to

wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7 or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

We offer the following comments to assist in planning for the conservation of listed and sensitive wildlife and plant species that could be affected by the proposed project, and as a means to assist you, the landowner, and the City of Pismo Beach in complying with the Act. These comments are prepared in accordance with the Act, and other authorities mandating Department of Interior concern for environmental values.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Environmental Quality Act (CEQA), our comments on the notice of intent for the proposed project do not constitute a full review of project impacts. We are providing our comments based upon a review of sections addressing biological resources, project activities that have potential to affect federally listed species, and our concerns for listed species within our jurisdiction related to our mandates under the Act. The National Marine Fisheries Service (NMFS) is the Federal agency with management responsibility for steelhead trout under the Act. For input regarding potential effects of the proposed project on steelhead trout with respect to compliance with the Act, we recommend that you contact NMFS at (562) 980-4000.

The Pacific coast population of the western snowy plover was federally listed as threatened on March 5, 1993. A recovery plan was published in 2007 (Service 2007), and identified six recovery units for the listed population. Biological and physical features required by the western snowy plover are provided by intertidal beaches, associated dune systems, and river/stream estuaries. Important components of the beach/dune/estuarine ecosystem include surf-cast kelp, sparsely vegetated foredunes, interdunal flats, spits, washover areas, blowouts, intertidal flats, salt flats, and flat rocky outcrops. The Pacific coast population nests near tidal water along the mainland coast and offshore islands from southern Washington the southern Baja California, Mexico. Nesting and chick rearing activity generally occur between March 1 and September 30. The widespread loss of habitat and reduced reproductive success of many nesting locations are major threats to the western snowy plover. Urban development, encroachment of European beachgrass (*Ammophila arenaria*), disturbance from human activities, and predation are factors that result in loss of habitat and reduced reproductive success for the subspecies. Recreational activities such as jogging, running pets, horseback riding, and off-road vehicle use frequently crush and destroy the western snowy plover's cryptic nests and chicks.

The tidewater goby was federally listed as endangered on March 7, 1994. A recovery plan was published in 2005 (Service 2005a). Endemic to California, the tidewater goby is found primarily in waters of coastal lagoons, estuaries, and marshes. Tidewater gobies prefer a sandy substrate for breeding, but they can be found on rocky, mud, and silt substrates as well. Tidewater gobies are found in isolated populations within stream drainages, and have been found in localities

previously considered extirpated. Major storm events where individuals are flushed into the littoral zones could be the source of recolonization. They have been documented in waters with salinity levels from 0 to 42 parts per thousand, temperature levels from 8 to 25 degrees Celsius, and water depths from 25 to 200 centimeters. Twenty-three (17 percent) of the 134 known localities of the species are currently considered extirpated, and 55 to 70 (41 to 52 percent) localities are naturally so small or have been so degraded over time that long-term persistence is uncertain. Declines can be attributed to upstream water diversions, pollution, siltation, and urban development on surrounding lands. The tidewater goby continues to be threatened by modification and loss of habitat as a result of coastal development, channelization of habitat, diversions of water flows, groundwater overdrafting, and alteration of water flows (Service 2005a). As noted in the species' recovery plan, Pismo Creek is occupied by the tidewater goby (Service 2005a). Approximately 25 percent of the tidewater goby habitat in Pismo Creek occurs within the boundaries of Pismo State Beach; the remainder is privately owned and owned by the City of Pismo Beach.

On January 31, 2008, the U.S. Fish and Wildlife Service (Service) designated 18 acres of lower Pismo Creek as critical habitat for the tidewater goby (73 Federal Register (FR) 5920). This critical habitat unit (SLO-7) includes the lagoon and surrounding area immediately adjacent to the proposed project site. The Pismo Creek critical habitat unit (SLO-7) is important to the conservation of the tidewater goby because it will support the recovery of the species' population along this portion of the coast and will help facilitate colonization of currently unoccupied locations (73 FR 5944). The notice of intent does not address the importance of maintaining water quality and habitat values in lower Pismo Creek in the context of critical habitat for the tidewater goby.

California red-legged frogs spend most of their lives in and near sheltered backwaters of ponds, marshes, springs, streams, and reservoirs. Deep pools with dense stands of overhanging willows (*Salix* sp.) and an intermixed fringe of cattails (*Typha* sp.) are considered optimal habitat. Eggs, larvae, transformed juveniles, and adults also have been found in ephemeral wetlands, creeks, and drainages, and in ponds that do not have riparian vegetation. Accessibility to sheltering habitat is essential for the survival of California red-legged frogs within a watershed, and can be a factor limiting population numbers and distribution.

During dry periods of the year, the California red-legged frog is rarely encountered far from water. However, during periods of wet, mild weather, starting with the first rains of fall, some individuals of this species make overland excursions through upland habitats. Some California red-legged frogs have moved long distances over land between water sources during winter rains. Adult California red-legged frogs have been documented to move more than 3.2 kilometers (km) in northern Santa Cruz County "without apparent regard to topography, vegetation type, or riparian corridors" (Bulger et al. 2003). Most of these overland movements occur at night.

The California red-legged frog has been extirpated or nearly extirpated from 70 percent of its former range. Ongoing causes of decline include direct habitat loss due to stream alteration and

David Foote

4

disturbance to wetland areas, indirect effects of expanding urbanization, and competition or predation from non-native species.

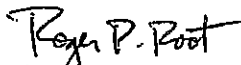
The initial study (page 10) acknowledges that the California red-legged frog may occur in the project area and may be impacted by the proposed development activities. However, neither the initial study nor the notice of intent describes the suitability of habitat in the vicinity of the project area for California red-legged frogs. The initial study (page 10) states that California red-legged frogs "were not identifiable in the winter, but would be expected to inhabit Pismo Creek." The initial study later concludes that it is "unlikely that [California red-legged frogs] use the project site," although the document does not discuss the rationale for this determination or provide any details regarding site assessments or surveys conducted for the subspecies in the project area. We recommend a site assessment and surveys for California red-legged frogs in the project area in accordance with Service guidelines (Service 2005b).

On page 10 (paragraph 7) of the initial study, it states that removal of an area of pioneer dune plant community "could directly affect the lagoon sediments, depth, and degree of wind protections." We are concerned that the proposed construction activities and removal of the dune community would negatively affect the hydrology and morphology of the lagoon and shoreline, thereby reducing the quality and quantity of habitat for the tidewater goby and California red-legged frog as well as migratory birds.

We are also concerned with the indirect impacts of development in the vicinity of the creek/lagoon and within the flood plain. Page 10 of the initial study acknowledges that development encroachment near sensitive habitats could have adverse effects on wildlife. For example, development near the shore line could attract domesticated waterfowl that would subsequently displace wild, native birds in the lagoon. Development near the shoreline could also attract or facilitate domesticated or feral cats, which could then adversely affect federally listed species and migratory birds through predation. The notice of intent does not describe any actions that would be taken to avoid or minimize these adverse impacts.

We appreciate the opportunity to provide comments on the initial study and notice of intent for the proposed Koligan residential project. If you have any questions regarding these comments or how to efficiently address them, please contact Colleen Mehlberg of my staff at (805) 644-1766, extension 221.

Sincerely,



Roger P. Root
Assistant Field Supervisor

cc:
Dave Hacker, California Department of Fish and Game

REFERENCES CITED

- Bulger, J.B., N.J. Scott, and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs (*Rana aurora draytonii*) in coastal forests and grasslands. *Biological Conservation* 110(2003):85-95.
- U.S. Fish and Wildlife Service. 2005a. Recovery plan for the tidewater goby (*Eucyclogobius newberryi*). U.S. Fish and Wildlife Service, Portland, Oregon. vi + 199 pp.
- U.S. Fish and Wildlife Service. 2005b. Revised guidance on site assessments and field surveys for the California red-legged frog. August 2005. Sacramento, California.
- U.S. Fish and Wildlife Service. 2007. Recovery plan for the Pacific Coast population of the western snowy plover (*Charadrius alexandrinus nivosus*). In 2 volumes. Sacramento, California xiv + 751 pp.

From: "David Hacker" <DHACKER@dfg.ca.gov>
Subject: 140 Addie St. comments on IS/MND 2008091044
Date: October 8, 2008 2:46:56 PM PDT
To: <david@firmaconsultants.com>
Cc: "Janice Yoshioka" <JYoshiok@dfg.ca.gov>, "Chris Kofron" <Chris_Kofron@fws.gov>, "Julie Vanderwier" <Julie_Vanderwier@fws.gov>

David:

As we discussed yesterday, here are the Department of Fish and Game's comments on the City of Pismo Beach's Initial Study and proposed Mitigated Negative Declaration (MND) for the 140 Addie St. Koligian Residence Project (SCH # 2008091044). The proposed project would construct a residence on the north side of the Pismo Creek lagoon.

The Department recommends completing a wetland delineation for this project following US Army Corps of Engineers (USACE) methods, and request a Jurisdictional Determination from the USACE, prior to adopting the MND. The vegetation community map provided is insufficient for determining the extent of wetlands, other jurisdictional waters, and their relation to the proposed structure. During a project site visit, Department personnel noted hydrophytic plant species extending into a swale that was not mapped in the MND. Hydrophytes were also observed extending into what appeared to be the building envelope.

When considering the extent of wetlands, the MND should consider the difference between the Federal Clean Water Act wetland definition and the Department's wetland definition. The Department uses the US Fish and Wildlife Service wetland definition, which requires only one wetland parameter to be present and includes man-made wetlands. The EIR should include a plan to ensure no net loss of wetland and riparian habitat values and acreage.

The project, because of its location within the Pismo Creek lagoon system, would displace and degrade uplands and potential wetlands used by lagoon species. The project would also indirectly degrade aquatic habitat, which supports the Federally Threatened tidewater goby (*Eucyclogobius newberryi*) and steelhead (*Oncorhynchus mykiss*), the California Species of Special Concern southwestern pond turtle (*Actinemys marmorata pallida*), and migratory waterfowl and shorebirds. Pismo Creek is also steelhead Critical Habitat. Lagoons are essential for steelhead rearing, overwintering, and transitioning between fresh and salt water, facilitating significantly higher steelhead growth rates than freshwater stream reaches. Light, noise, movement, pets, shading, pollutants, and the degradation of upland buffers would all contribute to adverse effects to each of these species, which the MND should discuss per species.

The Department recommends coordinating with the US Fish and Wildlife Service regarding the potential effects to and survey requirements for tidewater goby and the Federally Threatened western snowy plover (*Charadrius alexandrinus nivosus*) and California red-legged frog

{*Rana draytonii*). The City and its applicant should also coordinate with the National Marine Fisheries Service regarding effects to steelhead critical habitat.

The MND states that the project would not impede flows in Pismo Creek if the main channel alignment shifts. The project footprint is within an area that will likely become part of the main creek channel in the future, which would then require further impacts to the creek to maintain/repair the proposed residence, its access, and its parking area. This is a likely scenario given the dynamic nature of coastal lagoons.

California Environmental Quality Act (CEQA) Authority: The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact fish and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

The Department is a Responsible Agency when a subsequent permit or other type of discretionary approval is required from the Department, such as an Incidental Take Permit, pursuant to the California Endangered Species Act (CESA), or a Streambed Alteration Agreement issued under Fish and Game Code § 1600 et seq. As the MND notes, the proposed project would require Notification to the Department regarding the intent to alter Pismo Creek.

Both of those actions by the Department are considered "projects" (CEQA Guidelines Section 15378) and are subject to CEQA. The Department typically relies on the Lead Agency's CEQA compliance to make findings pursuant to CEQA Guidelines Section 15091. For the Lead Agency's CEQA document to suffice for permit/agreement issuance, it must fully describe the potential project-related impacts to stream/riparian resources and listed species, and commit to measures to avoid, minimize, and mitigate impacts to these resources.

Impacts to State listed species must be "fully mitigated" in order to comply with CESA. If the CEQA document issued by the City for this Project does not contain these commitments, the Department may need to act as a Lead CEQA Agency and complete a subsequent CEQA document. This could significantly delay permit issuance and, subsequently, project implementation. In addition, CEQA grants Responsible Agencies authority to require changes in a project to lessen or avoid effects of that part of the project which the agency will be called on to approve (CEQA Guidelines § 15041).

Thank you for the opportunity to comment on this project. Please feel free to contact with any questions.

APPRAISAL OF REAL PROPERTY



LOCATED AT

140 Addie St
Pismo Beach, CA 93449
CY PB DOC ADD BLK 4 LT 5 Subject is further identified as APN: 005-163-029

FOR

Vaughn M. Jr. & Mary A. Koligian
5660 N Van Ness Blvd
Fresno, CA 93711

AS OF

January 23, 2012

BY

David P Cook
Cook & Associates, Inc.
1303 E Grand Ave., Suite 123
Arroyo Grande, CA 93420
(805) 474-1951
dave@davecookappraisals.com

RECEIVED

MAR 12 2012

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Introductory Letter

File No. C11-2031

Client	Vaughn M. Jr. & Mary A. Koligian			
Property Address	140 Addie St			
City	Pismo Beach	County	San Luis Obispo	State CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian			

COOK & ASSOCIATES, INC.

1303 East Grand Avenue, Suite 123

Arroyo Grande, CA 93420

February 8, 2012

Re: 140 Addie St.
Pismo Beach, CA 93449

Dear Mr. Koligian

In accordance with your request and authorization, I have prepared an appraisal report containing the data, analysis, and assumptions leading to the opinion of the Present Market Value of the real property situated at 140 Addie St., Pismo Beach, CA. 93449. The property is more specifically described in the body of this report.

The purpose of this appraisal was to estimate the Present Market Value of the Fee Simple Interest of the land situated at the above address.

After careful consideration and analysis of all factors affecting value, I have developed an opinion of value as of January 23, 2012 in the amount of \$520,000.

Subject to the limiting conditions contained herein.

The appraisal report that follows sets forth the identification of the property, the assumptions and limiting conditions, pertinent facts about the area and the subject property, comparable data, the results of the investigations and analyses, and the reasoning leading to the conclusions set forth.

Respectfully submitted,

David P Cook,
Real Estate Appraiser
General License# - AG010594

Summary of Salient Data

File No. C11-2031

Client	Vaughn M. Jr. & Mary A. Koligian			
Property Address	140 Addie St			
City	Pismo Beach	County	San Luis Obispo	State CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian			

SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS140 Addie St., Pismo Beach, CA 93449

Property Type: Vacant Parcel

Location: Urban

Date of Value Estimate: January 23, 2012

Property Rights Appraised: Fee Simple

Site: 4500 sf (50' x 90')

Improvements: None

Zoning: R-4, and is located in the Downtown Core Planning Area K, (MR a mixed residential district)

Highest and Best Use: To developed as a residential improved property

Site Value: \$520,000

Cost Approach: Not Applicable

Sales Comparison Approach: \$520,000

Income Capitalization Approach: Not Applicable

Final Value Conclusion: **FIVE HUNDRED TWENTY THOUSAND DOLLARS**

Client	Vaughn M. Jr. & Mary A. Koligian			File No.	C11-2031
Property Address	140 Addie St				
City	Pismo Beach	County	San Luis Obispo	State	CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian				

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DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

* Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

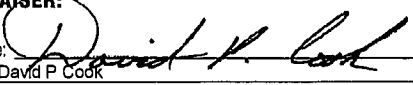
APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: 140 Addie St, Pismo Beach, CA 93449

APPRAISER:

Signature: 
 Name: David P Cook
 Date Signed: 02/08/2012
 State Certification #: General License - AG010594
 or State License #: _____
 State: CA
 Expiration Date of Certification or License: 11/09/2012

SUPERVISORY APPRAISER (only if required):

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____

☐ Did ☐ Did Not Inspect Property

LAND APPRAISAL REPORT

File No. C11-2031

SUBJECT	Borrower Not Applicable		Census Tract 0117-00		Map Reference 714-C3	
	Property Address 140 Addie St					
	City Pismo Beach		County San Luis Obispo		State CA Zip Code 93449	
	Legal Description CY PB DOC ADD BLK 4 LT 5 Subject is further identified as APN: 005-163-029					
NEIGHBORHOOD	Sale Price \$ NA		Date of Sale NA		Loan Term NA yrs.	
	Actual Real Estate Taxes \$ 2,473 (yr)		Loan charges to be paid by seller \$ NA		Other sales concessions NA	
	Lender/Client Vaughn M. Jr. & Mary A. Koligian		Address 5660 N. Van Ness Blvd, Fresno, CA 93711			
	Occupant Vacant		Appraiser David P Cook		Instructions to Appraiser Estimate of Market Value	
	Location	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Good	Avg.
	Built Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	Fair	Poor
	Growth Rate	<input type="checkbox"/> Fully Dev.	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Steady	<input type="checkbox"/> Slow	
	Property Values	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining		
	Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Oversupply		
	Marketing Time	<input type="checkbox"/> Under 3 Mos.	<input type="checkbox"/> 4-6 Mos.	<input checked="" type="checkbox"/> Over 6 Mos.		
SITE	Present	60 % One-Unit	1 % 2-4 Unit	4 % Apts.	25 % Condo	10 % Commercial
	Land Use	% Industrial	1 % Vacant			
	Change in Present	<input type="checkbox"/> Not Likely	<input checked="" type="checkbox"/> Likely (*)	<input type="checkbox"/> Taking Place (*)		
	Land Use	(*) From Vacant		To Residential		
	Predominant Occupancy	<input type="checkbox"/> Owner	<input checked="" type="checkbox"/> Tenant	1 % Vacant		
	One-Unit Price Range	\$ 350,000 to \$ 1,750,000		Predominant Value \$ 550,000		
	One-Unit Age Range	4 yrs. to 62 yrs.		Predominant Age 25 yrs.		
	Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise)	Subject is a non-ocean front lot that is also near, but not abutting, Pismo Creek. View is slightly obscured with home abutting to south. Location is in a flood zone and improvements require coastal commission approval.				
	Dimensions	90' x 50' x 90' x 50'		= 4,500 SF		
	Zoning Classification	R4 (Hotel-Motel and Visitor Serving Zone)		Present Improvements <input type="checkbox"/> Do <input checked="" type="checkbox"/> Do Not Conform to Zoning Regulations		
MARKET DATA ANALYSIS	Highest and Best Use	<input type="checkbox"/> Present Use	<input checked="" type="checkbox"/> Other (specify) Potential development for a residential building			
	Elec.	<input checked="" type="checkbox"/>	OFF SITE IMPROVEMENTS	Topo	Below Grade	
	Gas	<input checked="" type="checkbox"/>	Street Access	<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Private	Size Typical
	Water	<input checked="" type="checkbox"/>	Surface	Asphalt		Shape Rectangular
	San. Sewer	<input checked="" type="checkbox"/>	Maintenance	<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Private	View Ocean
		<input type="checkbox"/> Underground Elect. & Tel.	<input checked="" type="checkbox"/> Storm Sewer	<input type="checkbox"/> Curb/Gutter	Drainage Adequate	
			<input type="checkbox"/> Sidewalk	<input type="checkbox"/> Street Lights	Is the property located in a FEMA Special Flood Hazard Area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions) There does appear to be an encroachment from the abutting residential improvement to the south. Current ingress/egress for this encroachment is also on subject property. It is further noted that subject is in a flood zone (A10) and will require elevating living areas to a grade above flood plain with current grade estimated to be about 5+ feet below street.					
	The undersigned has recited the following recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.					
	ITEM		SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address		140 Addie St Pismo Beach, CA 93449	Searidge Ct. Pismo Beach, CA 93449	215 Santa Fe Ave. Pismo Beach, CA 93449	Seaview Ave. Pismo Beach, CA 93449	
Proximity to Subject			3.91 miles NW	2.26 miles NW	2.00 miles NW	
Sales Price		\$ NA	\$ 595,000	\$ 420,000	\$ 655,000	
Price \$/Sq. Ft.		\$ NA	\$ NA	\$ NA	\$ NA	
Data Source(s)		RQ, Realist, CDNA	RQ, Realist, CDNA and Agent	RQ, Realist, CDNA and Agent	RQ, Realist, CDNA and Agent	
ITEM		DESCRIPTION	+ (-) \$ Adjust.	DESCRIPTION	+ (-) \$ Adjust.	
Date of Sale/Time Adj.		NA	10/13/11	04/10/09	11/14/11	
Location		Good	Good - Inferior	+100,000	Good - Inferior	
Site/View		4,500 sf/Ocn View	5,837 SF/DstOcean	03,375 SF/DstOcean	+250,000	
Development		Needs Platform	Buildable	-200,000	Buildable	
Days on Market		None	DOM 453	DOM 85	DOM 134	
Sales or Financing		NA				
Concessions		NA				
Net Adj. (Total)			<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -100,000	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 92,000	<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -121,000	
Indicated Value of Subject			\$ 495,000	\$ 512,000	\$ 534,000	
Comments on Market Data Please refer to supplemental addendum.						
RECONCILIATION	Comments and Conditions of Appraisal Subject property is buildable with highest and best use as a residential/duplex parcel. It is an extraordinary assumption that costs to bring property to an acceptable building foundation is estimated at \$200,000. Should this prove to be significantly different, appraiser reserves the right to alter the opinion of market value. Appraiser has not been provided with plans or building specifications.					
	Final Reconciliation Most reliance placed on the Sales Comparison Approach as it best reflects the actions of buyers and sellers. Cost Approach is not developed as there are no existing improvements. Income Approach not developed as residential units are not typically held for investment portfolios. Refer to addendum for additional comments.					
	I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE SUBJECT PROPERTY AS OF January 23, 2012 TO BE \$ 520,000					
	Appraiser David P Cook		Supervisory Appraiser (if applicable)			
	Date of Signature and Report 02/08/2012		Date of Signature			
	Title General Licensed Appraiser		Title			
	State Certification # General License - AG010594 ST CA		State Certification # ST			
	Or State License # ST		Or State License # ST			
	Expiration Date of State Certification or License 11/09/2012		Expiration Date of State Certification or License			
	Date of Inspection (if applicable)		<input type="checkbox"/> Did <input type="checkbox"/> Did Not Inspect Property Date of Inspection			

ADDITIONAL COMPARABLE SALES

File No. C11-2031

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 4	COMPARABLE NO. 5	COMPARABLE NO. 6
Address	140 Addie St Pismo Beach, CA 93449	Cypress St. Pismo Beach, CA 93449	220 Indio Dr. Pismo Beach, CA 93449	501 Baycliff Dr. Pismo Beach, CA 93449
Proximity to Subject		0.07 miles NE	4.24 miles NW	2.04 miles NW
Sales Price	\$ NA	\$ 350,000	\$ 835,000	\$ 650,000
Price \$/Sq. Ft.	\$ NA	\$	\$	\$
Data Source(s)	RQ,Realist,CDNA	RQ,Realist,CDNA,Agent	RQ,Realist,CDNA,Agent	RQ,Realist,CDNA,Agent
ITEM	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Date of Sale/Time Adj.	NA	Pending 11/14/11	Active Listing	Active Listing
Location	Good			
Site/View	4,500 sf/Ocn View			
Development	Needs Platform	Buildable	Buildable	Buildable
Days on Market	None	DOM 5	DOM 447	DOM 233
Sales or Financing Concessions	NA			
Net Adj. (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 167,500	<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -283,500	<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -97,500
Indicated Value of Subject		\$ 517,500	\$ 551,500	\$ 552,500
<p>Comments on Market Data Comp#1 is located in Sunset Palisades and is an interior lot with distant ocean views from Pt. Sal to Avila Beach. View is considered equivalent due to buyer preferences. Site is level-ready for development. Property is about 3 blocks distant from ocean bluff but near freeway with traffic noise. Location adjustment of \$100,000 is made to equate subjects proximity to ocean. Comp#2 is located in Pismo Beach (formerly known as Shell Beach) is considered "mid-tier", is an interior lot with distant ocean views from 2nd story only and is about 2 blocks distant from ocean bluff with private homes. Location adjustment of 10% of purchase is made to equate subjects proximity to ocean with an added adjustment of say \$50,000 with no direct ocean access. Comp#3 is located in Pismo Beach (formerly known as Shell Beach) is the third lot up from the ocean bluff with potential second story views. Site is level-ready for development. Location adjustment is 10% of purchase to equate subjects proximity to ocean. Comp#4 is about one block to subject. This parcel, a single lot that is one of three, is located on a busy street. Agent reported property as pending with closing price "very near" list price. There is no view but could be obtained with second story structure. Comp#5 is an interior lot that is about 130' from ocean bluff. View is filtered, offering includes proposed plans for a 3200+sf home with a cost estimate for plans and permit at say \$25,000. This parcel previously sold on 05/12/10 for \$925,000 which included a 2,087 sf residence. During course of remodeling it was determined that entire structure needed to be removed. Owner subsequently opted to sell as prior home did not close and current offer is judged stressed and compounded with a high list price as evidenced from an extended days on market. Additionally, the potential building improvement is restricted to a maximum height of 15 feet. Listing adjustment decreased by 5% to reflect a more reasonable list price versus sale price as evidenced in an analysis. Comp#6 is located on the north side of US Hwy 101 and adjusted at 5% of list price for an inferior location and traffic noise but does have a panoramic view of ocean that is judged a buyer preference and thus no view adjustment. This is an interior lot in the Rancho Pacifica, which is a new subdivision. Site is level-ready for development.</p> <p>View adjustments based upon market reaction and adjusted at 10% for inferior distant ocean. Comp.# 6 view is panoramic and a buyers preference and adjustment could not be supported.</p> <p>Comparable development adjustments are for superior sites ready for development as opposed to subject inferior site that will require substantial engineering and a raised foundation platform to be above the flood plain. Estimated cost is in the range of \$130,000 plus permits and entrepreneurial profits with an overall across the board negative adjustment of say \$200,000.</p> <p>In summary, comparables used were vacant lots, closest to ocean and most recent sales/listings. Relatively equal weight afforded all comparables. Indicated sale comparable range is from \$495,000 to \$534,000 with added weight from pending sale comp #4 which is closest in location. Final market value estimate via the Market Data Analysis is judged to be \$520,000.</p>				

Supplemental Addendum

File No. C11-2031

Client	Vaughn M. Jr. & Mary A. Koligian				
Property Address	140 Addie St				
City	Pismo Beach	County	San Luis Obispo	State	CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian				

Cook & Associates, Inc.

Office 805-474-1951 - Fax 805-473-3768

INTENT OF APPRAISAL

The undersigned appraiser acknowledges that he has read and understands the Uniform Standards of Professional Appraiser Practice (USPAP) as they were adopted and may be amended from time to time by the Appraisal Standards Board of the Appraisal Foundation. Additionally, to the best of the appraiser's knowledge and ability, this appraisal conforms with the requirements of California Civil Code Sections 1911.1 & 1922.2.

PURPOSE AND FUNCTION OF APPRAISAL

The intended user of this appraisal is the Client. The Intended Use is to evaluate the property that is the subject of this appraisal for highest and best use and formulating an estimated market value, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value. No additional Intended Users are identified by the appraiser. The opinion of value is of the Fee Simple Estate of the subject property in its existing state. Uniform Standards of Professional Appraisal Practice (USPAP) Competency Rule: The appraiser certifies that his education, experience and knowledge provide sufficient competency to appraise the type of property being valued. This Summary Appraisal Report is a brief recapitulation of the appraiser's data, analyses and conclusions. Supporting documentation is retained in the appraiser's file.

COUNTY

San Luis Obispo County is 150 miles north of Los Angeles and 200 miles south of San Francisco. It is divided geographically into a north and south area. The north encompasses the cities of Paso Robles, Templeton and Atascadero which are north of the Cuesta Ridge. These have been growth oriented areas. The cities south of Cuesta Ridge are San Luis Obispo, the county seat and site of Cal Poly University, as well as Los Osos, Morro Bay, Pismo Beach, Grover Beach and Arroyo Grande. These economies are based on tourism, agriculture, education and research and development. Major employers are county government, the University, Diablo Nuclear Plant and research and development firms.

San Luis Obispo County has been declared a Zone 4, the type most likely to be affected by earthquakes in relation to the danger of earthquake activity. Moreover, the area is located in the Diablo Canyon nuclear power plant zone. Neither of these factors appears to appreciably/negatively affect real estate values. Subject and all comparables are under the same influence.

NEIGHBORHOOD COMMENTS

Pismo Beach is located on the Central Coast of California, midway between Los Angeles and San Francisco. It is a long, narrow town bordered by the ocean and coastal hills. Tourism is the primary industry. The City is 13.45 square miles in area, with a population of 7,655 (2010). Estimated median household income in 2005: \$63,500. Schools, employment, and other services are located within a reasonable distance. Subject is located about 5 blocks southeast of the central business district of Pismo Beach and the pier.

Immediate neighborhood buildings are best characterized as condominiums, small income housing, ie. duplex/triplex, vacation rental houses and hotels. Landlocked area adjacent east subject boundary is owned by the Pismo Coast Village, an RV resort which is located on the east side of Pismo Creek. Residential dwelling abutting the south side of subject parcel is similarly located in the flood zone and is built on pole pilings. This structure encroaches upon subject lot. Primary use is for vacation rental and is known as the "The Beach House". Property on the west side of Addie St is zoned (G) and is a public parking lot.

SITE DESCRIPTION

Subject site is an undeveloped lot that is below street grade. Lot is rectangular in shape with ingress/egress to paved public street shown as Addie St. There is an easement for a public trail on the adjoining lot owned by Pismo Coast Village and Pismo Creek. Pismo Creek traverses adjacent lot owned by the Pismo Coast Village. Site is covered with native and non-native vegetation. Property is located in a flood zone - A10. All utilities are available to site. Zoning is identified as an R4 zone with a mixed use overlay in the Pismo Beach general plan.

HIGHEST AND BEST USE

The highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive.

HIGHEST AND BEST USE defined:

1. The reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value.
2. The reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of the appraisal.

Supplemental Addendum

File No. C11-2031

Client	Vaughn M. Jr. & Mary A. Koligian		
Property Address	140 Addie St		
City	Pismo Beach	County	San Luis Obispo
		State	CA
		Zip Code	93449
Client	Vaughn M. Jr. & Mary A. Koligian		

3. The most profitable use.

Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers, 2006.

CONSISTENT USE: The concept that land cannot be valued on the basis of one use while improvements to the land are valued on the basis of another. The Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers, 2006.

CONTRIBUTION: The concept that the value of a particular component is measured in terms of its contribution to the value of the whole property, or as the amount that its absence would detract from the value of the whole. The Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers, 2006.

DISCUSSION:

Highest and Best Use as if vacant takes into account the worth of a parcel of property in its existing state subject to current zoning and physical features. Subject zone is R4, a hotel-motel zone designated to accommodate and cater to the needs of tourist serving lodging and other facilities. After an analysis of the zoning proposed and permitted uses as outlined in the 1983 zoning code and the 1992 general plan, reference is made to Pismo Beach Planning code; 17.095.2 to 17.102.040.1 and 17.099 (Visitor Services (VS) Overlay Zone).

Hotels, motels, bed and breakfast inns, restaurants and associated cocktail lounges and other visitor serving uses are legally permissible. Uses that are allowed in the R-1 thru R-3 zones and/or non-visitor -serving commercial uses are applicable to subject zone. Non-visitor serving uses are only allowed if the applicant can substantially show that the size, shape or location of the parcel makes it infeasible for a visitor-serving improvement pursuant to the local coastal program land use plan and Chapter 17.099. Prohibited uses include office space for general or medical businesses and non-retail commercial services.

Any improvement (specifically identified by zone or other use) will require an elevated platform to be above the flood plain. Environmental and sensitive area restrictions will prohibit backfilling subject site.

As subject property only contains 4500 square feet, it is financially infeasible to use as a motel-hotel, restaurant with associated lounge, retail or bed and breakfast as there is minimal; ground foot print (motel minimum lot size is 20,000 sf), setbacks and parking restrictions in which to generate a profitable income stream. Construction, operational and debt servicing costs also renders these uses as financially unfeasible.

On October 19, 2011 the Pismo Beach City Council upheld the Planning Commission approval of project identified as 08-0163 (subject site), for a; coastal development permit, conditional use permit, architectural review and adoption of a mitigated negative declaration for site preparation, demolition of a portion of the 136 Addie St, utility and right of way improvements, construction of a site access bridge structure and a 3,651 sf duplex structure on raised pilings.

In summation and after consideration of most common allowable uses; it is determined that an elevated residential improvement would be most probable/profitable use due to parcel size and flood plain which is concluded to be the highest and best use of subject property and is consistent with similarly located improved properties that contributes to the highest value of the whole property.

MARKET COMMENTS

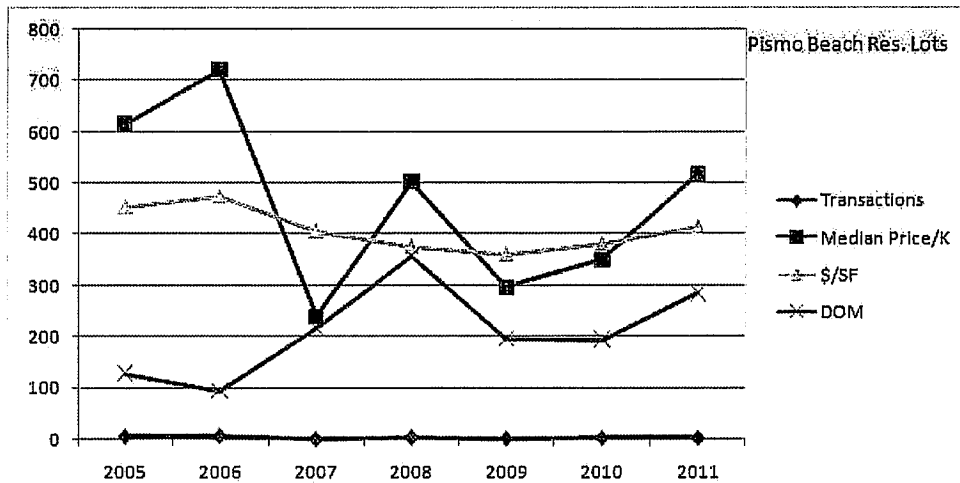
Review of all vacant parcels in the past year and within the Pismo Beach market yielded 3 sales and 10 listings. Market trends show median home prices to be stable. The number of active listings are also showing some stability in that listings during the past year have remained constant. While the market is showing signs of stabilizing, the overall market remains weak. Housing supply less than 6 months is a positive indicator and market is deemed in balance. Current supply is in excess of 12 months. What is not shown is the "Shadow Inventory" held by lenders and is unknown. This inventory is believed to be "dripped" onto the market in order to prevent a wholesale lessening of property values.

Supplemental Addendum

File No. C11-2031

Client	Vaughn M. Jr. & Mary A. Koligian				
Property Address	140 Addie St				
City	Pismo Beach	County	San Luis Obispo	State	CA
				Zip Code	93449
Client	Vaughn M. Jr. & Mary A. Koligian				

MARKET TRENDS



While there is limited data from which to develop supportable trends; properties in this price range have increased slightly through 2009/2011 as indicated by the median price with days on market (DOM) increasing. Last 12 months indicated a stable market in median sale and listing price. Overall, market appears stable but weak with primary sales season beginning in March. Tourism is primary economic activity with minor impact from the recession with December unemployment rate measured at 9.1%.

COST APPROACH

Subject is a vacant site available for development and as such The Cost Approach is not material to this appraisal assignment.

COMMENTS ON SALES APPROACH AND ANALYSIS

Through the use of all available data sources, a methodical search of the subject's immediate market area was performed for recent closed sales, pending sales and active listings. This data was then analyzed to determine which of these properties are the most similar to the subject in terms of highest and best use, location, view amenity and property size.

Although no two properties are exactly alike, experience has shown that adjustments can be made for differences between the appraised property and the competitive sales. Dollar adjustments were made only for those items judged to have significant differences which a prudent buyer would or would not pay for the various characteristics (amenities) of the subject or of the competitive properties selected. All adjustments were based on comparison analysis (where possible), discussions with local real estate agents and other knowledgeable sources, extensive analysis of recent sales and competitive listings and their overall effect on value.

Time since sale: Market research (MLS statistics) has shown that property values were increasing through late 2005. From about November 2006 to date, number of competitive listings have increased with significant price reductions for medium priced homes. DOM for reasonably priced property is as indicated in the URAR.

These comps represented the; most competitive, closest locations, size, quality and current sales. Adjustments based upon market reaction, agent interviews and experience in the Pismo Beach markets.

With subject property, it is all about the location and view with quality, condition and GLA as secondary buying motives. All comps have distant ocean views. All comps are fairly similar residential sites available for construction.

SUMMARY OF SALES APPROACH

A thorough search for comparable/competitive sales was made to find sales of properties that are comparable to the subject property. This data search produced an adequate amount of information to provide a reasonable analysis and determination of value indication that can be applied to the subject property. After consideration of locations, dates of sale, physical differences and special conditions, in the appraiser's judgment, the competitive sales used are the best indicators of the subject's value.

In summary, all sales/listing comparables and pending sale are competitive to subject property. Adjusted sales

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Client	Vaughn M. Jr. & Mary A. Koligian			

prices frame estimated value. Listings provided additional support. Market appeal for these properties is as a primary residence or vacation rental market. The estimated market value via the Sales Comparison Approach is judge to be \$520,000.

FINAL RECONCILIATION

This appraisal report is made "as-is". There are no special conditions or requirements which need to be met to support the estimate of value. Subject and other homes in neighborhood are similar.

The Cost Approach (has not been demonstrated as this is a bare lot and appraiser has not been presented with any development plans and specifications.

The Income approach was not demonstrated as SFRs are not typically held for investment purposes.

The Market Data Approach includes current, good quality, data and is therefore given the greatest weight to determine the subject's estimated market value, which is estimated to be say \$520,000.

FIVE HUNDRED TWENTY THOUSAND DOLLARS**USAGE**

Intended User: The intended user of this report is the client named in this report. In accordance with the Appraisal Standard Board's interpretation of Certification #23, the use of this appraisal by anyone other than the named client is not intended by the appraiser

This report is not intended for use by the client for the purpose of identifying any adverse conditions in the subject's parcel which might be revealed by any inspections by a licensed professional in any relevant field. This appraisal does not guarantee that the subject property is free of undetected problems, possible defects or environmental hazards that could exist.

Use: Reading the appraisal report or possessing the report does not constitute use. Relying on the appraisal report to understand how the appraiser developed the opinion of value does not constitute use. Use only means relying on the appraisal report to aid in making a decision as to the highest and best use and estimated market value of the identified subject property.

The entire contents of this report should be considered to constitute a "Summary Appraisal Report" as defined by the Appraisal Standards Board of the Appraisal Foundation.

SCOPE OF WORK CLARIFICATION

Appraisal: (noun) the act or process of developing an opinion of value; an opinion of value, (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Appraiser: a state licensed individual with appropriate license level, training and experience who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

Appraisal is a branch of applied economics, it is distinct from the applied sciences (engineering, surveying, mold or environmental testing, etc.), from the building trades (home inspection, pest and dry rot inspection, roof inspection, construction, etc.), and from the applied arts (architecture, home design or drafting).

Complete exterior visual observation of the unobstructed, exposed, and accessible perimeter of the site from standing height at ground level. It includes the visual observation of any detached accessory building/improvement judged by the appraiser to have contributory/diminished value.

GEOGRAPHIC COMPETENCY

Each assignment executed by this appraiser requires an intimate knowledge of the area in which the Subject Property is located, known in our profession as "geographical competency". This appraiser has spent sufficient time in this market and understands its nuances, including the supply and demand factors relevant to the Subject Property. Such understanding is not solely based upon database information such as demographics, costs, sales, and rentals. Geographical competency requires the understanding of this appraisers' knowledge of local market conditions based upon years of on site knowledge providing the link between a sale and legitimate comparable sales or rental comparables.

ADVERSE SITE CONDITIONS

Easements, encroachments, environmental conditions, hazardous wastes, toxic substances and detrimental land uses are reported only as visually observed at the site or known in the neighborhood or as reported to me during the course of my research. Site and utility easement typical of the neighborhood likely exist but were not researched as part of the scope of work. Scope of work does not include an attempt to research subject's title legal documents. I have no expertise in the areas of law, title searching or environmental hazards or inspection of environmental conditions. Scope of work does not include determining if permits for work done on the property have been secured, or if required inspections by local building inspectors were performed, or if any certificates of occupancy have been properly completed. No soil reports, environmental audits, site assessment, health department report have been reviewed. Scope of work does not include any additional verification of any of these items and client is invited to

Supplemental Addendum

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Client	Vaughn M. Jr. & Mary A. Koligian		
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Client	Vaughn M. Jr. & Mary A. Koligian		

employ the services of appropriate experts if any of these areas not covered by my scope of work are of concern.

Conditions of Appraisal

I have not provided a previous service or an appraisal regarding the subject property within the three years prior to this assignment.

The entire contents of this report should be considered to constitute a "Summary Appraisal Report" as defined by the Appraisal Standards Board of the Appraisal Foundation.

Subject Photo Page

Client	Vaughn M. Jr. & Mary A. Koligian		
Property Address	140 Addie St		
City	Pismo Beach	County	San Luis Obispo
		State	CA
		Zip Code	93449
Client	Vaughn M. Jr. & Mary A. Koligian		

Subject Front

140 Addie St



View looking E and apprx. center of lot

Subject Rear

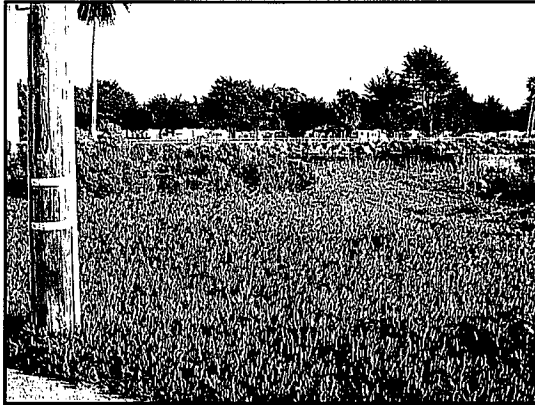
View looking West from NE corner

Subject Street

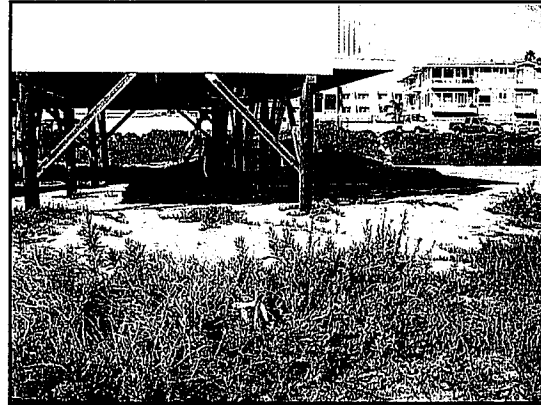
View look north near S. terminus of Addie St.

Photograph Addendum

Client	Vaughn M. Jr. & Mary A. Koligian			
Property Address	140 Addie St			
City	Pismo Beach	County	San Luis Obispo	State CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian			

**View of North boundary looking East****Comments:**

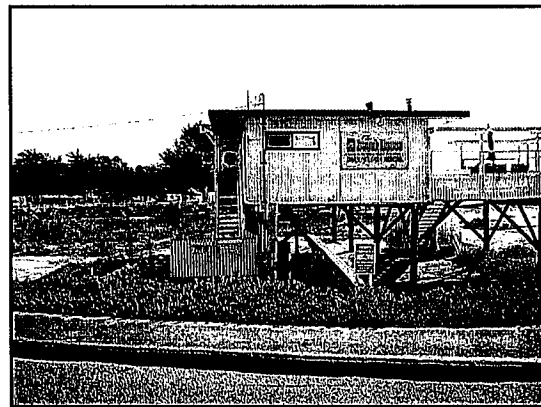
Pismo Coast Village is on far side of Pismo Creek.

**View from SE Corner looking West****Comments:**

Right side of single family residence encroaches upon subject property with an estimate of 100-140 square feet.

**View of East Boundary****Comments:**

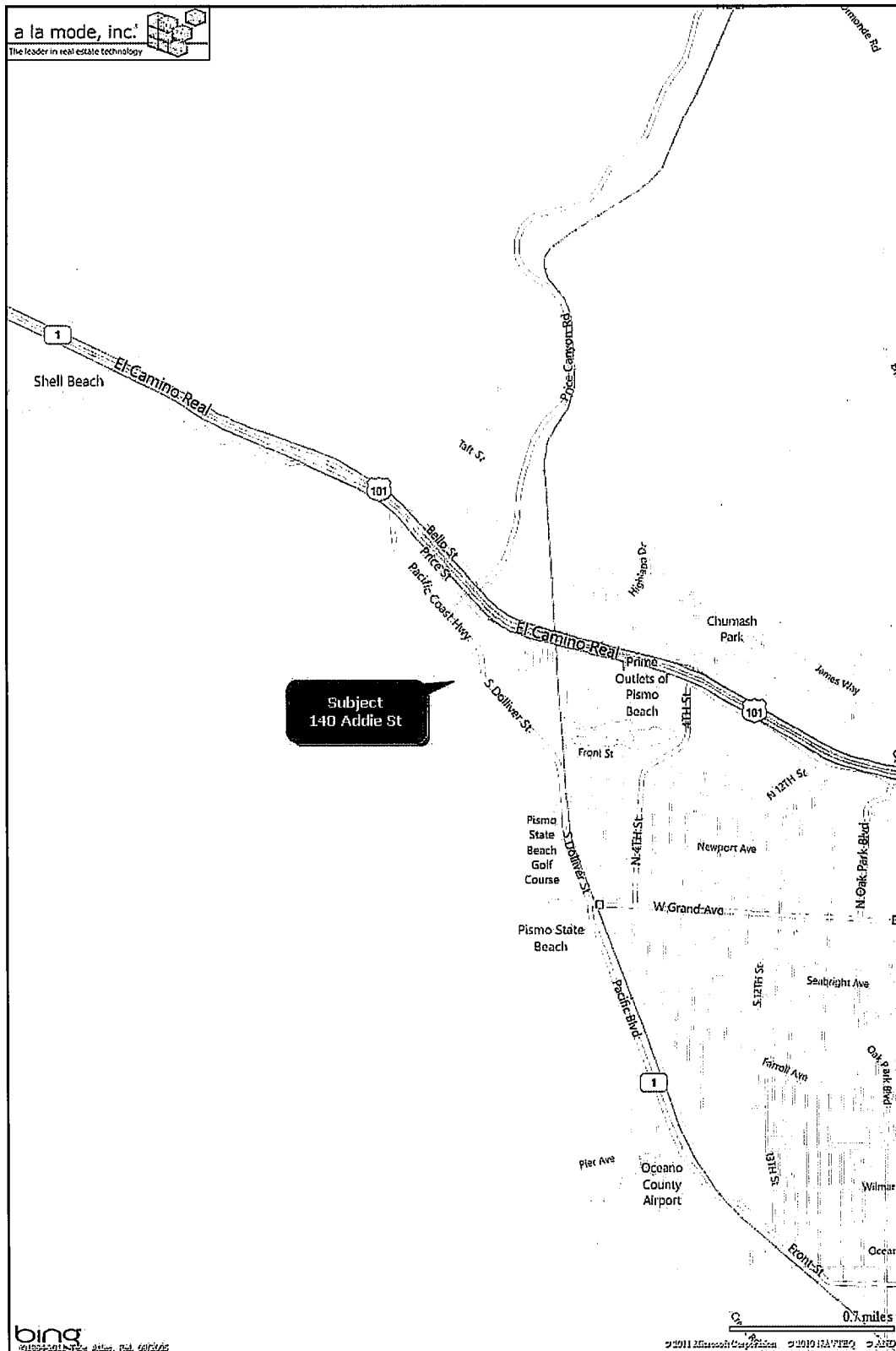
View looking north of eastern lot boundary abutting Pismo Creek

**View of "Beach House" Abutting South Boundary****Comments:**

Note: Ingress/Egress for this property represents a trespass across subject parcel.

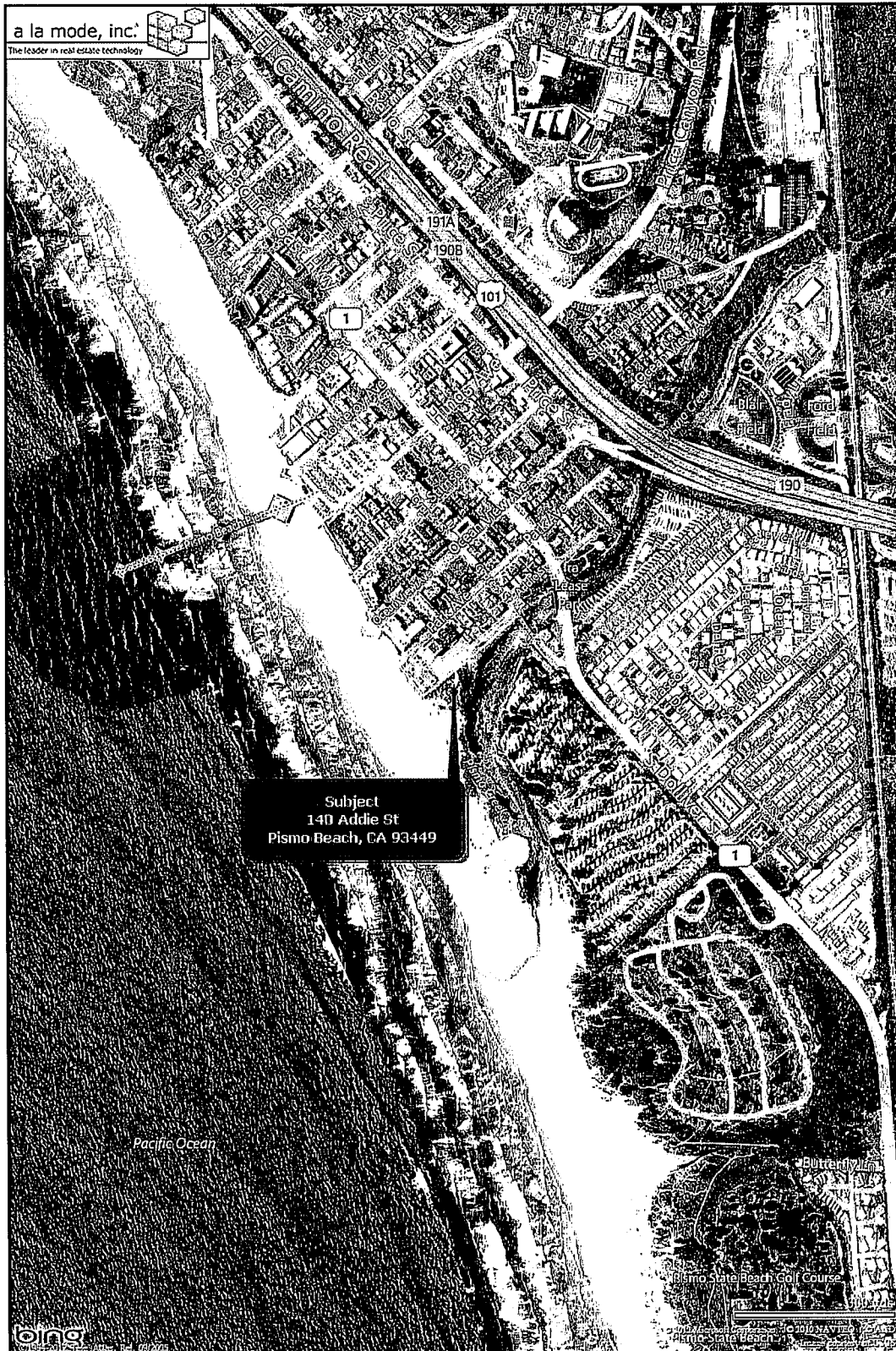
Location Map

Client	Vaughn M. Jr. & Mary A. Koligian				
Property Address	140 Addie St				
City	Pismo Beach	County	San Luis Obispo	State	CA
				Zip Code	93449
Client	Vaughn M. Jr. & Mary A. Koligian				



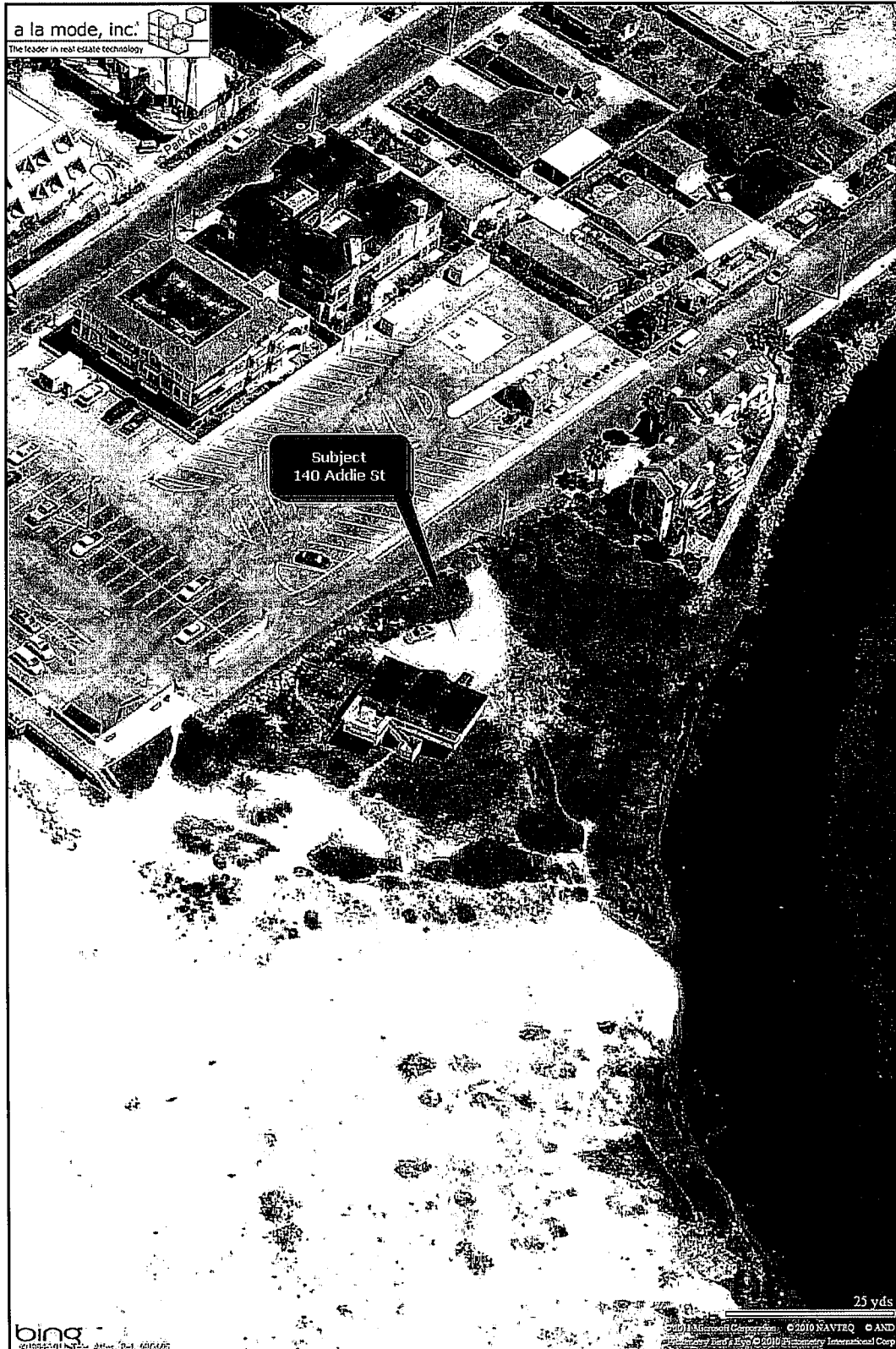
Aerial Map

Client	Vaughn M. Jr. & Mary A. Koligian			
Property Address	140 Addie St			
City	Pismo Beach	County	San Luis Obispo	State CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian			

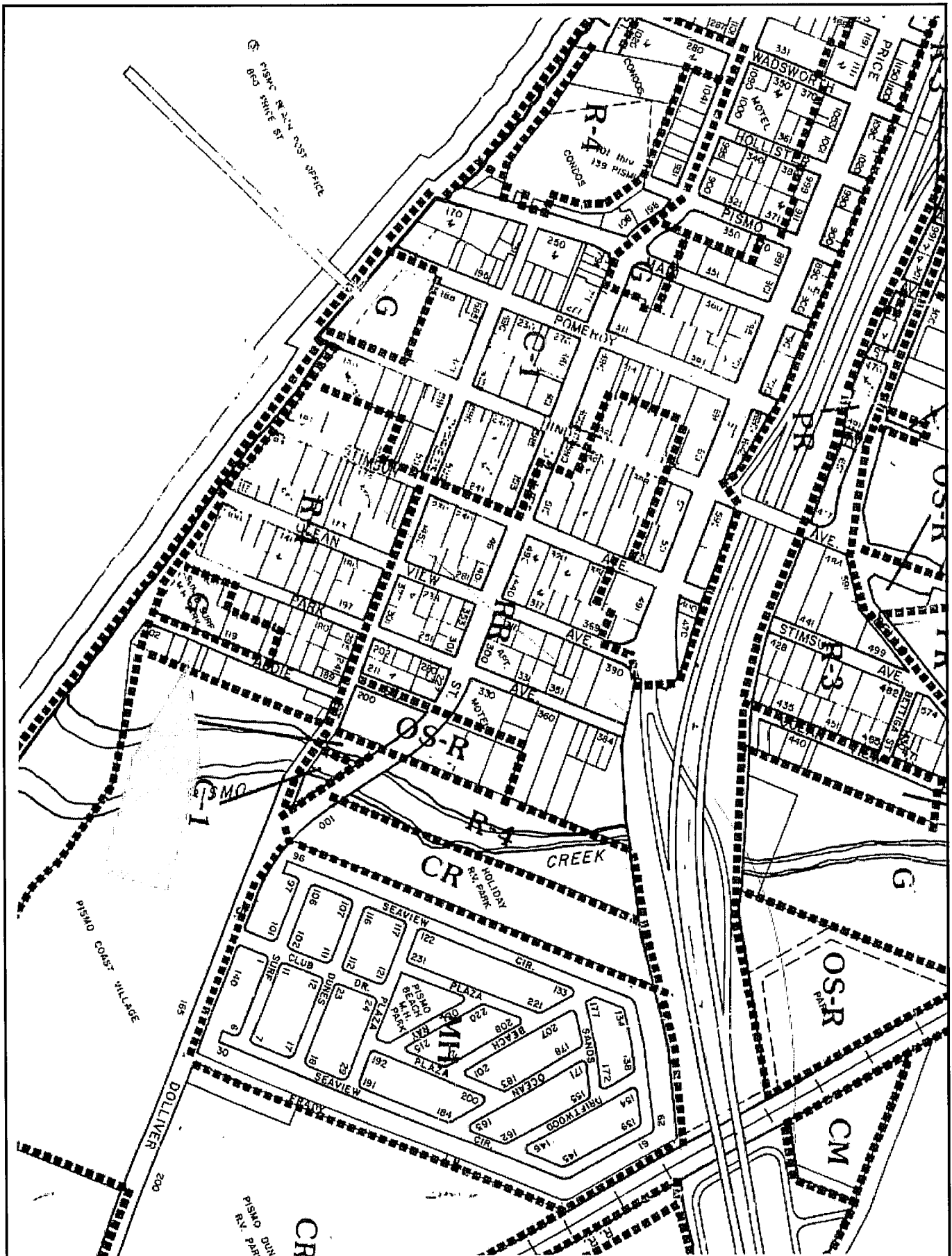


Bird's Eye Map

Client	Vaughn M. Jr. & Mary A. Koligian		
Property Address	140 Addie St		
City	Pismo Beach	County	San Luis Obispo
		State	CA
		Zip Code	93449
Client	Vaughn M. Jr. & Mary A. Koligian		

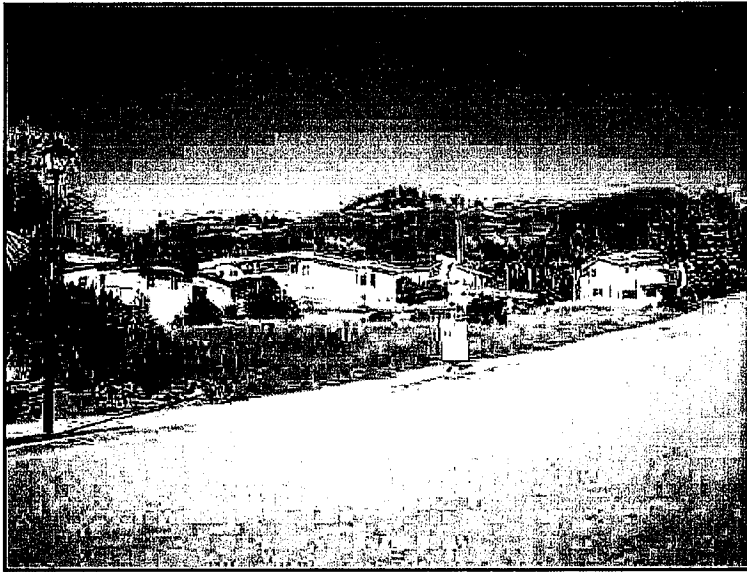


Zoning Map

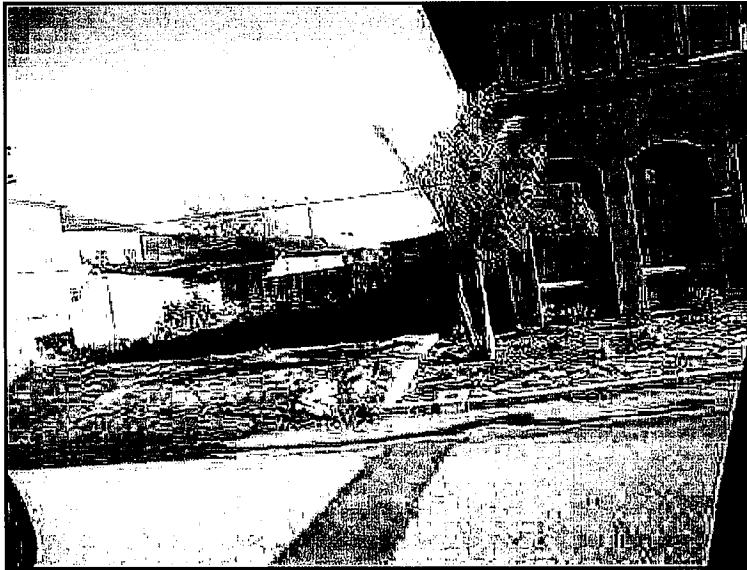


Comparable Photo Page

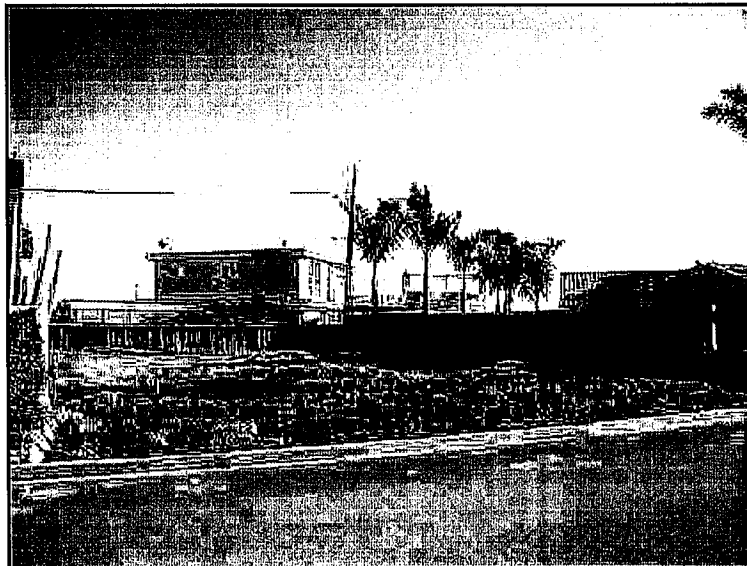
Client	Vaughn M. Jr. & Mary A. Koligian				
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City	Pismo Beach	County	San Luis Obispo	State	CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian				

**Comparable 1**

Searidge Ct.
Prox. to Subj. 3.91 miles NW
Sales Price 595,000
Location Good - Inferior
View DstOcean
Site 5,837 SF

**Comparable 2**

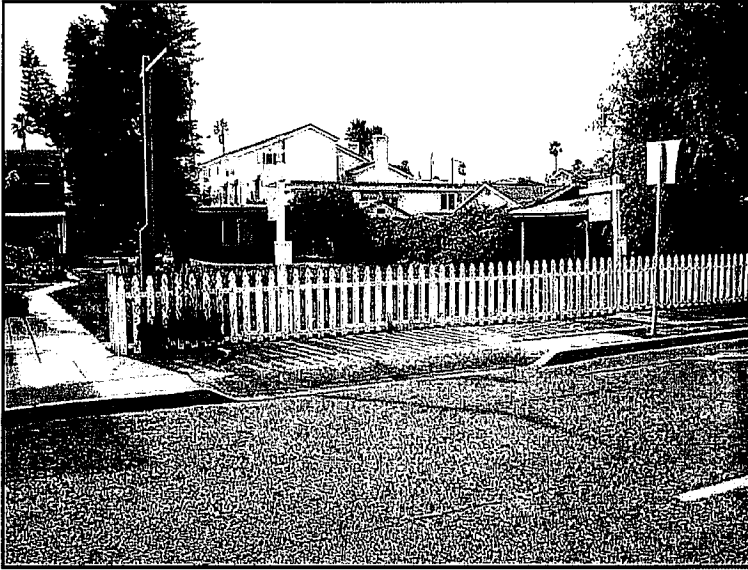
215 Santa Fe Ave.
Prox. to Subj. 2.26 miles NW
Sales Price 420,000
Location Ave.- Inferior
View 2nd Sty only
Site 3,375 SF

**Comparable 3**

Seaview Ave.
Prox. to Subj. 2.00 miles NW
Sales Price 655,000
Location Good - Inferior
View 2nd Story only
Site 3,790 SF

Comparable Photo Page

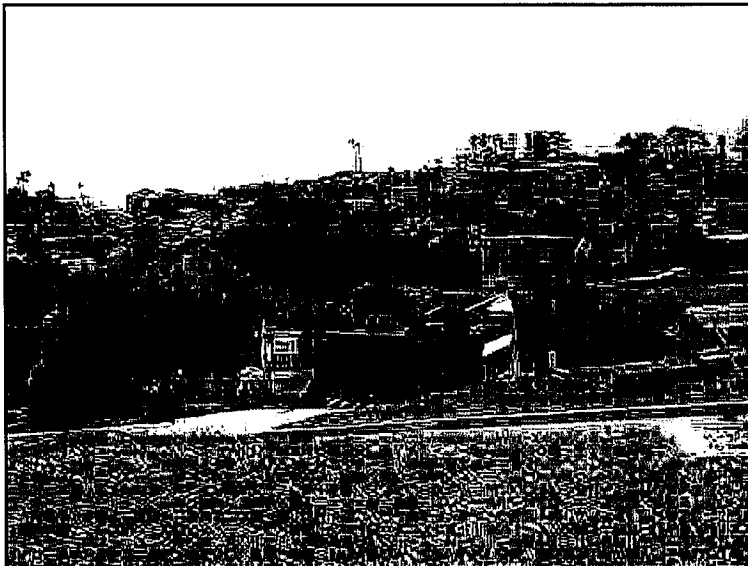
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Client	Vaughn M. Jr. & Mary A. Koligian			

**Comparable 4**

Cypress St.
Prox. to Subj. 0.07 miles NE
Pending Price 350,000
Location BsySt.
View 2nd Sty only
Site 5,000 SF

**Comparable 5**

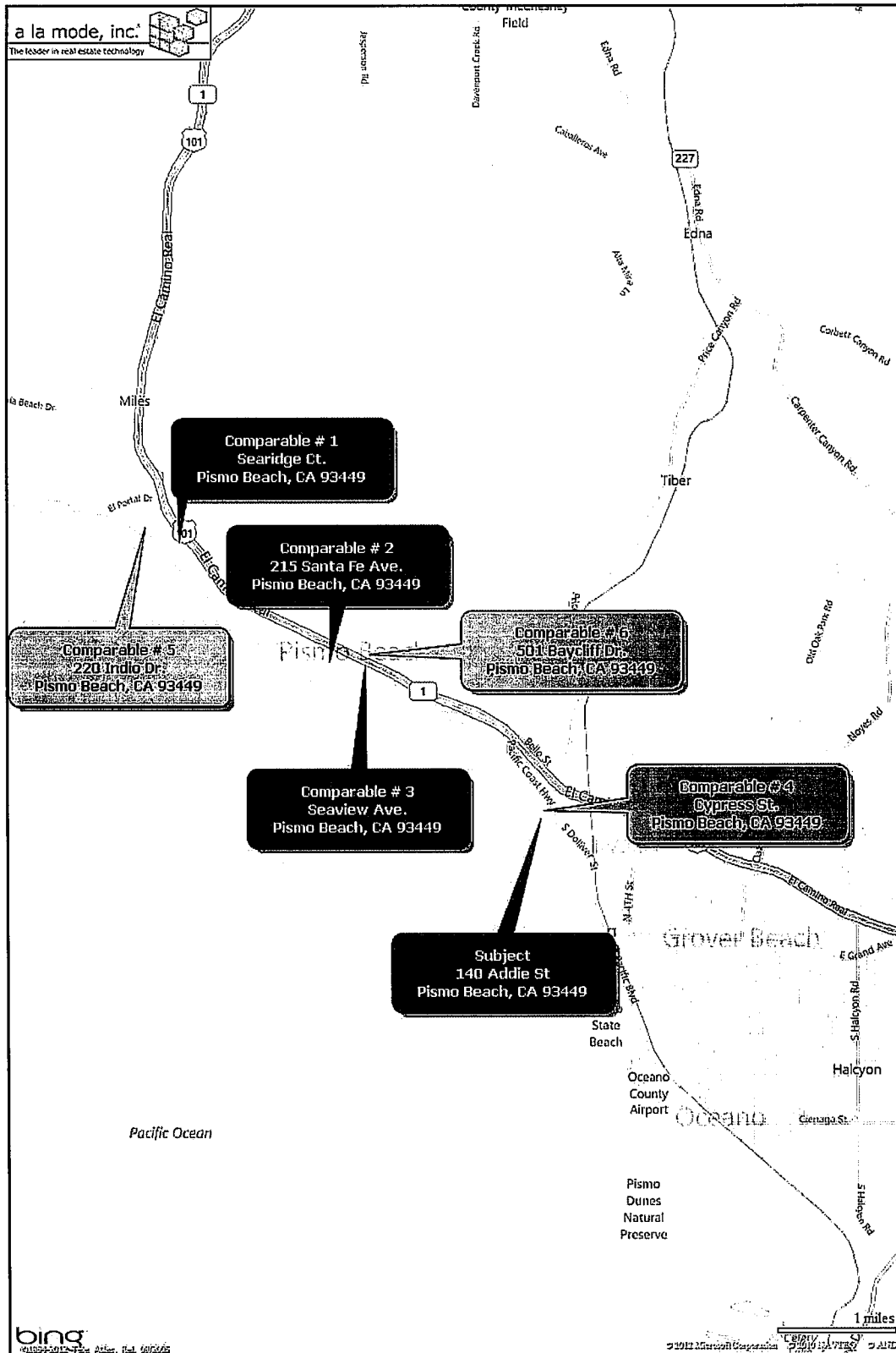
220 Indio Dr.
Prox. to Subj. 4.24 miles NW
List Price 835,000
Location Good Back Beach
View Dst Ocean
Site 7,500SF

**Comparable 6**

501 Baycliff Dr.
Prox. to Subj. 2.04 miles NW
List Price 650,000
Location Inferior - Trf noise
View DstOcn
Site 11,543sf

Comparable Sales Map

Client	Vaughn M. Jr. & Mary A. Koligian			
Property Address	140 Addie St			
City	Pismo Beach	County	San Luis Obispo	State CA Zip Code 93449
Client	Vaughn M. Jr. & Mary A. Koligian			



RealQuest Property Detail Report

RealQuest.com® - Report

Page 1 of 1

Property Detail Report

For Property Located At



CoreLogic

RealQuest Professional

140 ADDIE ST, PISMO BEACH, CA 93449

Owner Information:

Owner Name: KOLIGIAN VAUGHN M JR & MARY A
 Mailing Address: 5660 N VAN NESS BLVD, FRESNO CA 93711-1201 C043
 Phone Number: Vesting Codes: // CP

Location Information:

Legal Description: CY PB DOCK ADD BLK 4 LT 5
 County: SAN LUIS OBISPO, CA APN: 005-163-029
 Census Tract / Block: 117.00 / 3 Alternate APN:
 Township-Range-Section: Subdivision: DOCKERY'S
 Legal Book/Page: Map Reference: ADD/EL PIZMO
 Legal Lot: 5 / 714-C3
 Legal Block: 4 Tract #: LUCIA MAR
 Market Area: School District:
 Neighbor Code: Munic/Township:

Owner Transfer Information:

Recording/Sale Date: / Deed Type:
 Sale Price: 1st Mtg Document #:
 Document #:

Last Market Sale Information:

Recording/Sale Date: 06/28/1999 / 05/05/1999 1st Mtg Amount/Type: /
 Sale Price: \$180,000 1st Mtg Int. Rate/Type: /
 Sale Type: FULL 1st Mtg Document #:
 Document #: 57-461 2nd Mtg Amount/Type: /
 Deed Type: GRANT DEED 2nd Mtg Int. Rate/Type: /
 Transfer Document #: Price Per SqFt:
 New Construction: Multi/Split Sale:
 Title Company: FIRST AMERICAN TITLE
 Lender:
 Seller Name: BRENT DICKENS INC A CA CORP

Prior Sale Information:

Prior Rec/Sale Date: / Prior Lender:
 Prior Sale Price: Prior 1st Mtg Amt/Type: /
 Prior Doc Number: Prior 1st Mtg Rate/Type: /
 Prior Deed Type:

Property Characteristics:

Year Built / Eff: /	Total Rooms/Offices:	Garage Area:
Gross Area:	Total Restrooms:	Garage Capacity:
Building Area:	Roof Type:	Parking Spaces:
Tot Adj Area:	Roof Material:	Heat Type:
Above Grade:	Construction:	Air Cond:
# of Stories:	Foundation:	Pool:
Other Improvements:	Exterior wall:	Quality:
	Basement Area:	Condition:

Site Information:

Zoning: R4	Acres: 0.10	County Use: VACANT SINGLE FAMILY (100)
Flood Zone: A10	Lot Area: 4,500	State Use:
Flood Panel: 0603090002B	Lot Width/Depth: x	Site Influence:
Flood Panel Date: 11/05/1997	Commercial Units:	Sewer Type:
Land Use: RESIDENTIAL LOT	Building Class:	Water Type:

Tax Information:

Total Value: \$218,608	Assessed Year: 2010	Property Tax: \$2,473.14
Land Value: \$218,608	Improved %:	Tax Area: 004001
Improvement Value:	Tax Year: 2010	Tax Exemption:
Total Taxable Value: \$218,608		

<http://pro.realquest.com/jsp/report.jsp?&client=&action=confirm&type=getreport&record...> 12/13/2011

Appraiser's License

STATE OF CALIFORNIA	
	Business, Transportation & Housing Agency
OFFICE OF REAL ESTATE APPRAISERS	
REAL ESTATE APPRAISER LICENSE	
DAVID P. COOK	
has successfully met the requirements for a license as a general real estate appraiser in the State of California and is, therefore, entitled to use the title "Certified General Real Estate Appraiser".	
This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.	
CREA APPRAISER IDENTIFICATION NUMBER	AC0010594
Date Issued: November 10, 2010	
Date Expires: November 9, 2012	
	
Director, CREA	
Audit No. 123311	
THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO SEE "REAL" AND "APPRAISER"	



RECEIVED

MAR 12 2012

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 7, 2012

RE: ECONOMIC FEASIBILITY ANALYSIS, 140 ADDIE STREET, PISMO BEACH

To Whom It May Concern,

The purpose of this report is to fairly and accurately evaluate the feasibility of developing "visitor-serving" projects for the property located at 140 Addie Street, Pismo Beach, California.

This report is prepared in four sections as follows:

1. General Plan Designation, Zoning Designation, Site Statistics
2. Development Constraints
3. Development Scenarios
4. Conclusion

We have analyzed the development potential of the site based on the Pismo Beach 1983 Zoning Ordinance and the 1992 General Plan/Local Coastal Plan. The presentation does not consider development that would require variances, in-lieu parking fees, rezoning or other esoteric and discretionary departures from current policies and ordinances in place at the time of preparation. As a result of our analysis of parcels for sale in the immediate area and, in reviewing other recent appraisals, our estimate of the current value of the 140 Addie Street property is \$500,000. It should be noted a certified appraisal of the property was performed by David Cook dated February 3, 2012 indicating a value of \$520,000 which is comparable with our valuation.

This analysis reviews the development potential for visitor-serving uses including hotel, visitor-serving retail commercial, restaurant, vacation rental, kayak rental and a mobile food service site. Although *restaurant* is not an allowed use in this zone, other than when coincident with hotel development, it is understood the City would consider such a use as appropriate given the visitor serving focus of this property. Similarly, *vacation rentals* are not specified as an allowed use. However, given their visitor-serving nature, it is understood this zone could accommodate that use as well.

DRE License # 01465507

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Exhibit 10
A-3-PSB-10-062 (Koligian)
Page 26 of 31

1. GENERAL PLAN DESIGNATION, ZONING DESIGNATION, SITE STATISTICS

Note: Italicized copy is directly extracted from 1992 GP/LCP and 1983 Zoning Ordinance

The 140 Addie Street parcel abuts property owned by Pismo Coast Village to the southeast and Addie Street to the northwest. Similarly zoned R-4 parcels bracket the site on each interior side. The property is located within the *Downtown Core Planning Area K, Mixed Residential (MR) District LUK 3. 1 "The Mixed Residential or MR District shall permit a mixture of hotels and motels along with apartments, condominiums and other similar residential uses. Restaurants may be permitted when secondary to onside hotel use. It is expected that the visitor serving uses will gravitate toward the beach and the major thoroughfares. Small convenience markets that serve the daily needs of residents and visitors would be allowed in this district."*

The property is designated *R-4 Hotel-Motel and Visitor Serving Zone*.

17.027.010 Purpose of Zone. The Hotel-Motel or R-4 zone is designated to accommodate and cater to the needs of tourist serving lodging and other facilities.

17.027.020 Permitted Uses In the Hotel-Motel Zone. The following uses are permitted and are subject to the general provisions and exceptions set forth in Chapters 17. 102 and 17.105

1. *Hotels;*
2. *Motels;*
3. *Bed and Breakfast Inn;*
4. *Restaurants and cocktail lounges associated with restaurants;*
5. *Other visitor-serving commercial uses.*

17.027.030 Accessory Uses Permitted as an adjunct to a permitted use. Small shops for retail sale of clothing articles, jewelry, souvenirs, books, magazines, and uses that are similar or accessory to permitted uses and cater primarily to guests of hotel, motel or restaurant. Specifically, sale of groceries or frozen food stuffs is not permitted.

17.027.040 Uses Requiring a conditional use permit.

1. *Permitted uses in the R-1, R-2 and R-3 zones;*
2. *Residential and/or non-visitor serving commercial uses.*
**These residential and/or non-visitor serving uses may be allowed only if the applicant can substantially show that the size, shape or location of the parcel makes it infeasible for a visitor-serving use as stated pursuant to the Local Coastal Program Land Use Plan and Chapter 17.099. Uses prohibited specifically from the zone shall include office space for general or medical businesses and non-retail commercial services.*

ZONING ORDINANCE STANDARDS

Lot size	(50 x 90) 4500 square feet
General Plan Designation	Downtown Core (MR) Mixed Residential
Building Height	35 feet
Yard Setbacks: Front	15 feet
Rear	10 feet
Side	5 feet
Zoning	R-4 Hotel-Motel and Visitor-Serving
Minimum Lot Area	20,000 square feet
Minimum Lot Width	75 feet
Maximum Lot Coverage	55% = 2,475 sq. ft.
Maximum Total Building Area	125% = 5,625 sq. ft.

2. DEVELOPMENT CONSTRAINTS

The small size of this parcel, which is 4,500 square feet, is the limitation that must be recognized. R-4 properties are primarily intended to be developed as hotel-motel use. As witness, the zoning ordinance requires these parcels to be a minimum of 20,000 square feet with a minimum width of 75 feet. The property in question is less than 25% of the minimum requirement. The minimum required lot width of 75 feet is not arbitrary. A 75 foot wide lot allows for double loaded parking and 5 foot side yard setbacks. Without this width, properties such as the one in question are severely limited in their ability to provide onsite parking.

Due to the width of the parcel, a double loaded parking area cannot be achieved. City ordinance requires 64 feet for 90 degree parking. Angled parking would require one way drives which could not be achieved. It should also be noted that even a single loaded parking area would require a width of 44 feet. This width can be achieved at site grade but not on a raised platform as the required side yard setbacks could not be attained. For this reason, our development scenarios rely on "at grade" parking. The parking lot will be in the flood zone, which is allowed. The elevator is another issue. However it is believed that the elevator, which is essential to successful multi-level commercial development, would be allowed in the flood zone.

The commercial uses, whether hotel, restaurant, commercial retail or vacation rental, would be located above the parking lot on one or two levels depending on the amount of building area required for the particular development.

Parking would be configured as follows: Anticipating two stairways and an elevator, the 90 foot depth of the lot would allow for 5 passenger vehicles, one of which would be for an accessible van as required. The front setback would render 15 feet of the lot depth unavailable for "at grade" parking. The stair and elevator components would utilize an additional 18 feet minimum leaving 57 feet for parking. A HC van space requires 17 feet leaving 40 feet for the parking of 4 additional vehicles plus all structural supports. Given the requirement for a vehicle back-up area of at least 3 feet at the back of the parking area, 5 parking spaces may be unattainable.

3. DEVELOPMENT SCENARIOS

SCENARIO 1

Hotel: 3 sleeping rooms. Assume 1 sleeping room per unit, 700 square feet per unit. Floor area 2,100 square feet plus 250 square feet for elevator and stairs @ \$200 per square foot

COST	
Land	= 500,000
2,350 square feet x \$200 per square foot	= 470,000
Parking and podium deck	= 225,000
FF&E \$30,000 + elevator cost \$13,000	= 43,000
Soft costs and fees	= 100,000
Approximate total costs	= \$1,338,000

INCOME	
365 nights @ 60% occupancy @ 3 rooms @ \$175	= 115,500
Less operating costs @ 65% = 35% debt service	= 40,425
8% capitalization rate value	= \$505,313

Not economically feasible. Revenue inadequate to service debt.

SCENARIO 2

Restaurant: 5 x 75 square feet customer use area, 375 square feet/15 equals 25 seats. Assume 60% customer use and 40% back of house. This building will require a greater back of house percentage because of the limited customer use area. Kitchen/bathrooms and storage will require at least 300 square feet. Assume building size 625 square feet plus 250 square feet for elevator and stairs @ \$225 per square foot. Premium construction cost due to limited size of structure.

COST	
Land	= 500,000
875 square feet x \$300 per square foot	= 262,500
Parking and podium deck	= 225,000
FF&E	= 160,000
Soft costs and fees	= 100,000
Approximate total costs	= \$1,247,500

INCOME	
\$15 x 25 seats x 3 turns per day	= 1,125
Less operating costs @ 85% = 15% debt service	= 169
350 days x 169	= 59,150
8% capitalization rate value	= \$739,375

Not economically feasible. Revenue inadequate to service debt.

Used 8% because it is normal today on existing projects.

*\$1,338,000 - 500,000 = 838,000
8.0% = 67,040
1018000
↓
8% return*

*no risk included in this calculation
must wait 15-20% return*

*if no back of house cost
+ 500,000 out
noted 40,000
properly? with 505,000 in terms of value
new const. would use 15-20% cap rate*

SCENARIO 3

Commercial Retail: 5 X 300 square feet equals 1500 square feet of retail. Assume 1,000 square feet of sales and 500 square feet of service area plus 250 square feet for elevator and stairs @ \$200 per square foot. Due to the remote location of this property, the anticipated retail use rent must be discounted.

COST	
Land	= 500,000
1750 square feet x \$200 per square foot	= 350,000
Parking and podium deck	= 225,000
FF&E including interiors, bathroom, elevator	= 75,000
Soft costs and fees	= 100,000
Approximate total costs	= \$1,250,000

INCOME

\$2.25 per square foot	= 47,250
8% capitalization rate value	= \$590,625

Handwritten calculations:
- 320,000
930,000
47250 / .08 =
←

Not economically feasible. Revenue inadequate to service debt.

SCENARIO 4

Vacation Rental: 5 sleeping rooms total. Assume two 2-bedroom units and one 1-bedroom unit. The size of the structure for this project will be 3,000 square feet plus 250 square feet for elevator and stairs @\$200s per square foot.

COST	
Land	= 500,000
3250 square feet x \$200 per square foot	= 650,000
Parking and podium deck	= 225,000
Interiors and elevator	= 60,000
Soft costs and fees	= 100,000
Approximate total costs	= \$1,535,000

INCOME

\$155 x 5 (bedrooms) x 185 days	= 143,375
Less operating costs @ 40% = 60% debt service	= 86,025
8% capitalization rate value	= \$1,075,313

Handwritten calculations:
- 320,000
1215,000

Not economically feasible. Revenue inadequate to service debt.

SCENARIO 5

Kayak Rental: As a result of consulting with Central Coast Kayaks, it was discovered they previously evaluated the feasibility of offering kayak rentals in the general location of the 140 Addie Street parcel. From this evaluation, they determined the following:

- The mouth of Pismo Creek to be an undesirable location due to the unsanitary nature of the water which is caused by the upstream pollutants. The condition of the water makes the creek problematic for human contact.
- Access to either Pismo Creek or the ocean would require trespassing across privately owned property. (Pismo Coast Village separates Koligian from the Creek and King separates Koligian from the beach).
- Access to the ocean for a kayaker is at best questionable because of the windblown and often rough seas, unpredictable tides, runoff and lack of safe water to navigate in a kayak (unlike Central Coast Kayaks' Shell Beach location).
- The property would be rented by a kayak concession as a staging point. As a result, no construction would be necessary for the use as a kayak shop rental. A kayak trailer would be positioned on the property in the morning and removed in late afternoon which is the practice performed Central Coast Kayaks in Avila.

For their Avila Beach location, Central Coast Kayaks currently pays 10% of their gross yearly income (which ranges from \$1,800-\$8,000 per year) to Port San Luis as rent. The Addie property would earn comparable, at best, due to the issues disclosed above.

Not economically feasible. Revenue inadequate to service debt.

SCENARIO 6

Mobile Food Service: As a result of consulting with the City of Pismo Beach, it was determined the City does not have an ordinance prohibiting food wagons on City property. A food wagon vendor could apply for a Conditional Use Permit, Encroachment Permit and obtain a license to park their vehicle on a City authorized and approved parking lot, subject to the terms and condition the Planning Commission/City Council deem appropriate. Rent is not a consideration. Based upon these conditions, it is unreasonable to assume a mobile food vendor would pay to park on a private party lot located away from foot traffic when they could park in a City parking lot for no cost and have significantly greater exposure.

Not economically feasible. Revenue inadequate to service debt.

4. CONCLUSION

Based on the assumptions and economic modeling used in the six scenarios we evaluated, it is our opinion that none of the models provide a responsible rate of return for their development on the 140 Addie Street parcel.

If you have any questions regarding the above content please contact Richardson Properties at (805)781-6040 or by email at charlie@richardsonproperties.com.