

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



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original staff report

Th13e

Prepared January 11, 2017 for January 12, 2017 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, Central Coast District Manager
Subject: Additional hearing materials for Th13e
Appeal Number A-3-PSB-15-0030 (Rozo Residence)

Where checked in the boxes below, this package includes additional materials related to the above-referenced hearing item as follows:

- ☒ Staff report addendum
- ☒ Additional correspondence received in the time since the staff report was distributed
- ☐ Additional ex parte disclosures received in the time since the staff report was distributed
- ☒ Other: Ex parte.

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Th13e

Prepared January 10, 2017 for January 12, 2017 Hearing

To: Commissioners and Interested Persons
From: Dan Carl, Central Coast District Director
Susan Craig, Central Coast District Manager
Yair Chaver, Coastal Planner
**Subject: STAFF REPORT ADDENDUM for Th13e
A-3-PSB-15-0030 (Rozo SFD)**

Commission staff has received additional correspondence regarding the above-referenced proposed project in the time since the staff report was distributed (from the Applicants' attorney (Paul Beard), the Appellants in this matter (Tarren Collins and Laurie Cummings), the City of Pismo Beach, San Luis Obispo County Supervisor Debbie Arnold, the Pacific Legal Foundation, and others – see letters attached). The purpose of this addendum is to respond to these comments, including certain comments made by the Applicant's attorney in a letter date received in the Central Coast District office on January 6, 2017.¹ This addendum responds to certain contentions made in these comments, but does not alter staff's fundamental recommendation that the Commission find substantial issue for the appeals under consideration.

As an initial matter, the Applicants' attorney (and others) appear to be confusing questions regarding substantial issue determinations and de novo consideration of CDP applications. Given that the Applicants have exercised their right to postpone the de novo portion of the hearing should the Commission find a substantial issue, the only question before the Commission at the January 12, 2017 hearing is the question of whether the City's action raises a substantial issue with respect to the LCP and the Coastal Act (see also "Appeal Procedures" and "Substantial Issue Determination" sections of the staff report starting on pages 7 and 9 for more information). As detailed in the staff report, the question of whether a substantial issue exists is different than the question of whether to approve or deny a CDP. In the case of the former, it is a **threshold** investigation into the City's action and the facts of the case to determine if the Commission should take jurisdiction over the CDP application. Importantly, the Commission's regulations **presume** a substantial issue,² and the substantial issue determination analysis is not designed to make a decision whether to approve or deny a proposal or whether, how, or to what extent to

¹ A letter received January 4, 2017 from Mr. Jeremy Talcott of the Pacific Legal Foundation also raises similar constitutional questions regarding the public access easement, and other comments received raise similar issues regarding both staff's public access analysis and its mass and scale analysis.

² Per Title 14 of California Code of Regulations (CCR) Section 13115(b), the Commission shall consider the CDP application de novo in an appeal context "**unless** the Commission finds that the appeal raises **no** significant question" in terms of LCP conformance and Coastal Act public access and recreation conformance (emphasis added).

condition any approval, but rather it is to assess the adequacy of the City's approval in light of the facts of the case as well as the issues raised on appeal, and to determine if the adequacy of the City's approval in light of these circumstances warrants Commission consideration of the CDP application. In this case, and for the reasons more fully articulated in the staff report, staff continues to recommend that the Commission find a substantial issue.

Public Access

In terms of specific issues raised by the comments received, the substantive comments refer primarily to two of the substantial issue analyses in the staff report, namely public access and community character/compatibility. With respect to the former, Mr. Beard's letter states: "the question is whether 'substantial issue exists with respect to the grounds on which an appeal has been filed.' The answer turns on *whether the project violates* the LCP or the Coastal Act's public-access policies" (emphasis added). In the next sentence Mr. Beard quotes a case (*Hines v. California Coastal Commission* (2010) 186 Cal.App.4th 830) as stating "A substantial issue is defined as one that presents a '*significant question*' as to conformity with the certified local coastal program" (emphasis added).

First, at the Substantial Issue/No Substantial Issue stage the Commission is not determining whether a project categorically "violates" LCP or Coastal Act policies, but rather, as *Hines* states, whether the project presents a "significant question" as to conformity with the LCP and/or Chapter 3 public access policies, as also discussed above. Mr. Beard's letter equates a "significant question" to a "violation," which inappropriately reframes the regulation in a way in which it is not actually written, alleging that a different standard (namely a violation) must be met to find substantial issue. This is simply incorrect. Second, applying the *Hines* standard, staff is within its authorized discretion to recommend that questions relating to public access at the Rozo's property to connect a gap in the California Coastal Trail (CCT) *do* raise a "significant question" as to conformity with LCP and Coastal Act public access policies. As detailed in the staff report, the LCP includes multiple policies related to providing connected public access, all of which amplify Coastal Act public access policies that also apply, including LCP Policy LU-H-8 (which specifically references making a trail connection between Windward and Boeker Avenues, implicating the project site near the seaward end of Windward Avenue and further implicating the CCT). Proper interpretation and application of these policies, including LCP Policies LU-H-8 and PR-5, as well as the statewide significance of connecting the CCT, all support a finding that the appeal raises a substantial issue with respect to the LCP public access policy grounds on which the appeal has been filed. The question at this stage is not whether the Commission can *require* a public accessway to be provided in a de novo review, but rather whether the facts and circumstances of this case in light of the appeal contentions raise a substantial issue warranting Commission review of the CDP application. Mr. Beard construes the substantial issue stage of the appeal process as presenting *both* questions, which misrepresents what is before the Commission in a substantial issue context. The Commission need not make a decision on whether public access is required or not in this case to find substantial issue, even if, as Mr. Beard contends, it would be allegedly unconstitutional for the Commission to require public access in this location in a CDP application context.

The constitutional question of whether the Commission can require an *exaction* in response to the significant public access questions raised by the appeal is separate from consideration of whether the appeal raises a substantial issue with respect to LCP and/or Coastal Act public

access policies. Any inability to constitutionally require an exaction here does not preclude the Commission from first finding that the issues raised by the appeal establish a significant question regarding the basis of conformity with LCP and/or Coastal Act public access policies.

Acknowledgment of the Commission's constitutional limitations, if any, is appropriately made in the de novo consideration when the Commission normally considers what conditions it can apply to a development application.

Considering the above, as well as the fact that Commission staff recommends finding substantial issue on other independent bases (as discussed below), on balance the appeal supports the presumption of substantial issue, rather than supporting a finding that the appeal raises *no* significant question of LCP and/or Coastal Act public access policy conformity, as the Applicants' attorney would suggest.

Community Character/Compatibility

Mr. Beard's letter states: "As stated above, 'Substantial issue' can be found only 'with respect to the ground on which an appeal has been filed' – not on any ground the staff chooses." Mr. Beard asserts that: (1) procedurally, Commission staff should not have cited IP Section 17.105.135(a) as a basis for the substantial issue determination because it was not cited by the Appellants; and (2) substantively, staff misapplied IP Section 17.105.135(a) by including the project's stairwells and elevator in the calculation.

With respect to the first question, in their appeals the Appellants raised concerns that the size and character of the City-approved structure do not meet LCP policies, and they also cite LCP Policy LU-H-4(a). Commission staff, as has been the Commission's long practice, evaluated those appeal contentions broadly, and not unduly limited in terms of just the specific policies that were cited. The Commission has done this historically as a means of maximizing public participation under the Coastal Act and the Commission's regulations, and to best achieve Coastal Act (and by extension LCP) objectives.³ In other words, individual appellants are not required to be LCP and Coastal Act experts in order to raise concerns with local government decisions, and the lack of a specific statutory or regulatory policy citation does not mean that the policies that are *implicated* by a concern raised by appellants cannot be considered by staff when evaluating the merits of the concerns raised. Rather, the contentions necessarily extend to policies implicated by the appeal and not just the specific provisions cited by an appellant. In this case, questions of mass and scale are primary appeal contentions, and the LCP includes a series of standards that apply, including LCP Section 17.105.135(a) that limits second floor bulk to 80% of the first floor bulk (see also staff report discussion beginning on page 9).⁴ To suggest that the Commission should disregard LCP policies simply because they were not explicitly cited to by an appellant is to thwart the objectives of the LCP (and the Coastal Act by extension), and to *reduce* as opposed to maximizing public participation as is required by the Coastal Act.

With respect to the substantive question regarding the manner in which IP Section 17.105.135 applies to this case, staff does not agree with Mr. Beard or the City on this point. As discussed in

³ CCR Section 13003 states: "Each of these regulations shall be interpreted and liberally construed to accomplish the purposes and carry out the objectives of the California Coastal Act of 1976."

⁴ LCP Section 17.105.135 is also one of the Implementation Plan sections that carry out the Land Use Plan (LUP) with respect to mass and scale, including LUP Policy LU-H-4(a) cited by the appeals, and is separately applicable for that reason as well.

the staff report (beginning on page 9), IP Section 17.105.135 relies on IP Section 17.006.0485, which defines gross floor area for the purpose of applying Section 17.105.135. IP Section 17.006.0485 explicitly lists the floor areas that are **not** included in the calculation (i.e., “not including the area of the courts, open decks, patios, and basements”), and this list does **not** include stairwells and elevator shafts. In other words, IP Section 17.006.0485 provides a comprehensive and complete list as to what is excluded from such floor area calculations. Based on established laws of statutory interpretation, when a list is enumerated, items not enumerated on the list are presumed to be excluded from the list (*expressio unius est exclusion alterius* or “the express mention of one thing excludes all others”). In this case, IP Section 17.006.0485 specifically enumerates what is excluded from calculation of gross floor area. Stairwells and elevator shafts are not enumerated in this exclusion list, so they are properly considered in the gross floor area calculation.⁵

In sum, Commission staff did not manufacture grounds for appeal, but only looked at the LCP provisions implicated by the appeal contentions, including the IP sections related to the appeal contention of structure size and neighborhood compatibility. Thus, Commission staff’s recommendation is both procedurally and substantively based on grounds raised in the appeals. As described further in the staff report, the Applicants’ proposed second story bulk exceeds the LCP allowed maximum, and staff believes that this raises a substantial LCP conformance issue with respect to an appeal that is based in applicable part on the scale of the City-approved structure.

Process

In his email correspondence of January 9, 2017, Mr. Beard alleges that “the 80%-ratio issue came out of left field.” However, staff informed Mr. Beard regarding the 80% issue in early December, and Mr. Beard acknowledged staff’s position at that time, while disagreeing with it. Thus, to state that the issue was a surprise misrepresents staff’s discussions with Mr. Beard. The same can be said regarding staff’s position that this matter raises a substantial issue inasmuch as Mr. Beard was made aware of staff’s position in this regard as early as July 2016.⁶

In addition, Mr. Beard and others make a series of observations regarding the fact that staff previously produced a staff report with a recommendation of no substantial issue for the April 2016 Commission meeting. After that report was released, staff received correspondence from the Applicants, the Appellants, and others (e.g., Pacific Legal Foundation, etc.) raising a series of issues related to that recommendation. At that time, staff postponed the April 2016 hearing in order to evaluate the issues raised, including in light of the significant amount of new information that had been provided in the time since the prior staff report was published. Based on that additional review, staff modified its staff recommendation in light of new-found facts and analyses. Staff did not, as Mr. Beard and San Luis Obispo County Supervisor Debbie Arnold

⁵ Staff also notes that the claim that excluding such areas from floor area calculations is “industry practice,” and thus that these areas should be excluded from floor area calculations in this case, is immaterial to the LCP compliance question. Whether it is industry practice or not, the LCP does not exclude such areas, and they are properly included under the LCP for purpose of calculating gross floor area.

⁶ At that time there was also come confusion as the Applicants had two different attorneys representing them, and one, Marshall Ochylski, indicated to staff that he was in the process of negotiating a public access easement with the City, while the other, Mr. Beard, was representing that the Applicants would not provide an easement. It was not until July 18, 2016 that the Applicants indicated that staff should work with Mr. Beard going forward and not Mr. Ochylski.

contend in their January 6, 2017 letters (attached), bow to pressure from Appellants or others in updating staff's recommendation. Rather, staff evaluated the contentions in light of all of the information to date and concluded that the appeals do in fact raise substantial issues in terms of both public access and mass/scale, as is more fully described in the current staff report. Thus, not only does that prior staff report have no relevant legal status (as it was never acted upon and was instead retracted by staff), staff no longer supports the prior conclusion set forth in that staff report based on the updated, additional analyses staff has performed since then, and staff's conclusion is as is presented in the staff report dated prepared December 23, 2016.

ALSTON & BIRD L.L.P.

1115 11th Street
Sacramento, CA 95814

916-498-3354
Fax: 213-576-2864
www.alston.com

Paul J. Beard II

Direct Dial: 916-498-3354

Email: paul.beard@alston.com

January 6, 2017

VIA UPS NEXT-DAY AIR DELIVERY
AND VIA EMAIL (WHERE AVAILABLE)

Chairperson Bochco and Honorable
Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Appeal No. A-3-PSB-15-0030
Hearing Date: 1/12/17
Item No. Th-13e

Dear Chairperson Bochco and Honorable Commissioners,

We represent the project applicants, Ernie and Pam Rozo, in the above-referenced appeals. As explained more fully below, we respectfully request that:

- the Commission hold a hearing on substantial issue, and
- the Commission determine that the Rozos' project, as approved by the City of Pismo Beach, raises no substantial issue—just as your staff originally and correctly concluded in its March 25, 2016, Staff Report (attached hereto as Exhibit 1).

REASONS FOR HOLDING A HEARING AND FINDING NO SUBSTANTIAL ISSUE

Brief Background

After the appeals were filed, Appellants lured the Rozos into negotiations over a public-access easement with the promise of dismissing their costly and time-consuming appeals if an easement could be obtained. The Rozos did not, and do not, believe that the City or anyone else could take a trail easement from them without just compensation. But the Rozos engaged in good-faith settlement discussions in the hopes of negotiating an easement that would fully address their privacy and safety concerns, while saving them the time and expense of defending against the appeals and possible litigation. As

negotiations dragged on, Appellants constantly moved the goal posts, making it clear that no public-access trail would satisfy them and that they would proceed with their appeals anyway. This prompted the Rozos to walk away from negotiations, as was their right to do. No settlement was ever reached or promise ever made to record anything, as Appellants falsely claim.

Around that same time, staff issued its March 25, 2016, Staff Report, recommending a finding of “no substantial issue.” As the record of correspondence attached to the current Staff Report shows, Appellant Tarren Collins applied pressure on staff to reverse that recommendation. Much to the Rozos’ disappointment, the staff subsequently reversed its original “no substantial issue” recommendation. The current Staff Report incorrectly finds “substantial issue,” in part on grounds that not even the appeals allege and have never been presented to the City.

The appeals raise only three grounds as to why the City-approved project fails to conform to the City’s LCP or the Coastal Act’s public-access policies. The appeal is barred, as a matter of law, because there is no substantial issue with respect to any of the three grounds on which the two appeals were filed.

Issue No. 1: Public Access

The appeals contend that the City’s failure to condition the project on the Rozos’ dedication of a public-access easement across their property violates the law. But the appellants have it exactly backward. Not only was the City’s refusal to require a public-access easement consistent with the LCP and the Coastal Act’s public-access policies; it was constitutionally *required*.

Under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and a slew of precedents since that have reaffirmed it, an agency can exact a public-access easement as the condition of project approval only if the agency establishes that such condition is mitigation for the project’s impacts on existing public access. If now such showing can be made, then the condition is an “out-and-out plan of extortion” and effects an unconstitutional taking of private property without just compensation.

Speaking in terms of the *Nollan* case without explicitly citing it, the Staff Report all but admits that the Rozos’ residential project causes no adverse impacts to existing public access.¹ That comes as no surprise, since the Rozos’ property has no existing

¹ The Staff Report, at page 3, finds: “[T]his project appears to have limited public access impacts (if any). That is not to say that some other similarly-situated residential project could not have more significant access impacts that would require an easement, but the facts of this particular case do not appear to warrant a trail easement as compensatory mitigation for impacts to public access caused by approval of this development proposal.”

trails to begin with that the project *could* affect. Since the City's refusal to exact a public-access easement as a condition of project approval was constitutionally *required*, the absence of a public-access condition cannot—and does not—constitute legitimate grounds for the appeals.

The Staff Report acknowledges that the absence of a public-access condition against the Rozos does not violate the LCP or the Coastal Act's public-access policies. But the Staff Report goes even further. It concludes that a trail on the Rozos' property would be impractical given the absence of connectivity to other existing trails.

Nevertheless, the Staff Report inexplicably recommends a finding of "substantial issue," because "issues associated with a potential trail at this location are significant, and raise statewide [California Coastal Trail] concerns given the trail gap at this location." That is not the correct application of the "substantial issue" test. The question is not whether any issue raised by the appellant—here, completion of the California Coastal Trail—is, in and of itself, significant or of statewide concern. Rather, the question is whether "substantial issue exists *with respect to the grounds on which an appeal has been filed*." Pub. Res. Code § 30625(b)(2) (emphasis added). The answer turns on whether the project violates the LCP or the Coastal Act's public-access policies. If no such violation exists, the appeal grounds cannot, as a matter of law, raise a "substantial issue." *Hines v. Cal. Coastal Comm'n*, 186 Cal. App. 4th 830 (2010) ("A substantial issue is defined as one that presents a 'significant question' *as to conformity with the certified local coastal program*." (emphasis added)).

Here, as the Staff Report readily acknowledges, the project does not violate the law on "public access" grounds. No matter how significant the CCT may be, the appellants' "public access" grounds for their appeals raise no substantial issue, precisely because there is no *legal* support for their allegations.

Issue No. 2: The Overall Size of the House

Appellants next contend that the overall size of the approved project violates the LCP. Appellant Tarren Collins claims that "the overall size of the home does not meet the Neighborhood Compatibility requirement per the General Plan."² She thinks the "total building area needs to be further reduced to meet the requirement." Appellant Laurie Cummings similarly claims, in the same vein, that "[t]he overall size of the structure is inconsistent with the Neighborhood Compatibility requirement and Residential Guidelines of the General Plan/LCP." Cummings cites to LU-H-4a, concerning the "scale of structures."

Like its March 25, 2016, Staff Report, the current Staff Report finds that the project "is within the applicable LCP maximum standards with respect to height,

² Both appeals are at Exhibit 7 of the Staff Report.

setbacks, lot coverage, and floor area.” Staff Report at 9. But unlike the original Staff Report, the current Staff Report finds a new ground for “substantial issue”—namely, that the second story’s gross floor area is more than 80% of the first story’s gross floor area, in alleged violation of the LCP’s “80% ratio” rule. The Staff Report reaches its conclusion by including, against City policy, the floor area covered by the project’s second-story stairwell and the elevator, thereby artificially increasing the second story’s floor area relative to the first story’s floor area. Staff Report at 9-10. But alleged violation of the LCP’s 80% ratio rule is not a valid ground for finding substantial issue.

As stated above, “substantial issue” can be found only “with respect to the grounds on which an appeal has been filed”—not on any ground the staff chooses. Pub. Res. Code § 30625(b)(2). The Appellants do not allege violation of the LCP’s “ratio” policy. They only take issue with the project’s “overall size.” As the current Staff Report itself finds, the project is in conformance with the LCP’s maximum standards with respect to height, setbacks, lot coverage, and floor area—i.e., with the LCP’s overall-size requirements. The *ratio* policy does not speak to a house’s overall size, but only to the relationship of the first story to the second. Simply put, the Staff Report purports to find a “substantial issue” with respect to grounds not alleged by the appeals, violating section 30625(b)(2)’s mandate.

Finally, the Appellants never even raised the “ratio” issue at the hearings before the Planning Commission or the City Council. Thus, neither the Rozos nor the City ever had the opportunity to consider and address the allegation that the project violates the LCP’s “ratio” policy. Had they been given that opportunity, evidence would have been presented establishing that the City’s policy is to exclude stairwells and elevators from their calculation of a second floor’s gross floor area under the LCP’s “ratio” policy, which is why the project is entirely consistent with that policy.³

Having failed to exhaust their administrative remedies with respect to the “ratio” issue and having failed even to mention the issue in their appeals, Appellants cannot now benefit from the issue as a *manufactured* ground for the appeals. The Staff Report’s improper reliance on the LCP’s “ratio” policy effectively puts before the Commission an issue that the City never adjudicated, that the Appellants have waived, and that fails—as a matter of fact and law—to support a “substantial issue” determination.

Issue No. 3: The Sewer Easement

³ Homes approved in Shell Beach at, or very close to, 80% square footage of the second floor in relation to the first floor, where a second floor’s staircase and elevator were not counted, include: 343 Palomar, P15-000019 (8-25-15); 250 Vista Del Mar, P15-000104 (11-24-15); 1026 Ocean lot 3, P15-000123 (4-26-16); 364 Windward, P09-0057 (8-11-09); 2631 Spyglass, P13-000133 (7-8-14); 342 Morro, P14-000158 (10-28-14).

Chairperson Bochco and Honorable Commissioners
January 6, 2017
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The Appellants' third and final ground for appeal is that the project will be built over a City-owned sewer easement. But as the current Staff Report states, there is no "substantial issue" with respect to that allegation. The *existing* residence already is built on top of the sewer easement. Staff Report at 11. The project ameliorates the already-existing encroachment. The second story would have a bridge *over* the easement, "allow[ing] the City access to the sewer in case of needed repairs or other issues." No City policy prohibits this. The easement itself does not prohibit this. And the project does not burden, in any way, the easement. Consequently, there is no substantial issue with respect to the "sewer easement" ground for appeal.

Incomplete Record

The record supplied by the current Staff Report is incomplete. Besides excluding its original Staff Report, it also excludes important comment letters from public-interest organizations, which we attach as Exhibit 2. Those letters raise concerns particularly with the public-access issue, and support the Rozos' view that the City was constitutionally precluded from exacting a public-access trail from them as the condition of project approval.

CONCLUSION

For all the reasons stated above, we urge the Commission to hold a hearing on "substantial issue" and find that there is no substantial issue with respect to the three grounds upon which the appeals were filed.

Sincerely,

ALSTON & BIRD LLP



Paul J. Beard II

Exhibit 1 – March 25, 2016, Staff Report

Exhibit 2 – Letters to California Coastal Commission (Pacific Legal Foundation and California Cattlemen's Association)

cc: Yair Chaver (via Email at: Yair.Chaver@coastal.ca.gov)

Exhibit 1

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



W11b

Appeal Filed:	5/6/2015
49th Day:	Waived
Staff:	Yair Chaver - SC
Staff Report:	3/25/2016
Hearing Date:	4/13/2016

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number:	A-3-PSB-15-0030
Applicants:	Ernie & Pam Roza
Appellants:	Tarren Collins; Laurie D. Cummings
Local Government:	City of Pismo Beach
Local Decision:	Coastal development permit (CDP) application number 14-000080 approved by the Pismo Beach Planning Commission on July 8, 2014, and upheld on appeal by the Pismo Beach City Council on April 21, 2015.
Location:	388 Windward Ave, Pismo Beach, San Luis Obispo County (APN 010-371-012)
Project Description:	Demolition of an existing single-family residence and construction of a new two-story single-family residence with an attached two-car garage and an attached secondary dwelling unit.
Staff Recommendation:	No Substantial Issue

total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (*Id.* § 13115(b).)

SUMMARY OF STAFF RECOMMENDATION

The City of Pismo Beach approved a coastal development permit (CDP) authorizing demolition of an existing 1,319 square-foot single-story single-family residence and, in its place, construction of a 3,575 square-foot, two-story, single-family residence with an attached secondary dwelling unit and an attached garage. The project parcel is located in the residential Shell Beach neighborhood and is zoned Single Family Residential (R-1), surrounded by existing residences on three sides (the fourth side fronting Windward Avenue).

The Appellants contend that the City-approved project is inconsistent with City of Pismo Beach Local Coastal Program (LCP) policies regarding the establishment of a public path to address and abate existing access connectivity deficiencies in this portion of the Shell Beach neighborhood, the protection of neighborhood character, and access to a City sewer easement that traverses the property.

After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the City of Pismo Beach LCP. The local action is factually and legally supported by the record, and the project complies with applicable LCP requirements. The City-approved project authorizes a residential structure located on an appropriately zoned parcel surrounded by existing, similarly-situated residential homes.

With respect to public access, the project site is located in an area identified in the LCP as having lateral bluff top public access connectivity deficiencies. The City extensively considered where the proper public access connections in this area should be, including whether or not a public access easement should be required on the Applicant's property. Ultimately, the City concluded that an access easement on the Applicant's property was not necessary at this time because it would not connect with any existing access easements or pathways and therefore would not provide or improve public access in the area. The City concluded that an easement on the Applicant's property did not comport with the City's vision and goals for the provision of public access in this area, and thus its decision to not require a public access easement on the Applicant's property was not inconsistent with the LCP's access goals and requirements in the project area.

Finally, with respect to City utility easements, the project parcel includes a ten-foot wide sewer easement. While the LCP contains no policy to explicitly address building on existing City utility easements, the City appropriately conditioned the residence to avoid it being built directly over the easement in order to ensure that the City will be able to repair and maintain the sewer. Thus, the City-approved project will not adversely impact the City's ability to access the sewer easement.

In short, the City-approved project on appeal does not raise substantial LCP conformance issues. As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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EXHIBITS

- Exhibit 1 – Project Location Map
- Exhibit 2 – Project Site Photos
- Exhibit 3 – Approved Project Plans
- Exhibit 4 – Final Local Action Notice (FLAN)
- Exhibit 5 – Appeal Text
- Exhibit 6 – Existing Pedestrian Path and Existing Easement
- Exhibit 7 – Figure PR-2 and Table PR-4
- Exhibit 8 – Project Design with Bridge

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-PSB-15-0030 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-PSB-15-0030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project authorizes the demolition of an existing 1,319 square-foot single-family residence and subsequent construction of a 3,575 square-foot single-family residence, consisting of a 2,470 square-foot primary residence with an attached 495 square-foot garage and a 610 square-foot attached secondary dwelling unit, on a 5,236 square-foot lot at 338 Windward Avenue (APN 010-371-012) in the Shell Beach neighborhood of the City of Pismo Beach. Shell Beach is an urbanized residential neighborhood located upcoast from downtown Pismo Beach, set between Highway 101 and large coastal bluffs. The subject parcel is surrounded by existing residences and is the second parcel inland from the coastal bluff. The parcel is zoned Single Family Residential (R-1), and the surrounding neighborhood contains a mix of one-, two-, and three-story houses, of varying sizes and architectural styles.

See Exhibit 1 for the project location map, Exhibit 2 for project site photos, and Exhibit 3 for the approved project plans.

B. CITY OF PISMO BEACH CDP APPROVAL

The City of Pismo Beach Planning Commission approved CDP 14-00080 by a 4-0 vote on July

Commission's Central Coast District office on May 6, 2015 (Exhibit 4). The Coastal Commission's ten-working day appeal period for this action began on May 7, 2015 and concluded at 5pm on May 20, 2015. Two valid appeals of the City's CDP decision were received during the appeal period (see below and see Exhibit 5).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Pub. Res. Code § 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* § 30603(a)(5).) This project is appealable because it is located between the first public road and the sea, and because it is located within 300 feet of the mean high tide line and the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. (*Id.* § 30603(b).) Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.² (*Id.* § 30625(b)(2).) Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the Pismo Beach certified LCP) if the Commission were to approve the project following a de novo hearing.

² The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. (14 CCR §13117.) Testimony from other persons regarding substantial issue must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal, if there is one.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the City-approved project is inconsistent with a number of Pismo Beach Local Coastal Program (LCP) policies, including those that protect public access, those that regulate development size to protect community character, and those that protect City public utility easements. Specifically, with respect to public access, the Appellants contend the approved project is inconsistent with LCP Policy LU-H-8 because the approved project does not include a public access easement through the Applicant's property to allow for a pedestrian connection between Boeker Street and Windward Avenue. With respect to development size, the Appellants contend that the size and scale of the approved project are inconsistent with LCP Policy LU-H-4(a), which encourages new development to reflect the small scale image of the Shell Beach neighborhood. Finally, with respect to utility easements, the Appellants contend the City-approved project is not consistent with an informal City policy that prohibits construction over City easements, in this case a sewer easement.

See Exhibit 5 for the full appeal text.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Public Access

Applicable Pismo Beach Local Coastal Program Policies

The applicable Pismo Beach LCP policies regarding lateral pedestrian pathways in the Shell Beach Planning Area read:

LCP Policy LU-H-8 Lateral Access at Boeker Street. *The City should pursue opportunities to create lateral pedestrian pathways connecting Booker[sic] Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility[sic] through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)*

LCP Policy PR-5 Multi-Use Path System (Trails). *A system of public paths as delineated on Figure PR-2 shall be developed to connect the various parks, scenic aspects and open space of the city. Ideally the paths should be located within designated greenbelt areas. However, in areas of the community that have already been developed, the system can*

LCP Figure PR-2 and Table PR-4(11)(b): (see Exhibit 7)

The Shell Beach neighborhood is bounded on its ocean side by Ocean Boulevard, which provides nearly continuous lateral pedestrian and vehicular access along the ocean bluff all the way from Vista Del Mar Avenue upcoast to Dinosaur Caves Park downcoast. However, Ocean Boulevard does not connect between the two blocks between Placentia Avenue and Windward Avenue. This two block segment fragments Ocean Boulevard, and results in a gap in Shell Beach's lateral bluff top public access (see Exhibit 6). To remedy this public access gap, LCP Policy LU-H-8 encourages the City to create a lateral pedestrian pathway between Placentia Avenue and Windward Avenue, including through publicly acquiring and building such a pathway, accepting private gifts or dedications, or through requiring a public access easement on private property as part of project approval. The policy does not state a timeframe for achieving the completion of the pathway, a preference for one method over others in its implementation, or a specific preferred alignment. Similarly, LUP Figure PR-2 and Table PR-4(11)(b) (Exhibit 7) show the need for access improvements in this area, envisioning a connection between Placentia Avenue and Windward Avenue to provide public access and fill in the access gap.

Consistent with these policies, the city, as a condition of approval for a CDP for the construction of a residence at 374 Boeker Street,³ required a public access easement/pedestrian path connecting Boeker Street with Ocean Boulevard, which has since been built (Exhibit 6), thereby solving half of this area's lateral access deficiencies. Furthermore, the City required, via condition of another CDP,⁴ an access easement at the property at 367 Boeker Street, which abuts the Applicant's western property line. However, this easement terminates at the property line and does not extend all the way to Windward Avenue. Thus, a full connection between Boeker Street and Windward Avenue is still lacking. Because of this, pedestrians need to walk one quarter-mile along Boeker Street to Shell Beach Road, and then continue one quarter-mile along Windward Avenue in order to reach Ocean Boulevard to continue along the bluff. A pedestrian path from Boeker Street to Windward Avenue passing through the Project site would shorten this half-mile (one way) journey to approximately 130 feet (Exhibit 6).

Appellants' Contentions

The Appellants contend that the City-approved project does not conform with LCP Policy LU-H-8 because the approved project does not require an easement through the property to connect Windward Avenue with Boeker Street. The Appellants go on to state that the redevelopment of 388 Windward presents an exceptional opportunity to enrich the community by "adhering to the General Plan mandate to obtain an access easement to complete a pedestrian path connecting the south end of Shell Beach with Ocean Boulevard"⁵ and that to allow the project without requiring a path as mandated by the General Plan/Land Use Plan would deprive the public of an opportunity to connect a missing coastal access link.

Analysis

As described above, Policy LU-H-8 does not *require* the City to condition specific development projects to create this public access path, and it allows the City discretion as to when and where to create these connections. As discussed above, in implementing Policy LU-H-8, the City conditioned a public access easement at 367 Boeker Street to help fill in the remaining access gap on the block between Boeker Street and Windward Avenue. The City's vision is for this access easement to connect with a future easement at the property at 398 Windward Avenue, which is adjacent to, and seaward of, the Applicant's property at 388 Windward Avenue. Thus, the City would require an access easement on the property at 398 Windward Avenue when this property redevelops in the future. Securing an easement in this manner would create a linear public access pathway crossing both 367 Boeker Street and 398 Windward Avenue, and would connect Boeker Street with Windward Avenue, thereby achieving the goal outlined in Policy LU-H-8.

In its review of the Applicant's CDP application at 388 Windward Avenue, the City extensively considered where the proper public access connections in this area should be, including whether or not the City should require a public access easement on the Applicant's property. Ultimately, the City concluded that an access easement on the Applicant's property was unneeded because any easement segment would not actually provide ready public access without securing future access easement connections on neighboring property. The City found that the existing easement at 367 Boeker Street is offset by roughly 20 to 25 feet from the Applicant's western property line, and abuts the rear of the property at 398 Windward Avenue instead. Due to this 20 to 25-foot offset, any easement along the western property line at 388 Windward Avenue would not actually connect with the existing easement at 367 Boeker Street and would not create a public access path as envisioned in Policy LU-H-8 (Exhibit 6). Thus, a better approach to ensure continuous lateral access is provided in this area, and to meet the LCP's access objectives, would be to require an easement on the adjacent property at 398 Windward Avenue, thereby creating a linear access connection that would provide superior access utility, and would be easier to monitor and maintain. Because of all of these factors, the City concluded that an access easement was not necessary on the Applicant's property, that its decision to not require an easement was not inconsistent with the LCP, and that the best way to meet the LCP's access goals and policies is to pursue a public access easement on the property at 398 Windward Avenue when that property redevelops in the future.

In conclusion, the City extensively studied the access issues and preferred alignments of pathways and trails in the project area, and concluded that an easement on the Applicant's property did not comport with the City's vision and goals for the provision of public access in this area. Thus, the City's action does not raise a substantial issue with respect to the recommendation in LCP Policy LU-H-8 to create lateral pedestrian pathways connecting Boeker Street to Windward Avenue.

LCP Policy D-2 Building and Site Design Criteria. (a) Small Scale. New development should be designed to reflect the small-scale image of the city rather than create large monolithic buildings. Apartment, condominium and hotel buildings should preferably be contained in several smaller massed buildings rather than one large building. Building mass and building surfaces such as roofs and exterior 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.

LCP Policy LU-H-1 Concept. Shell Beach Road is bordered by a narrow commercial strip backed by a narrow band of High Density Residential. Behind the High Density residential area to the Ocean, a medium density land use accommodates single family homes in the area. The focus of this area is a more traditional beach community with small single-family lots, street activity, and views of the ocean to the west, and the foothills to the east. The emphasis is on assuring that new and expanded homes are compatible with the scale, bulk, and character of existing neighborhood.

LCP Policy LU-H-4 Residential Guidelines. (a) Scale of structures. New development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal and roof articulation of building faces. Where two-story buildings are proposed, the second story should normally be stepped back.

IP Policy 17.102.010(A). Building heights, Residential.

Except as provided in Chapter 17.081 or unless a variance has been granted pursuant to Chapter 17.121, no structures in the... R-1... zones shall exceed twenty-five feet in height as measured above the center of the building footprint at site grade, nor shall the vertical measurement of any portion of the structure exceed thirty-five feet in height above site grade....

IP Policy 17.102.020(4)(a). Minimum front yard requirements. Residential.

The minimum front yard setback required may be the lesser of the following situations: The average front yard setback of the nearest improved lots on each side of the subject property on the same side of the street, but in no case less than ten (10) feet, nor required to be more than twenty (20) feet.

IP Policy 17.102.030(A) Minimum side yard setback requirements. Residential.

In the ... R-1 ... zones each corner and interior lot shall have a rear yard setback of not less than ten percent of the average lot depth, but in no case shall the setback be less than five feet nor be required to be more than ten feet.

IP Policy 17.102.060(B) Minimum lot size and/or area requirements for new lots.

R-1 ... Zones ... The minimum lot size for all lots created after the date of adoption of this ordinance shall be five thousand sq. ft.

IP Policy 17.102.080(B) Maximum allowable lot coverage for all structures. R-1 Zone.

Total maximum lot coverage for subdivided parcels: Fifty-five percent.

IP Policy 17.102.090(B) Maximum allowable total building floor area for all structures as a percentage of lot area. R-1 Zone

Eighty-six percent of the first two thousand seven hundred square feet of lot area plus sixty percent of any lot area in excess of two thousand seven hundred square feet.

IP Policy 17.105.135(A) Development and design standards applicable to single-family dwellings in certain zones.

The following additional development and design standards shall be applicable to the development, enlargement or alteration of single-family dwellings in the R-1 ... Zones ...: To avoid "boxy" structures that have unrelieved exterior wall planes extending in height for two or more stories and to promote vertical articulation of wall planes, the amount of gross floor area on any second floor shall not exceed eighty percent of the amount of gross floor area on the ground floor. Any "stepbacks" of the second-floor living area from the building footprint on the ground level shall be required to be provided at least in part on the street-side of the house unless infeasible.

....

Pismo Beach LCP Policies D-2, LU-H-1, and LU-H-4 are designed to maintain the nature and character of Pismo Beach as a small coastal town by avoiding very large buildings and excessive massing. The policies propose to achieve this through the use of articulated roofs and exterior walls, second stories that step back from the first story, and specific height and setback regulations. Specifically, regarding the residential area of Shell Beach, the intent of Policy LU-H-1 is to retain the traditional beach-town community feel of small single-family lots with views to the ocean to the west and the foothills to the east by making homes compatible with the character of the surrounding development. These policies are implemented by Implementation Plan (IP) Chapters 17.102 and 17.105, which describe detailed structural height, setback, and bulk requirements.

Appellant's Contentions

The City-approved project meets all applicable LCP policies and standards with respect to height, setback, and bulk, and is consistent with existing, similarly-situated residences in the surrounding area. First, with regard to IP Section 17.102.010(A), which limits structure height in the R-1 zoning district to 25 feet, the project's approved height is 24 feet-7 inches. In terms of lot size, IP Section 17.102.060(2) states that the minimum lot size must be 5,000 square feet. The existing lot is 5,236 square feet. With regard to IP Section 17.102.80(B), the maximum lot coverage allowable is 55%. The project's total lot coverage is 2,683 square feet, which is 51%. In regards to IP Section 17.105.135(A), to avoid a "boxy" look by way of step-backs, the second floor to lower floor ratio must be 80%. The approved project has a gross upper floor area of 1,590 square feet and a gross lower floor area of 1,985. The ratio is 80%, consistent with IP Section 17.105.135(A). In regards to setbacks, the approved project's front yard setback is 12.25 feet, its side yard setbacks are 5 feet, and the rear yard setback is 8.5 feet, all of which are consistent with IP standards. Therefore, the City-approved project meets all of the LCP's detailed site development standards.

Policy LU-H-1 requires new homes to be compatible with the scale, bulk, and character of the existing neighborhood. The houses within approximately 200 feet of the project site include ten single-story residences and eighteen two-story residences. The square footage of residences within the neighborhood varies greatly, mainly because lot size also varies greatly. The floor area ratio of the approved project is 68%, while the LCP allows a maximum floor area of 73%⁶. The floor area ratio of the last seven redevelopment projects on Windward Avenue ranged from 54% to 78%, with an average floor area ratio of 68%. Thus, in terms of number of stories (two) and floor area ratio, the approved project is compatible with the scale and bulk of the surrounding neighborhood.

In regards to design and massing, the design of the house includes articulated roofs and articulated exterior walls, stepping back of the second floor to break up the wall lines, and other design elements. These architectural and design elements will limit the project's mass and create a design that is compatible with the character of the neighborhood, consistent with LCP policies D-2, LU-H-1 and LU-H-4.

In short, the project represents construction of a residential structure in an existing, urbanized residential neighborhood, and meets all applicable LCP policies and standards with respect to siting and design. Thus, the City's approval does not raise a substantial LCP compliance issue with respect to neighborhood compatibility and community character.

3. Sewer Easement

Applicable LCP Policies and Standards

(None applicable.)

Appellant's Contentions

Analysis

The existing residence at 388 Windward Avenue is built directly on top of a sewer easement and does not currently provide any type of access to the sewer line within the property boundaries (Exhibit 8). The City-approved project includes the demolition of the existing single-family dwelling and construction of a new single-family dwelling with an attached garage, which as designed, incorporates a second-floor "bridge" above the sewer easement, and thus does not build directly on the sewer easement. (Exhibit 8)

The City of Pismo Beach LCP does not have a policy that prohibits constructing buildings over utility easements. The policy cited by the Appellants prohibiting construction over City easements in new development is an informal policy of the City's Department of Public Works. As such, there is no LCP requirement to avoid building over the sewer easement on the subject lot. Thus, building over the easement is not inconsistent with the LCP.

In any event, as approved, the project design includes a "bridge" that is eight feet above the easement, which is sufficient clearance for repair equipment and crews to access the City sewer line in case of needed repairs or maintenance. In addition, the project was approved with conditions (Utility Conditions 21(a)-(i) – see Exhibit 4) that protect the sewer line and allow the City to access the sewer line in the case of needed repairs. Condition 21(d) states that the first floor of the structure "may not be built over the existing ten-foot-wide sewer easement. The second floor may span over the easement." The approved project's Utility conditions act to fully protect the sewer easement, and require the Applicants to keep the easement accessible to the City of Pismo Beach should the sewer line need repairs. The City Engineer stated that, as designed, the project provides sufficient access for the City to work on the existing sewer line if repairs are needed in the future.

As a result of these conditions and the approved project's design, the project does not raise a substantial issue in regard to building over the utility easement because the project provides sufficient space for the City to access the sewer line and is conditioned to ensure that the existing sewer line is not compromised by the project.

Thus, the City-approved project does not raise a substantial issue with respect to utility easements.

F. CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission is guided in its decision of whether the issues raised in a given appeal are "substantial" by the following five factors: the degree of factual and

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, the City's conclusion that, as conditioned, the approved residence would not have significant adverse impacts to public access, community character, or to the City's sewer easement, is well supported by the record (as discussed extensively by staff in Section II.E of this staff report), weighing against finding a substantial issue. Second, the approved project is consistent with the purpose of the LCP's single-family residential zoning district and complies with the LCP's development standards, including with respect to building size and architectural attributes. Thus, the extent and scope of this project weigh in favor of a finding of no substantial issue. Third, the project is located within an existing residential community which is already substantially developed, and no significant coastal resources are expected to be adversely affected by this approval, so this factor also weighs against finding a substantial issue. The proposed project is consistent with all relevant LCP policies, so this project should not create an adverse precedent with respect to LCP interpretation, and thus this factor weighs against finding a substantial issue. Finally, the decisions made here are site- and LCP-specific and therefore do not raise issues of regional or statewide significance, also weighing against a finding that a substantial issue exists.

Therefore, all five factors weigh against a finding that the City's approval raises a substantial issue with respect to the LCP. Given that the record supports the City's action and the City's analysis did not result in the approval of a project with significant coastal resource impacts, and given that the approved project complies with applicable LCP provisions and raises no statewide issues, the Commission finds the appeal does not raise a substantial issue of conformance with the LCP and thus the Commission declines to take jurisdiction over the CDP for this project.

For the reasons stated above, the Commission finds that Appeal Number A-3-PSB-15-0030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act and finds the project is consistent with the certified LCP and the public access policies of the Coastal Act.

Exhibit 2



PACIFIC LEGAL FOUNDATION

April 6, 2016

Mr. John Ainsworth
Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal No. A-3-PSB-15-0030 ("Substantial Issue" Hearing Date: 4/13/2016)

Dear Director Ainsworth:

Pacific Legal Foundation has become aware of "substantial issue" appeals pending before you that raise serious questions regarding the unconstitutional exaction of protected private property rights. In Appeal No. A-3-PSB-15-0030, Appellants Tarren Collins and Laurie Cummings seek review of the City of Pismo Beach's approval of a coastal development permit to Ernie and Pam Rozo. The permit authorizes the demolition of a single family home and its replacement with a single family home and secondary structures. Among the grounds for the appeals is the City's failure to demand a public access easement from the Rozos in exchange for authorizing their home construction project. This basis for the appeals has no merit because an easement condition in these circumstances would be unconstitutional.

The Fifth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, forbids state and local governments from taking private property without just compensation. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 306 n.1 (2002). The California Constitution provides congruent protections. *San Remo Hotel L.P. v. City & County of San Francisco*, 27 Cal. 4th 643, 664 (2002). These protections impose direct as well as indirect limitations on government power. For example, the government may not directly condemn an easement without paying compensation. *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979) ("And even if the Government physically invades only an easement in property, it must nonetheless pay just compensation."). But the government also is forbidden from indirectly exacting protected property interests—such as through conditions on land-use approvals—when the exaction is not reasonably related to mitigating the impacts of the permitted activity. The seminal decision for this "indirect" limitation on the power of land-use agencies is *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

HEADQUARTERS: 930 G Street | Sacramento, CA 95814 | (916) 419-7111 | FAX (916) 419-7747
ATLANTIC: 8645 N. Military Trail, Suite 511 | Palm Beach Gardens, FL 33410 | (561) 691-5000 | FAX (561) 691-5006
DC: 300 New Jersey Avenue, NW, Suite 900 | Washington, DC 20001 | (202) 888-6881 | FAX (202) 888-6855
HAWAII: P.O. Box 235856 | Honolulu, HI 96823-3514 | (808) 733-3373 | FAX (808) 733-3374
NORTHWEST: 10940 NE 33rd Place, Suite 210 | Bellevue, WA 98004 | (425) 576-0484 | FAX (425) 576-9565
ALASKA: (907) 278-1731 | OREGON: (503) 241-8179

E-MAIL: plf@pacificlegal.org
WEB SITE: www.pacificlegal.org

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August 6, 2016

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In *Nollan*, the property owner sought a permit to demolish and replace a beach bungalow. *Nollan*, 483 U.S. at 827-28. The Commission granted the permit but only on the condition that the property owner dedicate a public easement across his hitherto private beach. *Id.* at 828. The United States Supreme Court ruled that the permit condition was unconstitutional. *See id.* at 837 (likening the condition to an “out-and-out plan of extortion” (quoting *J.E.D. Associates, Inc. v. Atkinson*, 432 A.2d 12, 14-15 (N.H. 1981))). An agency, the Court allowed, can impose conditions on proposed development that are designed to mitigate the impacts of that development. *Id.* at 836. But the agency may not impose a condition that it could not impose directly, outside the permitting context, if that condition lacks an “essential nexus” to the proposed development’s impacts. *Id.* at 836-37. The absence of any connection between the bungalow replacement and the public access easement rendered the Commission’s condition infirm. *Id.* at 837.

In its defense, the Commission argued that the easement condition was necessary to ameliorate the loss of various types of public access to the beach resulting from the bungalow replacement. *See id.* at 829 (noting the Commission’s position that, because the project “would cumulatively burden the public’s ability to traverse to and along the shorefront,” the agency “could properly require the Nollans to offset that burden by providing additional lateral access to the public beaches in the form of an easement across their property”). The Court found this argument unconvincing. The proposed easement would not have provided any type of access—visual or otherwise—for those off the beach. Rather, it would have provided access for those already on the beach to continue to cross the beach in front of the *Nollan* property owner’s home. Hence, the Commission’s condition was directed at remedying the wrong access problem. *See id.* at 838-39 (finding no nexus between (i) “a requirement that people already on the public beaches be able to walk across the Nollans’ property” and (ii) any visual, “psychological,” or other barrier for members of the public wishing to access the beach). It therefore lacked an essential nexus and could not be imposed. *Id.* at 841-42.

Under *Nollan*, demanding a public access easement from the Rozos would be unconstitutional. As far as the Foundation is aware, the Appellants have never asserted, nor is there any evidence in the permitting proceedings before the City, that the public currently may access the Rozos’ property. Moreover, there is no assertion or evidence that the Rozos’ modest home-building project will have any impact on public access. Rather, the Appellants simply seek to take advantage of the fortuity of the Rozos’ permit application to extort from them a public easement. That such an easement might benefit the public is irrelevant and cannot make it constitutional. *See Nollan*, 483 U.S. at 841 (“The Commission may well be right that . . . a continuous strip of publicly accessible beach along the coast . . . is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization.”).

Indeed, it is important to emphasize that alleged facts about the popularity, propriety, or necessity of a public access easement across the Rozos’ lot do nothing to change the constitutional analysis. However desirable it would be to use the Rozos’ property for a public access easement, the

Mr. John Ainsworth
August 6, 2016
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Constitution precludes such an easement from being taken without just compensation. As the Supreme Court has put it, "[a] strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Dolan v. City of Tigard*, 512 U.S. 374, 396 (1994) (internal citation and authorities omitted).

The Foundation has significant experience successfully litigating exaction issues. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013) (counsel of record for petitioner in case establishing that monetary exactions in the land-use permit context are subject to heightened scrutiny under *Nollan*); *Nollan*, 483 U.S. 825 (counsel of record for petitioner); *Bowman v. Cal. Coastal Comm'n*, 230 Cal. App. 4th 1146 (2014) (counsel of record for appellant in case striking down a public access easement as unconstitutional under *Nollan*). For that reason, the Foundation is very familiar with the types of conditions that may constitute unconstitutional exactions. The Foundation believes that the Appellants' proposed access easement, if imposed by the City or the Commission, would be just such an exaction. The appeals should be rejected.¹

Sincerely,



DAMIEN M. SCHIFF
Principal Attorney

cc: Mr. Yair Chaver (via email: Yair.Chaver@coastal.ca.gov)

¹ The Foundation respectfully requests that, once this letter has been added to the Commission's official record, you provide copies of the letter to the Commissioners prior to their consideration of the matter.

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January 6, 2017

Chairman Steve Kinsey
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Via: Yair Chaver, Coastal Program Analyst (via e-mail: Yair.Chaver@coastal.ca.gov)

Re: Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach)

Dear Chairman Kinsey and Honorable Commissioners:

The California Cattlemen's Association (CCA) appreciates the opportunity to provide input upon this appeal, which challenges the City of Pismo Beach's grant of a Coastal Development Permit (CDP) to Ernie and Pam Rozo to raze an existing home and construct a new home on their property. CCA urges the California Coastal Commission (Commission) to accept staff's recommendation finding that the appeal raises no substantial issue. CCA also urges the Commission to dispose of this matter in a timely manner, allowing the Rozos to move forward with this development.

CCA is a statewide trade association representing more than 1,700 cattle ranchers throughout the state, including nearly 200 beef producers ranching in San Luis Obispo County. CCA members own or lease property and graze cattle on land subject to the jurisdiction of the Commission throughout many of California's coastal counties, and CCA has established a Coastal Subcommittee with the express purpose of "help[ing] members located in this state's coastal zone with land use issues." Additionally, protection of private property rights is the utmost priority of CCA and its members. For these reasons, CCA is keenly interested in the present appeal, specifically Appellant's contention that CDP approval must be contingent upon the City of Pismo Beach mandating dedication of a public access easement upon the property, a claim which troublingly implicates private property rights within the coastal zone.

The Appellant's claim that the Rozos' permitted project violates policy LU-H-8 of the Pismo Beach Local Coastal Plan (LCP) is wholly without merit. Policy LU-H-8 states that the City "should pursue opportunities to create lateral pedestrian pathways connecting Bo[e]ker Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south." In using the word "should" rather than "shall" or "must," the LCP is permissive rather than mandatory, allowing the City to exercise its discretion in seeking public access at Boeker Street. Additionally, in approving the City of Pismo Beach's LCP, this Commission implicitly supported the City's retention of broad discretion in determining whether

BILLY FLOURNOY
PRESIDENT
LIKELY

ROB VON DER LIETH
TREASURER
COPPEROPOLIS

BILLY GATLIN
EXECUTIVE VICE PRESIDENT
HERALD

MIKE WILLIAMS
SECOND VICE PRESIDENT
ACTON

MARK LACEY
SECOND VICE PRESIDENT
INDEPENDENCE

DAVE DALEY
FIRST VICE PRESIDENT
CHICO

BILL BRANDENBERG
FEEDER COUNCIL CHAIR
EL CENTRO

JACK LAVERS
SECOND VICE PRESIDENT
GLENNVILLE

MIKE SMITH
FEEDER COUNCIL VICECHAIR
SELMA

and when to seek such pathways securing lateral access at Boeker Street. In approving the Rozos' CDP, the City exercised its discretion and determined that requiring a public access easement on the Rozos' property was both impractical and unnecessary. CCA urges the Commission to defer to the City's judgement and dismiss the present appeal.

Indeed, Commission deference to the City's determination would accord with the spirit of the California Coastal Act, in which the Legislature declared that to "achieve maximum responsiveness to local conditions...it is necessary to rely heavily on local government and local land use planning."¹

Counsel for the Rozos has rightly argued that requiring the Rozos to dedicate a public access easement over their property would violate the United States Constitution's prohibition against taking private property without just compensation. As counsel notes, "The Rozos' project does not in any way eliminate or otherwise negatively affect an existing public easement or pathway," and thus the City is barred from requiring a public access easement under the United States Supreme Court's decision in *Nollan v. California Coastal Commission*, which dictates that permit conditions (such as the dedication of a public access easement) be directly related to public impacts caused by a development project, and seek to proportionally mitigate those impacts.²

Consequently, mandating a public access easement on the Rozos' property would also violate the California Coastal Act, the very Act the Commission is charged with faithfully enforcing. In drafting the Act, the Legislature declared that it "shall not be construed as authorizing the commission...or local government...to exercise their power to grant or deny a permit in a manner which will take or damage private property" and that the Act "is not intended to increase or decrease the rights of any owner of property under the Constitution of...the United States."³

The City of Pismo Beach elected not to condition the Rozos' CDP upon dedication of a public access easement because it was unnecessary and impractical, and the City was well within its discretion under the LCP approved by the Commission to do so. Appellants argue that the City must require dedication of a public access easement, but this claim is at odds with the United States Constitution and the California Coastal Act. For these reasons, CCA urges the Commission to formally adopt Commission staff's recommendation finding that the appeal raises no substantial issue, and to dispose of this matter so that the Rozos may finally undertake the development of their new home.

Sincerely,



Kirk Wilbur
Director of Government Affairs, California Cattlemen's Association

¹ CALIFORNIA COASTAL ACT § 30004(a).

² Alternately, LU-H-8 allows the City to seek an easement via eminent domain. However, the City elected not to condemn the property, and should it seek to do so, it would remain liable for just compensation to the Rozos.

³ *Id.* at § 30010.



PACIFIC LEGAL FOUNDATION

January 4, 2017

Mr. John Ainsworth
Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

VIA E-MAIL John.Ainsworth@coastal.ca.gov
AND FIRST-CLASS MAIL

Re: Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach)

Dear Director Ainsworth:

Pacific Legal Foundation is the nation's oldest and most successful nonprofit, pro-bono public-interest law firm dedicated to the preservation of strong property rights. As such, PLF has engaged in numerous lawsuits nationwide to preserve federal and state constitutional limits on government action.

PLF consistently follows the actions of the California Coastal Commission, and has often commented as an interested party when appeals brought before the Commission raise constitutional concerns. One such appeal, Appeal No. A-3-PSB-15-0030 concerning applicants Ernie and Pam Rozo, includes a staff recommendation for a "substantial issue" determination that raises particular concerns in light of settled Supreme Court precedent. PLF has previously commented on this appeal in a letter dated April 6, 2016.

The staff report on the de novo appeal of coastal development permit number 14-000080 includes a recommendation that the Commission make a substantial issue determination because the City of Pismo Beach did not require any type of public access easement throughout its approval process. Accordingly, the staff suggests that the CDP raises a substantial issue under the Coastal Act. While staff nonetheless recommends approval of the permit, this finding is not only inconsistent with provisions of the Coastal Act, but with established precedent under both the U.S. and California Constitutions. Specifically, it is contrary to the unconstitutional conditions framework established in the seminal case of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

In *Nollan*, a property owner sought a permit to demolish and replace a beach bungalow. The Coastal Commission granted the permit, but required the property owner to grant a public easement across

HEADQUARTERS: 930 G Street | Sacramento, CA 95814 | (916) 419-7111 | Fax: (916) 419-7747
ATLANTIC: 8645 N. Military Trail, Suite 511 | Palm Beach Gardens, FL 33410 | (561) 691-5000 | Fax: (561) 691-5006
DC: 3033 Wilson Boulevard, Suite 700 | Arlington, VA 22201 | (202) 888-6881 | FAX (202) 888-6855
HAWAII: P.O. Box 3619 | Honolulu, HI 96811 | (808) 733-3373 | Fax: (808) 733-3374
NORTHWEST: 10940 NE 33rd Place, Suite 210 | Bellevue, WA 98004 | (425) 576-0484 | Fax: (425) 576-9565
LIBERTY CLINIC: Chapman University, Fowler School of Law | 1 University Drive | Orange, CA 95866 | (714) 591-0490
ALASKA: (907) 278-1731 | OREGON: (503) 241-8179

E-MAIL: plf@pacificlegal.org
WEB SITE: <http://www.pacificlegal.org>

Mr. John Ainsworth

January 4, 2017

Page 3

PLF has challenged government at all levels from coast to coast to protect property owners from unconstitutional burdens on the use of their land. PLF will continue to zealously litigate to preserve the protections on property rights established in cases such as *Nollan v. California Coastal Commission*. We urge this Commission to consider the issues raised above when deliberating on the Rozo appeal. A development which does not impact public access does not raise a substantial issue as to public access, and this Commission should vote accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "J Talcott", with a stylized flourish at the end.

JEREMY TALCOTT
Attorney

cc: Yair Chaver: Yair.Chaver@coastal.ca.gov
Dan Carl: Dan.Carl@coastal.ca.gov

BOARD OF SUPERVISORS

1055 MONTEREY, ROOM D430 • SAN LUIS OBISPO, CALIFORNIA 93408-1003 • 805.781.5450



January 6, 2017

California Coastal Commission

DEBBIE ARNOLD
SUPERVISOR DISTRICT FIVE

RE: Appeal A-3-PSB-15-0030 SI Hearing Date: 1/12/17
Item No. Th-13e

Dear Honorable Commissioners:

As a member of the San Luis Obispo County Board of Supervisors, I am writing to express my opposition to the staff's December 2016 report recommending that the Commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue.

After the hearing, the Commission should support its staff's original report and recommendation - issued in April 2016 - that finds no substantial issue, because: 1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; 2) neither the City nor the Commission can simply take a public-access easement without just compensation; and 3) the second story bridge over the city's sewer easement is consistent with LCP and violates no City policy.

The recent staff report of December 2016 recognizes all these things. Yet it raises a brand new issue that no one - not even the appellants - raised at any time before the Planning Commission or the City Council - namely, that the second floor exceeds 80% of the first floor's square footage. The appeal forms do not make the argument, and they do not cite to the relevant policy concerning the 80% rule. This violates the basic principle that all appellants must exhaust their administrative remedies. Here, the City did not have the opportunity to consider the argument, so the appellants waived it. Even if the 80% ratio issue were before the Commission, the City has consistently interpreted the relevant policy as excluding stairwells and elevators - so there still is no substantial issue on that ground, even if the Commission could properly consider it.

In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. There is concern that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the Commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support -as the staff found in April 2016 - a finding of no substantial issue. I respectfully request that you call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Thank you for your consideration.

Sincerely,

Debbie Arnold
Supervisor, 5th District

Chaver, Yair@Coastal

From: Beard, Paul <Paul.Beard@alston.com>
Sent: Monday, January 09, 2017 5:40 PM
To: Chaver, Yair@Coastal
Cc: Ernie and Pamela Roza (rozosonthebeach@att.net)
Subject: Additional Letters - SI Hearing Date: 1/12/17, Item No. Th-13e, Appeal A-3-PSB-15-0030
Attachments: Shelly Higginbotham.pdf; Letter re 388 Windward Avenue gfa calc.pdf

Hi Yair,

I am attaching two very important letters in response to the Staff Report. One letter is from the City of Pismo Beach's Director of Community Development, Jeff Winklepeck, and the other is from ex-Mayor Shelly Higginbotham (who was on the city council when the project was approved). Please include them in the file that goes to the Coastal Commission. If you cannot do so, please let me know so as soon as possible, so that I can make alternative arrangements to get these letters in front of the Commissioners.

As you can imagine, it has not been an easy task for us to marshal the witnesses and evidence necessary to rebut the Staff Report's "substantial issue" recommendation. Not only did we get notice of the staff report in the midst of the holidays (Dec. 27), when people's availability is at its lowest, but the 80%-ratio issue came out of left field. As my Friday letter states, it's not even an issue raised by the appellants in their appeal forms, let alone at any time during the city's planning commission or city council hearings. If staff is not inclined to reconsider its "substantial issue" recommendation and reinstate its original recommendation of "no substantial issue" from its March 2016 Staff Report, then in the interest of preserving a fair and open process, we renew our request to postpone the SI proceeding to give my clients additional time to prepare for that proceeding. Please let us know what you decide.

Thanks,

Paul J. Beard II | ALSTON & BIRD LLP

Office: 916-498-3354 | Mobile: 818-216-3988

e in error, please notify the sender by email and delete all copies of the message immediately.



City of Pismo Beach
Community Development Department
760 Mattie Road, Pismo Beach, CA 93449
Tel: (805)-773-4658 Fax: (805)-773-4684

January 9, 2017

Ernie and Pamela Rozo
388 Windward Avenue
Pismo Beach, CA 93449

RE: SQUARE FOOTAGE CALCULATIONS RELATED TO STAIRWELLS AND ELEVATOR SHAFTS

Dear Mr. and Mrs. Rozo:

This letter is in response to your request for clarification of how the Pismo Beach Planning Division calculates the square footage associated with stairwells and/or elevator shafts.

It has been standard policy for the City of Pismo Beach Planning Division for over 15 years to consider floor area related to stairwells and elevator shafts only once when calculating the gross floor area for a single family home. The area of the stairwell and/or elevator is considered as part of the first floor area for these calculations.

This policy was in effect when your proposed project (Project No. 14-000080) at 388 Windward Avenue for a new single-family home was processed through the City.

Should you have any questions, please contact me at (805) 773-4658.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Winklepleck", is written over a horizontal line.

Jeff Winklepleck, AICP
Director of Community Development

Appeal No. A-3-PSB-15-0030
Hearing Date: 1/12/2017
Item No. Th-13e

Dear Honorable Commissioners,

I am the former Mayor of the City of Pismo Beach and was Mayor during the processing of the application that is the subject of the two appeals now pending before you.

I am writing to **oppose** the appeals and the Staff Report, and to request that the Commission find no substantial issue with respect to the issues raised in those appeals. The two issues raised implies that the City's approval of the subject project violates the LCP and public access provisions of the Coastal Act.

My chief concern is with respect to the Staff Report's incorrect finding that the City approved project violates the LCP rule that a second story must have a gross floor area no greater than 80% of the first story. **This issue was never raised before the Planning Commission nor the City Council. We never had the opportunity to respond or address this.** The two appeals before you do not raise the 80% rule. Simply as a matter of fairness to the governing body, it seems unfair to find criticism on the City's decision based upon an issue that was never raised and never had an opportunity to address.

This finding is inconsistent with the history of the City's interpretation of the 80% rule. I served for 12 years on the City Council, 6 as Mayor. During my tenure, the City consistently interpreted its LCP as excluding second-story staircases and elevators in calculating the second-story gross floor area for purposes of applying the 80% rule. This is an industry standard that other jurisdictions in California similarly apply. For the Coastal Commission to change the City's longstanding and consistent applications of its LCP in the midst of an appeal appears to impose a legislative amendment to the City's LCP without the benefit of public participation and seems to unfairly apply this legislation retroactively on the projects applicants. I would respectfully request the Commission find no substantial issue with respect to the City's 80% policy and should the Commission want a change, work with the City towards an LCP amendment.

Finally, the City did not violate the law by not requiring a public trail across the applicant's property. Neither the Coastal Act nor the LCP mandates the taking of a public trails as the condition of a permit approval. Without a violation of the LCP, there is no substantial issue with respect to public access.

Please call for a hearing, find "no substantial issue" and let his project move forward.

Respectfully
Shelly Higginbotham

LAW OFFICE OF TARREN COLLINS

P.O. Box 3063
Shell Beach, CA 93448
Tel: (805) 773-0233
Fax: (805) 773-0403

January 9, 2017

California Coastal Commission

Sent via email to Yair Chaver at Yair.Chaver@coastal.ca.gov>

Re: Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach) 388 Windward Ave

Honorable Chair Kinsey and Coastal Commission Members:

I am one of the appellants in Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach). I ask that you adopt your staff's recommendation to find that our appeals raise Substantial Issue. I also join my fellow appellant, Laurie Cummings, in requesting that the bifurcated de novo hearing be held locally, at your meeting in Cambria September 13-15, 2017.

As the attached petitions with 135 signatures of Shell Beach residents show, this issue is of great importance to my neighbors in Shell Beach. Holding the de novo hearing locally will allow these concerned citizens to be present at the hearing. Many of these supporters of our appeals indicated they would be at the hearing scheduled for January 11. Now that the applicants have chosen to split off the de novo portion of the appeals hearing, we have notified our supporters to wait to be present during the de novo portion instead. Please schedule the de novo hearing when the commission next meets in San Luis Obispo County.

Our appeals raise substantial issue because the proposed demolition and construction of the residence, as proposed by the Rozos, raises substantial LCP conformance issues. The mass and scale of the proposed project is inconsistent with the Community Character of this special coastal community, and it is inconsistent with the Neighborhood Compatibility requirement of the General Plan.

The proposed project also raises a substantial issue because it does not include an essential pedestrian access easement, as required by our General Plan LU-H-8, and LCP Policy PR-5 which states: "Every attempt shall be made to interconnect city trails....".

I disagree with your staff's assessment that the proposed project can be approved with conditions which would reduce the size of the second floor. Even with a reduction in size of the second floor, the proposed residence would be significantly out of character with this special Shell Beach community.

The citizens here have been protesting loudly about the approval of such large, fortress-like homes dominating the lots where the neighborhoods are still predominantly one story homes with welcoming front yards set back from the street. The City of Pismo Beach has recently recognized the need to adopt new development standards and design guidelines to protect the unique, low-key ambiance and community character of the special Shell Beach neighborhoods. Please see the attached flyer and handout from the City of Pismo Beach concerning this effort.

"The mere fact that a proposed project is consistent with a jurisdiction's General Plan does not mean that it has no potential to cause significant impacts." *City of Antioch v. City Council* (1st Dist. 1986) 187 Cal. App. 3d 1325, 1331.

4.21.15

4:49 PM

**To the Pismo Beach City Council re: development permit appeal for 388
Windward Avenue Shell Beach.**

Please consider the "General Plan" and the "Local Coastal Plan" with the impending development of 388 Windward Avenue. Specifically in reference to the 5' wide pedestrian walking path. This path will be close to connecting Windward Avenue to Boeker Avenue along with the new easement at the rear of the development at 367 Boeker Avenue. One small segment will still need to be acquired in the future.

The Pismo Beach "General Plan" and "Local Coastal Plan" were adopted in 1992 and certified by the California Coastal Commission in 1993. It has been updated in 2006 and again in 2013. In each edition, the plan spoke to the creation of lateral pedestrian pathways connecting Boeker Street to Placentia Avenue on the north and Boeker Street to Windward Avenue on the South. (LU-H8 to LU-H9 attached) These paths will connect Ocean Avenue all the way through.

The path to connect Boeker Street to Placentia was completed several years ago. The path to connect Boeker Street to Windward is already in progress with the construction of a new home at 367 Boeker Street. The development at 388 Windward Avenue is the last big section to make this path a reality.

This path will connect our community on either side of Placentia Avenue and Windward. It will also complete a section of the coastal trail making it possible to travel from Dinosaur Caves Park on the South to Vista Del Mar Avenue on the North all while staying close to the sea.

The petition submitted with this letter was collected in a few hours by canvassing just the few streets near Boeker. We have had a 95 %+ agreement when asking for signatures. You will have the communities support with requiring this addition to the development permit. We have not had the chance to canvas Shell Beach in its entirety, but we believe we would be very positive and achieve a 90% agreement rate.

We urge you to not overlook this opportunity.

Also attached is the petition with signatures in favor of seeing this pathway accomplished.

4-21-15

Also submitted at Planning 10/9/12
Commission

TO THE PISMO BEACH PLANNING COMMISSION & CALIFORNIA
COASTAL COMMISSION

The undersigned residents of Shell Beach strongly support the opportunity for the Planning Commission to require a path connecting the ocean end of Boeker street to Windward Ave similar to what was done connecting Boeker Street to Placentia Avenue in the past. This is the chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two sides of Shell Beach village along the waterfront.

	NAME	ADDRESS
1	<u>[Signature]</u> B. Walta	372 Boeker, Shell Beach
2	Kelly Miller Kelly Miller	331 Castaic, Shell Beach
3	Michael Miller <u>[Signature]</u>	331 Castaic, SB
4	<u>[Signature]</u> L. Silva	372 BOEKER, SHELL BEACH
5	<u>[Signature]</u> S. LOPEZ	368 ROEKER, SHELL BEACH
6	<u>[Signature]</u> JOSEPH LOPEZ	111 BOEKER AVE, SHELL
7	Virginia Wrathall V. S. Wrathall	680 Ocean Blvd, Shell Beach
8	Richard Wrathall Ricardo Wrathall	680 Ocean Blvd, Shell Beach
9	LARRY SCARBOROUGH	167 BOEKER AVE SHELL BEACH
10	Linda Nelson	167 Boeker Ave, Shell Beach
11	BILL TAYLOR	P.O. BOX 1207 PISMO BEACH
12	TANA TANAKA	P O BOX 387, Pismo Beach CA.

①

TO THE PISMO BEACH PLANNING COMMISSION & CALIFORNIA
COASTAL COMMISSION

The undersigned residents of Shell Beach strongly support the opportunity for the Planning Commission to require a path connecting the ocean end of Boeker street to Windward Ave similar to what was done connecting Boeker Street to Placentia Avenue in the past. This is the chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two sides of Shell Beach village along the waterfront.

NAME

ADDRESS

- | | | |
|----|------------------|----------------------------|
| 26 | Monique Nelson | 320 Placentia Ave, SB, CA. |
| 27 | Holly Hartley | 114 Waluona Ave, SB, CA |
| 28 | Karen Leonard | 250 Cuyama Ave |
| 29 | Diana DeBarnes | 251 Capistrano S.B. |
| 30 | Doug Wunam | 250 Cuyama Ave. |
| 31 | Lois Kistner | 289 Windward S.B. |
| 32 | Whitney Elliott | 216 Windward Ave 93559 |
| 33 | Alvey Fleming | 216 Windward Ave |
| 34 | Michael Smith | 204 Lundgren Ave |
| 35 | Lynn LaMorie | 206 Leeward AVE |
| 36 | Barbara Hamilton | 190 Leeward Ave |
| 37 | Paul Green | 315 LEEWARD AV. |
| 38 | Cheryl Tidals | 324 WINDWARD AVE. |

(P)

TO THE PISMO BEACH PLANNING COMMISSION & CALIFORNIA
COASTAL COMMISSION

The undersigned residents of Shell Beach strongly support the opportunity for the Planning Commission to require a path connecting the ocean end of Boeker street to Windward Ave similar to what was done connecting Boeker Street to Placentia Avenue in the past. This is the chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two sides of Shell Beach village along the waterfront.

NAME

ADDRESS

44	Paul Schier	127 Cayana	Shell Beach CA
45	Rich Wike	324 Windward	SHELL 93449 BONNET 93449



TO THE PISMO BEACH PLANNING COMMISSION & CALIFORNIA
COASTAL COMMISSION

The undersigned residents of Shell Beach strongly support the opportunity for the Planning Commission to require a path connecting the ocean end of Boeker street to Windward Ave similar to what was done connecting Boeker Street to Placentia Avenue in the past. This is the chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two sides of Shell Beach village along the waterfront.

NAME

ADDRESS

60	Richard Bobb	250 CAPISTRANO
61	Nancy Ayer	262 Capistrano
62	S. Ayer	262 Capistrano
63	Patricia	257 CAVISTA AVE
64	Brenda Lee	257 CAPISTRANO
65	John	232 Capistrano ave
66	Heather	233 Capistrano Ave.
67	TABER LIO GRIGOLI	302 CAPISTRANO AVE
68	Charles Anderson	180 Ocean View, Pismo
69	Heather Stone	180 Ocean View Ave Pismo Beach CA
70	John	785 Hwy 81
71	John	227 Capistrano
72	Melinda Brown	239 Capistrano Ave

7

4.21.15

TO THE PISMO BEACH CITY COUNCIL & CALIFORNIA COASTAL COMMISSION

(In reference to the development of 388 Windward Ave)

The undersigned residents of Pismo Beach/Shell Beach strongly support the opportunity for the City Council to require a pedestrian path connecting the ocean end of Boeker St. to the ocean end of Windward Ave. similar to what was done connecting Boeker St. to Placentia Ave in the past. This is a chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two side of Shell Beach Village along the waterfront.

NAME

ADDRESS

- | | | |
|----|--------------------------|---|
| 81 | <u>Leo Barber</u> | <u>728 Ocean Blvd Shell Beach</u> |
| 82 | <u>Laurie D Cummings</u> | <u>305 WINDWARD AVE. SHELL BEACH</u> |
| 83 | <u>James Truitt</u> | <u>178 LEWIS AVE SB</u> |
| 84 | <u>Cathy Kilmer</u> | <u>6670 Bellvue Orchard Ln. SD, CA.</u> |
| 85 | <u>Craig Cummings</u> | <u>305 WINDWARD AVE SHELL BEACH</u> |
| 86 | <u>Helen Brown</u> | <u>208 Placentia Ave, Shell Beach</u> |
| 87 | <u>Rene Walker</u> | <u>266 Miramar Lane Shell Beach</u> |
| | | |
| | | |
| | | |
| | | |
| | | |

Please join your local Shell Beach Community in support of a Public coastal access pathway from 388 Windward Avenue to eventually connect with the approved pathway dedication at 367 Boeker Avenue. This is the next to final link in the connection between our communities on either side of Placentia Avenue and Windward Avenue.

TO THE PISMO BEACH CITY COUNCIL & CALIFORNIA COASTAL COMMISSION

(In reference to the development of 388 Windward Ave)

The undersigned residents of Pismo Beach/Shell Beach strongly support the opportunity for the City Council to require a pedestrian path connecting the ocean end of Boeker St. to the ocean end of Windward Ave. similar to what was done connecting Boeker St. to Placentia Ave in the past. This is a chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two side of Shell Beach Village along the waterfront.

NAME

ADDRESS

100	<u>Theresa McEwen</u>	<u>8 Bellflower Lane, San Carlos, CA 95070</u>
101	<u>Janine Post</u>	<u>653 Shell Beach Rd SB 93449</u>
102	<u>Ann Smith</u>	<u>204 Windward Ave Shell Beach, CA 9374</u>
103	<u>Sam Ashby</u>	<u>190 Windward</u>
104	<u>Art Dy</u>	<u>178 Windward</u>
105	<u>Ann Raul</u>	<u>127 Windward Ave</u>
106	<u>Heather Peracchi</u>	<u>141 Windward</u>
107	<u>Chris Pellegrini</u>	<u>149 Windward Ave</u>
108	<u>Chris Armstrong</u>	<u>153 Windward Ave</u>
109	<u>Rosy Street</u>	<u>189 Windward Ave</u>
110	<u>Amanda Rodriguez</u>	<u>229 Windward Ave</u>
111	<u>Barbara Moses</u>	<u>311 Leeward Ave</u>

Please join your local Shell Beach Community in support of a Public coastal access pathway from 388 Windward Avenue to eventually connect with the approved pathway dedication at 367 Boeker Avenue. This is the next to final link in the connection between our communities on either side of Placentia Avenue and Windward Avenue.

TO THE PISMO BEACH CITY COUNCIL & CALIFORNIA COASTAL COMMISSION

(In reference to the development of 388 Windward Ave)

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NAME

ADDRESS

124	Ausan Medelein	1956 Ocean Blvd. P.B.	92449
125	Phil Widdell	1956 OCEAN Blvd Pismo Beach	93449
126	Deborah Winter	273 Boeker Ave. Shell Beach CA	
127	Edna K. Winters	273 Boeker Ave Shell Beach ca.	
128	[Signature]	245 Buckner Ave Shell CT	93449
129	Jaclyn Griffith	269 Windward Ave Shell Beach	93449
130	[Signature]	316 WINDWARD AVE "	" "
131	[Signature]	298 Windward Ave	
132	DC Mc Fall	246 Windward	
133	Robert Bowersox	288 1/2 Windward	
134	Amy Bowersox	288 1/2 Windward Ave Shell Beach	
135	Sheri Mayer	16865 Silver Crest Dr. San Diego	CA 92127

Please join your local Shell Beach Community in support of a Public coastal access pathway from

388 Windward Avenue to eventually connect with the approved pathway dedication at 367

Boeker Avenue. This is the next to final link in the connection between our communities on either

side of Placentia Avenue and Windward Avenue.

COMMUNITY

GIVE INPUT ON SHAPING FUTURE DEVELOPMENT IN SHELL BEACH!

The purpose of this project is to create Development Standards and Design Guidelines that will help land owners, developers, architects and decision makers have a clear picture of what the Shell Beach community and City want to see in future development and remodels in Shell Beach.

Laurie D. Cummings
305 Windward Avenue
Shell Beach, CA 93448
Tel: (805) 440-1567

January 9, 2017

California Coastal Commission
Sent via email to Yair Chaver at Yair.Chaver@coastal.ca.gov>

Re: Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach) 388 Windward Ave

Honorable Chair Kinsey and Coastal Commission Members:

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4.21.15

4:49pm

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ALSO submitted at Planning 10/9/12
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- 12 TANA TANAKA P O BOX 387, Pismo Beach CA.

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125 Phil Middleh	1956 OCEAN Blvd Pismo Beach 93449
126 Deborah Winter	273 Boeker Ave. Shell Beach CA
127 Edwin K. Winter	273 Boeker Ave Shell Beach ca.
128 [Signature]	245 Bolivar Ave Shell CA 93449
129 Jocelyn Griffith	269 Windward Ave Shell Beach
130 [Signature]	316 WINDWARD AVE " " 93449
131 [Signature]	298 Windward Ave
132 DC Mc Fall	246 Windward
133 Robert Bowersox	288 1/2 Windward
134 Amy Bowersox	288 1/2 Windward Ave Shell Beach
135 Sheri Mayer	16865 Silver Crest Dr. San Diego CA 92127

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104	Art Dy	178 Windward
105	Alan Raul	121 Windward Ave
106	Heather Peracchi	141 Windward
107	Chris Pellegrini	149 Windward Ave
108	Chris Armstrong	153 Windward Ave
109	Rosy Stree	189 Windward Ave
110	Amanda Rodriguez	229 Windward Ave.
111	Barbara Moses	311 Leeward Ave.

Please join your local Shell Beach Community in support of a Public coastal access pathway from 388 Windward Avenue to eventually connect with the approved pathway dedication at 367 Boeker Avenue. This is the next to final link in the connection between our communities on either side of Placentia Avenue and Windward Avenue.

TO THE PISMO BEACH CITY COUNCIL & CALIFORNIA COASTAL COMMISSION

(In reference to the development of 388 Windward Ave)

The undersigned residents of Pismo Beach/Shell Beach strongly support the opportunity for the City Council to require a pedestrian path connecting the ocean end of Boeker St. to the ocean end of Windward Ave. similar to what was done connecting Boeker St. to Placentia Ave in the past. This is a chance to make a spectacular walking trail from Dinosaur Caves Park to Vista Del Mar that would finally connect the two side of Shell Beach Village along the waterfront.

NAME

ADDRESS

124	<u>Susan Middelich</u>	<u>1956 Ocean Blvd. P.B.</u>	<u>93449</u>
125	<u>Phil Middelich</u>	<u>1956 OCEAN Blvd Pismo Beach</u>	<u>93449</u>
126	<u>Deborah Winter</u>	<u>273 Boeker Ave. Shell Beach CA</u>	
127	<u>Edwin K. Wink</u>	<u>273 Boeker Ave Shell Beach ca.</u>	
128	<u>[Signature]</u>	<u>245 Boeker Ave Shell CT</u>	<u>93449</u>
129	<u>Jacquyn Griffith</u>	<u>269 Windward Ave Shell Beach</u>	<u>93449</u>
130	<u>[Signature]</u>	<u>316 WINDWARD AVE "</u>	<u>" "</u>
131	<u>[Signature]</u>	<u>298 Windward Ave</u>	
132	<u>DL Mc Fall</u>	<u>246 Windward</u>	
133	<u>Robert Bowersox</u>	<u>288 1/2 Windward</u>	
134	<u>Amy Bowersox</u>	<u>288 1/2 Windward Ave Shell Beach</u>	
135	<u>Sheri Mayer</u>	<u>16865 Silver Crest Dr. San Diego</u>	<u>CA 92127</u>

Please join your local Shell Beach Community in support of a Public coastal access pathway from

388 Windward Avenue to eventually connect with the approved pathway dedication at 367

Boeker Avenue. This is the next to final link in the connection between our communities on either

side of Placentia Avenue and Windward Avenue.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Erik Howell

1) Name or description of project: 388 Windward

2) Date and time of receipt of communication: March 23, 2016 10:19 am

3) Location of communication: Pismo Beach by telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Erik Howell

5) Identity of person(s) on whose behalf communication was made: Erik Howell

6) Identity of persons(s) receiving communication: Erik Howell

7) Identity of all person(s) present during the communication: Erik Howell, Marshall Ochylski

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I contacted Marshall Ochylski to discuss with him a letter I received as a member of the Pismo Beach City Council in which his clients stated a recision of their offer to dedicate an easement over their property to continue the coastal trail. Mr. Ochylski stated his clients' intention to come before the Coastal Commission for a hearing. I warned him that a finding of substantial issue by the Commission would lead to a de novo hearing in which all aspects of the project could be subject to review.

3/25/16

Date

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Erik Howell

1) Name or description of project: 388 Windward

2) Date and time of receipt of communication: March 23, 2016 1:13 pm

3) Location of communication: Pismo Beach by telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Erik Howell

5) Identity of person(s) on whose behalf communication was made: Erik Howell

6) Identity of persons(s) receiving communication: Erik Howell

7) Identity of all person(s) present during the communication: Erik Howell, Tarren Collins

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Tarren Collins shared that she had been unable to reach a resolution with the
applicants despite their offer to dedicate an easement due to the difficulty of finding
an organization willing to accept the easement. I encouraged her to continue to work
with Mr. Ochylski on the matter and suggested that simply recording the easement
might suffice to protect the trail. I also suggested that she continue to work with staff
to address her concerns.

3/25/16

Date

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th13e

Appeal Filed:	5/7/2015
49th Day:	Waived
Staff:	Yair Chaver - SC
Staff Report:	12/23/2016
Hearing Date:	01/12/2017

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number:	A-3-PSB-15-0030
Applicants:	Ernie and Pam Rozo
Appellants:	Tarren Collins and Laurie Cummings
Local Government:	City of Pismo Beach
Local Decision:	City of Pismo Beach coastal development permit application number 14-000080 approved by the Pismo Beach Planning Commission on July 8, 2014, and upheld on appeal by the Pismo Beach City Council on April 21, 2015.
Location:	388 Windward Avenue near its intersection with Ocean Boulevard near the shoreline and just upcoast of Dinosaur Caves Park in the Shell Beach area of the City of Pismo Beach, San Luis Obispo County (APN 010-371-012).
Project Description:	Demolition of an existing single-story single-family residence and construction of a new two-story single-family residence with an attached two-car garage and an attached secondary dwelling unit.
Staff Recommendation:	Substantial Issue Exists; Approval with Conditions

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or

the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony. (*Id.* § 13115(b).)

SUMMARY OF STAFF RECOMMENDATION

The City of Pismo Beach approved a coastal development permit (CDP) authorizing demolition of an existing 1,319 square-foot single-story single-family residence and construction of a new 3,741 square-foot, two-story single-family residence with an attached secondary dwelling unit and an attached garage. The project is located in the Shell Beach neighborhood just upcoast of Dinosaur Caves Park, and is located one house inland from the immediate shoreline atop the bluffs near the intersection of Windward Avenue and Ocean Boulevard. The Appellants contend that the City-approved project is inconsistent with City of Pismo Beach Local Coastal Program (LCP) policies related to providing public trail access and protecting community character, as well as provisions for allowing access to a public sewer easement located on the site.

After reviewing the local record, staff believes that the City's approval raises a substantial LCP conformance issue, but that project modifications are available to allow the Commission to approve a residential project at this location that is consistent with the LCP through a de novo action on the CDP application.

In terms of the community character appeal contentions, the project does not meet LCP requirements with respect to the size of the second story. Specifically, the second story is only allowed to be 80% the size of the first story per the LCP, and in this case the approved second story is nearly 90% of the size of the first story. The project also includes an unusual 'bridge' feature over the sewer easement area, exacerbating the fact that the project is roughly tripling the square footage of the residential development as compared to the existing residential square footage which, in and of itself is not violative of the LCP, but should be understood in the context of the development exceeding the LCP limitation on second-floor gross floor area. Although there are some similar two-story residences in the area, the lack of compliance with the LCP's maximum size requirements raises a substantial LCP conformance issue.

With respect to public access, the LCP includes a series of provisions related to providing lateral public access along the shoreline in the Shell Beach area, amplifying more general Coastal Act provisions to the same effect that also apply. Much of Shell Beach includes connected public lateral access trails, including those provided through CDP actions pursuant to these LCP and Coastal Act provisions, forming portions of the California Coastal Trail (CCT) in this area. However, there are gaps in the CCT, including one between Windward Avenue and upcoast Boeker Avenue where residential development precludes the connection of these two streets for public access, and which requires trail users to continue on an inland loop of over one-half mile

to continue accessing the CCT on either side of this site. The City did not require any type of trail easement through its approval. The issues associated with a potential trail at this location are significant, and raise statewide CCT concerns given the trail gap at this location, and thus raise substantial LCP and Coastal Act conformance issues requiring Commission consideration.

In de novo review, staff believes that conditions can be applied to reduce the size of the residence to meet the LCP's requirements in this respect. Even though the residence will still be a significant increase from what currently exists, staff does not believe it will be significantly out of character with other residential development in the area, including in terms of existing two-story residences adjacent to this site on Boeker Avenue as well as just inland of the site on Windward Avenue.

With respect to public access, although a trail easement would indeed be beneficial to helping to close the CCT gap at this location,¹ staff has analyzed the public access impacts of the proposed project and do not believe that these impacts rise to the level of requiring an easement as compensatory mitigation for such impacts. LCP and Coastal Act objectives would be better achieved with an easement, but this project appears to have limited public access impacts (if any). That is not to say that some other similarly-situated residential project could not have more significant access impacts that would require an easement, but the facts of this particular case do not appear to warrant a trail easement as compensatory mitigation for impacts to public access caused by approval of this development proposal. Thus, staff is not recommending a trail easement be required in this case.

Staff recommends that the Commission approve a CDP with conditions for a reduced scale residential project. The motions to find substantial issue and to approve the project per the staff recommendation are found on page 5 below.

¹ However, it is worth noting that an easement on the Applicants' property would not connect to any existing easements located on adjacent properties on Boeker Avenue, and thus an easement across a connected Boeker Avenue property would still be required in the future to be able to close the CCT gap at this location.

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EXHIBITS

Exhibit 1: Project Location
Exhibit 2: Project Site Photos
Exhibit 3: Proposed Project Plans
Exhibit 4: Before and After Street View
Exhibit 5: City Sewer Easement
Exhibit 6: City's Final Local Action Notice
Exhibit 7: Appeals of City's CDP Action
Exhibit 8: Applicable LCP and Coastal Act Provisions
Exhibit 9: Trail Easements and Potential Connections
Exhibit 10: Correspondence
Exhibit 11: Ex Parte Communications

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-PSB-15-0030 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-PSB-15-0030 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

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-15-0030 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-15-0030 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. **Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit, for the review and written approval of the Executive Director, two full-size sets of final plans. The final plans shall be in substantial conformance with the proposed project plans (see **Exhibit 3**) except that they shall be modified to limit the second-story gross floor area to no more than 80% of the first-story gross floor area, with a preference for second-story reductions that provide increased stepping back from the first-story as seen from public viewing areas along Windward Avenue. The final plans shall be submitted with evidence and documentation clearly showing the manner in which the 80% second-story threshold is maintained. The Permittees shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.
2. **Local Government Approval.** This CDP action has no effect on conditions imposed by the City of Pismo Beach on this project pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The Permittees are responsible for compliance with all terms and conditions of this CDP in addition to any other requirements imposed by other City of Pismo Beach terms and conditions pursuant to the City's non-Coastal Act authority. In the event of conflicts between the terms and conditions imposed by the City of Pismo Beach and those of this CDP, the terms and conditions of this CDP shall prevail.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The Applicants propose to demolish an existing 1,319-square-foot single-story single-family residence and replace it with a 3,741-square-foot two-story single-family residence (consisting of a 2,636-square-foot primary residence with an attached 495-square-foot garage and an attached 610-square-foot secondary dwelling unit) on a 5,236-square-foot lot located at 388 Windward Avenue (APN 010-371-012). The project is located in the Shell Beach area of the City of Pismo Beach upcoast from downtown Pismo Beach and between Highway 101 and the tall coastal bluffs that front this stretch of the City. The site itself is in a residential area just upcoast of Dinosaur Caves Park near the intersection of Windward Avenue and Ocean Boulevard, and it is the second residential property inland from the blufftop edge. The parcel is designated and zoned Single Family Residential (R-1) in the LCP, and the surrounding neighborhood contains a mix of one, two, and three-story houses of varying sizes and architectural styles.

See **Exhibit 1** for the project's location, **Exhibit 2** for project area photos, **Exhibit 3** for project plans, and **Exhibit 4** for before (i.e., photo) and after (i.e., photo simulation) street views of the site.

B. CITY OF PISMO BEACH CDP APPROVAL

The City of Pismo Beach Planning Commission approved the proposed project through action on City CDP 14-000080 by a 4-0 vote on July 8, 2014. The Planning Commission-approved project was subsequently appealed to the City Council by four different appellant groups,² and on April 21, 2015 the City Council denied the appeals and approved the project by a 4-1 vote.³ The City's notice of final local CDP action was received in the Coastal Commission's Central Coast District office on Wednesday May 6, 2015 (see **Exhibit 6**). The Coastal Commission's ten-working-day appeal period for this action began on Thursday May 7, 2015 and concluded at 5pm on Wednesday May 20, 2015. Two valid appeals of the City's CDP decision were received during the appeal period (see below and see **Exhibit 7**).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream,

² Wayne and Julie Maire; Albert and Gila Pomerantz; David and Mary Storentta; and Robert Warner.

³ The sole "no" vote was cast by Councilmember Blake.

or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (Pub. Res. Code § 30603(a)(1)-(4).) In addition, Section 30603 also provides that any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (Pub. Res. Code § 30603(a)(5).) This project is appealable because it is located between the first public road and the sea, and because it is located within 300 feet of the mean high tide line and the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts the de novo portion of an appeal hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the City of Pismo Beach LCP) if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government (per 14 CCR Section 13117). Testimony from other persons regarding substantial issue must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal, if there is one.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the City-approved project is inconsistent with City of Pismo Beach LCP provisions, including those that: 1) protect public access; 2) regulate development size to protect community character, and; 3) protect City public utility easements. Specifically, with respect to public access, the Appellants contend the City-approved project is inconsistent with LCP Policy LU-H-8 because the approved project does not include a public access easement through the Applicants’ property to allow for a pedestrian connection between Boeker and Windward Avenues. One of the appellants further states that the project presents an exceptional opportunity to enrich the community by “adhering to the General Plan mandate to obtain an access easement to complete a pedestrian path connecting the south end of Shell Beach with Ocean Boulevard” and that to allow the project without requiring a path as identified in the General Plan/Land Use Plan⁴ would “deprive the public of an opportunity to connect a missing coastal access link.” With respect to development size, the Appellants contend that the size and

⁴ Pismo Beach has a joint General Plan and LCP Land Use Plan.

scale of the City-approved project are inconsistent with LCP Policy LU-H-4(a), which encourages new development to reflect the small scale image of the Shell Beach neighborhood. Finally, with respect to utility easements, the Appellants contend the City-approved project is not consistent with an informal City policy that prohibits construction over City utility easements, in this case a sewer easement. See **Exhibit 7** for the full text of the two appeals.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (14 CCR Section 13115(b)). In previous decisions on appeals, the Commission has used the following factors in making such determinations: (1) the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government’s decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5 (see Coastal Act Section 30801).

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the City of Pismo Beach presents a substantial issue.

2. Substantial Issue Analysis

Community Character/Neighborhood Compatibility

Pismo Beach LCP Policies D-2, LU-H-1, and LU-H-4(a) (see all applicable policies in **Exhibit 8**) are designed to maintain the nature and character of Pismo Beach as a small coastal town by avoiding very large buildings and excessive massing. These policies propose to achieve this through a number of complementary LCP provisions, including the use of articulated roofs and exterior walls, second stories that step back from the first story, and specific height and setback regulations. Specifically, regarding the residential area of Shell Beach, the intent of Policy LU-H-1 is to retain the traditional beach-town community feel of small single-family lots with views to the ocean to the west and the foothills to the east by making homes compatible with the character of the surrounding development. These policies are implemented by LCP Implementation Plan (IP) Chapters 17.102 and 17.105, which describe detailed structural height, setback, and bulk requirements.

The City-approved project is within applicable LCP maximum standards with respect to height, setbacks, lot coverage, and floor area.⁵ However, the City-approved project is not consistent with

⁵ Maximum allowable height per IP Section 17.102.010(A) is 25 feet, and project height is 24 feet 7 inches. Minimum front yard setback per IP Section 17.102.020(4)(a) is based on the average front yard setback of the nearest improved lots on each side of the subject property on the same side of the street, but in no case less than 10 feet or more than 20 feet. The setbacks for the

IP Section 17.105.135(A), which requires that second-story residential development be designed to avoid a “boxy” look by using step-backs where second story external walls are inset from those of the first story, as well as limiting the gross floor area of the second story to no more than 80% of the first story gross floor area, and where any second story step backs are required to be provided at least in part on the street-side of the house unless infeasible (see IP Section 17.105.135(A) in **Exhibit 8**).

IP Section 17.006.0485 defines gross floor area as “The total horizontal area in square feet on each floor within the exterior walls of a structure but not including the area of the courts, open decks, patios and basements.” This IP Section specifically excludes only courts, open decks, patios and basements from this calculation. It does not exclude open floor areas of stairwells or elevator shafts. This makes sense inasmuch as the excluded elements do not increase visible interior square footage and bulk, whereas open floor areas (e.g., two-story tall room elements) and elevator shafts do.

In this case, the City-approved project is a two-story structure and therefore IP Section 17.105.135 related to maximum second floor gross area applies. In approving the project, the City excluded the second story stairwell and elevator shaft from the gross floor area calculation. However, the LCP’s definition of gross floor area does not exclude stairwells and elevator shafts from the calculation of gross floor area. Thus, the elevator shaft and the stairwell should have been included in the City’s calculations for second floor gross floor area. Including the stairwell and the elevator shaft in the gross floor area measurement results in a proposed second story of approximately 1,756 square feet. The gross floor area of the first floor is 1,985 square feet. Thus, the second-story-to-first-story gross floor area ratio is approximately 88.5% ($1756/1985 = 88.5\%$), inconsistent with the maximum 80% ratio required by IP Section 17.105.135. For these reasons, the approved project raises a substantial issue of conformance with respect to the neighborhood compatibility requirements of IP Section 17.105.135.

In conclusion, the project does not meet LCP requirements with respect to the size of the second story. Specifically, the second story is only allowed to be 80% the size of the first story per the LCP, and in this case the approved second story is nearly 90% of the size of the first story. The project also includes an unusual ‘bridge’ feature over the sewer easement, exacerbating the fact that the project is roughly tripling the square footage of the residential development as compared to the existing residential square footage, which, in and of itself is not violative of the LCP, but should be understood in the context of the development exceeding the LCP limitation on second-floor gross floor area (see before and after (photo simulation) street view in **Exhibit 4**). Although there are some similar two-story residences in the area, the lack of compliance with the LCP’s maximum size requirements raises a substantial LCP conformance issue.

properties on either side of this lot are 4.57 feet (398 Windward) and 19.58 feet (376 Windward), leading to an average setback of 12.075, and the project’s front yard setback is 12.25 feet. Minimum side yard setbacks per IP Section 17.102.030(A) are 10% of lot width, provided the setback is no less than 4 feet and no more than 5 feet, and the project’s side yard setbacks are at the maximum of 5 feet. Minimum rear yard setback per IP Section 17.102.040(A) is not less than 10% of the lot depth (the lot is 69 feet deep, and thus 10% is 6.9 feet) provided the setback is no less than 5 feet and no more than 10 feet, and the project’s rear yard setback is 8.5 feet. Maximum allowable lot coverage per IP Section 17.102.080(B) is 55%, and the project’s lot coverage is 51%. Maximum floor area per IP Section 17.102.090(B) is 3,844 square feet (i.e., 80% of the first 2,700 square feet of lot area (or 2,322 square feet) plus 60% of remaining lot area ($0.6 \times (5,236 - 2,700) = 1,522$), and the project floor area is 3,741 square feet.

Public Access

This section of the Shell Beach neighborhood is generally bounded on its seaward side by Ocean Boulevard, which provides nearly continuous lateral pedestrian and vehicular access along the bluffs from Vista Del Mar Avenue (upcoast) to Dinosaur Caves Park (downcoast). However, Ocean Boulevard does not connect between the contiguous blocks of Boeker and Windward Avenues perpendicular to the shoreline orientation, resulting in a critical gap in Shell Beach's lateral blufftop public access trail, which is a component of the California Coastal Trail (CCT) (see **Exhibit 9**). Because of this gap, pedestrians and bicyclists traversing the CCT in this area need to detour on an approximately one-half mile loop from the bluff at the end of Boeker Avenue inland to Shell Beach and seaward back to the bluff at the end of Windward Avenue. A pedestrian path from Boeker Avenue to Windward Avenue would close this gap and help to provide a more continuous blufftop CCT experience.

To remedy this public access gap, LCP Policy LU-H-8 directs the City to pursue opportunities to create a lateral pedestrian pathway to connect Boeker Avenue to Windward Avenue. LCP Policy LU-H-8 states:

***LCP Policy LU-H-8 Lateral Access at Boeker Street.** The City should pursue opportunities to create lateral pedestrian pathways connecting Booker[sic] Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility[sic] through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)*

The City-approved project is the second residential site inland from the blufftop edge on Windward Avenue, and it is one block over from Boeker Avenue. Thus, the project site is located in the immediate vicinity of the last remaining gap in the CCT in the Shell Beach area of Pismo Beach identified by LCP Policy LU-H-8, and therefore represents a prime location to enhance public access by requiring a public easement as part of the project. However, although the City has required easements in similar cases in the past,⁶ the City did not condition its approval here to require such an access easement. The issues associated with the trail at this location are significant, and raise statewide CCT concerns given the gap at this location, and thus raise substantial LCP and Coastal Act conformance issues requiring Commission consideration.

Sewer Easement

The existing residence at 388 Windward Avenue is built directly on top of a public City sewer easement within which a portion of the City's sewer system is located (see sewer easement language in **Exhibit 5**). The City of Pismo Beach LCP does not have any type of explicit policy that prohibits constructing buildings over utility easements.⁷ According to the City, the policy

⁶ Including those associated with approved residential development at nearby 367 and 374 Boeker Avenue, and at 321 Harbor View Avenue closer to downtown Pismo Beach.

⁷ The City is only aware of one other project where development was constructed over a City sewer easement, for a 6-unit condominium project at 300 Willmar Avenue near the Kon Tiki Inn, where a similar 'bridge' design was utilized and the bridge extends over the driveway to the first floor parking garage for the condominiums. At this location, the sewer easement extends from Windward to Boeker Avenue but the upcoast house (i.e., on Boeker Avenue) is not on top of the sewer easement

cited by the Appellant is actually an informal policy of the City's Public Works Department.⁸ As such, there is no explicit LCP requirement to avoid building over the sewer easement on the subject lot, and the easement itself likewise does not include any prohibitions of this type. At the same time, good planning and public policy dictate that the City ensure that the public is not unfairly burdened by private development that affects public interests, such as the City's sewer easement in this case. The City-approved project addresses this problem by including a second-floor "bridge" above the sewer easement (within which the Applicants driveway would be constructed) so as to allow the City access to the sewer in case of needed repairs or other issues (see project plans in **Exhibit 3**).

Although the bridge design helps to address easement issues, it does result in an unusual residential design that only serves to emphasize the upper floor massing which, as discussed above, is already larger than the LCP allows. Thus, although the practical issues associated with needed sewer line repair and maintenance are addressed through such a design, the way in which the 'bridge' contributes to excess second story massing raises concerns in how it relates to the project exceeding the LCP's maximum second story square footage.

3. Substantial Issue Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP and/or Coastal Act conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission has in the past used in its decision of whether the issues raised in a given appeal are "substantial" the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project raises a substantial issue of LCP conformance.

Regarding the first factor (the degree of factual and legal support for the local government's decision), while the project consists of a tear-down and rebuild of a single-family residence within a residentially-zoned neighborhood, the City-approved project raises questions regarding the manner in which it addresses coastal resource concerns associated with the approved development, including CCT connectivity and coastal access at a CCT gap, an issue of statewide

and does not utilize a bridge design, rather the easement extends along the side property line in an area not covered by the house.

⁸ The City's Public Works Department has an uncodified policy that prohibits development over sewer easements in order to ensure access for repair and maintenance. However, during the due-diligence phase prior to purchasing the property at 388 Windward, the City's Engineering Department issued a letter, dated September 11, 2008, granting the Applicants a special exception to that policy if the new residence were designed to allow maintenance equipment access to the sewer line in case of needed repairs. The Public Works Department noted that this was a one-time exception for the Applicants for this project only, and would not extend to any other future Applicant in the event that the Applicants sell the property as it currently exists (i.e., with the existing single-story residence).

significance. The City's action did not adequately analyze how the CCT could be connected in this area. Furthermore, the County's interpretation of LCP architectural requirements with respect to second story bulk misapplied relevant LCP provisions, and thus the County's approval of the project as designed lacks legal support. Relatedly, while the County's approval of the "bridge" design may address concerns about City accessibility of the sewer easement on the Applicants' property, it also contributed to the approved design which violates LCP policies regarding second-floor gross area. Thus, the first factor supports a finding of substantial issue.

Regarding the second factor (the extent and scope of the development), while relative to other single-family development in the vicinity the extent and scope of the development may not be out of the ordinary (demolition of a 1,319-square-foot single-story family residence and construction of a 3,714-square-foot two-story single-family residence), the extent and scope of the development (nearly 90% second floor gross area) relative to applicable LCP policies (80% limitation on second floor gross area) could be construed as significant given its exceedance of the LCP limitation on second-floor massing. Regarding the third factor (the significance of the coastal resources affected by the decision), the disposition of property which could improve and connect one of the last remaining gaps of the CCT in this area supports a finding of Substantial Issue. Regarding the fourth factor (the precedential value of the local government's decision for future interpretations of its LCP), the City's erroneous misapplication of LCP second-story gross area limitations could be equally misapplied for other similarly-situated development proposals in the future, and on that basis this factor supports a finding of substantial issue. Regarding the fifth factor (whether the appeal raises only local, or regional or statewide issues, of significance), the LCP second-story gross area limits and sewer easement building limitations pose issues of only local significance; however, disposition of property which may connect significant public access amenities such as the CCT raise issues of regional and statewide importance, and this factor supports a finding of substantial issue. On balance, these five factors support a finding of substantial issue.

The Commission evaluates these factors in determining whether an appeal raises substantial issue and thus warrants de novo review. For the reasons stated above, the Commission finds that Appeal Number A-3-PSB-15-0030 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 and takes jurisdiction over the CDP application.

F. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the City of Pismo Beach certified LCP and, because it is located between the first public road and the sea, the project must also conform with the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference. See **Exhibit 8** for applicable LCP provisions and Coastal Act policies.

As discussed above, the proposed project meets most LCP mass and scale provisions, but is inconsistent with second story square footage limitation requirements. This is exacerbated by the unusual "bridge" design necessary to avoid a public City sewer easement. If the second story were brought into LCP conformance then the project would meet objective LCP mass and scale maximums. At the same time, it would still be a fairly large residential development that would

nearly triple existing square footage at the site which, in and of itself is not violative of the LCP, but should be understood in the context of the second-floor gross floor area limitations. Questions associated with whether such a house is consistent with established community character are more subjective in nature (see before and after (photo simulation) street view in **Exhibit 4**). However, the house is not unlike the size and scale of many houses in the area, and provides a similar design. Thus, in this case, if the second story were brought into LCP square footage conformity, the house can be found consistent with LCP community character requirements. Accordingly, the project is conditioned to require the upper story to meet the LCP's minimum 80% threshold for the second story (see **Special Condition 1**).

With respect to public access, there is little doubt that a trail easement would indeed be beneficial to helping to provide a means to close the CCT gap at this location. However, on this point it is important to note that a trail easement on the Applicants' property alone would not connect all the way to Boeker Avenue. This is because the only complementary trail easement on Boeker Avenue does not connect to the Applicants' property,⁹ and a connection that utilized that easement and an easement on the Applicants' property would require a further easement on the Boeker Avenue property to form a zig-zag connection (see **Exhibit 9**). That said, an easement on the Applicants' property would provide for more possible trail siting options in the future (e.g., if the City were to require a connecting easement at some point from Boeker Avenue),¹⁰ furthering the LCP goal of developing a connecting trail segment in this area.¹¹ However, although the LCP indicates that the City should pursue such a trail,¹² such LCP direction by itself cannot be used to require a public access exaction in the form of an easement without satisfying applicable constitutional standards. Rather, such a trail easement can only be required if there are sufficient project impacts that require this level and type of mitigation.¹³ In this case, the public access impacts associated with the proposed project are relatively limited, and are primarily related to potential construction and traffic impacts from the increased intensity of use. In short, the proposed project's burden on public access does not rise to a level of requiring a public access easement in this case. For substantially the same reasons, the Commission also finds that the project is in conformity with the public access and public recreation policies of Chapter 3 (in that the project has little to no impact to public access and recreation), per Pub. Res. Code section 30604(c). That is not to say that some other residential project could not have more significant access impacts that would require an easement, but the facts of this particular case do not appear to warrant requiring a trail easement. For these reasons, although an easement would be beneficial to public access, the Commission does not require such an easement in this case.

⁹ The City-required easement at 367 Boeker Avenue.

¹⁰ An easement on three sides of the Applicants' property would provide the maximum amount of flexibility for potential connections from Boeker given the manner in which property lines on Boeker do not directly align with the Applicants' property lines.

¹¹ However, the best trail location would probably be on the seaward side of the residential developments at the seaward ends of Boeker and Windward Avenues, and not across the Applicants' property.

¹² LCP Policy LU-H-8. This policy uses the term "should", which is mandatory in an LCP context absent some other compelling reason (e.g., related to feasibility).

¹³ A point that has been made repeatedly to the Commission by the Applicants' attorney, Paul Beard.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 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, determined that the project was categorically exempt from CEQA in accordance with section 15303 of the CEQA guidelines, exempting construction of a single family residence within a single family zone where all infrastructure is present. During the review process, many comments from the public were received both in favor and against the project on the issue of size and community character, as well as the public access easement.

The Coastal Commission's review and analysis of CDPs has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).) 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. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as 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 would have on the environment within the meaning of CEQA. As conditioned, 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).



Project Location

Shell Beach
388 Windward Ave



388 Windward Ave

Exhibit 1
A-3-PSB-15-0030 (Rozo SFD)
Page 2 of 2

© 2016 Google

35°09'11.75" N 120°40'16"



388 Windward Ave

Ocean Blvd.

Ocean Blvd.

Boeker Ave

Windward Ave

388 Windward Ave





Ocean Blvd

Exhibit 2 - Project Site Photos
A-3-PSB-15-0030 (Rozo SFD)
Page 3 of 5

Downcoast view Windward Ave to Ocean Blvd.

35°09'11.37" N 120°40'15.61" W elev 43 ft eye alt 50 ft



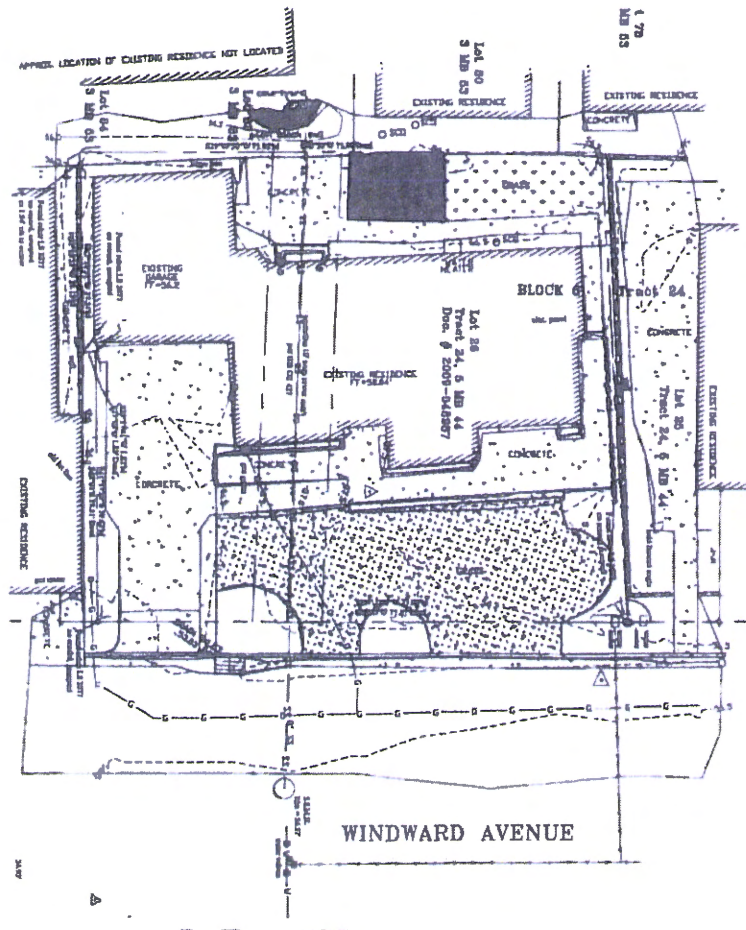
Location of existing
public easement







EXISTING SITE PLAN



City of Pismo Beach
Approved by City Council
Date: 4.21.2015

✓ as submitted
✗ with changes
Planner: [Signature]
[Signature] Biggs

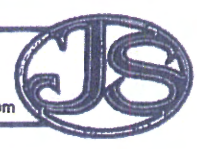
INDEX TO DRAWINGS
A-1 EXISTING SITE PLAN
A-2 PROPOSED SITE PLAN
A-3 EXISTING RESIDENCE
A-4 EXISTING RESIDENCE
A-5 EXISTING RESIDENCE
A-6 EXISTING RESIDENCE
A-7 EXISTING RESIDENCE
A-8 EXISTING RESIDENCE
A-9 EXISTING RESIDENCE
A-10 EXISTING RESIDENCE

Attachment 9

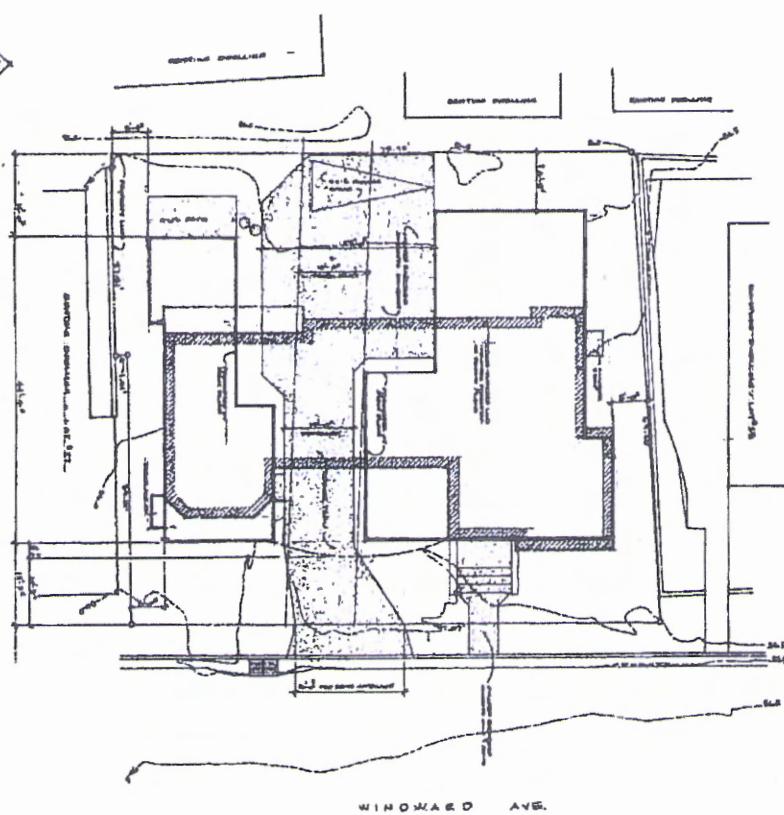
DATE / COMMENTS
A-1

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
380 WINDWARD AVE. PISMO BEACH, CA 93419

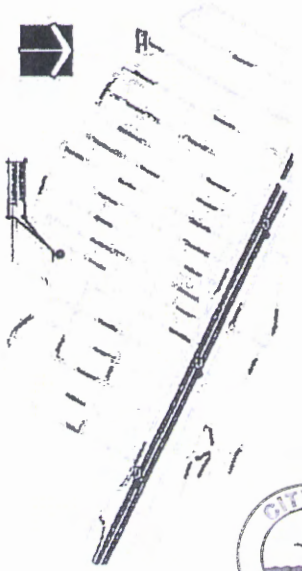
JERRY SHAW
Residential Design
(805) 481-0308
www.jerryshawdesign.com



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City of Pismo Beach
 Approved by City Council
 Date: 4-21-2007
 as submitted
 with changes
 Planner: *[Signature]*
For Biggs



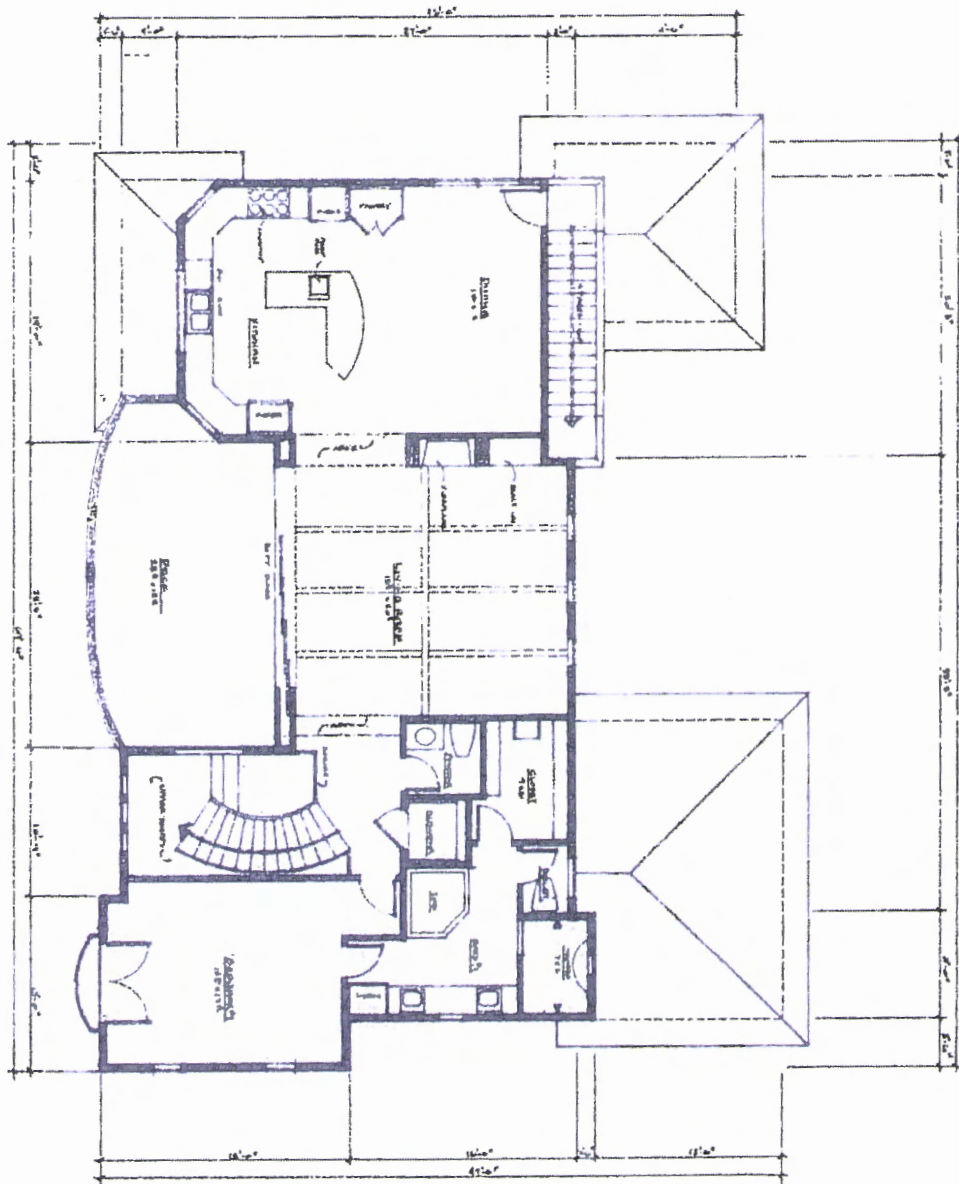
PROJECT TEAM	
OWNER	Ernie & Pamela Roza
DESIGNER	Jerry Shaw Residential Design
DATE	4/21/2007
PROJECT DESCRIPTION	
CONCEPT	Proposed 1-story custom residence with 3 bedrooms, 2 bathrooms, and a large open floor plan.
LOT AREA	10,000 sq. ft.
SETBACKS	Front: 10 ft, Side: 5 ft, Rear: 10 ft
FLOOR AREAS	
Living Room	1,200 sq. ft.
Kitchen	800 sq. ft.
Bedroom	1,000 sq. ft.
Bathroom	400 sq. ft.
Porch	200 sq. ft.
Garage	600 sq. ft.
Other	100 sq. ft.
TOTAL	4,200 sq. ft.
COVERAGE	
Living Room	1,200 sq. ft.
Kitchen	800 sq. ft.
Bedroom	1,000 sq. ft.
Bathroom	400 sq. ft.
Porch	200 sq. ft.
Garage	600 sq. ft.
Other	100 sq. ft.
TOTAL	4,200 sq. ft.
FLOOR AREA RATIO	
Living Room	1,200 sq. ft.
Kitchen	800 sq. ft.
Bedroom	1,000 sq. ft.
Bathroom	400 sq. ft.
Porch	200 sq. ft.
Garage	600 sq. ft.
Other	100 sq. ft.
TOTAL	4,200 sq. ft.
SCULPTURE & HANDSCAPE	
ARTIST	Jerry Shaw
DATE	4/21/2007
UTILITIES	
WATER	City of Pismo Beach
SEWER	City of Pismo Beach
ELECTRICITY	City of Pismo Beach
TELEPHONE	City of Pismo Beach
INTERNET	City of Pismo Beach
MAXIMUM BUILDING HEIGHT	
MAXIMUM BUILDING HEIGHT	10 ft
DATE	4/21/2007



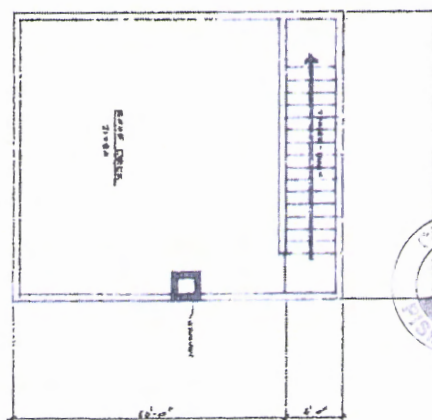
City of Pismo Beach
 Approved by City Council
 Date: _____
 as submitted
 with changes
 Planner: _____

SHEET A-2	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZA 388 WINDWARD AVE. PISMO BEACH, CA 93449	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	

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UPPER LEVEL FLOOR PLAN



ROOF DECK FLOOR PLAN

City of Pismo Beach
Approved by City Council
Date: 4-21-2015

✓ as submitted
with changes

Planner: *agaw for*
Jon Biggs



DATE / COMMENTS
A-4

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
388 WINDWARD AVE. PISMO BEACH, CA 93448

JERRY SHAW
Residential Design
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J. Schauer '15

PRESENT EMBELLISHMENT

$$\underline{V(t) = \int_{-\infty}^t \omega^2 dt}$$


EXTENSION FINISH KEYNOTES



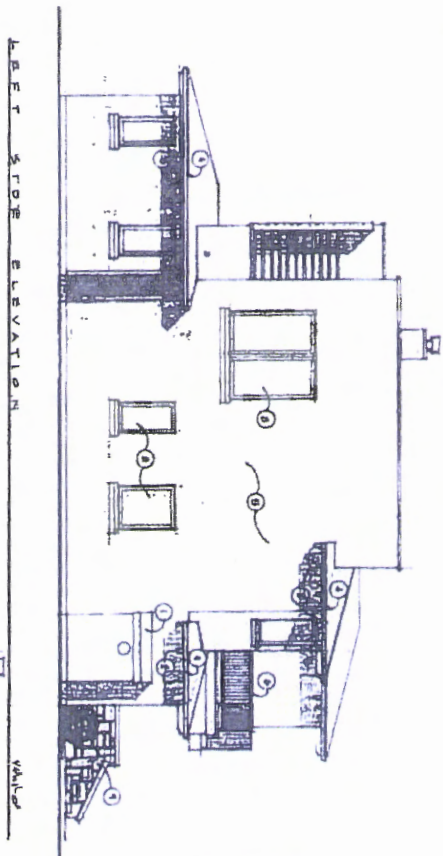
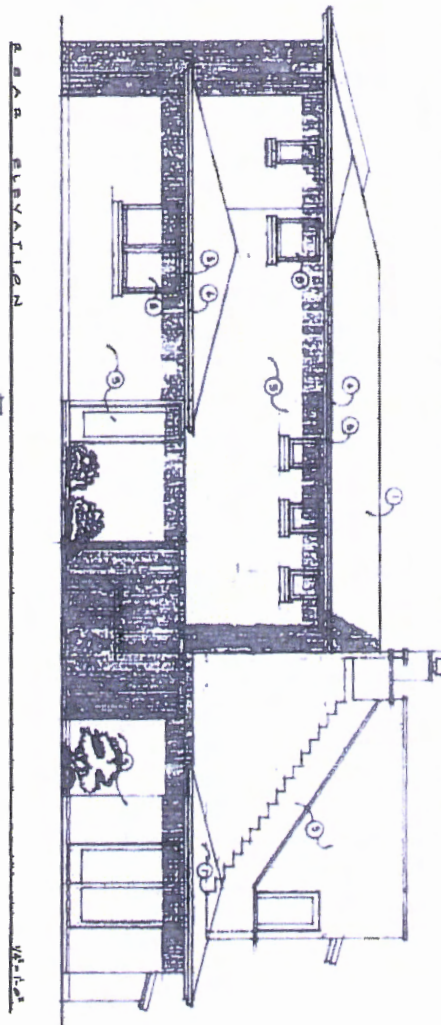
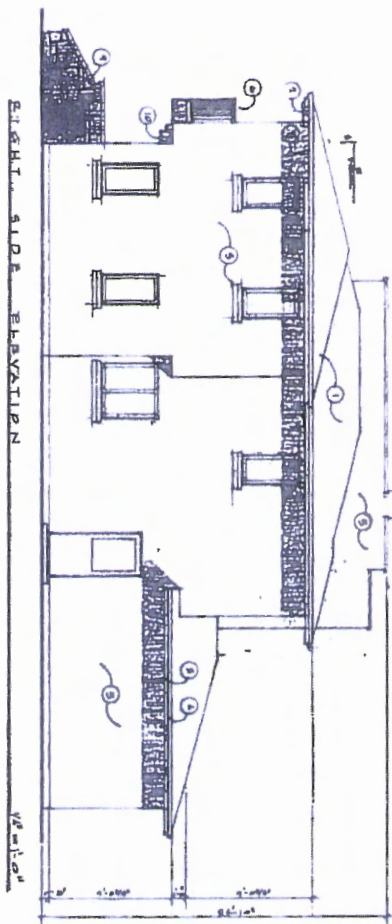
City of Pismo Beach
Approved by City Council
Date: 4-21-2015

✓ as submitted
with changes

Agm For
Jon Biggs

A-6	DATE / COMMENTS	<p>A NEW CUSTOM RESIDENCE FOR:</p> <p>ERNIE & PAMELA ROZO</p> <p>888 WINDWARD AVE. PISMO BEACH, CA 93449</p>	<p>JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com</p>	

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- EXTERIOR FINISH KEYNOTES**
- 1. EXTERIOR WALLS
 - 2. ROOFING
 - 3. FLOORING
 - 4. PAINTING
 - 5. LANDSCAPING
 - 6. EXTERIOR LIGHTING
 - 7. EXTERIOR STAIRS
 - 8. EXTERIOR PORCHES
 - 9. EXTERIOR PATIOS
 - 10. EXTERIOR FENCES
 - 11. EXTERIOR GATES
 - 12. EXTERIOR DRIVEWAYS
 - 13. EXTERIOR SIDEWALKS
 - 14. EXTERIOR STAIRS
 - 15. EXTERIOR PORCHES
 - 16. EXTERIOR PATIOS
 - 17. EXTERIOR FENCES
 - 18. EXTERIOR GATES
 - 19. EXTERIOR DRIVEWAYS
 - 20. EXTERIOR SIDEWALKS



City of Pismo Beach
Approved by City Council
Date: 4.21.2015

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with changes
Planner: Jon Biggs

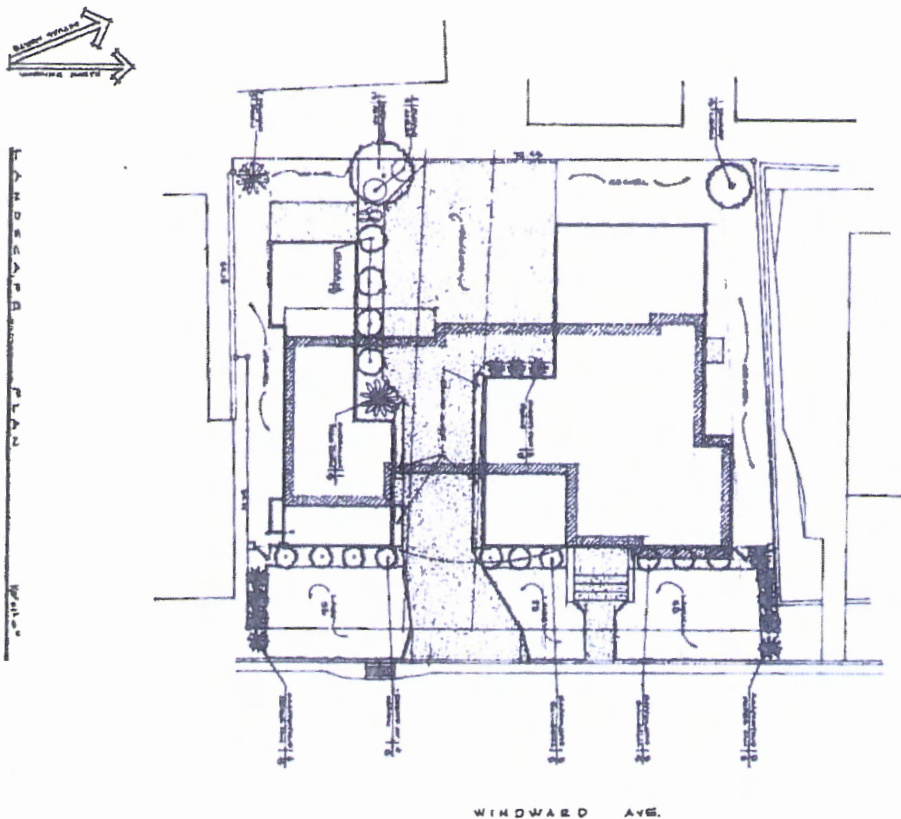
DATE / COMMENTS

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
322 WINDWARD AVE. PISMO BEACH, CA 93449

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Investigation Schedule	
Investigation	Priority
<p>1. PREPARE</p> <p>2. CONDUCT</p> <p>3. ANALYZE</p> <p>4. REPORT</p> <p>5. REVIEW</p> <p>6. RECOMMEND</p> <p>7. IMPLEMENT</p> <p>8. EVALUATE</p> <p>9. REVISIT</p> <p>10. REVIEW</p> <p>11. REVIEW</p> <p>12. REVIEW</p> <p>13. REVIEW</p> <p>14. REVIEW</p> <p>15. REVIEW</p> <p>16. REVIEW</p> <p>17. REVIEW</p> <p>18. REVIEW</p> <p>19. REVIEW</p> <p>20. REVIEW</p> <p>21. REVIEW</p> <p>22. REVIEW</p> <p>23. REVIEW</p> <p>24. REVIEW</p> <p>25. REVIEW</p> <p>26. REVIEW</p> <p>27. REVIEW</p> <p>28. REVIEW</p> <p>29. REVIEW</p> <p>30. REVIEW</p> <p>31. REVIEW</p> <p>32. REVIEW</p> <p>33. REVIEW</p> <p>34. REVIEW</p> <p>35. REVIEW</p> <p>36. REVIEW</p> <p>37. REVIEW</p> <p>38. REVIEW</p> <p>39. REVIEW</p> <p>40. REVIEW</p> <p>41. REVIEW</p> <p>42. REVIEW</p> <p>43. REVIEW</p> <p>44. REVIEW</p> <p>45. REVIEW</p> <p>46. REVIEW</p> <p>47. REVIEW</p> <p>48. REVIEW</p> <p>49. REVIEW</p> <p>50. REVIEW</p> <p>51. REVIEW</p> <p>52. REVIEW</p> <p>53. REVIEW</p> <p>54. REVIEW</p> <p>55. REVIEW</p> <p>56. REVIEW</p> <p>57. REVIEW</p> <p>58. REVIEW</p> <p>59. REVIEW</p> <p>60. REVIEW</p> <p>61. REVIEW</p> <p>62. REVIEW</p> <p>63. REVIEW</p> <p>64. REVIEW</p> <p>65. REVIEW</p> <p>66. REVIEW</p> <p>67. REVIEW</p> <p>68. REVIEW</p> <p>69. REVIEW</p> <p>70. REVIEW</p> <p>71. REVIEW</p> <p>72. REVIEW</p> <p>73. REVIEW</p> <p>74. REVIEW</p> <p>75. REVIEW</p> <p>76. REVIEW</p> <p>77. REVIEW</p> <p>78. REVIEW</p> <p>79. REVIEW</p> <p>80. REVIEW</p> <p>81. REVIEW</p> <p>82. REVIEW</p> <p>83. REVIEW</p> <p>84. REVIEW</p> <p>85. REVIEW</p> <p>86. REVIEW</p> <p>87. REVIEW</p> <p>88. REVIEW</p> <p>89. REVIEW</p> <p>90. REVIEW</p> <p>91. REVIEW</p> <p>92. REVIEW</p> <p>93. REVIEW</p> <p>94. REVIEW</p> <p>95. REVIEW</p> <p>96. REVIEW</p> <p>97. REVIEW</p> <p>98. REVIEW</p> <p>99. REVIEW</p> <p>100. REVIEW</p>	<p>1. PREPARE</p> <p>2. CONDUCT</p> <p>3. ANALYZE</p> <p>4. REPORT</p> <p>5. REVIEW</p> <p>6. RECOMMEND</p> <p>7. IMPLEMENT</p> <p>8. EVALUATE</p> <p>9. REVISIT</p> <p>10. REVIEW</p> <p>11. REVIEW</p> <p>12. REVIEW</p> <p>13. REVIEW</p> <p>14. REVIEW</p> <p>15. REVIEW</p> <p>16. REVIEW</p> <p>17. REVIEW</p> <p>18. REVIEW</p> <p>19. REVIEW</p> <p>20. REVIEW</p> <p>21. REVIEW</p> <p>22. REVIEW</p> <p>23. REVIEW</p> <p>24. REVIEW</p> <p>25. REVIEW</p> <p>26. REVIEW</p> <p>27. REVIEW</p> <p>28. REVIEW</p> <p>29. REVIEW</p> <p>30. REVIEW</p> <p>31. REVIEW</p> <p>32. REVIEW</p> <p>33. REVIEW</p> <p>34. REVIEW</p> <p>35. REVIEW</p> <p>36. REVIEW</p> <p>37. REVIEW</p> <p>38. REVIEW</p> <p>39. REVIEW</p> <p>40. REVIEW</p> <p>41. REVIEW</p> <p>42. REVIEW</p> <p>43. REVIEW</p> <p>44. REVIEW</p> <p>45. REVIEW</p> <p>46. REVIEW</p> <p>47. REVIEW</p> <p>48. REVIEW</p> <p>49. REVIEW</p> <p>50. REVIEW</p> <p>51. REVIEW</p> <p>52. REVIEW</p> <p>53. REVIEW</p> <p>54. REVIEW</p> <p>55. REVIEW</p> <p>56. REVIEW</p> <p>57. REVIEW</p> <p>58. REVIEW</p> <p>59. REVIEW</p> <p>60. REVIEW</p> <p>61. REVIEW</p> <p>62. REVIEW</p> <p>63. REVIEW</p> <p>64. REVIEW</p> <p>65. REVIEW</p> <p>66. REVIEW</p> <p>67. REVIEW</p> <p>68. REVIEW</p> <p>69. REVIEW</p> <p>70. REVIEW</p> <p>71. REVIEW</p> <p>72. REVIEW</p> <p>73. REVIEW</p> <p>74. REVIEW</p> <p>75. REVIEW</p> <p>76. REVIEW</p> <p>77. REVIEW</p> <p>78. REVIEW</p> <p>79. REVIEW</p> <p>80. REVIEW</p> <p>81. REVIEW</p> <p>82. REVIEW</p> <p>83. REVIEW</p> <p>84. REVIEW</p> <p>85. REVIEW</p> <p>86. REVIEW</p> <p>87. REVIEW</p> <p>88. REVIEW</p> <p>89. REVIEW</p> <p>90. REVIEW</p> <p>91. REVIEW</p> <p>92. REVIEW</p> <p>93. REVIEW</p> <p>94. REVIEW</p> <p>95. REVIEW</p> <p>96. REVIEW</p> <p>97. REVIEW</p> <p>98. REVIEW</p> <p>99. REVIEW</p> <p>100. REVIEW</p>


City of Pismo Beach
Approved by City Council

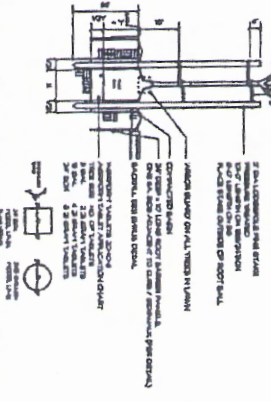
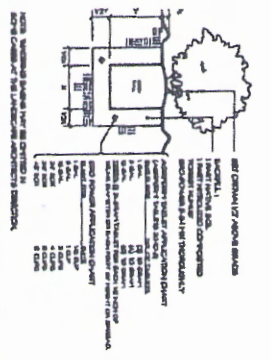
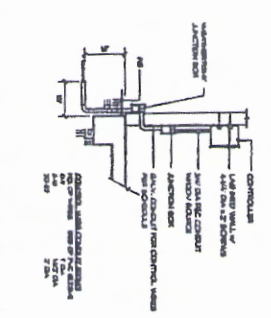
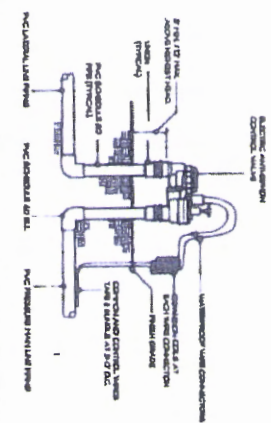
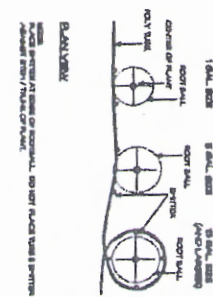
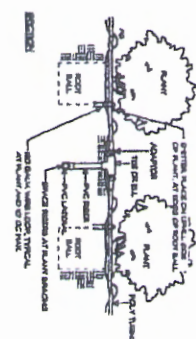
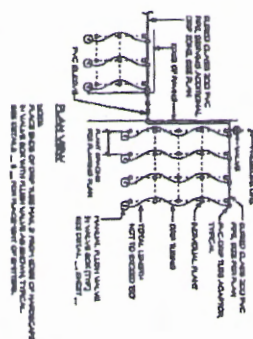
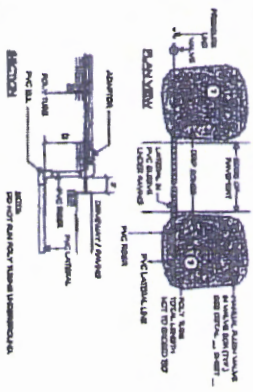
Date: 4.21.2015

✓ as submitted
with changes

Agree for

Jon
Biggs

A-8	SHEET	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 588 WINDWARD AVE. PISMO BEACH, CA. 93448	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	



PLANTING & IRRIGATION NOTES

City of Pismo Beach
 Approved by City Council
 Date: 4-21-2015
 as submitted
 with changes
 Planner: [Signature]
 For: [Signature]

A-9	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 300 WINDWARD AVE. PISMO BEACH, CA 93449	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
	SHEET			

THIS PRINT AND ALL INFORMATION HERE ON IS THE PROPERTY OF JERRY SHAW, DESIGNER AND SHALL NOT BE USED WITHOUT WRITTEN PERMISSION

Existing Street View

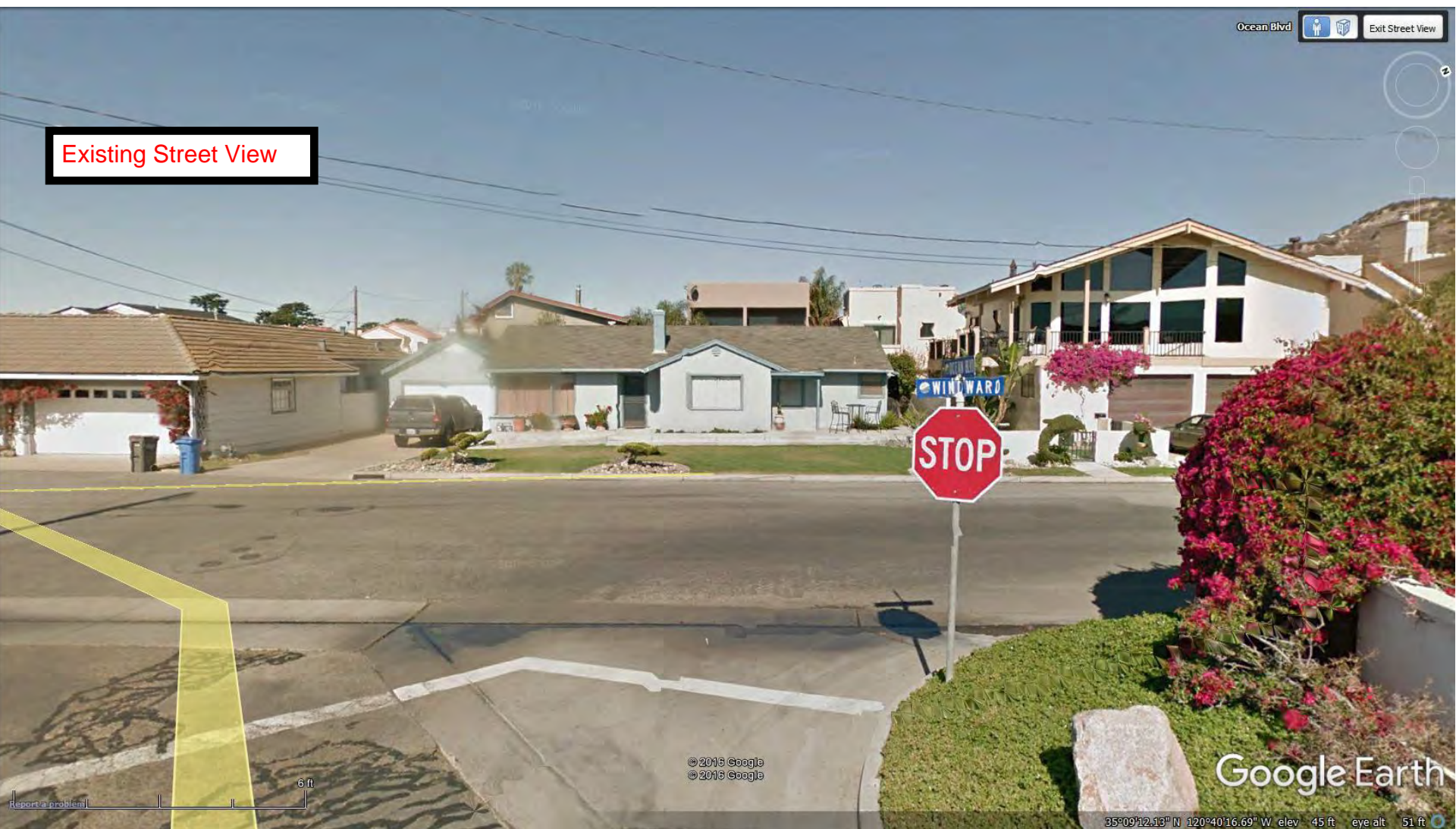


Exhibit 4 - Existing and Proposed Street View
A-3-PSB-15-0030 (Roza SFD)
Page 1 of 2

Proposed Street View



Bridge design over
sewer easement

VOL 803 PAGE 426 **6302**
DEED OF TRUST AND ASSIGNMENT OF RENTS
 Incorporating by reference certain provisions of a deed of trust (not fictitious) recorded in counties named herein.
 A copy of said provisions is set forth on the reverse hereof.

By this Deed of Trust, made this 29th day of April 1955,
 between **GEORGE T. JORDAN and DOROTHY S. JORDAN**,
 husband and wife, herein called Trustor,
 and **SECURITY TITLE INSURANCE COMPANY**, a California corporation, herein called Trustee, and
LOREN NEWMAN and VELMA E. NEWMAN,
 husband and wife, as joint tenants, herein called Beneficiary.

Trustor grants, transfers, and assigns to trustee, in trust, with power of sale, that property in
 San Luis Obispo County, California,
 described as follows:
 That portion of Lot 11 of the Folsom Tract, according to map filed for record
 September 26, 1891 in the office of the County Recorder of said County, described
 as follows:
 Beginning at a point on the Northerly line of the right of way conveyed to the
 County of San Luis Obispo by deed dated January 7, 1954 and recorded March 13, 1954
 in Book 748, at page 421 of Official Records; distant thereon North 68° 52' West
 120.7 feet from the intersection of said Northerly line with the Easterly line of
 said Lot 11; thence continuing North 68° 52' West along said Northerly line 70.5
 feet to the Easterly line of the property conveyed to B. F. Magee et ux., by deed
 dated May 1, 1935 and recorded May 17, 1935 in Book 168, at page 20 of Official
 Records; thence North 21° 08' East along said Easterly line 100 feet; thence South
 68° 52' East, 70.5 feet; thence South 21° 08' West to the point of beginning.

Together with all appurtenances in which Trustor has any interest, including water rights benefiting said realty whether
 represented by shares of a company or otherwise, and
 Trustor also assigns to Beneficiary all rents, issues and profits of said realty, reserving the right to collect and use the
 same except during continuance of default hereunder and during continuance of such default authorizing Beneficiary to
 collect and enforce the same by any lawful means in the name of any party hereto.

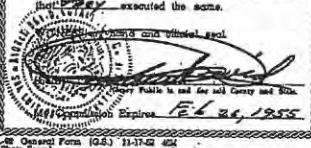
For the purpose of security: (1) Performance of such agreement of Trustor incorporated by reference or contained herein;
 (2) Payment of the indebtedness evidenced by one promissory note of even date herewith in the principal sum of
 \$9,000.00 payable to Beneficiary or order; (3) the payment of any money that may be advanced by the Bene-
 ficiary to Trustor, or his successors, with interest thereon.

To protect the security of this Deed of Trust, Trustor agrees by the execution and the delivery of this deed of trust and
 the notes secured hereby that the provisions of section A, including paragraphs 1 to 3 thereof and the provisions of
 section B, including paragraphs 1 to 8 thereof of the deeds of trust recorded in the Official Records of the following coun-
 ties in the state of California and in the books and at the pages of such Official Records as follows: Fresno County,
 Book 2510, Page 405; Imperial County, Book 888, Page 553; Kings County, Book 397, Page 1; Los Angeles County, Book
 2540, Page 351; Modoc County, Book 603, Page 36; Mono County, Book 912, Page 197; Riverside County, Book 53,
 Page 417; San Bernardino County, Book 2187, Page 162; San Luis Obispo County, Book 465, Page 41; San Joaquin County,
 Book 1102, Page 18; Santa Barbara County, Book 763, Page 33; Stanislaus County, Book 912, Page 215; Tulare County,
 Book 1228, Page 325; San Diego County, Book 4257, Page 114; and Mariposa County, Book 79, Page 63; which pro-
 visions are identical in each of said deeds of trust, shall be and they are hereby incorporated herein and made an
 integral part hereof for all purposes as fully as though set forth herein at length; and that the references to lands,
 obligations, and parties in said provisions shall be construed to refer to the lands, obligations, and parties set forth
 in this deed of trust. A copy of said provisions is printed on the reverse side of this deed of trust.

The undersigned Trustor requests that a copy of any notice of default and any notice of sale hereunder be mailed to
 him at the address hereinafter set forth.

TRUSTOR SIGN HERE: George Thomas Jordan STREET AND NUMBER: 210-A So. Mason St. CITY: Arroyo Grande, Calif. STATE: Calif.
Dorothy S. Jordan STREET AND NUMBER: 210-A So. Mason St. CITY: Arroyo Grande, Calif. STATE: Calif.

STATE OF CALIFORNIA
 COUNTY OF San Luis Obispo ss.
 On May 9, 1955
 before me, Andrew David
 a Notary Public in and for said County and State, per-
 sonally appeared George T. Jordan
Dorothy S. Jordan
his wife,
 known to me to be the persons whose names are
 subscribed to the within instrument and acknowledged
 that they executed the same.



WHEN RECORDED, PLEASE MAIL THIS INSTRUMENT TO
Loren Newman
Rt. 1, Arroyo Grande, Calif.
 ORDER No. _____ ESCROW No. 45091
 SPACE BELOW FOR RECORDER'S USE ONLY

Document No. **6302**
 RECORDED AT REQUEST OF
SECURITY TITLE INSURANCE COMPANY
 AT 1 MIN. PAST 4 PM
 VOL. 163 Official Records P. 236
 SAN LUIS OBISPO COUNTY, CALIF.

MAY 12 1955
J. E. Newman
 County Registrar
Thos. C. Newman
 Recorder
 Fee \$2.00 In Book 5

LA 60 (Revised Form (G.S.) 11-17-52 424
 (Photo Form)

COMPARED

6303

VOL 803 PAGE 427

THIS AGREEMENT entered into this 2nd day of May, 1955, between GRACE DeLANO MYERS, a married woman, hereinafter designated as FIRST PARTY, and the SHELL BEACH SANITARY DISTRICT, hereinafter designated as DISTRICT.

W I T N E S S E T H:

WHEREAS, the District is preparing to install sewers and a sewage disposal system throughout the area of Shell Beach, California; and

WHEREAS, in order to do so, it will be necessary for the District to obtain permission to install a sewer line or lines in and through property belonging to the First Party; and

WHEREAS, the First Party is willing to give such permission. NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

That for a valuable consideration, receipt whereof is herewith acknowledged, the First Party does herewith grant unto the District permission to install and maintain in the hereinafter described property a cast iron sewer line or lines together with the right to construct, maintain, operate, repair, replace and reconstruct said line or lines.

Provided, however, that the District herewith agrees, after the installation of such line or lines, to return the property to as near a condition in which it was prior to the installation of said line or lines as is possible; and

Provided further, that should the District find it necessary to go on said property for the purpose of repairing, replacing or reconstructing said line or lines or for the purpose of installing a new line, that any damage thereupon occasioned to the First Party's property will be paid for by the District.

The property concerning which the permission above referred to is given, is described as follows:

MAY 12 1955

6303

VOL. 803 PAGE 428

That certain strip or parcel of land situate, lying and being in Lot 26, Block 6, Tract No. 24, as shown on a map recorded in Book 5, Page 44, of Maps, records of San Luis Obispo County, State of California, more particularly described as follows:

A strip of land 10 feet in width lying 5 feet on each side of and measured at right angles to the following described center line; beginning at a point on the Southeasterly line of Lot 26, said point being S 28° 53' W 49.55 feet from the Northeastly corner of said Lot 26, thence N 57° 50' 20" W 68.70 feet, more or less to a point on the Northwestly line of Lot 26, said point being 42.78 feet from the Northwestly corner of said Lot 26.

IN WITNESS WHEREOF, the parties hereto have set their hands this 2nd day of May, 1955.

Grace Delano Myers
First Party

SHELL BEACH SANITARY DISTRICT

By Ed L. Woodward
District

STATE OF CALIFORNIA)

COUNTY of SAN LUIS OBISPO) ss

On the 2nd day of May, 1955

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Grace Delano Myers

known to me to be the person whose name is attached to the within and foregoing instrument as the First Party and she admitted to me that she had executed said instrument.



Marie Roff
Notary Public in and for said County and State

MAY 12 1955

6303

RESOLUTION NO. 25

BE IT RESOLVED that the Clerk of the Board of Trustees be, and he is, herewith ordered and directed to execute the Easement Agreement with Grace Delano Meyers.

On Motion of Trustee McEwin and seconded by Trustee Stewart and on the following roll call vote:

AYES: Be Kar, Donna Idson, McEwin, Quinlivia n, Stewart
 NOES: None
 ABSENT: None

The foregoing Resolution is hereby adopted this 5 day of May, 1955.

J. T. Baker
 Chairman of the Board of Directors
 of The Shell Beach Sanitary District

Ant Bonaccason
 Secy

Document No. 6303
 RECORDED AT REQUEST OF
Richard T. Bonaccason
 AT 1 MIN; PAST 24
 VOL. 103 Official Records 122
 SAN LUIS OBISPO COUNTY, CALIF.

MAY 12 1955

J. E. Brown
 County Recorder
Mary Hamilton
 Fee 5 Inc. 25



CITY OF PISMO BEACH
Community Development Department
760 Mattie Road, Pismo Beach, California 93449
(805) 773-4658 / Fax (805) 773-4684

April 29, 2015

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

ATTN: Daniel Robinson

RECEIVED

MAY - 6 2015

CALIFORNIA
COASTAL COMMISSION

**FINAL LOCAL
ACTION NOTICE**

REFERENCE #

3-PSB-15-030

APPEAL PERIOD

5/7/15 - 5/20/15

**Notice of Final Action
by the City of Pismo Beach City Council
on a Project located within the Pismo Beach Coastal Zone**

Applicant Info:

Name: Ernie & Pam Rozo
Address: 823 Tanis Place, Nipomo, CA 93444
Project No: **Project No. P14-000080**
Site Address: 388 Windward Avenue, Pismo Beach
APN # 010-371-12

Project Summary: Coastal Development Permit for the demolition of an existing residence and construction of a new, two-story single-family residence with an attached secondary dwelling unit at 388 Windward Avenue. The project is located in the Single-Family Residential (R-1) Zone District of the Shell Beach Planning Area. The project is located in the Coastal Appeal Zone and is appealable to the California Coastal Commission.

Date of Action: 4/21/2015
Action: Approved
Attachments: City Council Resolution
Record of Minute Order
Public Hearing Notice
Staff Report
Approved Plans
Appeal Status: Appealable to the Coastal Commission

NOTE: Appealable to the California Coastal Commission pursuant to Coastal Act Section 30503. An aggrieved person may appeal this decision to the Coastal Commission within ten working days following Coastal Commission receipt of this notice. Any appeal of this action must be filed in writing to the Coastal Commission using forms obtainable from the Santa Cruz district office at the address identified above.

RESOLUTION NO. R-2015-029

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH
UPHOLDING THE JULY 8, 2014, PLANNING COMMISSION APPROVAL OF A
COASTAL DEVELOPMENT PERMIT FOR DEMOLITION OF AN EXISTING
RESIDENCE AND CONSTRUCTION OF A NEW RESIDENCE (INCLUDING A
SECONDARY DWELLING UNIT AND GARAGE) AT 388 WINDWARD AVENUE.
PROJECT P14-000080**

WHEREAS, Ernie & Pam Rozo, Applicants, submitted an application to the City of Pismo Beach for a Coastal Development Permit at 388 Windward Avenue for demolition of an existing residence and construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit; and

WHEREAS, on July 8, 2014, the Pismo Beach Planning Commission held a duly noticed public hearing at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and approved the subject project at its July 8, 2014 meeting; and

WHEREAS, four appeals were subsequently filed by Wayne and Julie Maire (July 18, 2014); David and Mary Stornetta, Albert and Gila Pomerantz (July 21, 2014); and Robert Warner (July 22, 2014); and

WHEREAS, on September 2, 2014, the City Council held a duly noticed public hearing to review the four appeals, at which all interested persons were given the opportunity to be heard; and

WHEREAS, on September 2, 2014, the City Council voted to table action on the item to allow a redesign to 1. prevent single-story portions of the house from being constructed over the existing sewer easement and 2. achieve a reduction in the size of the house; and

WHEREAS, the property owners submitted revised plans for the project; and

WHEREAS, on April 21, 2015, the City Council held a duly noticed public hearing to review the four appeals and revised project, and at which all interested persons were given the opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pismo Beach hereby upholds the July 8, 2014, Planning Commission decision and approves the Coastal Development Permit and Architectural Application at 388 Windward for demolition of an existing residence and construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit, subject to the

conditions contained in **Attachment 'A'** of this resolution and makes the following findings:

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

1. The project consists of the demolition of an existing residence and construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit.
3. The demolition of the existing residence and subsequent construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit at this location is exempt from further environmental review in accordance with section 15303 of the CEQA Guidelines, exempting construction of on single-family dwellings within a single-family zone district where all infrastructure is present.

B. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AND ARCHITECTURAL REVIEW PERMIT:

1. The project improvements comply with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.
2. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is appropriate in size so as to be compatible with the adjacent structures.
3. The architectural and general appearance of the two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is in keeping with the character of the neighborhood.
4. The proposed structure is compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.
5. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Single-Family Low Density Residential.

6. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is compatible with the nearby existing uses and will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.
7. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.
8. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit will not impair the desirability of investment or occupation in the neighborhood.

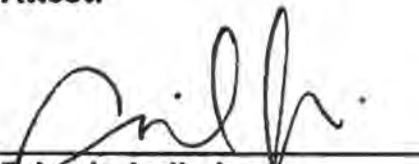
UPON MOTION OF Mayor Pro Tem Waage, seconded by Mayor Higginbotham, the foregoing resolution was adopted by the City Council of the City of Pismo Beach this 21st day of April 2015, by the following vote:

AYES:	5	Council Members Blake, Howell, Reiss, Waage, Higginbotham
NOES:	0	
ABSENT:	0	
ABSTAIN:	0	
RECUSED:	0	

Approved:


Shelly Higginbotham
Mayor

Attest:


Erica Inderlied
Interim City Clerk

ATTACHMENT 'A' TO CITY COUNCIL RESOLUTION No. R-2015-029

**PERMIT NO. P14-000080, CDP / ARP
CITY COUNCIL MEETING OF APRIL 21, 2015
388 Windward, APN: 010-371-012**

The conditions imposed on this project shall affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed and made available to the applicant shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit P14-000080 grants planning permits for the demolition of an existing residence and construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

Standard conditions, policies and selected code requirements applicable to new single-family residences, as adopted by the City Council are by this reference included as conditions of this permit. Such standard conditions will be attached to this permit when signed by the applicant. Special project conditions are listed on **Exhibit A** of this permit. The applicant agrees to comply with all City standard conditions and conditions specific to the project.

EFFECTIVE DATE: This permit shall become effective upon the passage of 20 days following the receipt of notice of this action by the California Coastal Commission, provided that an appeal has not been filed to the Coastal Commission within the above 20 days. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on April 21, 2017 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

ACCEPTANCE OF PERMIT AND CONDITIONS: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant.

COMPLIANCE AGREEMENT: I have read and understood, and I will comply with all applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction. The duty of inquiry as to such requirements shall be my responsibility. I agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the project; or my failure to comply with conditions of approval. This agreement shall be binding on all successors and assigns.

I HAVE READ AND UNDERSTAND, AND I WILL COMPLY WITH ALL ATTACHED STATED CONDITIONS OF THIS PERMIT

Approved by the City Council on April 21, 2015.

Applicant

Date

Property Owner

Date

EXHIBIT 'A'

CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS FOR PROJECT No. P14-000080 388 Windward Avenue, APN: 010-371-012

Conditions as indicated below have been deemed to be of a substantive nature on the basis of the Planning Commission's decision. These conditions cannot be altered without Planning Commission approval.

A. PRIOR TO ISSUANCE OF A BUILDING PERMIT:

BUILDING DIVISION:

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.
2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.
3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.
4. The owner shall comply with the City's Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments in order for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.
5. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.

6. Projects shall comply with current City and State water conservation regulations.
7. Deferred submittals are not allowed, i.e. fire sprinkler plans and calculations, spiral staircases, and truss calculations.
8. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided.
9. Site retaining walls require a separate building permit. Please provide a separate soils report and engineering calculations for the site walls at the time of permit application.
10. Fire sprinklers shall be required by City Codes.

PLANNING DIVISION

1. **COMPLIANCE WITH PLANNING COMMISSION APPROVAL.** Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and these conditions. Project shall comply with these standards:

Item	Approved
Lot area	5,236 sq. ft.
Maximum building height	24' - 7" or 81.50" elevation
Maximum building area ratio	3,575 sq. ft.
Lot Coverage	2,683 sq. ft.
Minimum front yard setback	12.25' to house 10.25' to edge of cantilevered deck
Minimum side yard setback	R = 5' L = 5'
Minimum rear yard setback	8' - 5"
Minimum parking spaces	2 within garage and 1 uncovered space for secondary dwelling unit
Minimum parking space size	2 – within a 21' x 22' clear area

2. **ARCHAEOLOGICAL MONITORING.** The applicant shall provide signed copies, to the Planning Division, of the contracts for both an archaeological and Native American monitor.

3. **LANDSCAPING, IRRIGATION.** The applicant shall provide landscaping and irrigation plans encompassing the entire site. The plans shall be submitted by the project applicant to the City for review and approval by the project planner. Detailed calculations shall be provided on the face of the plan indicating the provision of a minimum of 20% landscape area with no greater than 10% provided as lawn.

The landscape plan shall be designed in a manner consistent with Chapter 15.48 of the Municipal and include the following provisions:

- a. *Use of low-water-using irrigation systems. Drip irrigation shall be used where feasible.*
 - b. *Landscape Design Plan (including plant list)*
 - c. *Irrigation Design Plan*
 - d. *Separate calculation for landscaping and hardscape shall be provided.*
 - e. *Landscape plans shall not include any trees exceeding a mature height exceeding the roof line of the residence. All trees shall be maintained at a height not to exceed the height of the residence.*
4. Applicant shall comply with all municipal code requirements governing secondary dwelling units and shall record a deed restriction that outlines the rules governing secondary dwelling units.

ENGINEERING

1. Engineering standard conditions (notes): Shall be placed on the plans at time of submittal. A copy may be obtained through the Engineering Department.
2. Project improvements shall be designed and constructed in accordance with City standards and specifications and in accordance with all applicable City Ordinances. The decision of the City Engineer shall be final regarding the specific standards that shall apply.
3. Appropriate City standards shall be referred to on the plans and shall be included on a detail sheet within the plan set.
4. The applicant will be responsible for obtaining an encroachment permit for all work within a public right of way (City).
5. The City Engineering Division shall approve any landscaping or irrigation within a public right of way or otherwise to be maintained by the City.

6. The applicant shall provide a current title report to the Engineering Division.
7. Driveways and driveway approaches shall be located and constructed per City of Pismo Beach standards. Profiles shall be provided for all interior driveways.
8. If the existing City street adjacent to the frontage of the project is inadequate for the traffic generated by the project, or will be severely damaged by construction, the applicant shall excavate the entire section and replace it with a standard half-width street.

Grading and Drainage Plans

9. The following conditions shall be met during construction:
 - a. Owner and/or owner's contractor are to take precaution against damaging road surfaces. Note: The existing street sections adjacent the property may be substandard and may be subject to damage by heavy loading/equipment during construction. The owner is responsible for protection against and/or repair of, at owner's expense, any/all damage incurred during and/or due to construction.
 - b. Encroachment Permits are required prior to any/all work in the public right of way. City Streets are to remain open to through traffic at all times. A traffic control plan shall be submitted to the Engineering Division for approval prior to detours or rerouting of traffic. Excavation within the streets shall be covered or backfilled and paved prior to the end of work each day. No temporary or long term parking, storage, or disposal of construction equipment or materials within the right-of-way shall occur without prior issuance of an encroachment permit.
 - c. Erosion and Drainage control features are to be available to be placed in the event of rain or other erosive action to prevent any sediment or refuse from leaving the site. Erosion control devices shall be installed and in place following daily construction activities. The applicant shall notify the Engineering Division of any changes in construction which will require additional erosion control measures.
10. A Preliminary Soils and/or Geology Report providing technical specifications for grading of the site shall be prepared by a Geotechnical Engineer.
11. All grading and drainage improvements shall be designed and constructed in accordance with the City Grading Ordinance and subject to approval by the City Engineer.
12. The project shall conform to the City's Storm Water Discharge Ordinance.

13. In order for the proposed development to maintain conformance with the City's Regional Stormwater Permit, implementation of Low Impact Development (LID) source control, site design, and stormwater treatment onsite or at a joint stormwater treatment facility shall be required. The stormwater design shall be submitted for review and approval by the City Engineer and shall provide mitigation for post development runoff versus pre-development runoff.
14. Calculations and/or a drainage report must be submitted with the plans.
15. The applicant shall submit a composite utility plan.
16. Landscape and irrigation plans for the public right-of-way, if applicable, shall be incorporated into the improvement plans and shall require approval by the Streets Division Supervisor and the Community Development Department.
17. No Building Permits will be issued without prior approval of the Engineering Division and an approved erosion and sediment control plan and construction schedule. Erosion control measures shall be in place and approved by the Engineering Division prior to the start of construction.
18. An Erosion and Drainage Control Plan shall be submitted in accordance with the City Grading Ordinance. The plan shall reflect "Best Management Practices" as proposed in the California Regional Water Quality Control Board Erosion and Sediment Control Field Manual, and shall include both temporary measures (to be used during construction, and until permanent measures are completed/established) and permanent measures. Plan shall include both source control and perimeter containment measures. All Drainage and Erosion Control Measures shall be designed and/or sized by a qualified professional.

Utilities

19. The applicant shall install all utilities.
20. All utilities shall be extended to the boundaries of the project.
21. Sewer System Requirements:
 - a. Construction of permanent structures over a City sewer line and easement is against current City policy. Specifically, to allow the demolition of an existing home that has been built over the existing City sewer main and easement and construction of a new home over the sewer main and easement. This is not a preferable or even generally acceptable condition. However, due to the current site situation and per the request of the applicant, staff will allow such construction for your proposed project if the following conditions are met:

- b. The existing cast iron sewer pipe shall be protected in place.
 - c. All footings of the proposed residence that are adjacent to and parallel with the sewer line shall be designed to remain outside the existing 10' wide sewer easement and to extend below the depth of the existing sewer line using a concrete caisson and grade beam type system or other method as designed and approved by the applicants Geotechnical and Structural Engineer. The design shall be submitted for review and approval by the City Engineer and shall show that the zone of influence from the proposed structures falls completely below the sewer pipe.
 - d. The first floor of the structure may not be built over the existing 10' wide sewer easement. The second floor may span over the easement.
 - e. If the site is over excavated a depth of 1/3 or greater than the total depth of the sewer line, the sewer line shall be replaced to the satisfaction of the City Engineer. For example, if the sewer line is 9 feet deep, an over excavation of three or more feet shall require the replacement of the sewer line.
 - f. A video inspection of the existing sewer shall be required after the concrete forms have been put in place, prior to the placing of the concrete foundation. If at that time the sewer line shows signs of failure the applicant shall replace the sewer line, to the satisfaction of the City Engineer.
 - g. Prior to a final on the Building Permit for the proposed residence and after construction, the existing sewer shall be video inspected again to verify condition. If at that time the sewer line shows signs of failure the applicant shall replace the sewer line, to the satisfaction of the City Engineer.
 - h. An Encroachment Agreement for building over the sewer line and easement must be applied for through the Engineering Division. The Agreement must be reached with City Council, signed and recorded prior to issuance of Building Permit. Applicant shall understand that receiving the subject discretionary permits does not in any way guarantee that an agreement can, or will, be reached with the City Council for the encroachment into the existing sewer easement.
 - i. As an alternate to the conditions described above, the proposed residence may be designed to current City policy and commonly accepted engineering principles and remain completely outside of the existing 10' wide sewer easement.
22. Water System Requirements: Applicant is required to show the existing location of the Water Main in the street and location of the existing water lateral, if

existing, on the plans. The size of the proposed lateral and proposed water meter shall be shown on the plans. If existing lateral is inadequate for the proposed water meter, then applicant is responsible for all costs, materials and labor for the installation of a new water lateral. Show size and type of all water lines.

23. All existing overhead wire service utilities to the residence shall be relocated underground.

Public Improvement Plans

24. Public improvement plans shall be prepared by a registered Civil Engineer and approved by the Public Works Department, Engineering Division.
25. The applicant shall submit three sets of public improvement plans to the Engineering Division on the City of Pismo Beach title block as a separate submittal.
26. Upon approval of the improvement plans, the applicant shall provide a reproducible mylar set and 3 sets of prints of the improvements for inspection purposes.
27. The applicant shall provide an engineer's estimate for all work on public improvement plan.
28. Prior to any plan check, the applicant shall enter into an Engineering Plan Check and Inspection Services Agreement with the City based on 5% of the engineer's estimate for all work on public improvement plan.
29. Building plans will not be approved by the Engineering Department until Public Improvement Plans are approved; i.e. approved mylars signed by the City Engineer.
30. Prior to the final inspections and acceptance of the public improvements the applicant shall provide to the City Engineer record drawings, signed by the engineer of record:
 - a. 1 set of reproducible mylars
 - b. 3 sets of prints of the approved record drawings (as-builts)
31. An electronic AutoCAD drawing file registered to the City's benchmark system shall be provided.
32. The applicant shall pay any current and outstanding fees for Engineering Plan Checking and Construction Inspection services.

B. CONDITIONS TO BE MET DURING CONSTRUCTION:

BUILDING DIVISION:

1. **SITE MAINTENANCE.** During construction, the site shall be maintained so as to not infringe on neighboring property, such as debris and dust.
2. **ARCHAEOLOGICAL MATERIALS.** In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify the county coroner. If human remains are found to be of ancient age and of archaeological and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.
3. Certification of compliance with the soils report shall be submitted to the Building Division prior to foundation approvals. A final report certifying compliance with the soils report or grading plans shall be submitted to the Building Division prior to final approvals.
4. A licensed surveyor or engineer shall verify pad elevations, setbacks, prior to foundation inspection, and roof elevations, prior to roof sheeting inspection, when determined necessary by the Planning Department.

C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF CERTIFICATE OF OCCUPANCY:

BUILDING DIVISION:

1. Prior to building division final approval all required inspections from the other various divisions must have been completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card.

D. CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. **ROOF-MOUNTED EQUIPMENT.** All roof-mounted air conditioning or heating equipment, vents or ducts shall be screened from view in a manner approved by the Project Planner.

2. **COMPLIANCE WITH APPLICABLE LAWS.** All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.



From the Office of the City Clerk

Erica Inderlied, Interim City Clerk

760 Mattie Road

Pismo Beach, CA 93449

(805) 773-7003

PISMO BEACH CITY COUNCIL—RECORD OF MINUTE ORDER

Date of Meeting: Tuesday, April 21, 2015 (Regular)

Council Members Present: Blake, Higginbotham, Howell, Reiss, Waage

Council Members Absent: None

Subject:

Continued Consideration of an Appeal of a Planning Commission Approval of a Coastal Development Permit for the Demolition of an Existing Residence and Construction of a New Two-Story Single-Family Residence with an attached Secondary Dwelling Unit at 388 Woodward Avenue, Ernie & Pam Roza, Applicant; Appellants, Wayne & Julie Maire, Albert & Gila Pomerantz, David & Mary Stornetta, and Robert Warner.

Staff Recommendation:

That Council refer the project back to the Planning Commission with direction to address the second-story roof and deck.

Public Comment:

The following spoke in support of upholding Planning Commission approval: Tony Ferrara, applicant representative; Cathy Dahl-Kunkel, resident; Dennis Kunkel, resident; Eric Schaefer, resident; Jean Power, resident; Mike McCarthy, resident; Don Day, resident.

The following spoke in opposition to upholding Planning Commission approval: Wayne Maire, appellant; Mary Stornetta, appellant; Joe Boysen, resident; Tarren Collins, resident; Susan Testa, resident.

The following made other comment: Eric Miller, resident; Paul Shiro, resident.

(continued)

Action:

Motion by Mayor Pro Tem Waage, seconded by Mayor Higginbotham, to adopt Resolution R-2015-029 upholding the Planning Commission's approval of a Coastal Development Permit and Architectural Application for the demolition of an existing residence and construction of a new residence at 388 Windward Avenue, Project P14-000080.

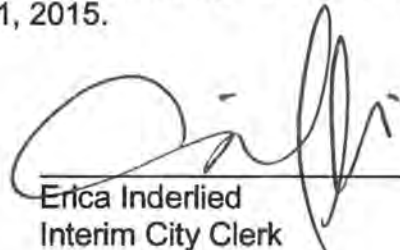
AYES: Councilmembers Waage, Higginbotham, Howell, Reiss
NOES: Councilmember Blake
ABSENT: None
ABSTAIN: None
RECUSED: None

Motion passed 4:1 by roll call vote.

CERTIFICATION

I, Erica Inderlied, Interim City Clerk for the City of Pismo Beach, California, do hereby certify that the foregoing is the true and exact motion made by the Pismo Beach City Council and passed at their regular meeting of April 21, 2015.

Dated: April 29, 2015



Erica Inderlied
Interim City Clerk
City of Pismo Beach



**CITY OF PISMO BEACH
PUBLIC HEARING NOTICE**

NOTICE IS HEREBY GIVEN that on **Tuesday, April 21, 2015**, at 6:30 p.m. or soon thereafter, the City Council of the City of Pismo Beach will hold a Public Hearing at **760 Mattie Road, Pismo Beach, California**, in the **City Hall Council Chamber** for the following purpose:

CONTINUED CONSIDERATION OF AN APPEAL OF A PLANNING COMMISSION APPROVAL OF A COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF AN EXISTING RESIDENCE AND CONSTRUCTION OF A NEW TWO-STORY SINGLE-FAMILY RESIDENCE WITH AN ATTACHED SECONDARY DWELLING UNIT AT 388 WINDWARD AVENUE, ERNIE & PAM ROZO, APPLICANT; APPELLANTS, WAYNE H. MAIRE, ALBERT & GILA POMERANTZ, DAVID & MARY STORNETTA, AND ROBERT WARNER.

PROJECT P14-000080

If you challenge the City Council's final action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City, either at or prior to the public hearing.

All interested persons are invited to appear at this time and place specified above to give oral or written testimony in regards to these matters. Written comments may be forwarded to the City Clerk at 760 Mattie Road, Pismo Beach, California, 93449 or by emailing ecano@pismo-beach.org prior to the meeting.

Agendas and staff reports will be available the Thursday before the meeting in the City Clerk's office and on the City's website at <http://www.pismo-beach.org>. The Council meeting will be televised live on Charter Cable Channel 20. For more information regarding City Council meetings, please contact the City Clerk's office at (805) 773-4657 or for more information regarding the above listed projects; please contact the Community Development Department at City Hall or by calling (805) 773-4658.

Elaina Cano, CMC
City of Pismo Beach City Clerk
April 11, 2015

1666083



PISMO BEACH COUNCIL AGENDA REPORT

SUBJECT/TITLE:

CONTINUED CONSIDERATION OF AN APPEAL OF A PLANNING COMMISSION APPROVAL OF A COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF AN EXISTING RESIDENCE AND CONSTRUCTION OF A NEW TWO-STORY SINGLE-FAMILY RESIDENCE WITH AN ATTACHED SECONDARY DWELLING UNIT AT 388 WINDWARD AVENUE, ERNIE & PAM ROZO, APPLICANT; APPELLANTS, WAYNE & JULIE MAIRE, ALBERT & GILA POMERANTZ, DAVID & MARY STORNETTA, AND ROBERT WARNER.

RECOMMENDATION:

Refer the project to the Planning Commission with direction to address the second-story and roof deck.

BACKGROUND:

The project site is located in an R-1 (single-family residential) coastal zone district and has a medium density residential General Plan Designation. The site is a 5,236 square foot interior lot that is about 77' in width. It is developed with a one-story single-family dwelling with an attached garage that will be demolished to make way for the proposed house. Surrounding properties contain a mix of one-story and two-story single-family dwellings.

AERIAL MAP INDICATING 388 WINDWARD LOCATION



EXISTING HOUSE



In September of 2014, the City Council considered four appeals of the Planning Commission's approval of a Coastal Development and Architectural permit for a two-story single-family dwelling. The four appeals were filed by Wayne and Julie Maire, David and Mary Stornetta, Albert and Gila Pomerantz, and Robert Warner. (Attachments 2-5)

Primary appeal points included:

1. Development over a sewer easement, (Warner, Pomerantz, Stornetta, & Maire)
2. Project is out of scale for the area, (Warner, Stornetta, & Maire)
3. A pedestrian access easement between Windward and Boeker should have been required. (Stornetta)

There is an easement for a City sewer line that crosses the property in a north/south direction. The house reviewed by the City Council in September of 2014 included two-floors of living space with an attached two-car garage located on the back side of the

house and construction of a portion of the house over the sewer easement. The home included an open deck that extended from the second floor living space at the front of the house and another deck within the roof form at the north eastern side of the house. The total floor area within the house and garage was 3,694 square feet.

HOUSE CONSIDERED BY CITY COUNCIL IN SEPTEMBER 2014



The project considered by the City Council in September of 2014, complied with all of the City's site development standards for the R-1 coastal zone and there were no requests for exceptions.

Following staff's presentation, testimony by the appellants, the applicants, and the public, the City Council had a lengthy discussion regarding construction of a house over an existing sewer easement and concerns were expressed regarding the size and scale of the house with support indicated for a redesign of the project that would accommodate both the appellants and applicants and achieve a reduction in the size of the house.

Following its deliberation, the City Council voted 4-1 to table consideration of this project for 90 days to allow staff time to work with the applicant regarding a redesign of the project to:

1. Prevent single-story portions of the house from being constructed over the sewer easement, but allowing second-story elements of the house to bridge the sewer easement.

2. Achieve a reduction in the size of the home.

Since the City Council meeting in September, there have been requests by staff and the applicants to table consideration beyond the 90 days approved by the City Council to allow time for the property owners to finalize a revised design.

REVISED PROJECT

The applicants have revised the project and submitted plans that reflect a two-story single-family dwelling with an attached two-car garage, which is located at the back of the house. The revised project complies with the site development standards of the R-1 zone district. The plans also include an attached secondary dwelling unit that is located on the lower level of the building at the west of the sewer easement. An uncovered parking space at the back of the site is proposed for the secondary dwelling unit. The parking space is within the rear yard setback, but the secondary dwelling unit regulations allow a parking space to be sited in this location. The proposed secondary unit complies with the City's zoning regulations and either the principal residence or secondary unit must be occupied by the property owners. They cannot both be rented out and neither can be used as a vacation rental unit. The municipal code requires the filing of a deed restriction regarding the allowable uses of the secondary unit and consistency with the City's 1983 Zoning Code.

In line with City Council direction, the revised project does not propose the construction of a first floor over the sewer easement, the second floor of the proposed house does bridge that easement. The distance the second floor spans is 13', which is wider than the 10' sewer easement. The clearance distance between the bottom of the second floor and finished slab of the driveway directly below it is about 8' at its highest point. The Engineering Division is recommending a number of conditions that provide for protection and repair of the existing sewer line should inspections following construction activities find that damage to the line has occurred. Conditions are also being recommended that will provide access to the sewer line should its repair or replacement be necessary in the future. Following is a street level illustration of the revised house:



The proposed house has approximately 3,080 square feet of living space and the attached garage contains about 495 square feet for a total floor area of 3,575 square feet. The following table provides a square footage comparison between the revised project and the house reviewed by the City Council in September of 2014:

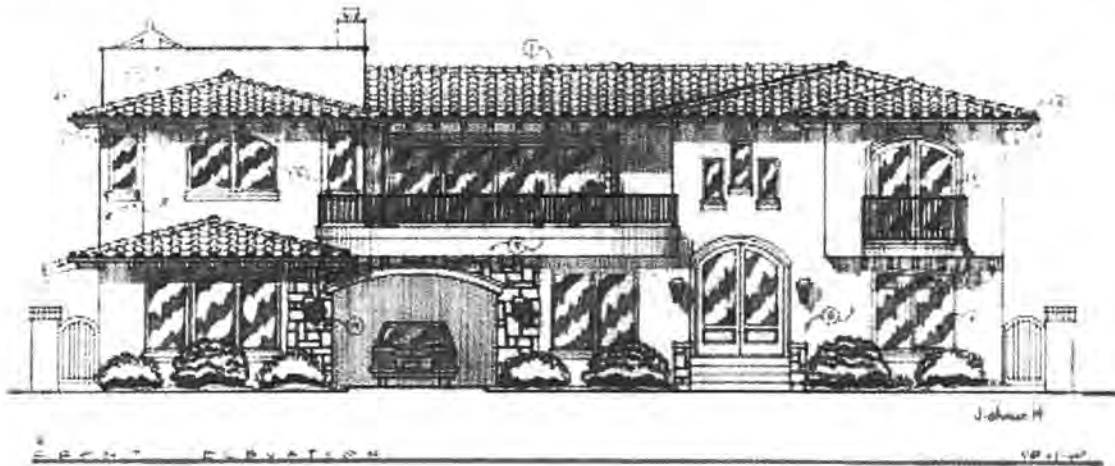
AREA	ORIGINAL	REVISED
Lower Floor	1,466	1,490
Upper Floor	1,642	1,590
Subtotal	3,108	3,080
Garage	586	495
Total	3,694	3,575
Deck	340	308
Roof Deck	363	420

ANALYSIS

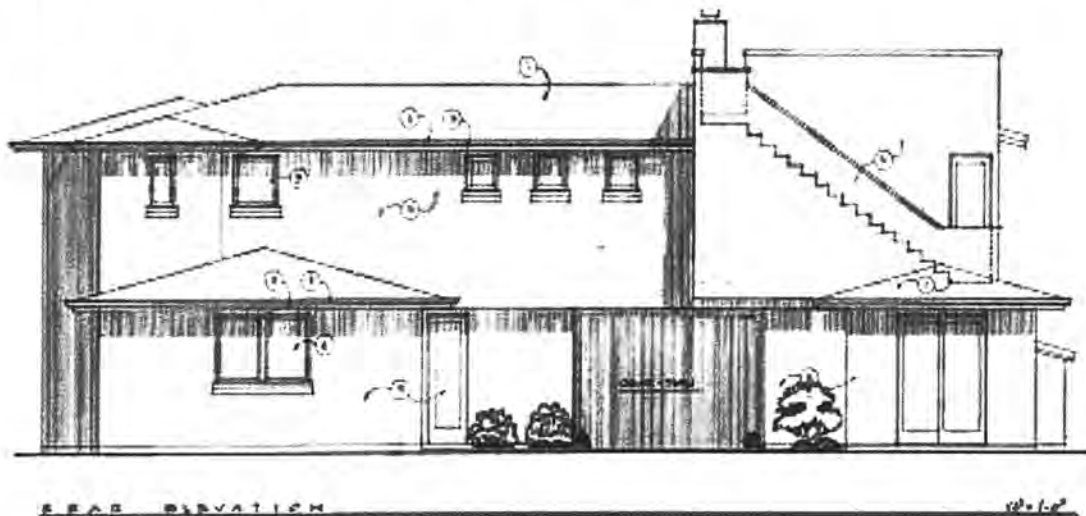
The proposed house reflects an architectural style that is similar to that reviewed by the City Council in September 2014. Exterior walls have a plaster finish, there is a second-story deck and a roof deck and some of the windows on the front of the second story are arched, which provides an architectural accent and interest at the front elevation as does the stone veneer that frames the opening through the building over the sewer easement. The roof forms are hipped, save for the roof deck at the western end, and the proposed tile compliments the stucco exterior, 4 x 6 shaped rafter tails, cast concrete window sills, and wrought iron railing. These exterior details are appropriate for

this style of architecture and the applicants have done a good job of linking these finishes to the overall design of the home

Although the floor space within the house has been reduced, the design of the house does present a full two stories to the street, which is depicted in the following elevation:

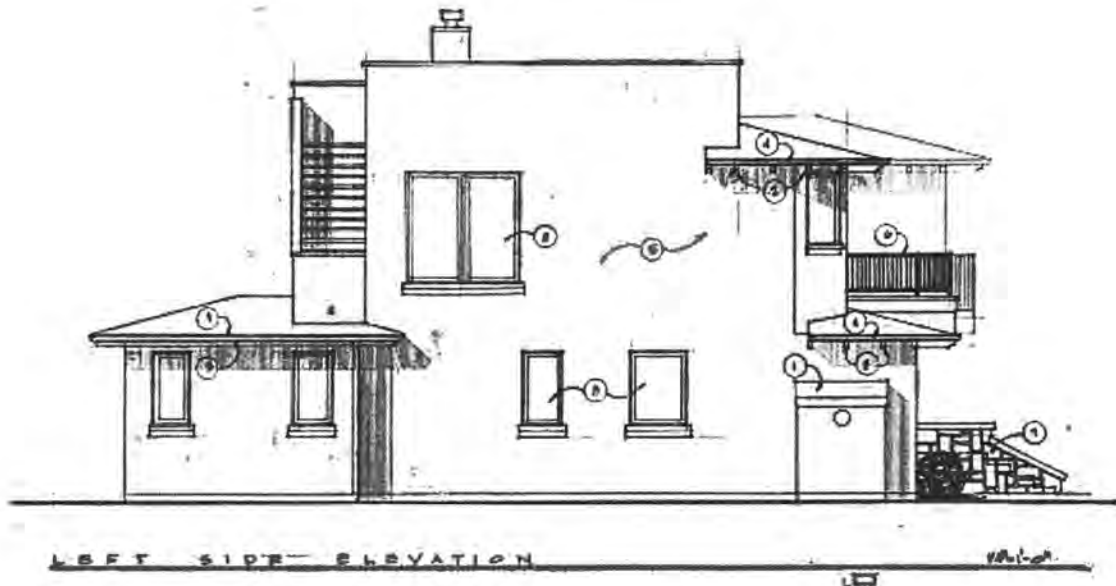


From the back, the revised house presents a full two stories across its width as well. The form of the house at the roof deck is a tall vertical wall; however, the second story is further away from the rear property line than the plans reviewed by the City Council in September 2014. As can be seen in the following elevation, the stucco walls that enclose the stairs and form the railings for the roof deck result in a two-story stucco element that interrupts the hipped roof forms over the other portions of the house and creates a disconnect in the continuity of the house's predominate style.

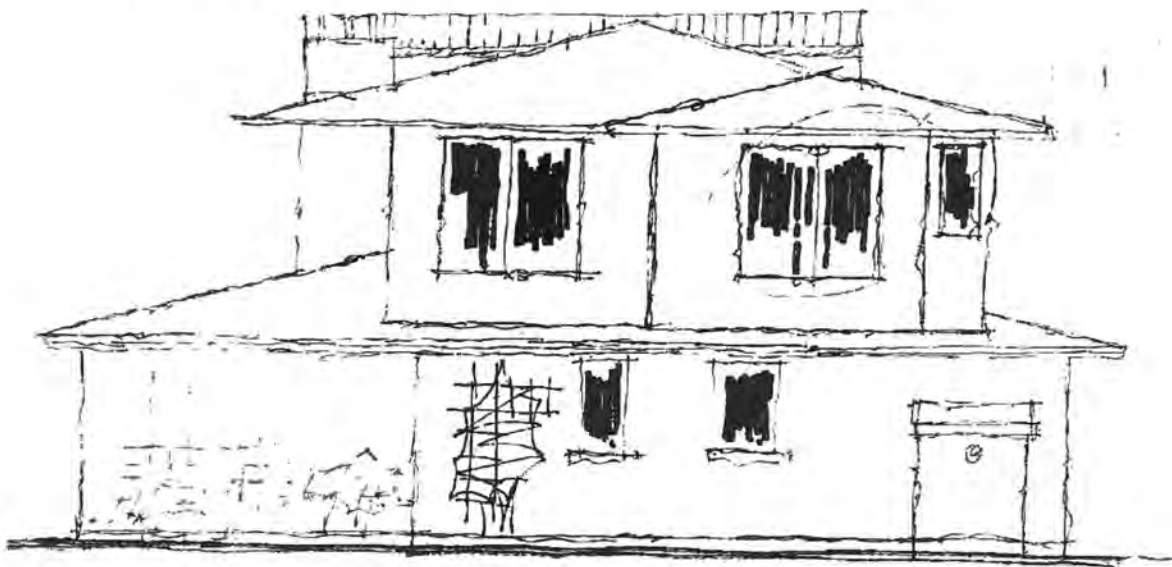


On the southwestern elevation of the proposed house, this form is carried around to the side with the upper portions of the two-story wall forming the railings for the roof deck

and they too diverge from the hipped roof forms over the rest of the house. The result is a tall vertical stucco wall that presents itself to the one-story neighboring property at the southwest.



The design of the revised house would benefit from having the walls of the second floor pulled in from the walls of the first floor at the sides of the building in order to minimize the buildings mass being carried across the width of the site. Developing a deck within the form of the hipped roof would also help maintain the continuity of the house's overall architectural style. To illustrate this, staff provides the following sketch of the southwestern elevation that depicts second story walls that are pulled in from those on the first floor, and a deck that has been incorporated into the hipped roof –



The above sketch is illustrative and is intended to show what is possible to address staff's reservations with the revised project. There are many other potential solutions to address staff's concerns, but it provides a starting point for discussion and serves as a tool to evaluate staff's stated reservations.

RECOMMENDATION

The applicants have developed a house that includes many components of a well designed structure and addresses the City Council's primary concern of keeping the first floor area over the sewer easement clear. The house size has also been reduced. However, staff believes the design of the structure and its integration into the neighborhood could benefit from two modifications, and recommends that the City Council refer this project to the Planning Commission to accomplish the following two specific items:

- Second floor walls at the sides of the building that are pulled in from those on the first floor.
- A roof deck that is integrated into the form of the hipped roof.

It is staff's opinion that with this direction to the applicants, the Planning Commission will be able to review and take appropriate action on the project. If the City Council seeks to approve the project, and thereby upholding the Planning Commission's earlier approval, a resolution is attached with this agenda report to support this action.

FISCAL IMPACT:

This project is appealable to the Coastal Commission and as such there is no fee to file an appeal of a Planning Commission decision to the City Council. The City does incur an expense in processing appeals. The cost for processing this appeal is now approaching \$5,000.

ALTERNATIVES:

1. Adopt the attached resolution of approval.
2. Deny the project
3. Refer the project back to the Applicants to address concerns raised by the City Council and continue to a future meeting.

ATTACHMENTS:

- | | |
|-------------------------------------|-----------------------------------|
| 1. Resolution Approving the Project | |
| 2. Appeal-Maire | 6. Planning Commission 7/08/2014 |
| 3. Appeal-Stornetta | Hearing Minutes Excerpt |
| 4. Appeal- Pomerantz | 7. PC Staff Report |
| 5. Appeal - Warner | 8. Planning Commission Resolution |
| | 9. Revised Project Plans |

Prepared by: Jon Biggs, Community Development Director **Meeting Date:** April 21, 2015

City Manager Approval:

A handwritten signature in black ink, appearing to read "Jon Biggs", is written over the "City Manager Approval:" text.

RESOLUTION NO. R-2015-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH UPHOLDING THE JULY 8, 2014, PLANNING COMMISSION APPROVAL OF A COASTAL DEVELOPMENT PERMIT FOR DEMOLITION OF AN EXISTING RESIDENCE AND CONSTRUCTION OF A NEW RESIDENCE (INCLUDING A SECONDARY DWELLING UNIT AND GARAGE) AT 388 WINDWARD AVENUE. PROJECT P14-000080

WHEREAS, Ernie & Pam Rozo, Applicant's, submitted an application to the City of Pismo Beach for a Coastal Development Permit at 388 Windward Avenue for demolition of an existing residence and construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit; and

WHEREAS, on July 8, 2014, the Pismo Beach Planning Commission held a duly noticed public hearing at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and approved the subject project at its July 8, 2014 meeting; and

WHEREAS, four appeals were subsequently filed by Wayne and Julie Maire (July 18, 2014); David and Mary Stornetta, Albert and Gila Pomerantz (July 21, 2014); and Robert Warner (July 22, 2014); and

WHEREAS, on September 2, 2014, the City Council held a duly noticed public hearing to review the four appeals at which all interested persons were given the opportunity to be heard; and

WHEREAS, on September 2, 2014, the City Council voted to table action on the item to allow a redesign to 1. prevent single-story portions of the house from being constructed over the existing sewer easement and 2. achieve a reduction in the size of the house; and

WHEREAS, the property owners submitted revised plans for the project; and

WHEREAS, on April 21, 2015, the City Council held a duly noticed public hearing to review the four appeals and revised project and at which all interested persons were given the opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pismo Beach hereby upholds the July 8, 2014, Planning Commission decision and approves the Coastal Development Permit and Architectural Application at 388 Windward for demolition of an existing residence and construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit, subject to the

conditions contained in Attachment 'A' of this resolution and makes the following findings:

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

1. The project consists of the demolition of an existing residence and construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit.
3. The demolition of the existing residence and subsequent construction of a new two-story single-family dwelling with an attached two-car garage and secondary dwelling unit at this location is exempt from further environmental review in accordance with section 15303 of the CEQA Guidelines, exempting construction of on single-family dwellings within a single-family zone district where all infrastructure is present.

B. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AND ARCHITECTURAL REVIEW PERMIT:

1. The project improvements comply with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.
2. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is appropriate in size so as to be compatible with the adjacent structures.
3. The architectural and general appearance of the two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is in keeping with the character of the neighborhood.
4. The proposed structure is compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.
5. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Single-Family Low Density Residential.
6. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit is compatible with the nearby existing uses and will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.

7. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.

8. The construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit will not impair the desirability of investment or occupation in the neighborhood.

UPON MOTION OF Council Member _____ **seconded by** Council Member _____ **the**
foregoing resolution was adopted by the City Council of the City of Pismo Beach this
21st day of April 2015, by the following roll call vote:

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAIN:	Council Members:

Approved:

Attest:

Shelly Higginbotham
Mayor

City Clerk

ATTACHMENT 'A' TO CITY COUNCIL RESOLUTION No. R-2015-__

**PERMIT NO. P14-000080, CDP / ARP
CITY COUNCIL MEETING OF APRIL 21, 2015
388 Windward, APN: 010-371-012**

The conditions imposed on this project shall affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed and made available to the applicant shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit P14-000080 grants planning permits for the demolition of an existing residence and construction of a two-story single-family dwelling with an attached two-car garage and secondary dwelling unit. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

Standard conditions, policies and selected code requirements applicable to new single-family residences, as adopted by the City Council are by this reference included as conditions of this permit. Such standard conditions will be attached to this permit when signed by the applicant. Special project conditions are listed on Exhibit A of this permit. The applicant agrees to comply with all City standard conditions and conditions specific to the project.

EFFECTIVE DATE: This permit shall become effective upon the passage of 20 days following the receipt of notice of this action by the California Coastal Commission, provided that an appeal has not been filed to the Coastal Commission within the above 20 days. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on April 21, 2017 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

ACCEPTANCE OF PERMIT AND CONDITIONS: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant.

COMPLIANCE AGREEMENT: I have read and understood, and I will comply with all applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction. The duty of inquiry as to such requirements shall be my responsibility. I agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the project; or my failure to comply with conditions of approval. This agreement shall be binding on all successors and assigns.

I HAVE READ AND UNDERSTAND, AND I WILL COMPLY WITH ALL ATTACHED STATED CONDITIONS OF THIS PERMIT

Approved by the City Council on April 21, 2015.

Applicant

Date

Property Owner

Date

EXHIBIT 'A'

CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS FOR PROJECT No. P14-000080 388 Windward, APN: 010-371-012

Conditions as indicated below have been deemed to be of a substantive nature on the basis of the Planning Commission's decision. These conditions cannot be altered without Planning Commission approval.

A. PRIOR TO ISSUANCE OF A BUILDING PERMIT:

BUILDING DIVISION:

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.
2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.
3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.
4. The owner shall comply with the City's Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments in order for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.
5. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.
6. Projects shall comply with current City and State water conservation regulations.

7. Deferred submittals are not allowed, i.e. fire sprinkler plans and calculations, spiral staircases, and truss calculations.
8. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided
9. Site retaining walls require a separate building permit. Please provide a separate soils report and engineering calculations for the site walls at the time of permit application.
10. Fire sprinklers, shall be required by City Codes.

PLANNING DIVISION

1. COMPLIANCE WITH PLANNING COMMISSION APPROVAL. Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and these conditions. Project shall comply with these standards:

Item	Approved
Lot area	5,236 sq. ft.
Maximum building height	24' - 7" or 81.50' elevation
Maximum building area ratio	3,575 sq. ft.
Lot Coverage	2,683 sq. ft.
Minimum front yard setback	12.25' to house 10.25' to edge of cantilevered deck
Minimum side yard setback	R = 5' L = 5'
Minimum rear yard setback	8' - 5"
Minimum parking spaces	2 within garage and 1 uncovered space for secondary dwelling unit
Minimum parking space size	2 – within a 21' x 22' clear area

2. ARCHAEOLOGICAL MONITORING. The applicant shall provide signed copies, to the Planning Division, of the contracts for both an archaeological and Native American monitor.
3. LANDSCAPING, IRRIGATION. The applicant shall provide Landscaping and irrigation plans encompassing the entire site. The plans shall be submitted by the project applicant to the City for review and approval by the project planner. Detailed calculations shall be provided on the face of the plan indicating the

provision of a minimum of 20% landscape area with no greater than 10% provided as lawn.

The landscape plan shall be designed in a manner consistent with Chapter 15.48 of the Municipal and include the following provisions:

- a. *Use of low-water-using irrigation systems. Drip irrigation shall be used where feasible.*
 - b. *Landscape Design Plan (including plant list)*
 - c. *Irrigation Design Plan*
 - d. *Separate calculation for landscaping and hardscape shall be provided.*
 - e. *Landscape plans shall not include any trees exceeding a mature height exceeding the roof line of the residence. All trees shall be maintained at a height not to exceed the height of the residence.*
4. Applicant shall comply with all municipal code requirements governing secondary dwelling units and shall record a deed restriction that outlines the rules governing secondary dwelling units.

ENGINEERING

1. Engineering standard conditions (notes): Shall be placed on the plans at time of submittal. A copy may be obtained through the Engineering Department.
2. Project improvements shall be designed and constructed in accordance with City standards and specifications and in accordance with all applicable City Ordinances. The decision of the City Engineer shall be final regarding the specific standards that shall apply.
3. Appropriate City standards shall be referred to on the plans and shall be included on a detail sheet within the plan set.
4. The applicant will be responsible for obtaining an encroachment permit for all work within a public right of way (City).
5. The City Engineering Division shall approve any landscaping or irrigation within a public right of way or otherwise to be maintained by the City.
6. The applicant shall provide a current title report to the Engineering Division.
7. Driveways and driveway approaches shall be located and constructed per City of Pismo Beach standards. Profiles shall be provided for all interior driveways.
8. If the existing City street adjacent to the frontage of the project is inadequate for the traffic generated by the project, or will be severely damaged by construction, the applicant shall excavate the entire section and replace it with a standard half – width street.

Grading and Drainage Plans

9. The following conditions shall be met during construction:

- a. Owner and/or owner's contractor are to take precaution against damaging road surfaces. Note: The existing street sections adjacent the property may be substandard and may be subject to damage by heavy loading/equipment during construction. The owner is responsible for protection against and/or repair of, at owner's expense, any/all damage incurred during and/or due to construction.
- b. Encroachment Permits are required prior to any/all work in the public right of way. City Streets are to remain open to through traffic at all times. A traffic control plan shall be submitted to the Engineering Division for approval prior to detours or rerouting of traffic. Excavation within the streets shall be covered or backfilled and paved prior to the end of work each day. No temporary or long term parking, storage, or disposal of construction equipment or materials within the right-of-way shall occur without prior issuance of an encroachment permit.
- c. Erosion and Drainage control features are to be available to be placed in the event of rain or other erosive action to prevent any sediment or refuse from leaving the site. Erosion control devices shall be installed and in place following daily construction activities. The applicant shall notify the Engineering Division of any changes in construction which will require additional erosion control measures.

10. A Preliminary Soils and/or Geology Report providing technical specifications for grading of the site shall be prepared by a Geotechnical Engineer.

11. All grading and drainage improvements shall be designed and constructed in accordance with the City Grading Ordinance and subject to approval by the City Engineer.

12. The project shall conform to the City's Storm Water Discharge Ordinance.

13. In order for the proposed development to maintain conformance with the City's Regional Stormwater Permit, implementation of Low Impact Development (LID) source control, site design, and stormwater treatment onsite or at a joint stormwater treatment facility shall be required. The stormwater design shall be submitted for review and approval by the City Engineer and shall provide mitigation for post development runoff versus pre-development runoff.

14. Calculations and/or a drainage report must be submitted with the plans.

15. The applicant shall submit a composite utility plan.

16. Landscape and irrigation plans for the public right-of-way, if applicable, shall be incorporated into the improvement plans and shall require approval by the Streets Division Supervisor and the Community Development Department.
17. No Building Permits will be issued without prior approval of the Engineering Division and an approved erosion and sediment control plan and construction schedule. Erosion control measures shall be in place and approved by the Engineering Division prior to the start of construction.
18. An Erosion and Drainage Control Plan shall be submitted in accordance with the City Grading Ordinance. The plan shall reflect "Best Management Practices" as proposed in the California Regional Water Quality Control Board Erosion and Sediment Control Field Manual, and shall include both temporary measures (to be used during construction, and until permanent measures are completed/established) and permanent measures. Plan shall include both source control and perimeter containment measures. All Drainage and Erosion Control Measures shall be designed and/or sized by a qualified professional.

Utilities

19. The applicant shall install all utilities.
20. All utilities shall be extended to the boundaries of the project.
21. Sewer System Requirements:
 - a. Construction of permanent structures over a City sewer line and easement is against current City policy. Specifically, to allow the demolition of an existing home that has been built over the existing City sewer main and easement and construction of a new home over the sewer main and easement. This is not a preferable or even generally acceptable condition. However, due to the current site situation and per the request of the applicant, staff will allow such construction for your proposed project if the following conditions are met:
 - b. The existing cast iron sewer pipe shall be protected in place.
 - c. All footings of the proposed residence that are adjacent to and parallel with the sewer line shall be designed to remain outside the existing 10' wide sewer easement and to extend below the depth of the existing sewer line using a concrete caisson and grade beam type system or other method as designed and approved by the applicants Geotechnical and Structural Engineer. The design shall be submitted for review and approval by the City Engineer and shall show that the zone of influence from the proposed structures falls completely below the sewer pipe.

- d. The first floor of the structure may not be built over the existing 10' wide sewer easement. The second floor may span over the easement.
 - e. If the site is over excavated a depth of 1/3 or greater than the total depth of the sewer line, the sewer line shall be replaced to the satisfaction of the City Engineer. For example if the Sewer line is 9 feet deep, an over excavation of three or more feet shall require the replacement of the sewer line.
 - f. A video inspection of the existing sewer shall be required after the concrete forms have been put in place, prior to the placing of the concrete foundation. If at that time the sewer line shows signs of failure the applicant shall replace the sewer line, to the satisfaction of the City Engineer.
 - g. Prior to a final on the Building Permit for the proposed residence and after construction, the existing sewer shall be video inspected again to verify condition. If at that time the sewer line shows signs of failure the applicant shall replace the sewer line, to the satisfaction of the City Engineer.
 - h. An Encroachment Agreement for building over the sewer line and easement must be applied for through the Engineering Division. The Agreement must be reached with City Council, signed and recorded prior to issuance of Building Permit. Applicant shall understand that receiving the subject discretionary permits does not in any way guarantee that an agreement can, or will, be reached with the City Council for the encroachment into the existing sewer easement.
 - i. As an alternate to the conditions described above, the proposed residence may be designed to current City policy and commonly accepted engineering principles and remain completely outside of the existing 10' wide sewer easement.
22. Water System Requirements - Applicant is required to show the existing location of the Water Main in the street and location of the existing water lateral, if existing, on the plans. The size of the proposed lateral and proposed water meter shall be shown on the plans. If existing lateral is inadequate for the proposed water meter, then applicant is responsible for all costs, materials and labor for the installation of a new water lateral. Show size and type of all water lines.

23. All existing overhead wire service utilities to the residence shall be relocated underground.

Public Improvement Plans

24. Public improvement plans shall be prepared by a registered Civil Engineer and approved by the Public Works Department, Engineering Division.
25. The applicant shall submit three sets of public improvement plans to the Engineering Division on the City of Pismo Beach title block as a separate submittal.
26. Upon approval of the improvement plans, the applicant shall provide a reproducible mylar set and 3 sets of prints of the improvements for inspection purposes.
27. The applicant shall provide an engineer's estimate for all work on public improvement plan.
28. Prior to any plan check, the applicant shall enter into an Engineering Plan Check and Inspection Services Agreement with the City based on 5% of the engineer's estimate for all work on public improvement plan.
29. Building plans will not be approved by the Engineering Department until Public Improvement Plans are approved; i.e. approved mylars signed by the City Engineer.
30. Prior to the final inspections and acceptance of the public improvements the applicant shall provide to the City Engineer record drawings, signed by the engineer of record:
- a. 1 set of reproducible mylars
 - b. sets of print of the approved record drawings (as-built)
31. An electronic AutoCAD drawing file registered to the City's benchmark system shall be provided.
32. The applicant shall pay any current and outstanding fees for Engineering Plan Checking and Construction Inspection services.

B. CONDITIONS TO BE MET DURING CONSTRUCTION:

BUILDING DIVISION:

1. **SITE MAINTENANCE.** During construction, the site shall be maintained so as to not infringe on neighboring property, such as debris and dust.

2. **ARCHAEOLOGICAL MATERIALS.** In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify to county coroner. If human remains are found to be of ancient age and of archaeological and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.

3. Certification of compliance with the soils report shall be submitted to the Building Division prior to foundation approvals. A final report certifying compliance with the soils report or grading plans shall be submitted to the Building Division prior to final approvals.

4. A licensed surveyor or engineer shall verify pad elevations, setbacks, prior to foundation inspection, and roof elevations, prior to roof sheeting inspection, when determined necessary by the Planning Department.

C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF CERTIFICATE OF OCCUPANCY:

BUILDING DIVISION:

1. Prior to building division final approval all required inspections from the other various divisions must have been completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card.

D. CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. **ROOF-MOUNTED EQUIPMENT.** All roof-mounted air conditioning or heating equipment, vents or ducts shall be screened from view in a manner approved by the Project Planner.

2. **COMPLIANCE WITH APPLICABLE LAWS.** All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.

-END-

Maire Appeal

CITY OF PISMO BEACH
CITY CLERK'S OFFICE

JUL 18 2014

RECEIVED

July 18, 2014

To Whom It May Concern:

Re: appeal of decision regarding 388 Windward

Attached is our appeal to the City Council of a Planning Commission decision regarding 388 Windward which was heard on July 8, 2014. In discussing this with staff, it is our understanding that City Council meets on the first and 3rd Tuesday of every month. It is also our understanding that the agenda for the City Council for the month of August is already full and it is likely that the appeal in this matter would be heard sometime thereafter. We are also informed that the city Council meeting scheduled for September 2, 2014 may be canceled.

We are unavailable to attend the City Council meeting on September 16, 2014. We would respectfully request, therefore, that if possible this matter be placed on the city council's agenda for either October 7, 2014 or October 21, 2014. Thank you for your consideration of this request.


Wayne H Maire



CITY OF PISMO BEACH
CITY CLERK'S OFFICE

JUL 18 2014

RECEIVED

City of Pismo Beach
Attention: City Clerk
760 Mattie Road
Pismo Beach, CA 93449
805-773-4657 Fax: 805-773-7006

APPEAL OF A PLANNING COMMISSION DECISION

An appeal of the City of Pismo Beach Planning Commission decision may be filed by paying a fee set by the Pismo Beach City Council. Appeals must be filed in the Office of the City Clerk within 10 working days of the Planning Commission decision. Coastal Development permit appeals can be made at no charge. Appeals of all permits for projects within the Coastal Appeal Zone can be made at no charge. See Section 17.124.130-180 for Coastal Permit Appeal information.

Person Filing Appeal:

WAYNE & Julie Maire

Print Name local address - 347 Becker

2889 El Vistita

Address

Phone (H) 530-222-0420

(W) 530-246-6050

Redding, Ca. 96002

City/State/Zip Code

388 WINDWARD

APN 010-371-012

Project Address/Parcel Number

APPLICATION of ERNIE & Pam Roza

Project Name

*What permits are being appealed:

COASTAL Development Permit

*List all applicable case numbers(s):

Date Heard at Planning Commission: 7/8/14

Date Appeal Filed: 7/18/14

Cause for Appeal: (Please be specific; attach additional sheets if necessary, reference any inconsistency with specific city statutes; the General Plan/Local Coastal Plan and Zoning Ordinance is available for review):

(see attached)

Signature(s)

Date: 7/18/14 20

ATTEST:

City Clerk

Received By: _____ Date: _____ 20____

Fee Paid: \$ _____ Date: _____ Receipt Number: _____

July 1, 2013 fee schedule: \$788 outside the Coastal Zone and No Fee for Appeals Within the Coastal Appeal Zone.

NOTICE OF APPEAL

Re: 388 Windward Ave., Pismo Beach, CA
Ernie and Pam Rozo, Applicants

On July 8, 2014, the Pismo Beach Planning Commission held its hearing with regard to the approval of the proposed new residence at 388 Windward Avenue, Pismo Beach, California, regarding the demolition of an existing residence and construction of a new, approximately 3,700 sq. ft. residence. Attached for the council's convenience is the formal objection which we filed with the planning department prior to that hearing. That objection is marked herein as Exhibit "1".

The basis of this appeal is three fold. One, as pointed out by the planning department and the city engineering department, this project clearly violates the City of Pismo Beach longstanding prohibition of building over sewer easements. Two, as confirmed by representatives of the planning department at the July 8, 2014 hearing, the residences immediately behind this proposed project were informed by the City during their due diligence prior to the purchase of their residences that a two story home of the size and magnitude of the type here proposed could not be built at 388 Windward due to the easement restrictions on that lot. As noted below, the residences at 345 Boeker, 347 Boeker and 349 Boeker, had the right to rely on the representations of the representatives of the City of Pismo Beach during their due diligence of the purchase of their homes and had the right to expect that the City of Pismo Beach would in fact force its own municipal codes and regulations in the approval of any project at 388 Windward. Three, it is clear that the size and magnitude of the home that is being proposed at 388 Windward is, in fact, not consistent with the size and characters of the homes in the surrounding neighborhood. For the council's convenience, I will address each of these issues separately below:

I.

THE PROJECT HERE INVOLVED CLEARLY VIOLATES CITY OF PISMO BEACH BUILDING STANDARDS

One need only review the staff report itself with regard to the clear violation of this project of longstanding City of Pismo Beach building standards. The staff report at paragraph 22 provides in pertinent part as follows:

"Construction of permanent structures over a city sewer line and easement is against current city policy. Specifically, to allow the demolition of an existing home that has been built over the existing city sewer easement and construction of a new home over the city main and easement. This is not a preferable or even generally accepted condition." (Emphasis added)

During the planning commission hearing on this matter, Mr. Scott Graham, the representative of the planning department who presented this proposal stated as follows, "Previous city engineer, Dennis Delzeit, was adamantly opposed to the placement of any additional structures over the sewer easement in this location." (We have had a transcript prepared of the entire hearing on this matter and will make said transcript available to the council should it so desire.)

During his statements to the commission, Mr. Graham also confirmed that the residences on Boeker were informed by the planning department of Mr. Delzeit's position in this regard, his reaffirmation of enforcing the prohibition of building over a sewer easement and that this was in fact communicated to the now current owners on Boeker Street. We were very surprised to learn for the first time during the hearing on July 8, 2014 that the planning department had issued a letter in September of 2008 and there were apparently discussions with the planning department on enforcement of the restrictions regarding building on 388 Windward. We were informed during the meeting that Mr. Delzeit had left the City of Pismo Beach in 2008 and a Dwayne Chisholm had assumed his position. Based upon the testimony by representatives of the City at the planning commission, Mr. Chisholm apparently held an opinion different than his predecessor and the current city engineer with regard to building over the sewer easement. Mr. Chisholm apparently authorized an "interim associate engineer", Jeff Eikhot, to author a letter to a John F. Mack on September 11, 2008. I was able to see that letter for the first time on July 16, 2014. That letter is attached for the council's convenience as Exhibit "2". Apparently, the City of Pismo Beach engineering division had received a letter on September 2, 2008 from Mr. Mack requesting permission to construct a "new home that would bridge the sewer easement". In Mr. Eikhot's response he accurately noted that, "construction of permanent structures over a city sewer easement is against current city policy". His letter goes on to state a variety of conditions that must be completed if the city were to consider a project to be built over the city sewer line. As confirmed by staff in response to a commission member's question, neither the adjoining property owners (including myself and my neighbors on Boeker) were provided notice of this dramatic potential change in the city's position nor does it appear was the city attorney consulted prior to this letter being issued by an interim associate engineer.

The testimony of the City of Pismo Beach engineering division at the commission hearing on July 8, 2014 was clear that this proposal would not have been accepted by Mr. Delzeit and would not be acceptable under the current city engineer's interpretation of the applicable limitations created by the easement and city policy. Staff felt, however, that they should honor the letter written by interim associate engineer Eikhot in 2008. In that regard, the representative of the engineering division, Mr. Eric Eldridge, stated, "Although it is not the position of the current city engineer or staff, we'll honor that letter due to it was a -- we believe the Applicant was doing everything they could do and they were doing their research before they made quite an investment. So we'll honor that letter." It appears, therefore, that the only reason that the staff is willing to recommend a course of action which is against the clear public policy of the City of Pismo Beach, is to honor a letter written by an interim associate engineer which in the body of the letter itself notes that, "construction of permanent structures

over a city sewer easement is against current city policy." This is despite the fact that this position is not one shared by the current city engineer and a position that was not shared by the prior city engineer, Mr. Delzeit.

In reviewing the documentation and testimony obtained to date, there is absolutely no information that has been presented which would establish that the residents of the City of Pismo Beach are in any way benefited by a project which clearly violates longstanding city policy. It remains unclear why the City of Pismo Beach would even consider violating this policy and making an exception for this one project when it has consistently prevented development of numerous other projects which would infringe upon a city easement on other projects. I would hope the fact that the architect for this project, Mr. Cody McLaughlin, in no way affected any of the decision-making process at any stage of these proceedings. As I'm sure the Council is aware, Mr. McLaughlin is a member of the planning commission. It certainly does not appear appropriate, however, that the City would deviate so clearly from its prior stated positions and choose to approve a project which is admittedly against current city policy when the designer of that project is a current member of its own planning commission. We were certainly concerned about this issue when Ms. Rozo advised the planning commission on July 8, 2014 that Mr. McLaughlin was their representative for this project and best person to answer any questions about the project. Appropriately Mr. McLaughlin recused himself from voting on the project.

II.

THE RESIDENTS SURROUNDING 388 WINDWARD HAVE THE RIGHT TO RELY UPON REPRESENTATIONS MADE BY CITY OF PISMO BEACH STAFF THAT A PROJECT OF THIS MAGNITUDE COULD NOT BE BUILT

As established at the hearing on July 8, 2014, both my wife and I, along with our neighbors at 345 Boeker, Bob and Gloria Warner, were specifically informed by staff prior to the purchase of our homes that due to the easement restrictions on 388 Windward, a two story residence could not be built at that location, except over the garage area. Mr. Scott Graham confirmed in his testimony before the commission that in fact those representations were made by staff when both the Warners and my wife and I were doing our diligence in 2005 prior to the purchasing of our residences. As Mr. Graham noted, the city engineer at that point in time, Mr. Dennis Delzeit, was "adamant" that a project like this cannot be built over the city sewer easement. During the hearing one commissioner in fact asked why staff was willing to honor the representations made in a letter drafted by an interim associate engineer in September of 2008 and not honor the representations made to other property owners who were doing their due diligence and relied upon the information in the purchase of their homes. As noted by Vice Chairman Hamrick,

"I've dealt with hundreds of these easements in my lifetime, and I've never been able to build on top of one like this but if they have a letter from the

Public Works department, does that give them the legal authority to do that, I don't know. I'm just not equipped to make that decision. So with regard to the home, its presence in the neighborhood, I think that's all we really have to look at."

As noted by Mr. Graham at that point, "If somebody is unhappy with the decision rendered by the planning commission, they can just simply come down to the administration office downstairs and file that appeal with the city clerk's office."

It was very clear during the hearing on July 8, 2014 that the planning commission was unprepared to deal with the legal issues related to approval of project where there is a clear violation of City policies and the inconsistent representations made to the residents here involved. The Commission felt that these issues were more appropriately decided by the City Council. The testimony during the hearing was also clear that staff was and is under the mistaken understanding that a letter by an interim associate engineer, apparently without input from legal counsel, carries more weight than the multiple verbal representations made by the planning department and engineering department to the surrounding neighbors of 388 Windward. In fact we, along with our neighbors, had the right to rely on the representations made by the City of Pismo Beach that it would enforce its own policies, procedures and regulations and not allow a project of this size and scope to be built on 388 Windward.

From a purely legal standpoint, the representations to the residents of 345 Boeker, 347 Boeker and 349 Boeker, have more legal weight than a letter drafted by an interim associate engineer without involvement of the city's legal counsel. We along with our neighbors relied on those representations and from a legal standpoint the city of Pismo Beach is facing the possibility of multiple damage claims resulting from the failure to honor those representations. Each of those adjoining landowners who justifiably relied on the representations made by the City of Pismo Beach and made significant financial investments based on the representations and assurances that the City would follow and enforce its own policies, regulations and laws, have a potential claim for the City's failure to honor its commitment in this regard. If, in fact, the City of Pismo Beach allows the project as designed at 388 Windward to move forward despite its violation of the clear policies of the City of Pismo Beach, the neighbors affected by that project will unquestionably incur and suffer significant losses and damages regarding the diminution in value of their homes. In that regard, I would note that my wife and I paid more for our residence at 347 Boeker than Pam and Ernie Roza paid for the property located at 388 Windward. A significant amount of the purchase price was based upon the value of the views from our residence which we were assured by representatives of the City of Pismo Beach could not be infringed upon by the development of 388 Windward as a result of the city policy prohibiting the building of a residence of this type over the dedicated sewer easement.

III.

THIS PROJECT IS NOT COMPATABLE WITH THE ESTABLISHED PHYSICAL SCALE OF THE AREA

Pursuant to section 17.124.140(A)(3), one of the grounds for appeal is that, "The development is not compatible with the established physical scale of the area or is not consistent with the level and scale of development provided for in the city's certified local program." Even a casual review of the homes in the area around 388 Windward establishes that it is not remotely close to the established physical scale of those homes. Almost every home in the general area surrounding 388 Windward is in the 1,300 to 2,000 sq. ft. range. There are no homes remotely approaching the scale of this 3,700 sq. ft. residence which one of our neighbors has described as a "mansion". In short, this home is completely out of character and scale with those of the surrounding residents. It replaces an approximately 1,350 sq. ft. one story single family residence. The proposed home is almost three times the size of the existing home and can in no way be stated or argued to be "compatible with the established physical scale of the area."

IV. CONCLUSION

As noted above, the undisputed facts before the city council are that this proposed project at 388 Windward clearly violates established city of Pismo Beach policy. We were informed prior to the purchase of our home that the city of Pismo Beach policy precluded the building of this type of residence at 388 Windward. Based upon the assurances of representatives of the city of Pismo Beach in that regard along with our own review of the applicable limitations that the city sewer easement placed upon 388 Windward, we made a significant financial investment in the purchase of our home at 347 Boeker. If this project is approved there is no question that our home will incur a significant diminution in value as a result of the almost total loss of the views from our home. Finally, this project should be denied as it is completely inconsistent with the size and scale of the surrounding neighborhood. For the grounds outlined above, we would respectfully request that the City of Pismo Beach reject the application for the construction of a 3,700 sq. ft. multi-story residence at 388 Windward.

Finally, I think it is important to note that Julie and I are in no way opposed to either redevelopment or the construction of a new home at 388 Windward. We are more than willing to work with Mr. and Mrs. Roza in that regard. Our primary concern, however, is the magnitude, scale and height of their proposed project is completely inconsistent with what we were assured would occur on that lot and with the neighborhood generally.

Respectfully submitted.

Dated: 7/18/14


Wayne H. Maire

Julie Maire



Maire Burgess & Deedon

A Law Corporation

2851 PARK MARINA DRIVE, SUITE 800
REDDING, CALIFORNIA 96001

P.O. DRAWER 994607
REDDING, CALIFORNIA 96088-4607

EMAIL: INFO@MAIRE-LAW.COM
WEBSITE: WWW.MAIRE-LAW.COM

TEL: (530) 246-6050
FAX: (530) 246-6060

FTZPATRICK LAW OFFICES
ASSOCIATED COUNSEL

WAYNE E. MAIRE

July 3, 2014

VIA FEDERAL EXPRESS

VIA E-MAIL TO emaire@pismo-beach.org

VIA FAX TO (805) 773-4684

Planning Division
CITY OF PISMO BEACH
760 Mattie Road
Pismo Beach, CA 93449

Re: Project No. : P14-000080
Project Location : 388 Windward
Hearing Date : July 8, 2014

To Whom It May Concern:

Please be advised that I have received the notice that on July 8, 2014, the Planning Department will hold a public hearing with regard to a proposed project at 388 Windward Ave., Pismo Beach, California, with regard to the demolition of an existing residence and construction of a new 3,693 sq. ft. residence. Please be advised that my wife, Julie, and I own the residence at 347 Boeker, directly behind 388 Windward. Notice of this project was provided to us as we are obviously a property owner affected by this project.

Please consider this correspondence a formal objection to this matter proceeding to hearing on July 8, 2014. Initially, I would note that we have received the absolute minimum amount of notice pursuant to Pismo Beach Municipal Code Section 17.124.090 with regard to this project. It is my understanding that the application of this project was filed on April 29, 2014. Pursuant to Section 17.124.090, notice of appealable developments, which this clearly is, is to be provided, "within 10 calendar days of accepting an application for an appealable coastal development permit or at least 10 calendar days prior to the first public hearing on a development proposal, the city shall provide notice by first class mail of pending application for appealable development". Notice of this hearing was mailed on June 27, 2014 and not received by the undersigned until late on June 30, 2014, just eight days prior to the hearing itself. Given the magnitude of this project and the number of residences affected by this project, eight calendar days is insufficient notice to determine the effect of this project on our community. I would note that my office contacted the Planning Department

EXHIBIT "1"

Planning Division
Re: 388 Windward
July 3, 2014
Page 2

immediately on July 1, 2014 and was advised that staff recommendation to this project would not even be available until late on the afternoon of July 3, 2014. Given that Julie and I, along with most of the other owners affected by this project do not have our primary residences in Pismo Beach, we do not have the opportunity to personally come to the Planning Department on three days' notice to review this project and determine the impact of this project on our surrounding community. This is of course, further exacerbated by the fact that notice was received the week of the July 4th holiday which further hinders our ability to receive sufficient notice to evaluate the impact of this project on our community. Please consider this, therefore, a formal request on behalf of the residents affected by this project that the Planning Commission continue hearing of this matter until those residents have had an opportunity to have sufficient time to review and evaluate this project and provide their input as to whether or not it detrimentally affects those affected by this project and the surrounding community.

Should the Planning Commission deny our request to continue the hearing of this matter, please consider the following as our formal objections to the project based upon the very limited information known about it to date. Those objections include:

1. The magnitude of this project appears to be completely out of scale with the level and scale of development in the immediate area surrounding this home. It is our understanding that this project proposes to replace a home of approximately 1,400 to 1,500 sq. ft. with a home almost two and half times that size, approximately 3,700 sq. ft. Almost all of the homes in the immediate vicinity of 388 Windward range in size from approximately 1,300 to 2,300 sq. ft. Pursuant to Section 17.124.140 (A) (3) it would therefore appear that this development, "is not compatible with the established physical scale of the area".
2. Given that we have not yet been provided an opportunity to actually review the plans and specifications of the project, there are significant concerns with regard to whether or not this project does, in fact, adequately protect public views from any public road that may be affected by this project as per Section 17.124.140 (A) (2).
3. Prior to our purchase of our residence at 347 Boeker in 2005, we performed a significant amount of due diligence with regard to potential development at 388 Windward to determine the possible impact that development could have on our residence. We consulted with the Planning Department at that point in time and were advised that due to city easements running underneath 388 Windward, it would not be possible for future development of that address to include a two story residence at 388 Windward, except for the area directly above the garage. We also consulted with our neighbors, Bob and Gloria Warner, who live immediately

adjacent to our property who informed us that they had performed similar due diligence and were advised by the Planning Department of those same facts. Finally, we also consulted with the builder of our residence, Mr. Mark Daniels, who was also the prior owner of 388 Windward, who also confirmed that it was the Planning Department's position that future development at this address would be limited to a one story residence with the exception that two stories would be allowed over the garage. Based upon our reliance on the position of the Planning Department in 2005, we proceeded forward with the purchase of our home. Given that we have not yet received staff's recommendation on this project, it is unknown whether or not staff has changed its position in this regard. If staff has, in fact, changed its position in this regard, I believe we are entitled to a full and complete explanation as to why that position has been changed and this may provide an additional basis of objection and potential appeal.

4. While I am cognizant that pursuant to Section 17.124.090 future challenges to this project MAY be limited to those issues raised in this written correspondence, I must respectfully reserve my right to assert further and future challenges once we have had an opportunity to actually review the project itself. As noted above, given that our primary residence is in Redding, California, we have in reality been provided only three days' notice to prepare a written response for the Planning Commission to consider on this project. I must respectfully reserve, therefore, my right to provide further and additional objections that may exist once we have had an opportunity to adequately evaluate the project itself.

Finally, I think it is important for the Commission to be aware that Julie and I, and I believe the other residents affected by this project do not oppose redevelopment of 388 Windward and the construction of a new home. Our objection is primarily that we have been deprived of an opportunity to provide any reasonable opportunity to evaluate the project, determine its impact on the surrounding community, and provide any input thereto. I would therefore request that the Planning Commission continue this matter for at least thirty (30) days for the residents and community effected by this project to provide that input.

Respectfully submitted,



WAYNE H. MAIRE

WHM/th



City of Pismo Beach,
Engineering Department
760 Mattie Road
Pismo Beach, CA 93449
(805) 773-4656 • Fax: (805) 773-4684

September 11, 2008

John F. Mack
Accurate Architecture and Construction
1141 Highland Way
Grover Beach, CA 93433

RE: 388 Windward, Shell Beach

Dear Mr. Mack:

The City of Pismo Beach Engineering Division has received your letter dated September 2, 2008 regarding the above address. The letter requests consideration to allow the demolition of an existing home that has been built over a sewer easement, and construction of a new home that would bridge the sewer easement.

After site review and consideration of your request, Staff has come to the following conclusions:

- The site is currently developed with a single-family residence that spans an existing sewer easement.
- Construction of permanent structures over a City sewer easement is against current City policy.
- The proposed removal of the existing residence and construction of a residence with a bridge spanning the sewer easement will improve the existing conditions.

Due to the current site conditions, Staff recommends that the current prohibition of construction over a City sewer easement be removed, if the following conditions are met:

- The existing sewer line must be removed and replaced with a sleeved sewer line that extends at least 5' outside the footprint of the proposed house. The sleeved system will allow the sewer line to be removed and replaced if necessary without adversely affecting the proposed residence.
- All footings of the proposed residence that are adjacent to and parallel with the sewer line must be designed to extend below the depth of the existing sewer line.
- The "bridge" must be high enough to provide clearance for a standard size backhoe or similar piece of construction equipment to access the rear of the property.

If you have any questions regarding this matter, please call me at 805-779-1201.

Respectfully,


Jeff van Een Ekhof, PE
Interim Associate Engineer

\\A:\Engineering\Development\Exhibit 2 to Final Comments\388 Windward\388 Windward - Sewer Easement Response.doc

Stornetta appeal

CITY OF PISMO BEACH
CITY CLERK'S OFFICE

JUL 21 2014

RECEIVED

City of Pismo Beach
Attention: City Clerk
760 Mattie Road
Pismo Beach, CA 93449
805-773-4657 Fax: 805-773-7006

APPEAL OF A PLANNING COMMISSION DECISION

An appeal of the City of Pismo Beach Planning Commission decision may be filed by paying a fee set by the Pismo Beach City Council. Appeals must be filed in the Office of the City Clerk within 10 working days of the Planning Commission decision. Coastal Development permit appeals can be made at no charge. Appeals of all permits for projects within the Coastal Appeal Zone can be made at no charge. See Section 17.124.130-180 for Coastal Permit Appeal information.

Person Filing Appeal:

DAVID & MARY STORNETTA
Print Name

349 Becker Avenue, Shell Beach Phone M-805-440-5652
Address - Mailing H-805-481-1105
1675 Bee Canyon Road
ARROYO GRANDE, CA - 93420
City/State/Zip Code

388 Windward / APN 010-371-012
Project Address/Parcel Number

Application of Ernie & Pam Rozo
Project Name

*What permits are being appealed:

Coastal Development Permit

*List all applicable case numbers(s): _____

Date Heard at Planning Commission: 7/8/14 Date Appeal Filed: 7/21/14

Cause for Appeal: (Please be specific; attach additional sheets if necessary, reference any inconsistency with specific city statutes; the General Plan/Local Coastal Plan and Zoning Ordinance is available for review):

(See Attached)
Attachment to Notice of Appeal

Signature (s)

Date: 7/20/14 20

ATTEST:

Debbie DeBianco for L. Carr
City Clerk

Received By: _____ Date: _____ 20__

Fee Paid: \$ _____ Date: _____ Receipt Number: _____

July 1, 2013 fee schedule: \$788 outside the Coastal Zone and No Fee for Appeals Within the Coastal Appeal Zone.

On July 8, 2014, I appeared and spoke at the Pismo Beach City Planning Commission hearing with regard to the proposed project at 388 Windward. I objected to the project at 388 Windward on several grounds.

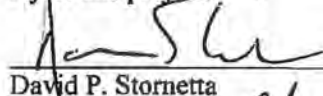
Objection 1: When we purchased the residence at 349 Boeker, which is immediately behind 388 Windward, we were led to believe by your planning department that there were severe restrictions regarding the size, scope and height potential that the residents could build at 388 Windward. The major restriction relates to the sewer easement which runs directly through 388 Windward and passes along the property line of our residence. We were led to believe that a two story structure could not be built over the sewer easement. At the planning commission hearing on July 8, 2014, that belief was confirmed when representatives of the Planning Department and Engineer's Office stated that it is against city policy to allow building over a sewer easement.

There does not appear to be any legitimate reason why the city would waive this policy for this one project, particularly when the city is aware that the owners of the houses immediately behind 388 Windward were told this would not happen. I do not know whether the fact that this project was designed by one of the members of the planning commission has anything to do with this commission approving this project. At the subject hearing I specifically stated that this matter didn't feel right and most certainly didn't smell right based on what I was hearing. My instincts and judgment have only heightened after acquiring more facts since the hearing.

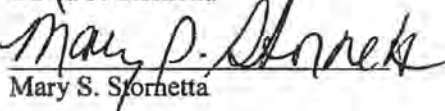
Objection 2: I think the city council should consider, in rejecting this project, that there does not appear to be adequate efforts taken to ensure the creation of a pedestrian walkway between Boeker and Windward like the one which was created at the end of Boeker and connects to Placentia Street. Having lived in the area since 1963 I have seen what forward thinking officials have done to make a positive difference such as the acquisition of the Dinosaur Caves Park property and requiring a pedestrian easement between Boeker and Placentia Street.

Objection 3: I believe the city council should consider in rejecting this proposal is the fact that this house is significantly larger than any home in the area. Most of the homes in the neighborhood are in the 1,300 to 2,000 sq. ft. range. The proposed house is almost twice that size nearly 3,700 sq. ft. Frankly, this house does not fit in our neighborhood. I think you would agree if you were to stand at the end of Seaview Avenue by the gazebo and look west over to Windward your reaction would be "Wow what's with that big, huge house over there!"

For all of the above outlined reasons, we respectfully and strongly request that the city council reject this project.


David P. Stornetta

Dated: 7-20-14


Mary S. Stornetta

Dated: 7-20-14

July 20, 2014

To Whom It May Concern:

Re: Appeal of decision regarding 388 Windward

Attached is our appeal to the City Council of a Planning Commission decision regarding 388 Windward which was heard on July 8, 2014.

While discussing the issue with my neighbor Wayne Maire he shared that the City Council meets on the 1st and 3rd Tuesday of each month. Additionally he mentioned that the subject appeal could potentially be heard by the City Council in September when I have prior commitments in Florida.

I am hoping and asking that the appeal could be put on the City Council's agenda in October which would be October 7th or the 21st.

Thanks for your consideration of this important request. It would be appreciated.


David P. Stornetta

7-20-14
Date

Pomerantz Appeal
CITY OF PISMO BEACH
CITY CLERK'S OFFICE

JUL 21 2014

RECEIVED

City of Pismo Beach
Attention: City Clerk
760 Mattie Road
Pismo Beach, CA 93449
805-773-4657 Fax: 805-773-7006

APPEAL OF A PLANNING COMMISSION DECISION

An appeal of this City of Pismo Beach Planning Commission decision may be filed by paying a fee set by the Pismo Beach City Council. Appeals must be filed in the Office of the City Clerk within 10 working days of the Planning Commission decision. Coastal Development permit appeals can be made at no charge. Appeals of all permits for projects within the Coastal Appeal Zone can be made at no charge. See Section 17.124.130-180 for Coastal Permit Appeal information.

Person Filing Appeal:

Albert & Gila Pomerantz
Print Name / Local address: 344 Boelter
6555 N. Dolores Ave. Phone 559-281-8417
Address
Fresno, Ca, 93711
City/State/Zip Code
388 Windward APN 010-371-012
Project Address/Parcel Number
Application of Ernest & Pam Rozo
Project Name

***What permits are being appealed:**

Coastal development permit

***List all applicable case numbers(s):**

Date Heard at Planning Commission: 7/18/14 Date Appeal Filed: 7/19/14

Cause for Appeal: (Please be specific; attach additional sheets if necessary, reference any inconsistency with specific city statutes; the General Plan/Local Coastal Plan and Zoning Ordinance is available for review):

See attached - Above project violates
City of Pismo Beach prohibition of building
over sewer easements.

Alat Ponce
Signature (s)
Gila Pong

ATTEST:

Date: 7/19/14 2014

City Clerk

Received By: _____ Date: _____ 20____

Fee Paid: \$ _____ Date: _____ Receipt Number: _____

July 1, 2013 fee schedule: \$788 outside the Coastal Zone and No Fee for Appeals Within the Coastal Appeal Zone.

Warner appeal

Attachment Re: Notice of Appeal of a Planning Commission Decision
388 Windward Ave., Pismo Beach, Ca.
Ernie and Pam Rozo, Applicants

City of Pismo Beach
Attention: City Clerk-Elaina Cano
760 Mattie Road
Pismo Beach Ca. 93449

CITY OF PISMO BEACH
CITY CLERK'S OFFICE

JUL 22 2014

RECEIVED

To Whom It May Concern:

I own two properties behind and just west of proposed 388 Windward project located at 345 and 340 Boeker and we will be directly affected by the development of this property. Specifically our property located at 345 Boeker Pismo Beach Ca.

The basis for Cause for Appeal is three fold as noted below in items 1 through 3.

1) In February 2005 prior to purchasing our home located at 345 Boeker my wife and I both had a concern with 388 Windward if there would ever be a possibility that it could be developed and changed from a single story to a two story as it would dramatically affect our view of the ocean and future property value. Prior to considering the purchase of 345 Boeker property we did our due diligence and spoke in detail with the City of Pismo Beach Planning Department and we were told that there was a sewer easement under or near 388 Windward and that it would be very difficult and expensive to mitigate this sewer easement and we were assured that even if the sewer easement was mitigated there could only be a two story above the garage area and the remaining would be required to be a single story. Without that assurance from the Planning Department we would have never purchased 345 Boeker.

2) Based on the size of this project being almost 3700 sq. ft. it does not seem compatible with surrounding homes which are approximately 1300-2300 sq. ft. and I believe the current single story residence at 388 Windward is approximately 1500 sq. ft

3) This project is a clear violation of the longstanding City of Pismo Beach building standards regarding construction of permanent structures over a city sewer line and easement is against current city policy.

Thank you for your consideration,


Robert Warner

Contact numbers: Cell..559-970-5317 or Office: 559-298-6000



City of Pismo Beach
Attention: City Clerk
760 Mattie Road
Pismo Beach, CA 93449
805-773-4657 Fax: 805-773-7006

APPEAL OF A PLANNING COMMISSION DECISION

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Person Filing Appeal:

ROBERT J. WARNER
Print Name
PRIMARY - 7819 N. FANCHER RD. CLOVIS CA. 93619 559-970-5317 cell
SECONDARY - 345 BOEKER PISMO BEACH CA 93449 559-298-6000 office
Address 559-299-3377 PRIMARY RES.

City/State/Zip Code

388 WINDWARD AVE PISMO BEACH CA.
Project Address/Parcel Number

ERNE AND PAT ROZO - PROJECT NO. P14-000080
Project Name

*What permits are being appealed:

PROJECT NO P14-000080

*List all applicable case numbers(s):

Date Heard at Planning Commission: 7/8/2014 Date Appeal Filed: 7/22/14

Cause for Appeal: (Please be specific; attach additional sheets if necessary, reference any inconsistency with specific city statutes; the General Plan/Local Coastal Plan and Zoning Ordinance is available for review):

(SEE ATTACHMENT)

Signature (s)

ATTEST:

Date: JULY 22, 2014

City Clerk

Received By: _____ Date: _____ 20__

Fee Paid: \$ _____ Date: _____ Receipt Number: _____

July 1, 2013 fee schedule: \$788 outside the Coastal Zone and No Fee for Appeals Within the Coastal Appeal Zone.

July 8, 2014 Planning Commission Minutes Excerpt

5. Public Hearing Agenda:

5.A. 388 Windward; Ernie & Pam Rozo, Applicants: Project No. 14-000080

A Coastal Development Permit for demolition of an existing residence and construction of a new 3,693 sq. ft. residence (including garage). The project is located in the R-1 (Single-Family) zone of the Shell Beach Planning Area. APN: 010-371-012. The project is appealable to the California Coastal Commission.

Commissioner McLaughlin recused himself from this item.

Senior Planner Graham gave the staff report and answered questions from the Planning Commission.

Vice Chairman Hamrick opened the public hearing.

Speakers in support of the project: Pam Rozo, applicant

Speakers against the project: David Stornetta

Vice Chairman Hamrick closed the public hearing.

Associate Engineer Eldridge answered questions from the Planning Commission.

Commissioner Woodhouse moved to adopt the resolution approving Project No. P14-000080 as conditioned. Commissioner Jewell seconded the motion. The motion was approved by roll call vote. The motion passed 4-0. Voting Yes: Vice Chairman Hamrick, Commissioner Jewell, Commissioner Overland, Commissioner Woodhouse; Voting No: None; Recused: Commissioner McLaughlin

PLANNING COMMISSION AGENDA REPORT



PISMO BEACH PLANNING COMMISSION REPORT

SUBJECT/TITLE: 388 Windward, Ernie & Pam Rozo, Applicant's; Project P14-000080

A Coastal Development Permit for demolition of an existing residence and construction of a new 3,693 square foot residence (including garage). The project is located in the R-1 (single Family) zone of the Shell Beach Planning Area. APN: 010-371-012. The project is appealable to the California Coastal Commission.

RECOMMENDATION: Adopt the attached resolution approving the Coastal Development Permit subject to the attached conditions.

EXECUTIVE SUMMARY: The proposal includes demolition of an existing residence and construction of a new 3,693 square foot residence.



The project complies with all applicable General Plan/Local Coastal Program policies and all 1983 Zoning Code requirements.

Prepared by: Scot Graham, Senior Planner
2014

Meeting Date: July 8,

Reviewed by: Carolyn Johnson, Planning Manager

Approved by: Jon Biggs, Community Development Director

Exhibits

1. GP/LCP, Overlay & Development Standards
2. Resolution
3. Plans

Exhibit 1**GP/LCP, Overlay Zoning Issues, Development Standards Chart**

Project No. P14-000080, Address: 388 Windward

APNS: 010-371-012, Planning Area: Shell Beach

General Plan and Zoning Code Consistency Issues Charts

A. GENERAL PLAN/LOCAL COASTAL PLAN POLICIES			
Number	General Plan Policy	Related Condition	Issue
LU-H-4	<p>a. Scale of structure New development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal and roof articulation of building faces. Where two story buildings are proposed the second story should normally be stepped back.</p> <p>b. Orientation of doors windows and balconies to street Generally the street frontage should consist of residential units with windows, doors, balconies and porches facing and in reasonably close proximity to the street, both in terms of height (ie units at street level, rather than raised) and in distance from the street (minimum setback). This type of orientation reinforces the traditional beach and street active environment and also increases street safety with "eyes" on the street.</p>	None.	None. Project is a two story home. Design includes windows, balconies and a door facing the street. Project also includes variation in roof height.
LU-H-5	Minimum bluff setback is 25' and all bluff top projects are required to be accompanied by a geologic bluff study.	None	None. Project is not a bluff top lot.
LU-H-8	<p>Lateral Access at Boeker Street: The City should pursue opportunities to create lateral pedestrian pathways connecting Booker Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)</p>	None	None. The property does not align with the recently acquired pedestrian easement at 367 Boeker. The lateral access would more likely be acquired/achieved when the adjacent property at 398 Windward redevelops.

D-2	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.	None	None. Door faces street and is readily identifiable.
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B. OVERLAY ZONES			
Number	Overlay Zone	Related Conditions	Issue
17.072	Coastal Appeal (CA) Project approvals in this zone can be appealed to the Coastal Commission in limited circumstances. All projects within the zone require review by the Planning Commission.	None	Project is being reviewed by Planning Commission and any decision rendered is subject to appeal.
17.063	Archaeology and Historic Sites (A) Requires archaeological surface survey for all sites in this zone; additional study or mitigation may be required depending on results of survey	Planning A-2	None. Both a Historical analysis and Cultural Resources Assessment were performed by Rebecca Anastasio in November 2013. The Historical Assessment finds the residence lacking historical significance. The Cultural Resources Assessment recommends monitoring of all demolition activities, utility trenching and foundation excavation due to the proximity of the project to a known archaeological site.
17.069	Architectural Review (AR) Architectural review is required of certain types of projects and of all projects in zones other than R-1 and R-2.	None	None. Planning Commission conducts architectural review.

C. Single-Family Dwelling Design Standards consistency (Resolution 06-0048) ¹	
Title/Criteria	Complies?
A. Second floor massing To avoid "boxy" structures that have unrelieved exterior wall plans extending in height for two or more stories, and to promote vertical articulation of wall planes, the second floor	Yes. The front elevation exterior wall is broken by a covered balcony and a roof overhang extending from the first story. The

¹ note: the figures related to these guidelines can be found in the Resolution 06-0048.

living area shall be set back from the ground floor building footprint on the street sides of the house as much as determined by the review authority to be feasible.	second floor also steps back along a portion of the upper floor.
B. Neighborhood character. In order to attain compatibility with the existing scale and character of the surrounding neighborhood, the development of new single-family dwellings and the alteration of existing dwellings shall include design features or elements that are similar or complementary to nearby homes, including building form and mass, exterior materials, roof form and style, and window shape and style.	Yes. The proposed single-family home makes use of similar colors and materials as those found in surrounding homes. Materials include a stucco exterior finish, tile roof, with stone veneer accents.
C. Design features. 1. Garages. Required parking for single-family dwellings shall be enclosed within a garage; carports shall be prohibited. Roll-up or similar types of garage doors shall be required to maximize parking area on the driveway apron and to avoid the obstruction of sidewalks by parked vehicles.	Yes. A two-car garage is proposed. The garage is located at the rear of the home providing ample onsite parking.
2. Façade articulation. Long expanses of uninterrupted exterior wall plans should be avoided. Exterior wall planes should be relieved by: the provision of off-sets in wall plans; placement of windows; incorporation of porches, balconies, trellises, or decks; incorporation of trim, ornamentation or architectural detailing appropriate to the building style; use of varied textures and colors; and the use of other design accents to soften the architecture.	Yes. The design incorporates elements that include off sets in the wall planes, inclusion of windows, eaves and deck features to help break up the building elevations.
3. Roof articulation. Long expanses of uninterrupted roof plans should be avoided. Roof heights, plans, and lines should be varied. Traditional roof forms, especially gable and hip designs, should be used unless infeasible. Roof features including dormers and clerestories are encouraged. If flat or low-slope roof forms are proposed, special care should be taken to ensure compatibility with, and minimize shading of, adjacent structures.	Yes. The roof is broken up through the use of various pitches on the second floor, including a significant step down of the garage area from the main roof.

**D. DEVELOPMENT STANDARDS CONSISTENCY CHART:
388 Windward, R-1 Zone, Shell Beach Planning Area**

Item	Permitted/ Required	Code Section	Proposed	Complies?
Lot area	5,000 sq. ft. min.	17.102.060	5,236 sq. ft.	Yes
Max bldg height	25' above natural grade at center of building footprint. $56.50' + 25 = 81.5'$ max elevation	17.102.010	24' – 7" Or 81.0' elevation	Yes
Max lot coverage	55% Allowed: 2,879 sq. ft. max	17.102.080	2,770 sq. ft. (53%)	Yes
Max Building	86% of the first 2700 sq. ft. of lot area, 60% of the	17.105.135	3,693 sq. ft.	Yes

Area Ratio	remainder= 3,843 sq. ft. max.			
Planting Area	20% of lot size 1,047 sq. ft. minimum,	17.102.095	1,447 sq. ft. (27.6%)	Yes
2nd/1st floor ratio	2nd floor not to exceed 80% of 1 st floor. 1 st = 2,052 sq.ft. x .80 = 1,641.6 sf max	17.102.080	1,641 sq. ft. or 79.9%	Yes
Minimum front yard setback	20% of lot depth or the avg. of the front setbacks of the nearest improved lots on either side of the subject lot, no less than 10', no more than 20' required. Using the avg. setback for the lots on either side = 4.57' (398 Windward) + 19.58' (376 Windward) = 24.33/2 = 12.165'	17.102.020	12.25'	Yes
Front Setback Encroachment	Cantilevered balconies can extend into the required front yard setback up to 20% into the required setback. 12.25' x .20 = 2.45' - 12.25' = 9.8'	17.102.150	9' - 9"	Yes
Minimum side yard setback	10% lot width; min. 4'; max. 5 req'd., in this case: 5'	17.102.030.1	R = 5' L = 5' - 5"	Yes
Garage Setback	20'	GP LU-D-2	46' side loading at rear of residence	Yes
Minimum parking spaces	2 spaces within a garage for lot	17.108.020, 17.108.030 b	2 spaces within a garage.	Yes
Minimum Rear Setback	10% of lot depth or 6' - 11.4"	17.102.040	6' - 11"	Yes
Minimum parking space size	10' x 20'	17.108.030	2 spaces measuring 24' x 22'	Yes

Planning Commission Resolution

RESOLUTION NO: PC-R-2014-023

**A Resolution of the Planning Commission of the City of Pismo Beach
Approving Project No. 14-000080 For
Construction of a New 3,693 Square Foot Single-Family Residence
at 388 Windward; APN: 010-371-012**

WHEREAS, Ernie & Pam Rozo ("Applicant's") have submitted an application to the City of Pismo Beach for a Coastal Development and Architectural Review Permit for the demolition of an existing residence and construction of a new two story 3,693 square foot single-family residence; and

WHEREAS, the Planning Commission held a duly-noticed public hearings on July 8, 2014, at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission determines that under the provisions of the California Environmental Quality Act (CEQA), the construction of a new single-family residence is exempted per section 15303 of the guidelines.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Pismo Beach, California as follows:

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

1. The project consists of the demolition of an existing residence and construction of a new 3,693 square foot single-family residence.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the construction of a new single-family residence.
3. The demolition of the existing residence and subsequent construction of a new 3,693 square foot single-family residence is exempt from CEQA in accordance with section 15303 of the CEQA Guidelines, exempting construction of on single family residence within a single family zone where all infrastructures is present.

B. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMIT AND ARCHITECTURAL REVIEW PERMIT:

1. The project improvements comply with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.
2. The construction of a new 3,693 square foot single-family residence is appropriate in size so as to be compatible with the adjacent structures.
3. The architectural and general appearance of the new single-family residence is in keeping with the character of the neighborhood.

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4. The proposed new residence is compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.

5. The construction of a new 3,693 square foot single-family residence is consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Single-Family Low Density Residential.

6. The construction of a new 3,693 square foot single-family residence is compatible with the nearby existing uses and will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.

7. The construction of a new 3,693 square foot single-family residence will not be detrimental to the orderly development of improvements in the surrounding area, and will not be detrimental to the orderly and harmonious development of the City.

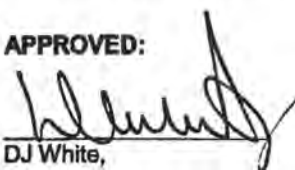
8. The construction of a new 3,693 square foot single-family residence will not impair the desirability of investment or occupation in the neighborhood.

The Planning Commission does hereby approve the Coastal Development Permit subject to the Conditions attached as Exhibit A.

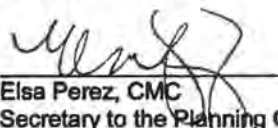
UPON MOTION of Commissioner Woodhouse seconded by Commissioner Jewell the foregoing Resolution is hereby approved and adopted the 8th of July, 2014, by the following roll call vote, to wit:

AYES: COMMISSIONERS: Hamrick, Jewell, Overland, Woodhouse.
NOES: COMMISSIONERS: None.
ABSTAIN: COMMISSIONERS: McLaughlin
ABSENT: COMMISSIONERS: None

APPROVED:


DJ White,
Chairman

ATTEST:


Elsa Perez, CMC
Secretary to the Planning Commission

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EXHIBIT A
PERMIT NO. P14-000080, CDP / ARP
PLANNING COMMISSION MEETING OF July 8, 2014
388 Windward, APN: 010-371-012

The conditions imposed on this project shall affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed and made available to the applicant shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on owner (applicant, developer) by this permit.

AUTHORIZATION: Subject to the conditions stated below, approval of Permit P14-000080 grants planning permits for the demolition of an existing residence and construction of a new 3,693 square foot residence, as shown on the approved plans with City of Pismo Beach stamp of July 08, 2014. Approval is granted only for the construction and use as herein stated; any proposed changes shall require approval of amendments to these permits by the City of Pismo Beach.

Standard conditions, policies and selected code requirements applicable to new single-family residences, as adopted by the Planning Commission are by this reference included as conditions of this permit. Such standard conditions will be attached to this permit when signed by the applicant. Special project conditions are listed on Exhibit A of this permit. The applicant agrees to comply with all City standard conditions and conditions specific to the project.

EFFECTIVE DATE: This permit shall become effective upon the passage of 20 days following the receipt of notice of this action by the California Coastal Commission, provided that an appeal has not been filed to the City Council within 10 working days or that an appeal has not been filed to the Coastal Commission within the above 20 days. The filing of an appeal shall stay the effective date until an action is taken on the appeal.

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on July 8, 2016 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

ACCEPTANCE OF PERMIT AND CONDITIONS: The property owner and the applicant (if different) shall sign these Conditions within ten (10) working days of receipt; the permit is not valid until signed by the property owner and applicant.

COMPLIANCE AGREEMENT: I have read and understood, and I will comply with all applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction. The duty of inquiry as to such requirements shall be my responsibility. I agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of

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the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the project; or my failure to comply with conditions of approval. This agreement shall be binding on all successors and assigns.

I HAVE READ AND UNDERSTOOD, AND I WILL COMPLY WITH ALL ATTACHED STATED CONDITIONS OF THIS PERMIT

Approved by the Planning Commission on July 8, 2014.

Applicant

Date

Property Owner

Date

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**CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS FOR
PROJECT No. P14-000080
388 Windward, APN: 010-371-012**

Conditions as indicated below have been deemed to be of a substantive nature on the basis of the Planning Commission's decision. These conditions cannot be altered without Planning Commission approval.

A. PRIOR TO ISSUANCE OF A BUILDING PERMIT:

BUILDING DIVISION:

1. Building permit plans shall be submitted by a California licensed architect or engineer when required by the Business & Professions Code, except when otherwise approved by the Chief Building Official.
2. The owner shall designate on the building permit application a registered design professional who shall act as the Registered Design Professional in Responsible Charge. The Registered Design Professional in Responsible Charge shall be responsible for reviewing and coordinating submittal documents prepared by others including phased and staggered submittal items, for compatibility with design of the building.
3. The owner shall comply with the City's Structural Observation Program. The owner shall employ the engineer or architect responsible for the structural design, or another engineer or architect designated by the engineer of record or architect responsible for the structural design, to perform structural observation as defined in Section 220. Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved.
4. The owner shall comply with the City's Special Inspection Program. Special inspections will be required by Section 1704 of the California Building Code. All Special Inspectors shall first be approved by the Building Official to work in the jurisdiction. All field reports shall be provided to the City Building Inspector when requested at specified increments in order for the construction to proceed. All final reports from Special Inspectors shall be provided to the Building Official when they are complete and prior to final inspection.
5. Mitigation measures for natural occurring asbestos require approval from San Luis Obispo County Air Pollution Control District.
6. Projects shall comply with current City and State water conservation regulations.
7. Deferred submittals are not allowed, i.e. fire sprinkler plans and calculations, spiral staircases, and truss calculations.

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8. A soils investigation performed by a qualified professional shall be required for this project. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability; details shall be provided
9. Site retaining walls require a separate building permit. Please provide a separate soils report and engineering calculations for the site walls at the time of permit application.
10. Fire sprinklers, shall be required by City Codes.

PLANNING DIVISION

1. COMPLIANCE WITH PLANNING COMMISSION APPROVAL. Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and these conditions. Project shall comply with these standards:

Item	Approved
Lot area	5,236 sq. ft.
Maximum building height	24' – 7" or 81.0" elevation
Maximum building area ratio	3,693 sq. ft.
Planting area	1,447 sq. ft.
Lot Coverage	2,770 sq. ft.
Minimum front yard setback	12.25' to house 9' – 9" to edge of cantilevered deck
Minimum side yard setback	R = 5' L = 5' – 5"
Minimum rear yard setback	6' – 11"
Minimum parking spaces	2 within garage
Minimum parking space size	2 at 24' x 22' clear

2. ARCHAEOLOGICAL MONITORING. The applicant shall provide signed copies, to the Planning Division, of the contracts for both an archaeological and Native American monitor.
3. LANDSCAPING, IRRIGATION. The applicant shall provide Landscaping and irrigation plans encompassing the entire site. The plans shall be submitted by the project applicant to the City for review and approval by the project planner. Detailed calculations shall be provided on the face of the plan indicating the provision of a minimum of 20% landscape area with no greater than 10% provided as lawn. The landscape plan shall be designed in a manner consistent with Chapter 15.48 of the Municipal and include the following provisions:

- a. *Use of low-water-using irrigation systems. Drip irrigation shall be used where feasible.*

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- b. *Landscape Design Plan (including plant list)*
- c. *Irrigation Design Plan*
- d. *Separate calculation for landscaping and hardscape shall be provided.*
- e. *Landscape plans shall not include any trees exceeding a mature height exceeding the roof line of the residence. All trees shall be maintained at a height not to exceed the height of the residence.*

ENGINEERING

1. Engineering standard conditions (notes): Shall be placed on the plans at time of submittal. A copy may be obtained through the Engineering Department.
2. Project improvements shall be designed and constructed in accordance with City standards and specifications and in accordance with all applicable City Ordinances. The decision of the City Engineer shall be final regarding the specific standards that shall apply.
3. Appropriate City standards shall be referred to on the plans and shall be included on a detail sheet within the plan set.
4. The applicant will be responsible for obtaining an encroachment permit for all work within a public right of way (City).
5. The City Engineering Division shall approve any landscaping or irrigation within a public right of way or otherwise to be maintained by the City.
6. The applicant shall provide a current title report to the Engineering Division.
7. Driveways and driveway approaches shall be located and constructed per City of Pismo Beach standards. Profiles shall be provided for all interior driveways.
8. If the existing City street adjacent to the frontage of the project is inadequate for the traffic generated by the project, or will be severely damaged by construction, the applicant shall excavate the entire section and replace it with a standard half – width street.
9. A lot Merger shall be applied for and completed prior to issuance of a building permit.

Grading and Drainage Plans

10. The following conditions shall be met during construction:
 - a. Owner and/or owner's contractor are to take precaution against damaging road surfaces. Note: The existing street sections adjacent the property may be substandard and may be subject to damage by heavy loading/equipment during construction. The owner is responsible for protection against and/or repair of, at owner's expense, any/all damage incurred during and/or due to construction.

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- a. Encroachment Permits are required prior to any/all work in the public right of way. City Streets are to remain open to through traffic at all times. A traffic control plan shall be submitted to the Engineering Division for approval prior to detours or rerouting of traffic. Excavation within the streets shall be covered or backfilled and paved prior to the end of work each day. No temporary or long term parking, storage, or disposal of construction equipment or materials within the right-of-way shall occur without prior issuance of an encroachment permit.
 - b. Erosion and Drainage control features are to be available to be placed in the event of rain or other erosive action to prevent any sediment or refuse from leaving the site. Erosion control devices shall be installed and in place following daily construction activities. The applicant shall notify the Engineering Division of any changes in construction which will require additional erosion control measures.
- 11. A Preliminary Soils and/or Geology Report providing technical specifications for grading of the site shall be prepared by a Geotechnical Engineer.
 - 12. All grading and drainage improvements shall be designed and constructed in accordance with the City Grading Ordinance and subject to approval by the City Engineer.
 - 13. The project shall conform to the City's Storm Water Discharge Ordinance.
 - 14. In order for the proposed development to maintain conformance with the City's Regional Stormwater Permit, implementation of Low Impact Development (LID) source control, site design, and stormwater treatment onsite or at a joint stormwater treatment facility shall be required. The stormwater design shall be submitted for review and approval by the City Engineer and shall provide mitigation for post development runoff versus pre-development runoff.
 - 15. Calculations and/or a drainage report must be submitted with the plans.
 - 16. The applicant shall submit a composite utility plan.
 - 17. Landscape and irrigation plans for the public right-of-way shall be incorporated into the improvement plans and shall require approval by the Streets Division Supervisor and the Community Development Department.
 - 18. No Building Permits will be issued without prior approval of the Engineering Division and an approved erosion and sediment control plan and construction schedule. Erosion control measures shall be in place and approved by the Engineering Division prior to the start of construction.
 - 19. An Erosion and Drainage Control Plan shall be submitted in accordance with the City Grading Ordinance. The plan shall reflect "Best Management Practices" as proposed in the California Regional Water Quality Control Board Erosion and Sediment Control Field Manual, and shall include both temporary measures (to be used during construction, and until permanent measures are completed/established) and permanent measures. Plan shall

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include both source control and perimeter containment measures. All Drainage and Erosion Control Measures shall be designed and/or sized by a qualified professional.

Utilities

- 20. The applicant shall install all utilities.
- 21. All utilities shall be extended to the boundaries of the project.
- 22. Sewer System Requirements

Construction of permanent structures over a City sewer line and easement is against current City policy. Specifically, to allow the demolition of an existing home that has been built over the existing City sewer main and easement and construction of a new home over the sewer main and easement. This is not a preferable or even generally acceptable condition. However, due to the current site situation and per the request of the applicant, staff will allow such construction for your proposed project if the following conditions are met:

- A. The existing cast iron sewer pipe shall be removed and replaced with PVC pipe that extends a minimum of 10' beyond the footprint of the proposed house. The pipe shall be backfilled with 2-sack concrete slurry.
- B. All footings of the proposed residence that are adjacent to and parallel with the sewer line must be designed to remain outside the existing 10' wide sewer easement and to extend below the depth of the existing sewer line using a concrete caisson and grade beam type system or other method as designed and approved by the applicants Geotechnical and Structural Engineer. The design shall be submitted for review and approval by the City Engineer.
- C. Prior to final of the proposed residence the newly installed PVC sewer shall be video inspected to verify condition.
- D. An Encroachment Agreement for building over the sewer line and easement must be applied for through the Engineering Division. The Agreement must be reached with City Council, signed and recorded prior to issuance of Building Permit. Applicant shall understand that receiving a Conditional Use Permit does not in any way guarantee that an agreement can, or will, be reached with the City Council for the encroachment into the existing sewer easement.
- E. As an alternate to the conditions described above, the proposed residence may be designed to current City policy and commonly accepted engineering principles and remain completely outside of the existing 10' wide sewer easement.

23. Water System Requirements

Applicant is required to show the existing location of the Water Main in the street and location of the existing water lateral, if existing, on the plans. The size of the proposed lateral and proposed water meter shall be shown on the plans. If existing lateral is inadequate for the

proposed water meter, then applicant is responsible for all costs, materials and labor for the installation of a new water lateral. Show size and type of all water lines.

24. All existing overhead wire service utilities to the residence shall be relocated underground.

Public Improvement Plans

25. Public improvement plans shall be prepared by a registered Civil Engineer and approved by the Public Works Department, Engineering Division and include the following:

A. Existing Sewer Main replacement

26. The applicant shall submit three sets of public improvement plans to the engineering department on the City of Pismo Beach title block as a separate submittal.

27. Upon approval of the improvement plans, the applicant shall provide a reproducible mylar set and 3 sets of prints of the improvements for inspection purposes.

28. The applicant shall provide an engineer's estimate for all work on public improvement plan.

29. Prior to any plan check, the applicant shall enter into an Engineering Plan Check and Inspection Services Agreement with the City based on 5% of the engineer's estimate for all work on public improvement plan.

30. Building plans will not be approved by the Engineering Department until Public Improvement Plans are approved; i.e approved mylars signed by the City Engineer.

31. Prior to the final inspections and acceptance of the public improvements the applicant shall provide to the City Engineer record drawings, signed by the engineer of record:

1 set of reproducible mylars

3 sets of print of the approved record drawings (as built)

32. An electronic AutoCAD drawing file registered to the City's benchmark system shall be provided.

33. The applicant shall pay any current and outstanding fees for Engineering Plan Checking and Construction Inspection services.

B. CONDITIONS TO BE MET DURING CONSTRUCTION:

BUILDING DIVISION:

1. SITE MAINTENANCE. During construction, the site shall be maintained so as to not infringe on neighboring property, such as debris and dust.

2. ARCHAEOLOGICAL MATERIALS. In the event unforeseen archaeological resources are unearthed during any construction activities, all grading and or excavation shall cease in the immediate area and the find left untouched. The Building Official shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist,

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Native American, or paleontologist, whichever is appropriate. The qualified professional shall evaluate the find and make reservations related to the preservation or disposition of artifacts in accordance with applicable laws and ordinances. If discovered archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the Building Official shall notify to county coroner. If human remains are found to be of ancient age and of archaeological and spiritual significance, the Building Official shall notify the Native American Heritage Commission. The developer shall be liable for costs associated with the professional investigation.

3. Certification of compliance with the soils report shall be submitted to the Building Division prior to foundation approvals. A final report certifying compliance with the soils report or grading plans shall be submitted to the Building Division prior to final approvals.

4. A licensed surveyor or engineer shall verify pad elevations, setbacks, prior to foundation inspection, and roof elevations, prior to roof sheeting inspection, when determined necessary by the Planning Department.

C. CONDITIONS TO BE MET PRIOR TO FINAL INSPECTION AND ISSUANCE OF CERTIFICATE OF OCCUPANCY:

BUILDING DIVISION:

1. Prior to building division final approval all required inspections from the other various divisions must have been completed and verified by a city inspector. All required final inspection approvals must be obtained from the various departments and documented on the permit card.

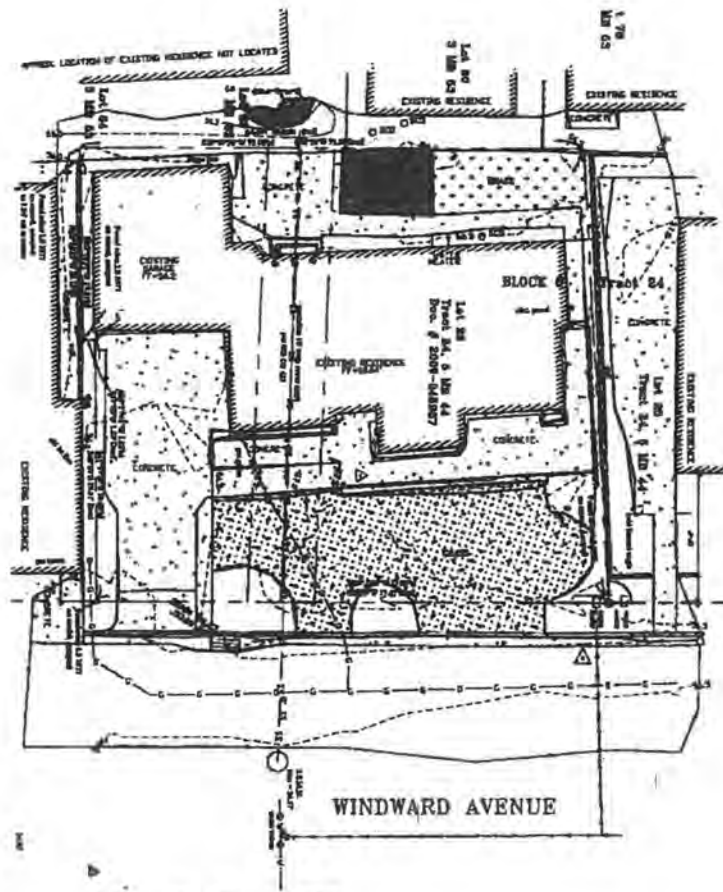
D. CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. ROOF-MOUNTED EQUIPMENT. All roof-mounted air conditioning or heating equipment, vents or ducts shall be screened from view in a manner approved by the Project Planner.

2. COMPLIANCE WITH APPLICABLE LAWS. All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.


-END-

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INDEX TO DRAWINGS
 1. SITE PLAN
 2. FLOOR PLAN
 3. ELEVATIONS
 4. SECTION
 5. DETAIL
 6. LANDSCAPE
 7. PAVING
 8. LIGHTING
 9. FURNITURE
 10. OTHER

Attachment 9

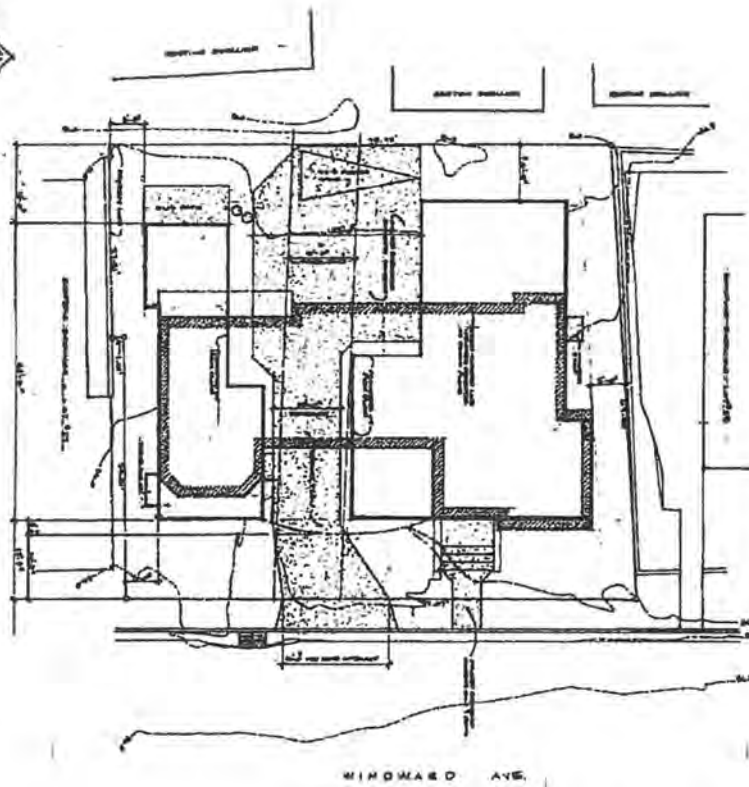
A-1	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 388 WINDWARD AVE. POINCIPE BEACH, FL 33440	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
	SHEET 1			

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PROPOSED SITE PLAN

1/8" = 1'-0"



NEIGHBORHOOD MAP

1/4" = 1'-0"



PROJECT TEAM	
OWNER	ERNIE & PAMELA ROZO
DESIGNER	JERRY SHAW RESIDENTIAL DESIGN
DATE	04/15/2015
PROJECT DESCRIPTION	NEW CUSTOM RESIDENCE FOR ERNIE & PAMELA ROZO
PROJECT ADDRESS	325 WINDWARD AVE. PISMO BEACH, CA 93449
PERMITTING AGENCY	SAN LUIS OBISPO COUNTY
SETBACKS	FRONT: 10'-0" SIDE: 5'-0" REAR: 10'-0"
FLOOR AREAS	1ST FLOOR: 1,200 SQ. FT. 2ND FLOOR: 1,200 SQ. FT. TOTAL: 2,400 SQ. FT.

COVERAGE	
1ST FLOOR	1,200 SQ. FT.
2ND FLOOR	1,200 SQ. FT.
FLOOR AREA RATIO	0.50
SCULPTURE & LANDSCAPE	100 SQ. FT.
PARKING	2 SPACES
LIMITS	10'-0" FROM STREET
MAXIMUM BUILDING HEIGHT	10'-0"

DATE / COMMENTS

A-2

A NEW CUSTOM RESIDENCE FOR:

ERNIE & PAMELA ROZO

325 WINDWARD AVE. PISMO BEACH, CA 93449

JERRY SHAW

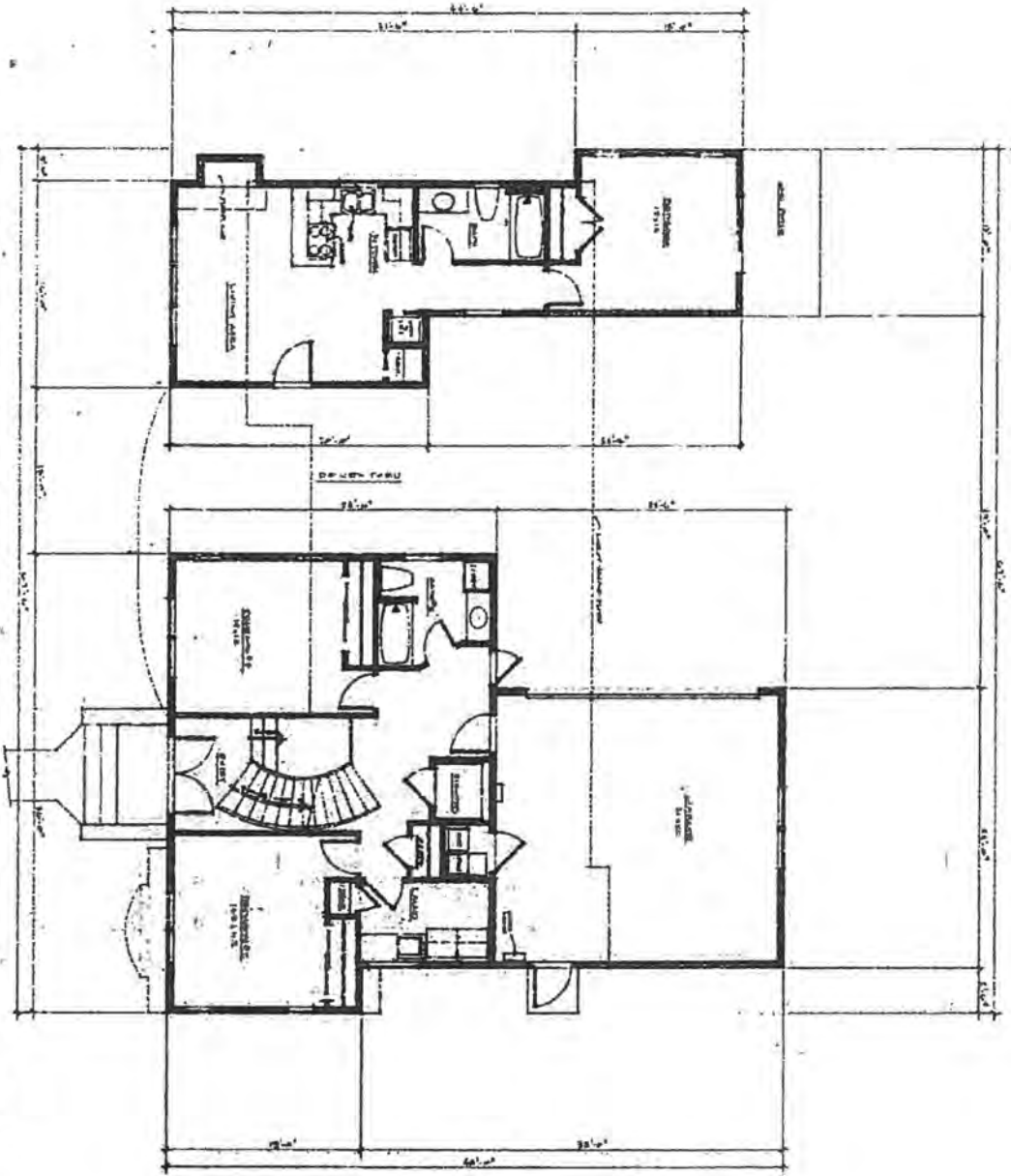
Residential Design


(805) 481-0308

www.jerryshawdesign.com

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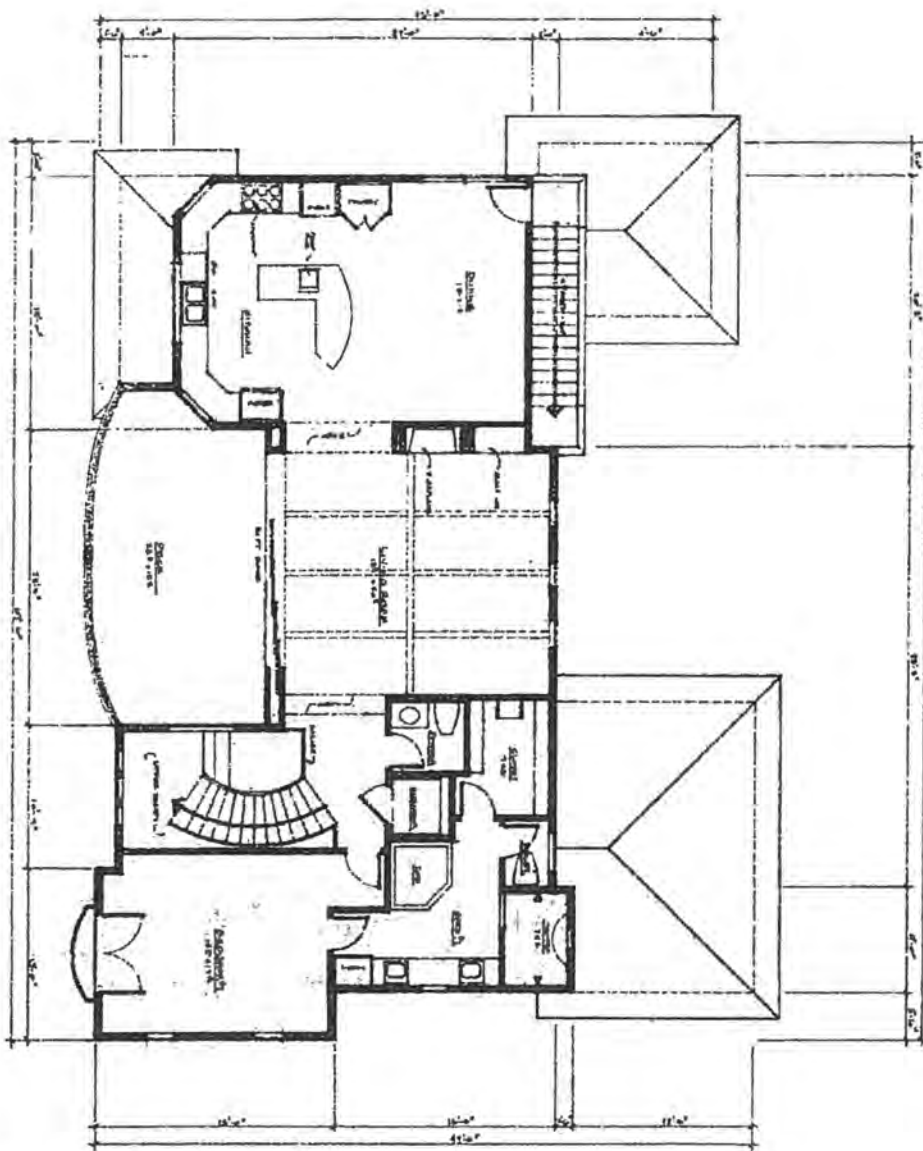
CLIENT: ERNIE & PAMELA ROZO
 PROJECT: NEW CUSTOM RESIDENCE
 ADDRESS: 3300 WINDWARD AVE., PISMO BEACH, CA 93449
 DATE: 04/21/15
 DRAWN BY: JERRY SHAW
 CHECKED BY: JERRY SHAW
 SCALE: 1/8" = 1'-0"



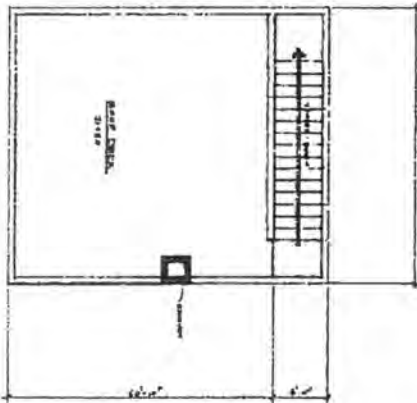
A-3	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 3300 WINDWARD AVE. PISMO BEACH, CA 93449	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
	SHEET _____ _____ _____			


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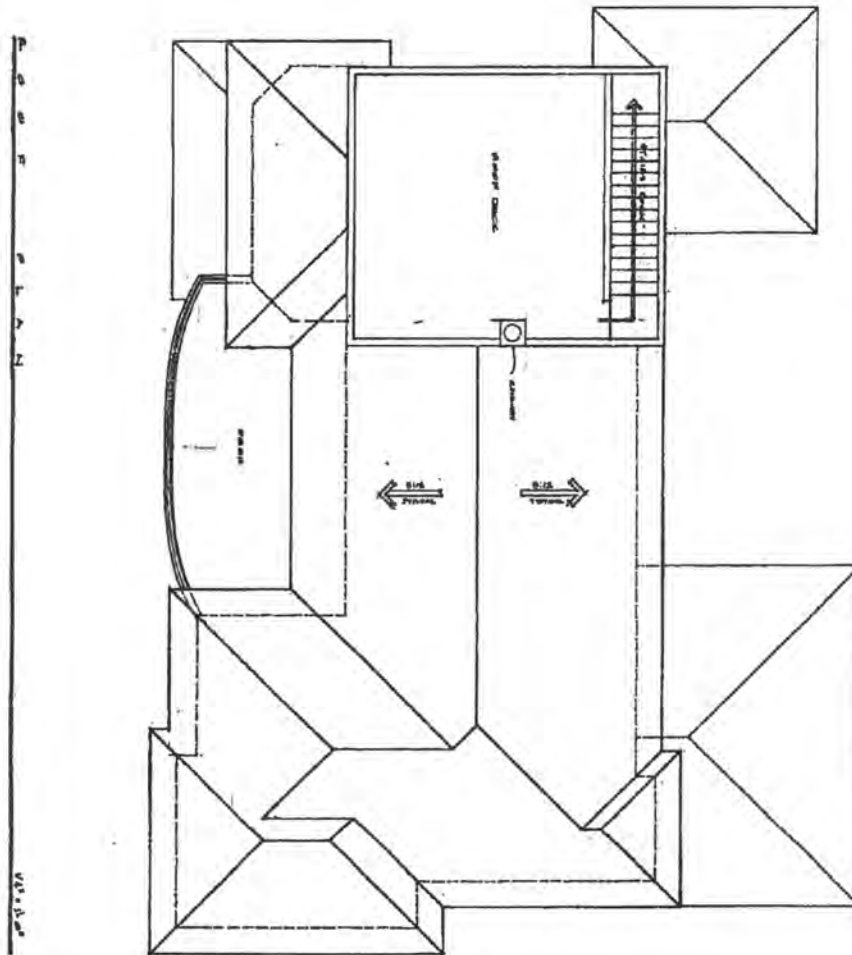
USEFUL LEVEL - FLOOR PLAN



ROOF DECK FLOOR PLAN

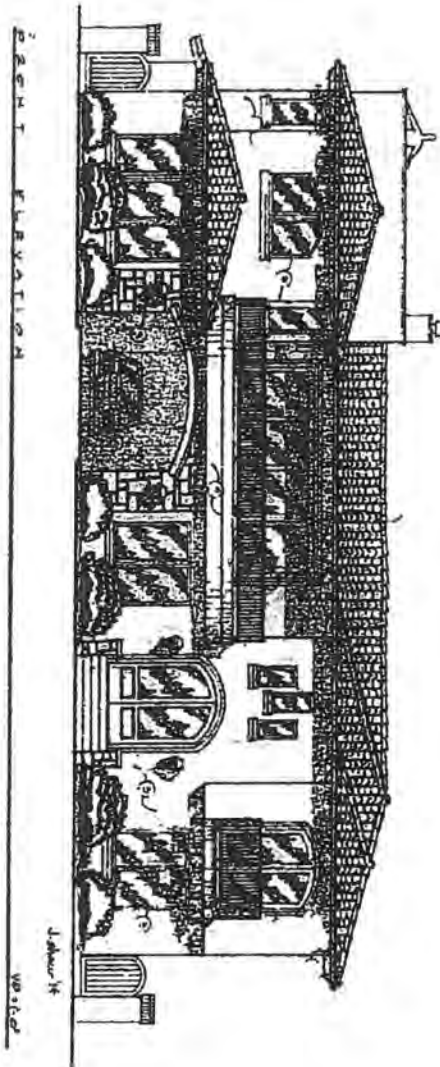


A-4	DATE / COMMENTS	<p>A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 300 WINDWARD AVE. POMONA BEACH, CA 93448</p>	<p>JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com</p>	
	SHEET			



A-5	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 328 WINDWARD AVE. PISMO BEACH, CA. 93448	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
	SHEET			

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EXTENSION FINISH REMARKS
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A-6

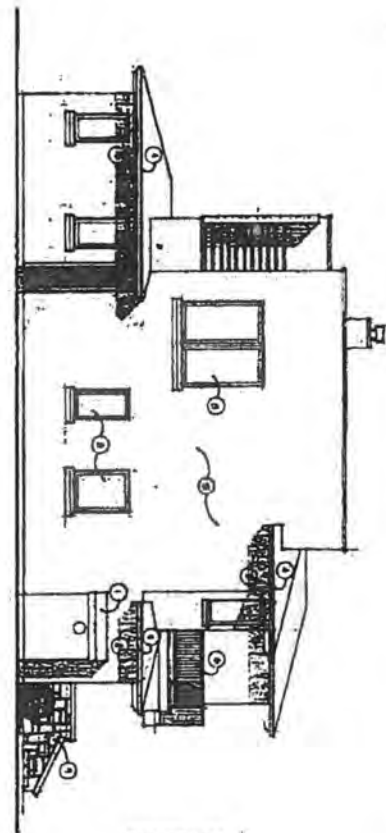
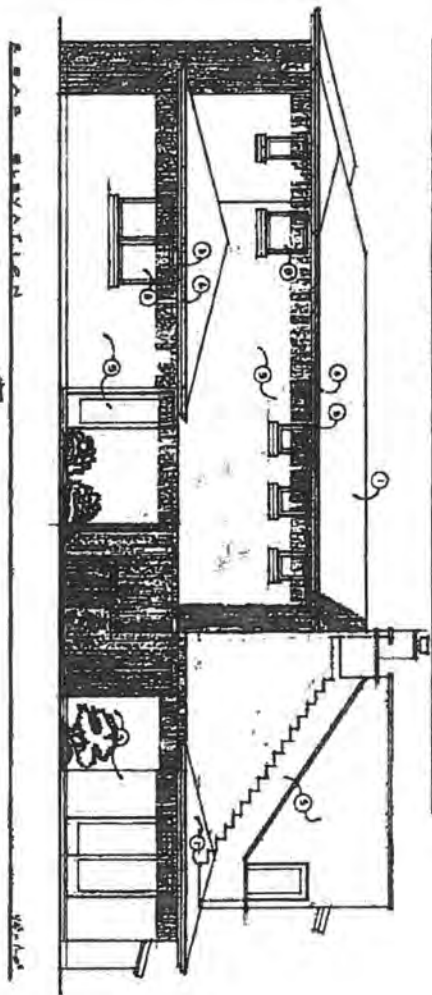
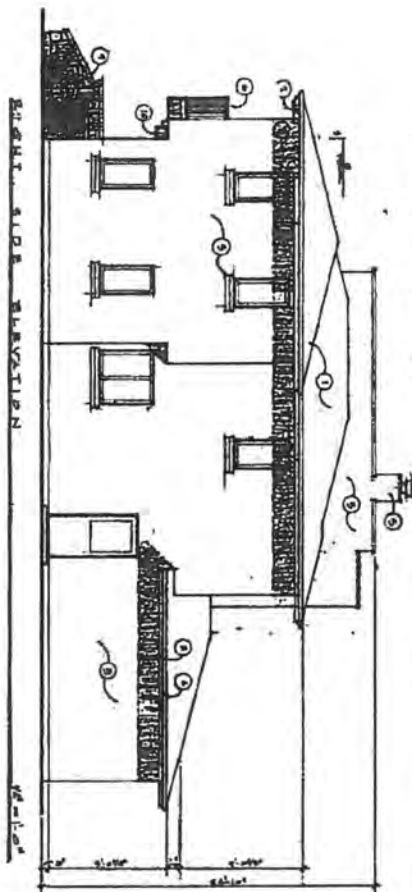
DATE / COMMENTS

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
 888 WINDWARD AVE. PISMO BEACH, CA 93449

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EXTERIOR FINISH NOTES

- 1. EXTERIOR WALLS: STUCCO
- 2. ROOF: ASPH/FLT SHINGLES
- 3. FLOORS: 1" SOLID PLYWOOD
- 4. CEILING: 1/2" SOLID PLYWOOD
- 5. INTERIOR WALLS: 5/8" GYP BOARD
- 6. INTERIOR FLOORS: 3/4" SOLID PLYWOOD
- 7. INTERIOR CEILING: 5/8" GYP BOARD
- 8. EXTERIOR DOORS: 1 3/4" SOLID WOOD
- 9. EXTERIOR WINDOWS: 1 3/4" SOLID WOOD
- 10. EXTERIOR STAIRS: 1 3/4" SOLID WOOD
- 11. EXTERIOR RAILINGS: 1 3/4" SOLID WOOD
- 12. EXTERIOR LIGHTS: 6" SQUARE
- 13. EXTERIOR VENTS: 12" ROUND
- 14. EXTERIOR DOWNSPUTS: 1 1/2" DIA
- 15. EXTERIOR GUTTERS: 6" KYLE

A-7	SHEET	DATE / COMMENTS

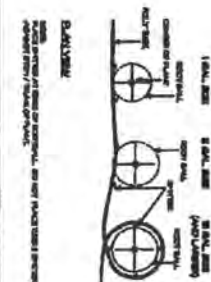
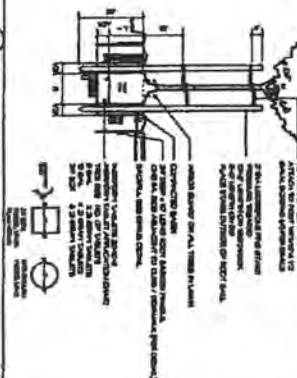
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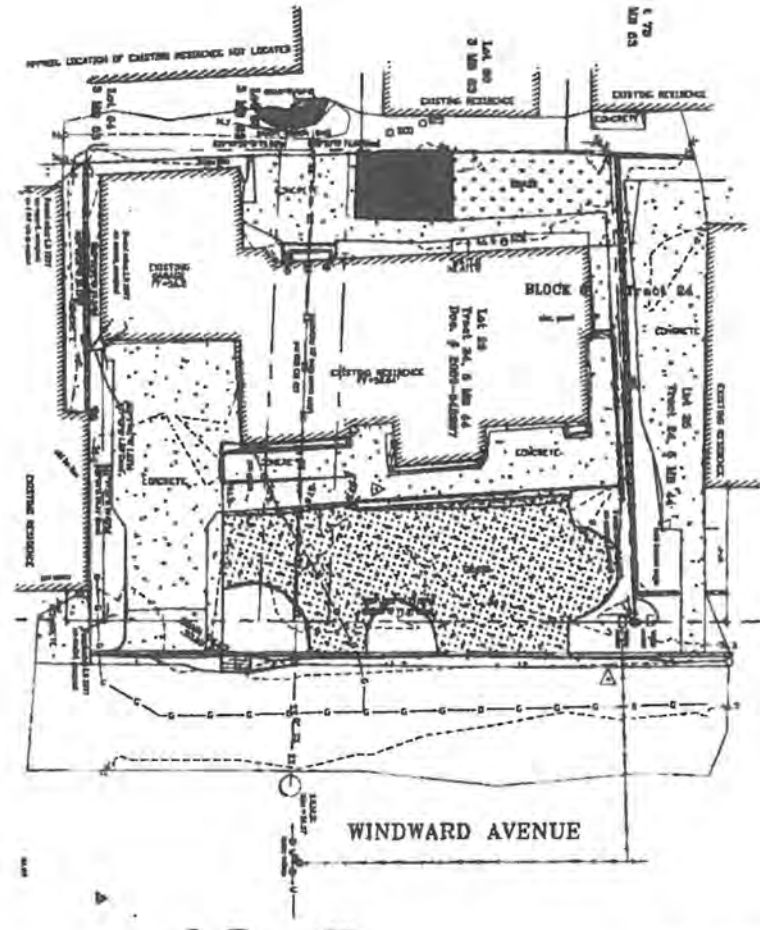
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Abstract





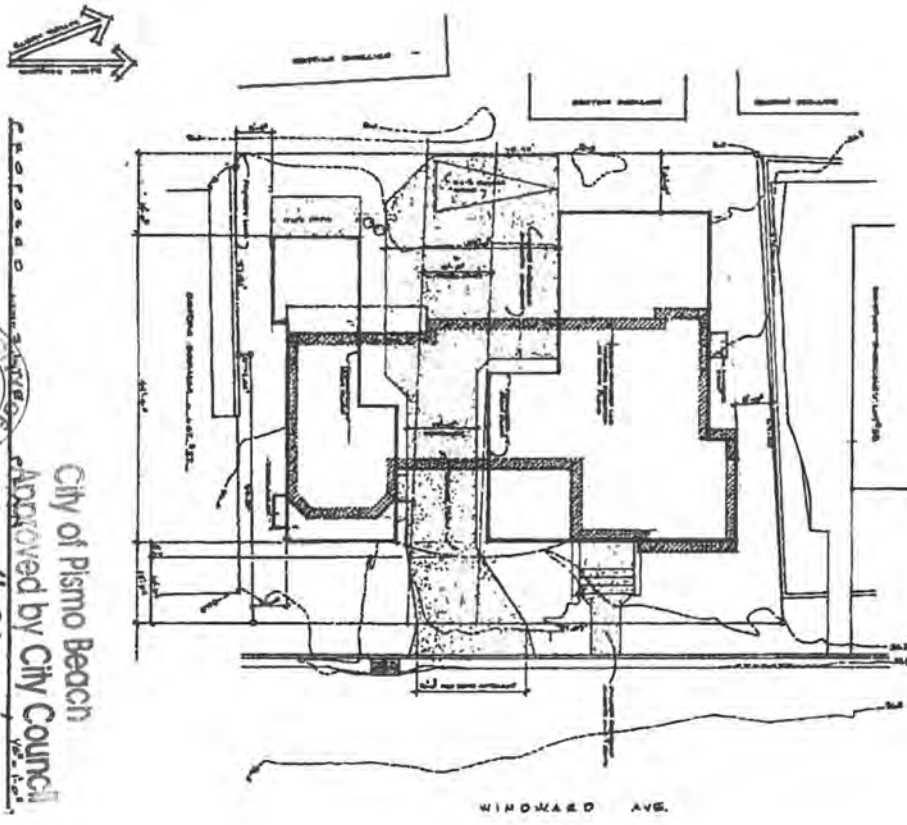
SHEET



City of Pismo Beach
 Approved by City Council
 Date: 4-21-2015
 ✓ as submitted
 ✗ with changes
 Planner: [Signature]
[Signature] 12/9/15

INDEX TO DRAWINGS
 1. SITE PLAN
 2. FLOOR PLAN
 3. ELEVATIONS
 4. SECTION
 5. DETAIL
 6. OTHER

Attachment 9



City of Pismo Beach
 Approved by City Council
 Date: 4-21-2015

as submitted
 with changes

Planner:

for Biggs

PROJECT TEAM

Owner	Ernie & Pamela Roza
Architect	Jerry Shaw Residential Design
Engineer	David L. Brown, Inc.
Interior Designer	Ernie & Pamela Roza
Landscaper	David L. Brown, Inc.
Contractor	David L. Brown, Inc.

PROJECT DESCRIPTION

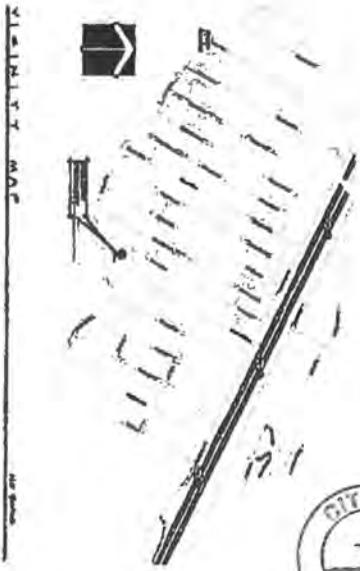
A new custom residence for Ernie & Pamela Roza, located at 385 Windward Ave., Pismo Beach, CA 93451. The project includes a new 10,000 sq. ft. residence with a pool and spa.

FLOOR AREAS

Floor Area	10,000 sq. ft.
Pool Area	1,000 sq. ft.
Spa Area	500 sq. ft.
Garage Area	1,500 sq. ft.
Other Areas	500 sq. ft.
Total Area	13,500 sq. ft.

SETBACKS

Front	10 ft.
Rear	10 ft.
Side	10 ft.
Other	10 ft.



COVERAGE

Living Room	1,000 sq. ft.
Dining Room	1,000 sq. ft.
Kitchen	1,000 sq. ft.
Breakfast Room	1,000 sq. ft.
Bedroom	1,000 sq. ft.
Bathroom	1,000 sq. ft.
Other	1,000 sq. ft.
Total	6,000 sq. ft.

FLOOR AREA RATIO

Floor Area Ratio	0.75
Other	0.75

SOFTSCAPE & HARDSCAPE

Landscaping, pool, spa, patio, etc.

PAINTING

Interior and exterior painting.

LIMITATIONS

Not to be used for other purposes.

City of Pismo Beach
 Approved by City Council
 Date:

as submitted
 with changes

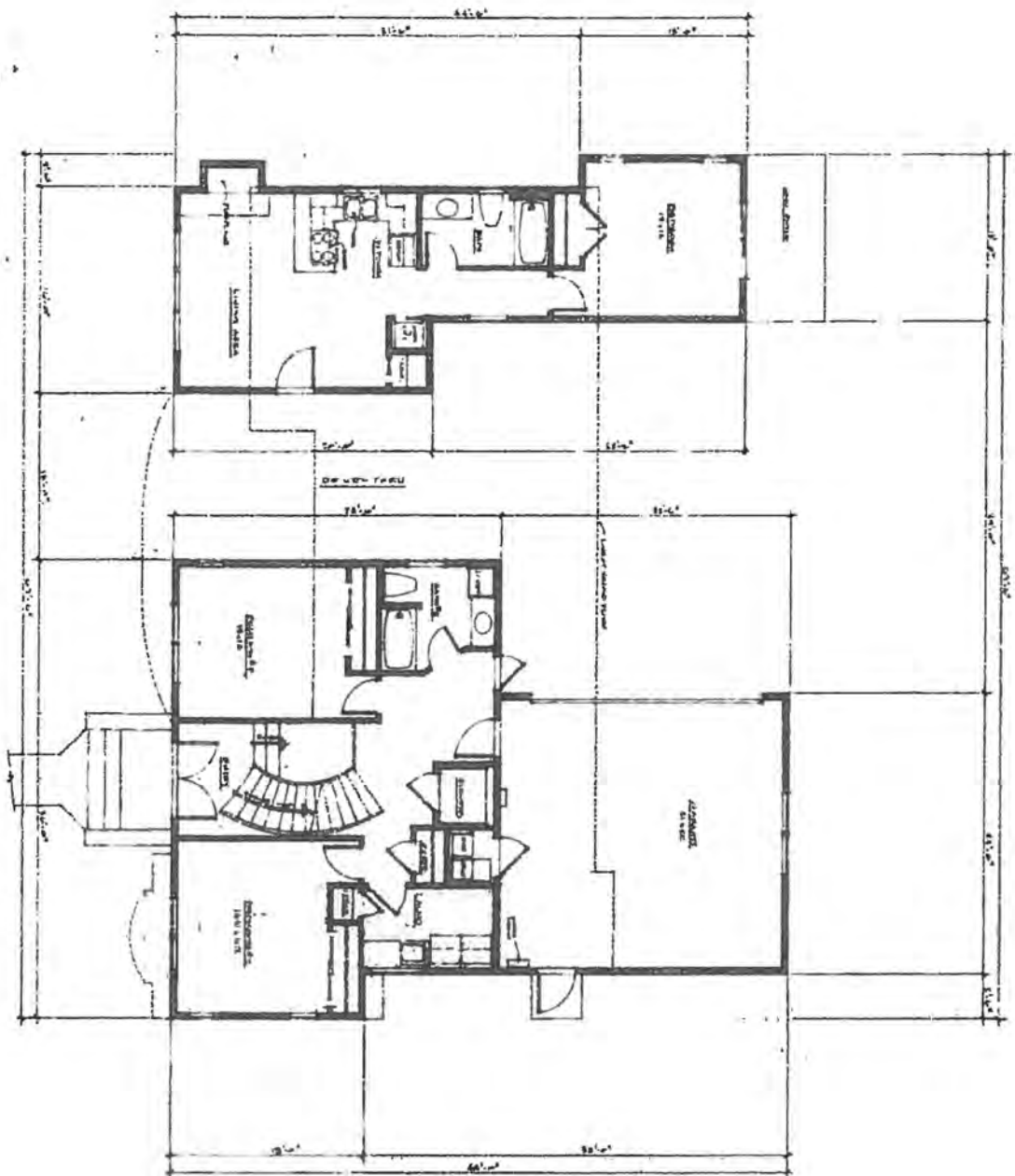
Planner:



A-2	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZA 385 WINDWARD AVE. PISMO BEACH, CA 93451	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
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City of Pismo Beach
 Approved by City Council

Date: 4-21-2015

✓ as submitted
 with changes

Planner: Agustin for Jon Biggs

DATE / COMMENTS

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
 228 WINDWARD AVE. PISMO BEACH, CA 93449

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 www.jerryshawdesign.com



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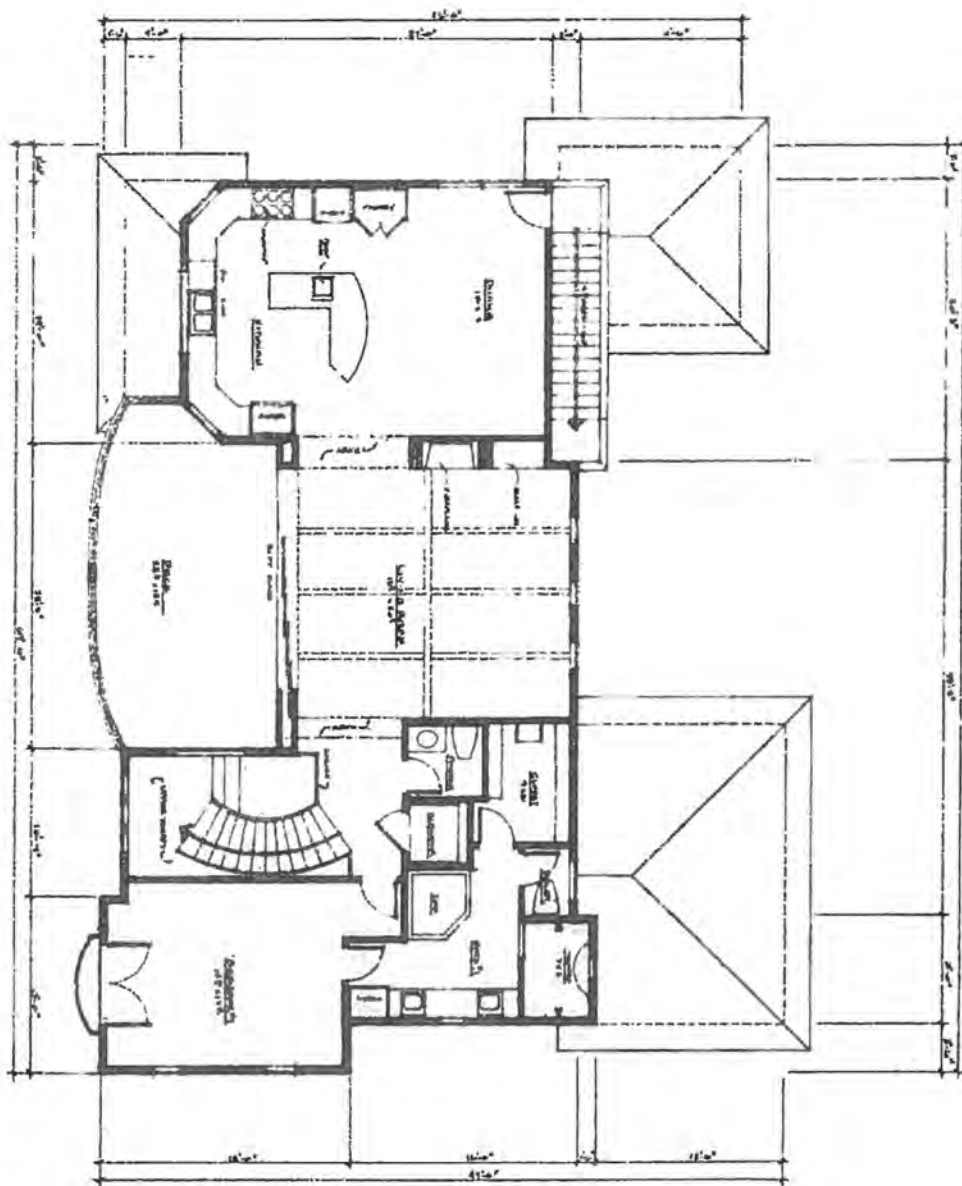
Exhibit 6 - City's Final Local CDP Action Notice

A-3-PSB-15-0030 (Roza SFD)

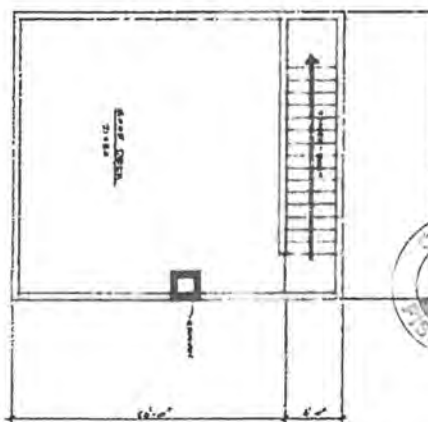
Page 97 of 110

Agenda 6.A

UPPER LEVEL FLOOR PLAN



ROOF DECK FLOOR PLAN



City of Pismo Beach
Approved by City Council
Date: 4-21-2015

✓ as submitted
with changes

Planner: *Agnew for*
Jon Biggs



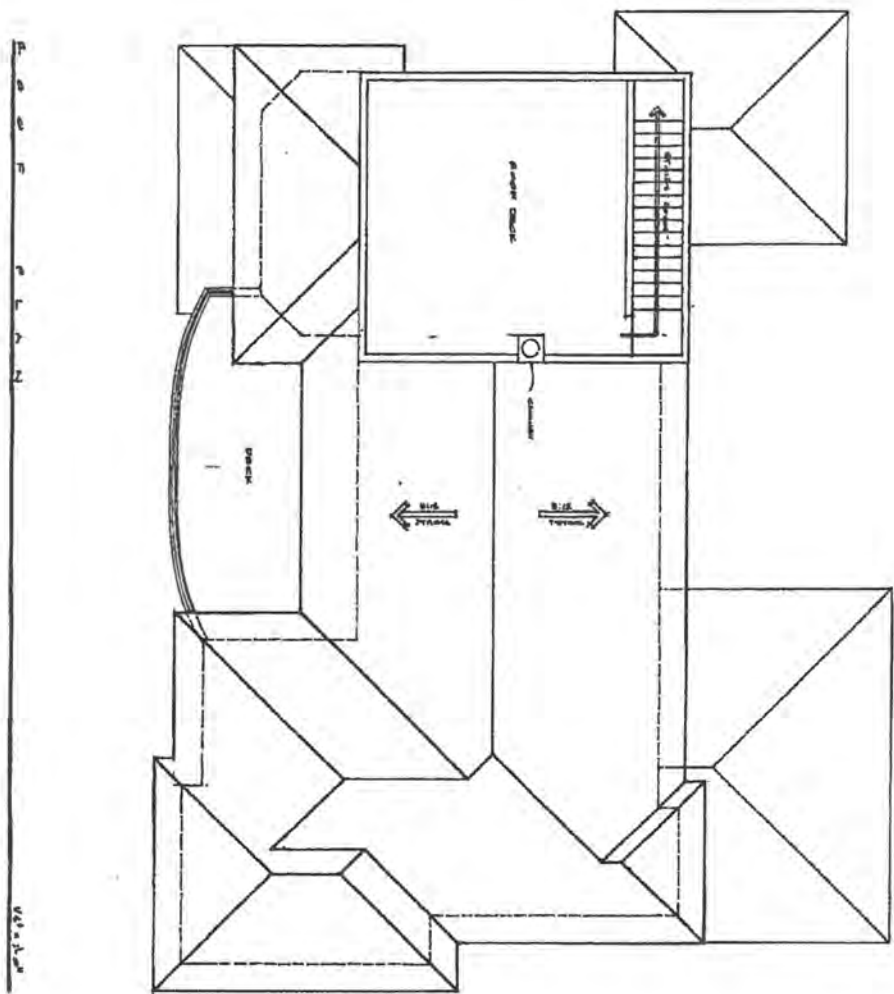
DATE / COMMENTS
A-4

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
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City of Pismo Beach
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 Date: 4-21-2015
 as submitted
 with changes

Planner: Cym for
Jon Biggs

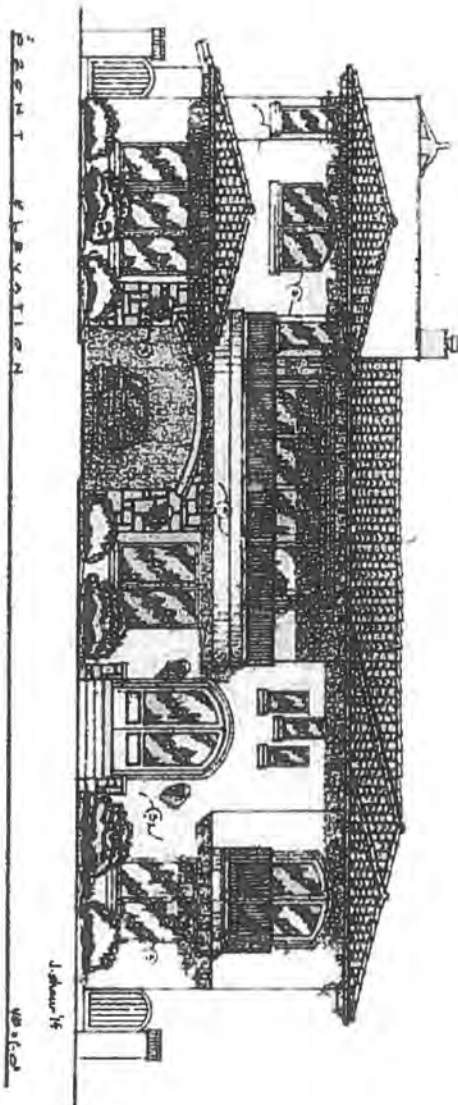
A-5	DATE / COMMENTS

A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
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FRONT ELEVATION

J. Shaw '15

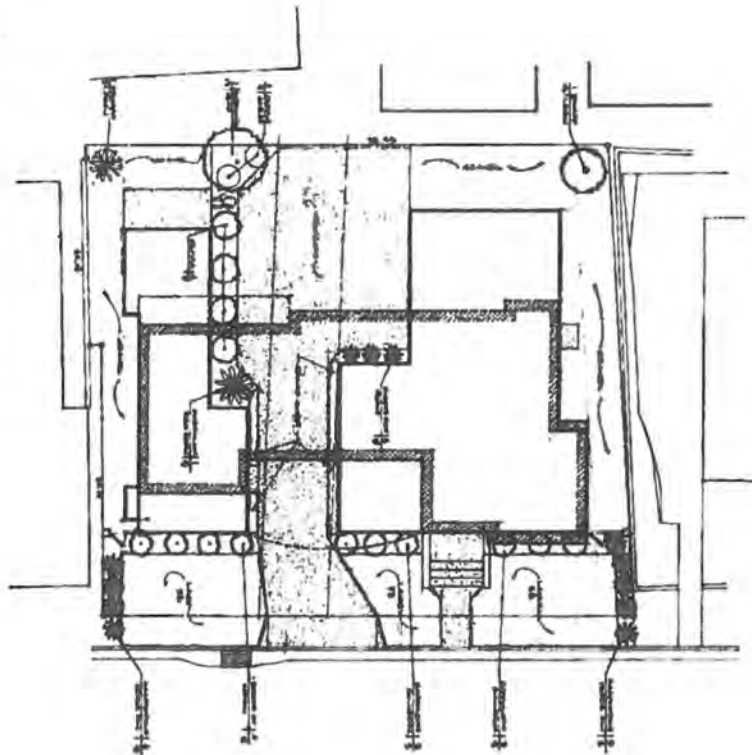
EXTENSION: FRONTS, SIDEWALLS, PORCHES, TERRACE, DRIVEWAY, PATIO, STAIRS, FENCE, GARDEN, etc.



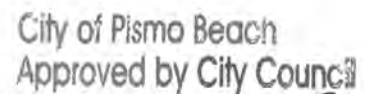
City of Pismo Beach
Approved by City Council
Date: 4-21-2015

✓ as submitted
with changes
Signature: Jon Biggs
Jon Biggs





WINDWARD AVE

[illegible]

Date: 4.21.2015

✓ as submitted
with changes

Wagon: Cover for

Jon
Biggs

A-8	DATE / COMMENTS

**A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO**
388 WINEWARD AVE. PISMO BEACH, CA 93448

JERRY SHAW
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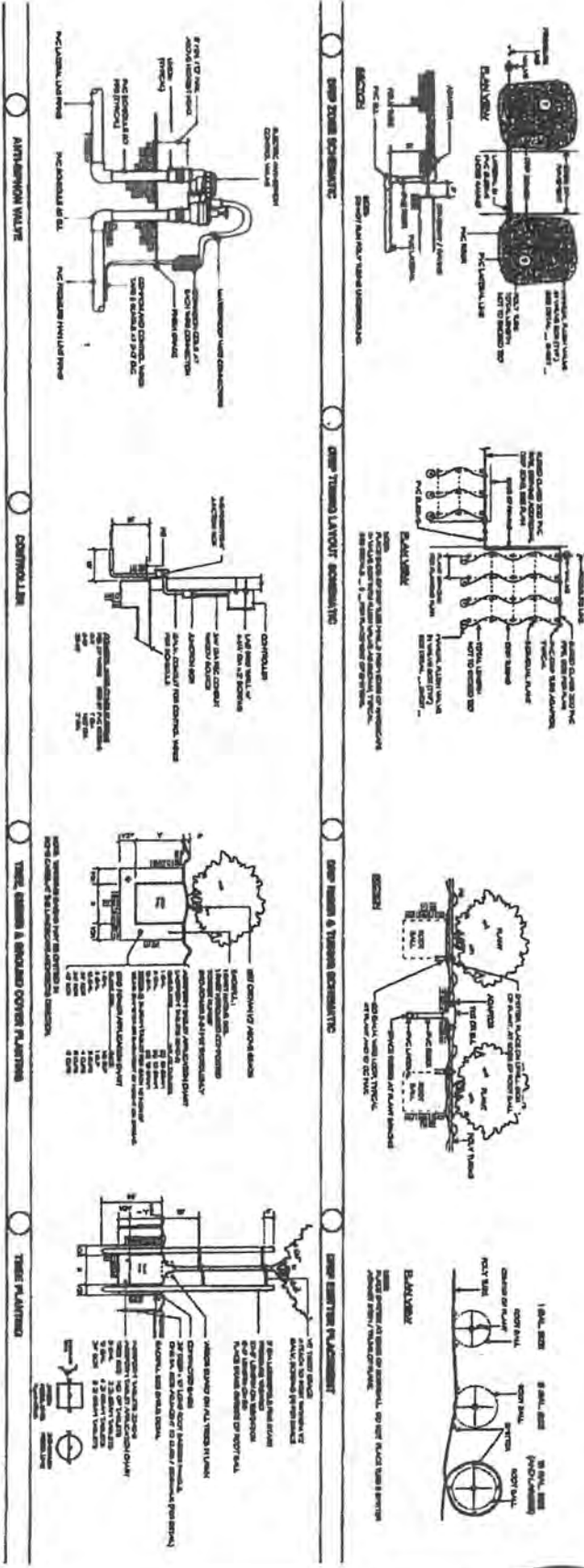


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Exhibit 6 - City's Final Local CDP Action Notice
A-3-PSB-15-0030 (Rozo SFD)

Page 10
Agenda 6.A

PLANTING & IRRIGATION NOTES



City of Pismo Beach
 Approved by City Council
 Date: 4-21-2015
 as submitted
 with changes
 For Jon Biggs



A-9	DATE / COMMENTS	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 328 WINDWARD AVE. PISMO BEACH, CA 93448	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885

APR 28 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Tarren Collins

Mailing Address: PO Box 3063

City: Shell Beach

Zip Code: 93448

Phone: (805)773-0233

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed:

Approval of a Coastal Development Permit for the Demolition of an Existing Residence and Construction of a New Two-Story Single-Family Residence with an attached Secondary Dwelling Unit at 388 Windward Avenue, Pismo Beach. Ernie & Pam Roza, Applicant; item 6.A on City Council Agenda for April 21, 2015.

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

388 Windward Avenue, Pismo Beach, CA 93449

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-3-PSB-15-0030

DATE FILED:

5-6-15

DISTRICT:

Central Coast

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

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

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

6. Date of local government's decision: April 21, 2015

7. Local government's file number (if any): Item 6 A on City Council Agenda for 4-21-15

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Ernie & Pam Rozo
388 Windward Ave.
Pismo Beach, CA 93449

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

(1) David & Mary Stornetta
349 Boeker Ave.
Shell Beach, CA 93449

Mailing address:
1675 Bee Canyon Rd
Arroyo Grande, CA 93420

(2) Wayne & Julie Maire
2389 El Vista
Redding, CA 96002

(3) Albert & Gila Pomerantz
6555 N. Dolores Ave.
Fresno, CA 93711

(4) Robert Warner
345 Boeker Ave.
Pismo Beach, CA 93449

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

This project development is not in conformity with, and therefore violates, the requirements of the LCP and General Plan, and the public access policies of the Coastal Act.

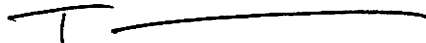
The most important violation of the LCP and the public access policies of the Coastal Act arises because a public access easement creating a pedestrian path through 388 Windward Avenue to connect Windward Ave with Boeker Avenue was not required as a condition of approval.

Additionally, the overall size of the home does not meet the Neighborhood Compatibility requirement per the General Plan. The total building area needs to be further reduced to meet the requirement.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: April 24, 2015

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Submitted
Prior to
hearing on
4-21-15

LAW OFFICE OF TARREN COLLINS

P.O. Box 3063
Shell Beach, CA 93448
Tel: (805) 773-0233
Fax: (805) 773-0403

RECEIVED

APR 28 2015

April 21, 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

City of Pismo Beach Council Members
Sent via email to Elaina Cano <ecano@pismobeach.org>

Re: Item 6A on 4/21/15 Council Agenda - 388 Windward Ave

Honorable Pismo Beach City Council Members:

I have lived in Shell Beach Village since 2001. I also lived here in the early 1980's when I was in college. I came to love this community when I was growing up in San Luis Obispo. I am an attorney whose practice includes land use and planning issues.

I am opposed to this project because it does not include an essential pedestrian access easement, as required by our General Plan LU-H-8. The general plan is the Holy Grail and is required to be adhered to by anyone developing in the city. I also oppose this development on the grounds that the overall size of the development does not meet the Neighborhood Compatibility requirement per the General Plan. Additionally, I am opposed to building over the sewer line.

One of the major purposes of the General Plan is to assure that development in the City of Pismo Beach maintains, and if possible enhances, the community experience for the current residents. We have an exceptional opportunity to enrich our community by adhering to the General Plan mandate to obtain access easements to complete a pedestrian path connecting the south end of Shell Beach with Ocean Boulevard. To allow this development to be approved without requiring the pedestrian access easement, as mandated by our General Plan, would be a travesty negatively impacting the community for generations to come.

Prior developments in this area of Shell Beach were required to include the pedestrian access easements mandated by LU-H-8. The community development director required a pedestrian access path over the front of the project at 374 Boeker, and this development was completed per those requirements. When the property at 367 Boeker was redeveloped, a pedestrian access easement pursuant to LU-H-8 was also required at the east end of the property.

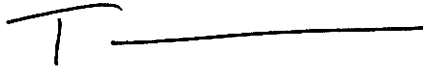
A finding that the easement on 388 Windward, does not align would be inconsistent with the finding for requiring the easement over 374 Boeker. The easement over 374 Boeker also does not align, but these easements can be connected in the future. The city is required to acquire these easement at 388 Windward per LU-H-8.

The request to build over a sewer line is inconsistent with city policy. Why would the city jeopardize the whole of south Shell Beach Village for the benefit of one property owner? The city engineer would not allow any building over the sewer line that traversed the property at 374 Boeker. The property at 388 Windward can be developed without building over the sewer line, and this council should reject the project until plans are submitted which do not have any buildings placed over the sewer line.

The revised plan has reduced the total building area by only 119 square feet, with 91 square feet if this reduction in the garage. This is less than 3%. The overall size still does not meet the Neighborhood (1) Compatibility requirement per the General Plan. The total building area needs to be further reduced to meet the requirement. Staff's recommendations should be incorporated in the overall design.

After all these years it would be ideal to walk along Ocean Blvd from Dinosaur Caves to Vista Del Mar. This is the purpose of General Plan section LU-H-8. Please require the pedestrian access easement over 388 Windward as a condition of approval. And please require the reduction in size of the building area to comply with the Neighborhood Compatibility requirement of the General Plan. And please do not allow any buildings to be placed over the sewer line.

Thank you,

A handwritten signature consisting of a stylized 'T' followed by a horizontal line.

Tarren Collins

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885

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MAY - 6 2015

CALIFORNIA
COASTAL COMMISSION**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Laurie D. Cummings

Mailing Address: 305 Windward Avenue

City: Shell Beach

Zip Code: 93449

Phone: (805)440-1567

SECTION II. Decision Being Appealed

1. Name of local/port government: Pismo Beach City Council
2. Brief description of development being appealed:
Approval of a Coastal Development Permit for the Demolition of an Existing Residence and Construction of a New Two-Story Single-Family Residence with an attached Secondary Dwelling Unit at 388 Windward Avenue, Pismo Beach. Ernie & Pam Roza, Applicant; item 6.A on City Council Agenda for April 21, 2015.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
388 Windward Avenue, Pismo Beach, CA 93449 at Ocean Boulevard
4. Description of decision being appealed (check one.):
 - ☒ Approval; no special conditions
 - ☐ Approval with special conditions:
 - ☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-3-PSB-15-0030

DATE FILED:

5-6-15

DISTRICT:

Central-Coast

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

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

6. Date of local government's decision: April 21, 2015

7. Local government's file number (if any): Item 6 A on City Council Agenda for 4-21-15

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Ernie & Pam Rozo
388 Windward Ave.
Pismo Beach, CA 93449

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

(1) David & Mary Stornetta
349 Boeker Ave.
Shell Beach, CA 93449

Mailing address:
1675 Bee Canyon Rd
Arroyo Grande, CA 93420

(2) Wayne & Julie Maire
2389 El Vista
Redding, CA 96002

(3) Albert & Gila Pomerantz
6555 N. Dolores Ave.
Fresno, CA 93711

(4) Robert Warner
345 Boeker Ave.
Pismo Beach, CA 93449

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SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

-This project development is inconsistent with the City of Pismo Beach General Plan/Local Coastal Plan (LCP) Land Use Element:

LU- Lateral Access at Boeker Street

H-9

The City should pursue opportunities to create lateral pedestrian pathways connecting Boeker Street to Windward Avenue or Ocean Boulevard.. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)

Creating a pedestrian path through 388 Windward Avenue to connect Windward Avenue with Boeker Street was not required as a condition of the approval in violation of the LCP and with the public access policies of the California Coastal Act.

-The overall size of the structure is inconsistent with the Neighborhood Compatibility requirement and Residential Guidelines of the General Plan/LCP:

LU- Residential Guidelines

H-4a

a. Scale of Structures.

New residential development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal and roof articulation of building faces.

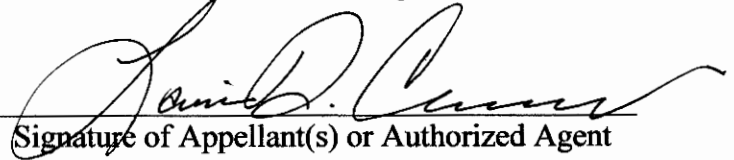
The revised development plan has only reduced the house size by 28 SF, and the garage by 91 SF. The total building area needs to be further reduced to meet the requirement.

-Additionally, the project is still proposing to build over a public utility/sewer line which is inconsistent with city policy.

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SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: May 1, 2015

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Relevant LCP Policies

LCP Policy D-2a Building and Site Design Criteria. Small Scale. (in relevant part)

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.

LCP Policy LU-H-1 Concept.

Shell Beach Road is bordered by a narrow commercial strip backed by a narrow band of High Density Residential. Behind the High Density residential area to the Ocean, a medium density land use accommodates single family homes in the area. The focus of this area is a more traditional beach community with small single-family lots, street activity, and views of the ocean to the west, and the foothills to the east. The emphasis is on assuring that new and expanded homes are compatible with the scale, bulk and character of existing neighborhood.

LCP Policy LU-H-2 Shoreline Qualities (in relevant part)

The unique shoreline qualities of Shell Beach shall be protected by:

- a. Maintaining and improving public access along the bluff-tops.*
- b. Pursuing all available sources to provide the necessary funds to improve and maintain the parks along the Shell Beach bluffs.*

...

- d. Designating the vista point at the end of Boeker Street as a bird observation area and leaving it in its natural state for neighborhood use.*

LCP Policy LU-h-4(a). Scale of Structures.

New residential development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal and roof articulation of building faces.

LCP Policy LU-H-8 Lateral Access at Boeker Street.

The City should pursue opportunities to create lateral pedestrian pathways connecting Booker[sic] Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility[sic] through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)

LCP Policy PR-5 Multi-Use Path System (Trails).

A system of public paths as delineated on Figure PR-2 shall be developed to connect the various parks, scenic aspects and open space of the city. Ideally the paths should be located within designated greenbelt areas. However, in areas of the community that have

already been developed, the system can include sidewalks and right-of-way shoulders of less traveled streets. The system should be delineated with signs, uniform landscaping, and pavement. Every attempt shall be made to interconnect city trails with those being developed by adjacent cities and the county.

LCP Figure PR-2 and Table PR-4(11)(b): (see Exhibit 7)

Relevant IP Sections

17.006.0485 Floor area, gross.

The total horizontal area, in square feet, on all floors within the exterior walls of a structure, including garages and carports, but excluding the area of courts, open decks, unenclosed patios and basements. Roofed portions of structures which are enclosed by vertical wall surfaces exceeding sixty percent of the total vertical area between the floor and roof planes shall be included as building area.

17.006.0490 Floor area ratio.

The ratio of the gross floor area of the structure to the total area of the lot or building site.

17.006.0680 Lot coverage by buildings.

The coverage of a lot by all portions of the building, either at or above ground level, including garages, carports and cantilever portions of the building excluding roof overhangs, eaves or similar architectural extensions.

17.102.010 Building heights.

Building heights shall be as follows:

A. Residential. Except as provided in Chapter 17.081 or unless a variance has been granted pursuant to Chapter 17.121, no structures in the ..., R-1, ... zones shall exceed twenty-five feet in height as measured above the center of the building footprint at site grade, nor shall the vertical measurement of any portion of the structure exceed thirty-five feet in height above site grade. Except for single-family dwellings, which shall have the same height limit as stated in the foregoing, no building or structure in the R-3, R-4 and R-R zones shall exceed thirty-five feet in height above site grade.

17.102.020 Minimum front yard requirements.

The minimum front yard setbacks shall be as follows:

A. Residential.

1. In the ... R-1..., each lot shall have a front yard setback of not less than twenty feet

D. Exceptions to Front Yard Setback Requirements in the R-1 Zone. The minimum front yard setback required may be the lesser of the following situations:

1. The average front yard setback of the nearest improved lots on each side of the subject property on the same side of the street, but in no case less than ten feet, nor required to be more than twenty feet; or

2. Twenty percent of the average depth of the subject property, but in no case less than ten feet, nor required to be more than twenty feet.

17.102.030 Minimum side yard setback requirements.

A. Residential. In the ... R-1, ... each corner lot shall have a street side yard setback of not less than twenty percent of the lot width, but in no case shall the setback be less than seven feet nor required to be more than ten feet. Interior lots shall have a side yard setback of not less than ten percent of the lot width, but in no case shall the setback be less than four feet nor required to be more than five feet.

17.102.040 Minimum rear yard setback requirements.

A. Residential. In the ... R-1, ... each corner and interior lot shall have a rear yard setback of not less than ten percent of the average lot depth, but in no case shall the setback be less than five feet nor be required to be more than ten feet.

17.102.060 Minimum lot size and/or area requirements for new lots. B.

R-1, The minimum lot size for all lots created after the date of adoption of this ordinance shall be five thousand sq. ft.

17.102.080 Maximum allowable lot coverage for all structures.

B. R-1 ... Total maximum lot coverage for subdivided parcels: Fifty-five percent.

17.102.090 Maximum allowable total building floor area for all structures as a percentage of lot area.

B. R-1 Zone. Eighty-six percent of the first two thousand seven hundred square feet of lot area plus sixty percent of any lot area in excess of two thousand seven hundred square feet.

17.102.095 Minimum planting and vegetation area (as a percentage of total lot area).

Requirements (as a percentage of total lot area):

B. R-1, ... Zones: Twenty percent

17.105.135 Development and design standards applicable to single-family dwellings in certain zones.

The following additional development and design standards shall be applicable to the development, enlargement or alteration of single-family dwellings in the R-1, ..., except for the Pismo Heights planning area as defined in the Pismo Beach general plan/local coastal plan:

A. To avoid "boxy" structures that have unrelieved exterior wall planes extending in height for two or more stories and to promote vertical articulation of wall planes, the amount of gross floor area on any second floor shall not exceed eighty percent of the amount of gross floor area on the ground floor. Any "stepbacks" of the second-floor living area from the building footprint on the ground level shall be required to be provided at least in part on the street-side of the house unless infeasible

17.102.150 Architectural features, regulations and restrictions.

Architectural features may be permitted to extend into required setbacks a maximum distance as described below:

A. Cornices, eaves, canopies and similar structures: Thirty inches into any required front, side or rear yard, but in no case closer than two feet to any side property line.

B. Fireplaces: Fireplaces not exceeding six feet in breadth may extend two feet into any required front, side or rear yard, but in no case closer than three feet to any side property line.

C. Open, uncovered raised porches, patios, landing places, decks, or outside stairways in rear or side yards: May extend a distance not more than twenty percent into the required rear or interior side yard setbacks. Street side yard extensions may be a distance not to exceed forty percent of the required street setback.

D. Cantilevered balconies and decks that are open, uncovered and raised (thirty inches or more above existing grade): May extend a distance of not more than 20 percent into the required front yard setback.

E. Open, uncovered porches, patios, decks, landing places, stairways or similar structures at grade (structures less than 30 inches above existing grade): May extend to the front, side, or rear property lines. (Except as otherwise prohibited in Section 17.102.050 and 17.102.120 for bluff retreat areas.)

F. Covered or semi-covered (other than allowable roof overhangs) balconies, porches, patios, landing places, decks, stairways or similar structures: May not extend into required front, side or rear yard areas

2. Applicable Coastal Act Public Access Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road and thus such a finding is required. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. 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 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 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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

Table PR-4 Physical and Visual Ocean Access/California Coastal Trail (See Figure PR-3 for map locations)												X - Existing # - Proposed
Planning Area	Access Points	Public Beach Access Stairs	Walking Path and/or Walking with View Access	Direct Beach Access No Stairs	View Points	Lateral Open Space Top of Bluff	Barranca	Parking On-Street	Parking Off-Street	Signage &/or Amenities	Open to Public	Comments
A. Sunset Palisades	1a: The Bluffs trail.		X		X	X			X	X	X	Improved public trail with access at the north end connecting to SLO County trail. On-street section of the California Coastal Trail with ocean overlooks.
	1b: Indio Drive		X		X			X		X	X	
	2. Encanto		X		X			X		#		No improvements
	3. Topaz St.		X		X			X		#		No improvements
B. South Palisades	4. Florin St.		X		X			X		#		Improvements complete.
	5. Beachcomber stairs	X	X		X	X		X		X	X	Located at lateral bluff top park 80% improved with park/open space amenities (benches, picnic tables) and >150 On-street parking spaces available.
	6. Sunset Beach Estates stairs	#	#		#	#		#		#	#	North side of Barranca with access to South Palisades Park areas adjacent to Ebb Tide. Approved subdivision with linear park and beach access.
C. North Spyglass	7a. Cliffs Hotel stairs	X	X		X	X	X		X	X	X	Trash receptacles available.
	7b. Bluff top trail		X		X	X	X		X	X	X	Improved public access bluff top trail at the rear of the Cliff's Hotel, Dolphin Bay Resort, and Spyglass Inn.
D. Spyglass	8. Spyglass Park	#	X		X	X	X		X	#	X	Steep dirt trail at the edge of Barranca provides beach access but should be improved. Benches and trash receptacles available along bluff top.

Table PR-4 Physical and Visual Ocean Access/California Coastal Trail (See Figure PR-3 for map locations)												X - Existing # - Proposed
Planning Area	Access Points	Public Beach Access Stairs	Walking Path and/or Walking with View Access	Direct Beach Access No Stairs	View Points	Lateral Open Space Top of Bluff	Barranca	Parking On-Street	Parking Off-Street	Signage &/or Amenities	Open to Public	Comments
E. St. Andrews Tract	9a. Memory Park	#			X	X		X		X	X	Benches, tables, trash receptacles available. A beach access stairway to St. Andrews Beach shall be installed in this area.
	9b. Seaciff Access path		X							#		Walking path between 182 and 188 Seaciff; public access easement between St. Andrews Tract subdivision and Spyglass Park. Ongoing bluff erosion may affect the functionality of this access easement in the future.
F. Spindrift	10. Linear Bluff top park	#	#		#	#			#	#	X	Area for lateral park to be dedicated with future development of the estates pursuant to Policy LU-F-3 and LU-F-4. Pedestrian access to the area is from Naomi and Park Place. Pedestrian access easement over the park shall be no closer than 25' from the top of the bluff.
H. Shell Beach	11a. Eldwayen Ocean Park	X	X		X	X		X		X	X	Beach access at Vista Del Mar and Cuyama. Cuyama stairs require improvements.
	11b. Boeker overlook		X		X	X		X		X	X	Access path from Placentia to Boeker along oceanfront. Future public bluff top access through to Ocean Blvd. to the south if/when development occurs directly to the southwest of Boeker.

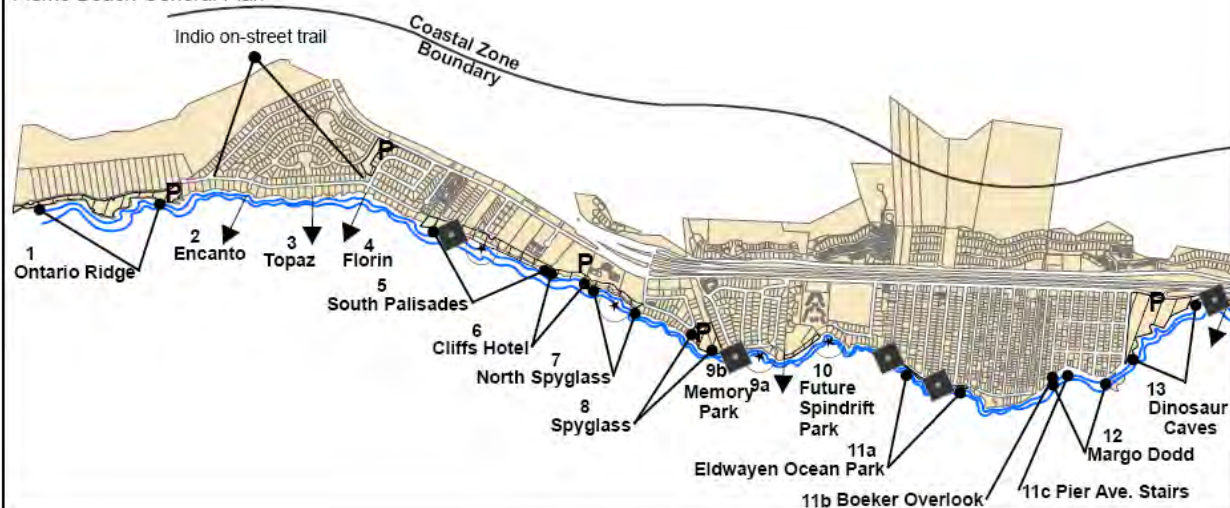
Table PR-4 Physical and Visual Ocean Access/California Coastal Trail (See Figure PR-3 for map locations)												X - Existing # - Proposed
Planning Area	Access Points	Public Beach Access Stairs	Walking Path and/or Walking with View Access	Direct Beach Access No Stairs	View Points	Lateral Open Space Top of Bluff	Barranca	Parking On-Street	Parking Off-Street	Signage &/or Amenities	Open to Public	Comments
H. Shell Beach continued	11c. Pier Avenue stairs	X	X		X	X		X		X	X	Bench and trash facilities available.
	12. Margo Dodd Park	X			X	X		X		#	X	Gazebo, picnicking, trash facilities available.
I. Dinosaur Caves	13. Dinosaur Caves Jarowicz Path		#		#	#			#	#	#	An improved park for four ocean overlooks, bluff top trail, and multiple park amenities.
J. Motel District	14. Shelter Cove	#	X		X	X			X	X	X	Public parking at the Shelter Cove Hotel.
	15. Shorecliffs/Elmer Ross	X			X	X			X	X	X	Signage needs improvement, 3 gazebo/viewing platforms
	16. Whalers Inn				X	X	X	X		X	#	
	17. Knights Rest	X			X			X				Stairs need repair
	PISMO STATE BEACH											
	18. Tides Hotel	X						X		X	#	
	19. Wilmar Ave.	X			X			X		X	X	Volleyball on beach, portable restrooms
	20. Trader Nicks						X			#		

Table PR-4 Physical and Visual Ocean Access/California Coastal Trail (See Figure PR-3 for map locations)												X - Existing # - Proposed * - Existing & Proposed
Planning Area	Access Points	Public Beach Access Stairs	Walking Path and/or Walking with View Access	Direct Beach Access No Stairs	View Points	Lateral Open Space Top of Bluff	Barranca	Parking On-Street	Parking Off-Street	Signage &/or Amenities	Open to Public	Comments
K. Commercial Core	21. Cypress Street (North)				X			X		#	X	Volleyball on beach
	22. Wadsworth Steps	X	X					X			X	Volleyball on beach, play equip. seasonal
	23. Main Street		X					X		#	X	Connected by proposed esplanade
	24. Pomeroy Ave.	X						X	X	X	X	Connected by proposed esplanade
	25. Pier	X		X	X	X		X	X	X	X	Restrooms available
	26. Hinds St.	#	X	X	X			X	X	X	X	Connected by proposed esplanade
	27. Stimson Ave.		X		X			X		#	X	Connected by proposed esplanade
	28. Ocean View Ave.			X	X			X		#		Connected by proposed esplanade
	29. Park Ave.			X				X		#		Connected by proposed esplanade
	30. Addie Street		X					X	X	#		Connected by proposed esplanade
	31. Pismo Creek		*						X	#	#	Restroom to be remodeled, trails to be added both sides
L. Pismo Creek	32. North		X	X		X			X	X	X	Needs better access to beach, day use facilities, signage.

California Coastal Trail and Pismo Beach Beach Access

Figure PR-3

Pismo Beach General Plan



KEY

PATHS IN CITY



BEACH PATHS



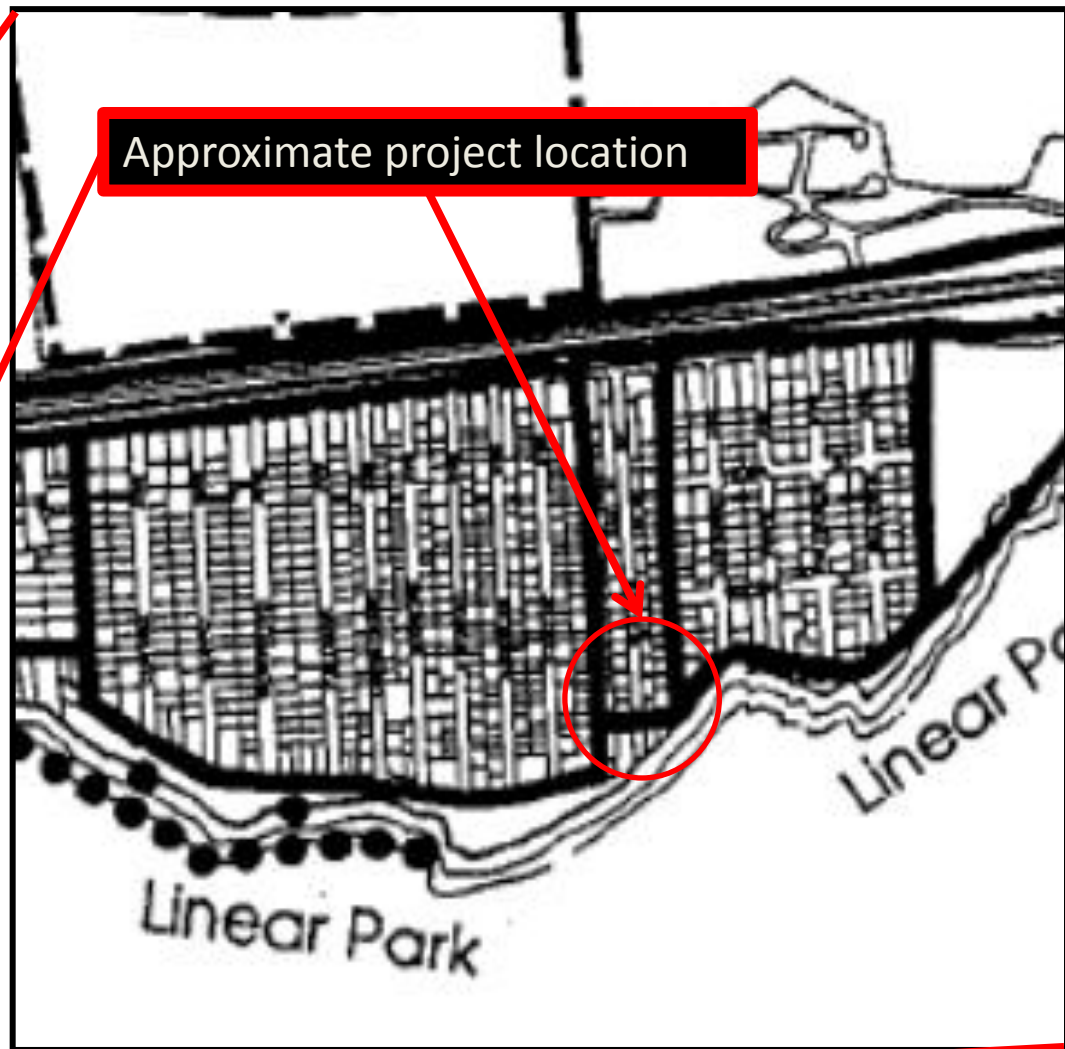
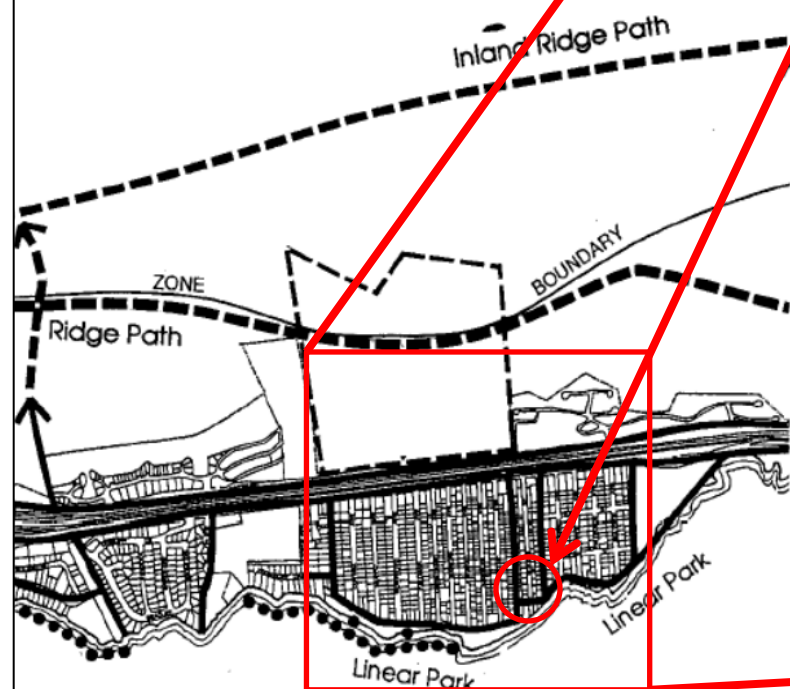
PATHS IN SPHERE



BOARDWALK



Figure PR-2



River Mouth



Project Site

Existing Easement

Windward Ave

Ocean Blvd

Boeker Ave

Ocean Blvd

Boeker to
Placentia

From: [Tarren Collins](#)
To: [Chaver_Yair@Coastal](#); [Carl_Dan@Coastal](#)
Cc: [Laurie Cummings](#)
Subject: 388 Windward - Agenda Item W11b
Date: Monday, April 04, 2016 9:44:19 PM
Attachments: [321 Harbor View with jogged public access easement Coastal Trail.pdf](#)

Hi Yair and Dan,

A former Pismo Beach Planning Commissioner sent me an email tonight showing that the City of Pismo “JUST required/approved a similar public easement, with similar jog. 321 Harbor View Ave”. She also attached the Executive Summary of this project, which shows a similar access easement to the one we have been trying to obtain at 388 Windward. This approval was given on March 22, 2016. Here is a pertinent section of the executive summary:

STAFF ANALYSIS

1. Consistency with the City’s General Plan (GP)/Local Coastal Plan (LCP).

The project site is located within the Motel District Planning Area and is designated for medium density residential. The proposed single family dwelling is consistent with the City’s GP and LCP. Relevant policies are discussed below:

a. Public Access. Land Use **Policy LU-J-9 requires the dedication of a pedestrian pathway easement between Wilmar Avenue and Harbor View Avenue.** This access is intended to provide pedestrian access to the beach stairway located on Wilmar Avenue. Consistent with this policy the project will provide a 4-foot wide public access easement along the project’s northern perimeter. **This access easement will tie into an existing pedestrian easement located west of the project site and thereby provide through public access between Harbor View Avenue and Wilmar Avenue** (see Exhibit 1, Figure 1-2 for a depiction of this connection). The property owner will be required to construct and maintain the portion of the public access easement located on their property.

I highlighted the language used by the city regarding the LCP: “**Policy LU-J-9 requires the dedication of a pedestrian pathway easement between Wilmar Avenue and Harbor View Avenue. .. This access easement will tie into an existing pedestrian easement located west of the project site and thereby provide through public access between Harbor View Avenue and Wilmar Avenue.**”

LCP Policy LU-H-8 contains the same language as LU-J-9. And, in the Harbor View project, the city states that the LCP “requires” this easement. The LCP also requires the easement at 388 Windward.

The City approved an easement with a jog on the Harbor View project- the same type of easement jog that the City used as an excuse not to require a pedestrian access easement at 388 Windward – the subject of my appeal. Note that both Harbor View and the pedestrian easement we seek at 388 Windward will “tie into an existing pedestrian easement... and thereby provide through public access...” between streets.

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Tuesday, March 29, 2016 1:38 PM
To: Chaver, Yair@Coastal <Yair.Chaver@coastal.ca.gov>
Cc: Laurie Cummings <laurie.d.cummings@gmail.com>; Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Subject: FW: 388 Windward Shell Beach CA Appeal of Rozo project

Hi Yair,

I wish we'd had a chance to discuss some of the substantive issues concerning the appeals filed by Laurie Cummings and I prior to the staff report being published. When you and I spoke briefly last week, I believed that the Rozos and their attorney were still working with us to ensure that the public pedestrian easement would be dedicated, and that we would simply be asking the CCC to make this a condition of approval of their CDP. Had I known you were considering the evidence and LCP in order to make a determination on Substantial Issue last week, I would have used our conversation time to provide you with evidence and arguments concerning LCP Policy LU-H-8 Lateral Access at Boeker Street and LCP Policy PR-5 Multi-Use Path System.

My time is limited today, but I want to get some of the evidence of community support to you, along with the history of the Rozos' agreement to dedicate the pedestrian easement at 388 Winward. I also want to briefly list some of the information concerning the Local Coastal Plan and the language and implementation challenges of LCP Policy LU-H-8 Lateral Access at Boeker Street and LCP Policy PR-5 Multi-Use Path System.

Please find attached petitions signed by community members concerning the obtaining of easements to connect Boeker St. with Winward Ave. These petitions concern both the pathway easement already obtained at 367 Boeker, and the current easement sought at 388 Winward. These petitions evidence the community's understanding of the best way to implement the creation of a lateral pedestrian pathway between Placentia Ave. and Winward Ave, based on the current constraints.

The public pedestrian access easement as a condition of approval of the project at 388 Winward Avenue is required by LCP Policy LU-H-8 Lateral Access at Boeker Street, and LCP Policy PR-5 Multi-Use Path System (Trails). LCP Policy LU-H-8 is the remedy to the public access gap in this neighborhood, and it specifically states the City "should pursue opportunities to create lateral pedestrian pathways connecting Boeker St. to ...Winward Avenue or Ocean Blvd." Furthermore, LCP Policy PR-5 Multi-Use Path System (Trails) states in pertinent part: "Every attempt shall be made to

interconnect city trails...."

The language of these two LCP Policies instructs the city to remedy the access gap in this neighborhood, it does not "encourage" the city. "Should" and "shall" are mandates.

It is important for the CCC to understand the constraints to creating a lateral pedestrian pathway to connect Boeker with Winward as required by these 2 LCP Policies, and why the **mandate to take every opportunity to create this pathway here necessitates the pedestrian easement at 388 Winward.**

First, **the City's "preferred route"** for this easement, through 398 Winward, **will never happen** – at least not until the existing residence falls into the ocean. The house at 398 Winward was built when there were not the present restrictions to building so close to the bluff edge. The lot at 398 Winward is very small, and as you can see on page 2 of Exhibit 6, the present house takes up the entire lot from the bluff edge to the property line with 388 Winward. Given current bluff edge building restrictions, this lot size and configuration so close to the bluff edge is not conducive for the owners to do anything that might require a CDP which would trigger bluff top setback restrictions. Therefore, the City's stated "vision" of putting a lateral public access easement here is disingenuous. The city knows this will never happen because the owners of 398 Winward will not be applying for a CDP which could trigger the easement.

Second, when the community sought, and obtained, the easement at 367 Boeker, it was to ensure that should a CDP be sought at the neighboring Boeker Street property and at 388 Winward, it would allow the long sought connection planned for by LCP Policy LU-H-8! I do not know the address of the property next door to 367 Boeker (I will locate it and give it to you), but the creation of the lateral pedestrian pathway can either be a bending path from the easement at 367 Boeker through the neighboring property to connect to an easement on 388 Winward, or it can go straight through the property next door to 367 Boeker and connect directly to a pathway at 388 Winward. **The more options for the path, the more likely it will happen with the least impact.**

"Pursuing opportunities" and making "every attempt" mandate that when a CDP is sought at any of these addresses, a public pedestrian access easement MUST be required. This is the only way to eventually create a lateral pedestrian pathway between Placentia Avenue and Winward Ave to complete the lateral access path along the coast here! We must require the easements that will eventually allow the creation of the path. If the easement is not made a condition of approval of the CDP for 388 Winward, the opportunity to create the lateral public pathway designated by LCP

Policy LU-H-8 will be lost for generations to come. We will not see this pathway during our lifetimes.

In reviewing the criteria for finding Substantial Issue, I will note that our appeals effect the eventual completion of the **California Coastal Trail**, therefor they **raise issues of regional and statewide significance**.

You will notice that the existing pedestrian path shown on Exhibit 6 connecting Ocean Blvd with Boeker Street is not a straight line. You will also note that the easement obtained on 367 Boeker does not connect to an existing easement. These arguments presented by the city against the easement sought at 388 Windward, and repeated in the staff report, are not conditions that should prevent the easement at 388 Winward. They should not be cited as evidence of "factual or legal support" for the city's decision.

And finally, to allow the city to so blatantly misinterpret its mandate to use every opportunity and make every attempt to secure the pathway envisioned by LCP Policy LU-H-8 and LCP Policy PR-5 would **set a very dangerous precedent for coastal public access**.

Yair, this is my first draft of my argument, drafted in haste in an attempt to get my arguments to you quickly. I will be providing more information and arguments to you in the next few days, and hope to have a telephone discussion with you about our appeals soon.

Thank you for your consideration of these hastily drafted points.

Tarren Collins

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Monday, March 28, 2016 1:03 PM
To: 'Carl, Dan@Coastal' <Dan.Carl@coastal.ca.gov>
Cc: 'Laurie Cummings' <laurie.d.cummings@gmail.com>; 'Chaver, Yair@Coastal' <Yair.Chaver@coastal.ca.gov>; 'Craig, Susan@Coastal' <Susan.Craig@coastal.ca.gov>; 'Kahn, Kevin@Coastal' <Kevin.Kahn@coastal.ca.gov>; 'O'Neill, Brian@Coastal' <Brian.O'Neill@coastal.ca.gov>
Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

Hi Dan,

I will resend to Yair the information that I sent to you on Friday, Dan. And I will look forward to having a conversation with him as soon as I get a chance to review the staff report later today or tomorrow morning.

I'm sure a check of phone records will show that my first contact from Yair was last Tuesday.

Perhaps he thought through his communications with Laurie Cummings, he was gathering the information on both of our appeals?

All of my communications regarding my appeal, both with Brian O'Neill last summer, and my short conversations with Yair on Tuesday afternoon and Wednesday morning last week, have involved discussions about the Rozos' agreement to put an easement for the pathway into this project. This agreement was communicated to me first through their consultant Tony Ferraro shortly after I filed my appeal, then through their attorney Ochylski. Ochylski and I were still in discussions about how to secure this pathway last week, when Yair called me. Last week Ochylski told me that he was not positive he was still representing the Rozos, then upon his confirmation that he was representing them, he said he would be recommending we all sit down and try to resolve the pathway issue.

This appeal took a rapid 180 degree turn last week, surprising both Laurie Cummings and myself. I look forward to the opportunity for the potential to alter your staff recommendation.

Thank you,

Tarren

From: Carl, Dan@Coastal [<mailto:Dan.Carl@coastal.ca.gov>]

Sent: Monday, March 28, 2016 11:21 AM

To: Tarren Collins <tarrencollins@charter.net>

Cc: 'Laurie Cummings' <laurie.d.cummings@gmail.com>; Chaver, Yair@Coastal <Yair.Chaver@coastal.ca.gov>; Craig, Susan@Coastal <Susan.Craig@coastal.ca.gov>; Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>; O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>

Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

Hi Tarren,

Sounds like your recollections and staff's notes are at odds regarding timing. Either way, I would strongly encourage you to talk to Yair to share your thoughts and materials. We are always open to new information and arguments, particularly if they have the potential to alter our recommendation. Hope that helps...

Dan

From: Tarren Collins [tarrencollins@charter.net]

Sent: Friday, March 25, 2016 6:18 PM

To: Carl, Dan@Coastal

Cc: 'Laurie Cummings'; Chaver, Yair@Coastal; Craig, Susan@Coastal; Kahn, Kevin@Coastal; O'Neill, Brian@Coastal

Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

Hi Dan,

Unfortunately staff did not coordinate with me at all until 2 days ago, when I received my first phone call from Yair. Laurie Cummings, who filed a separate appeal, did hear from Yair two weeks ago. Laurie asked Yair to coordinate with me because I am a lawyer. Yair did not coordinate nor communicate with me until his first phone call to me on Tuesday – a call I returned on Tuesday late afternoon. The only subject of our conversation was my request to see if we could postpone the hearing to Santa Barbara in June.

In a previous appeal years ago, staff was very helpful, and coordinated with me – obtaining input and documentation from me, and engaging in phone conversations and email exchanges in advance of issuing a staff recommendation. I expected no less this time. Can you please explain why there was no effort to “coordinate” with me on this appeal prior to the staff recommendation?

As you are aware, 2 days is not nearly enough time to coordinate. However, had Yair warned me, even 2 days ago, that I needed to submit the documents and evidence I have in support of the appeal to assist with the staff recommendation, I would have. I also would have provided him arguments in favor of a substantial issue recommendation.

I do not understand why the staff would progress all the way to the staff recommendation without making a serious attempt to obtain appellant’s input and documentation.

Finally, I submitted petitions and law today to you. Will these items be included in an addendum to the staff report? And is there going to be an opportunity to engage with staff to at least have a chance to argue my points in hopes of perhaps gaining an amended staff recommendation for substantial issue regarding the pathway?

Thank you,

Tarren

From: Carl, Dan@Coastal [<mailto:Dan.Carl@coastal.ca.gov>]

Sent: Friday, March 25, 2016 4:13 PM

To: 'Tarren Collins' <tarrencollins@charter.net>

Cc: Laurie Cummings <laurie.d.cummings@gmail.com>; Chaver, Yair@Coastal <Yair.Chaver@coastal.ca.gov>; Craig, Susan@Coastal <Susan.Craig@coastal.ca.gov>; Kahn, Kevin@Coastal <Kevin.Kahn@coastal.ca.gov>; O'Neill, Brian@Coastal <Brian.O'Neill@coastal.ca.gov>

Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

Hi Tarren,

I checked in with staff and it sounds like they have been coordinating with you regards our potential recommendation for some time, including in the past weeks leading up to staff report production. In terms of a meeting before the staff report is finished, I am afraid that is not possible as it went out today. I would encourage you to contact Yair to set up a time when you can share your input with him in advance of a hearing. Hope that helps...

Dan

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Friday, March 25, 2016 12:26 PM
To: Carl, Dan@Coastal
Cc: Laurie Cummings
Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

PSS- Dan, I am attaching a file containing my letter dated April 21, 2015 and 2 petitions which I submitted to the Pismo Beach City Council during the hearing on the Rozo's CDP. Please forward to Yair. I had planned to provide him with these submissions during the staff deliberations concerning appellants' substantial issue determination.

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Friday, March 25, 2016 12:10 PM
To: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Cc: Laurie Cummings (laurie.d.cummings@gmail.com) <laurie.d.cummings@gmail.com>
Subject: RE: 388 Windward Shell Beach CA Appeal of Rozo project

PS – Dan, I am attaching a file containing a petition signed by many community members, sent to me by my fellow appellant Laurie Cummings. I had not yet started compiling my documents, but with the voicemail from Yair today, I will scan and email them to you right now. Please forward all of this information to Yair today, and please assure me that this information and evidence will be taken into consideration by Yair prior to finalizing the staff report. I do not have Yair's email address or I would send it directly.

Thank you,

Tarren

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Friday, March 25, 2016 11:28 AM
To: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Subject: FW: 388 Windward Shell Beach CA Appeal of Rozo project
Importance: High

Hi Dan,

I write asking for your assistance. Back in August and September, Brian O'Neill of the CCC Santa Cruz staff was working to assist a settlement of my appeal of a City of Pismo CDP for 388 Windward Ave. in Shell Beach (Pismo Beach). The community here in Shell Beach has worked very hard to connect Boeker Ave. with Windward as part of the Coastal Trail. This pathway is a part of the Land Use Element of our Local Coastal Plan. When the Pismo Beach City Council approved the Rozos CDP without requiring a special condition of approval for the easement pathway, this CDP was appealed

to the CCC by both Laurie Cummings and myself.

In subsequent discussions with the project applicants' attorney, Marshall Ochylski, it was agreed that if the Rozos dedicated an OTD and went back to the City Council for an amended CDP requiring the path easement as a condition of approval, our appeals would be dropped. Over the course of the ensuing months, Ochylski claimed to be trying to find an easement holder for the OTD, and there was some discussion about alternative ways to secure a pathway here. Then in late February I was informed by Ochylski that the City of Pismo would not hold the easement so the Rozos were going to proceed to the CCC hearing. I was against the City of Pismo being the easement holder all along, so this did not make sense to me...

On March 23 (Wednesday of this week) I got a call from Yair Chaver from the Santa Cruz office, informing me in a voicemail that the Rozos were going to proceed with a hearing at the CCC. When I called him back, I asked if this could be postponed to June in Santa Barbara. He called yesterday to let me know that the Rozos would not postpone to June. I anticipated that there would be at least one more conversation with him, where we would discuss the basis for our appeal, before the staff recommendation was formulated and the report published. This did not happen. Instead, I got a call a voicemail this morning from Yair giving me the date of the hearing as April 13, and letting me know that staff was recommending no Substantial Issue.... What???

Apparently my fellow appellant (separate appeal), Laurie Cummings, was first contacted by Yair weeks ago. That my first contact was two days ago, and there has never been a discussion of General Plan, LCP or Coastal Act issues between Yair and I prior to the staff formulating a position in opposition to the community here is disconcerting. I am completely frustrated.

Can you please let me know why staff would ignore the LCP and the many petition signatures of community members both for a previous path easement on a Boeker Street property, and the current project on the Rozos property at 388 Winward when recommending a finding of no Substantial Issue? Can someone from staff at least take the time to have this conversation with me before the staff report is published?

The community has been successful in obtaining ½ the pathway on the Boeker side already. The project applicants (Rozos) have been willing up to now to grant an easement if we could find an easement holder. Just this week, their attorney and I were discussing sitting down and trying to work with staff to make this pathway happen.

Please reply at your earliest convenience. I am forwarding email exchanges between Brian O'Neill, Marshall Ochylski and myself back in August.

Thank you,

Tarren Collins
(805) 748-7319

Law Office of Tarren Collins

PO Box 3063
Shell Beach, CA 93448
(805)773-0233

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From: O'Neill, Brian@Coastal [mailto:Brian.O'Neill@coastal.ca.gov]
Sent: Monday, August 24, 2015 3:18 PM
To: marshall@slollegal.com; 'Tarren Collins' <tarrencollins@charter.net>
Subject: RE: Rozo OTD

If and when the Applicants decide to move forward with an OTD as part of a CDP, our staff can review the document to ensure that is drafted correctly.

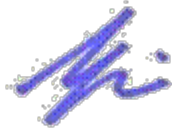
~Brian

From: Marshall E. Ochylski [mailto:mochylski@slollegal.com]
Sent: Monday, August 24, 2015 3:03 PM
To: 'Tarren Collins'; marshall@slollegal.com; O'Neill, Brian@Coastal
Cc: marshall@slollegal.com
Subject: RE: Rozo OTD

Tarren,

Yes, I will follow up with them.

Thank you.



Marshall E. Ochylski,
Attorney at Law

The Law Office of Marshall E. Ochylski
The Parsonage at Old Church Place
867 Pacific Street, Suite 210 · San Luis Obispo, CA 93401
Mailing Address: Post Office Box 14327 · San Luis Obispo, CA 93406-4327
Telephone: 805-544-4546 (Direct Line)
Facsimile: 805-544-4594

Email: marshall@slollegal.com

Website: www.slolegal.com

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From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Monday, August 24, 2015 2:51 PM
To: marshall@slolegal.com; 'O'Neill, Brian@Coastal'
Subject: RE: Rozo OTD

Marshall,

Will you also be checking with the Coastal Conservancy to see if they are willing to accept the OTD?

Thank you,

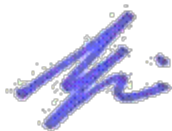
Tarren

From: Marshall E. Ochylski [<mailto:mochylski@slolegal.com>]
Sent: Monday, August 24, 2015 2:01 PM
To: 'O'Neill, Brian@Coastal' <Brian.O'Neill@coastal.ca.gov>; 'Tarren Collins' <tarrencollins@charter.net>
Cc: marshall@slolegal.com; marshall@slolegal.com
Subject: RE: Rozo OTD

Brain and Tarren,

I am going to pursue the idea of a minor amendment to the City's CDP to add the OTD as a Condition of Approval as an alternate course of action to the Deed Restriction. As soon as I get the City's feedback, I will forward it on to you.

Thank you.



Marshall E. Ochylski,
Attorney at Law

The Law Office of Marshall E. Ochylski

The Parsonage at Old Church Place

867 Pacific Street, Suite 210 · San Luis Obispo, CA 93401

Mailing Address: Post Office Box 14327 · San Luis Obispo, CA 93406-4327

Telephone: 805-544-4546 (Direct Line)

Facsimile: 805-544-4594

Email: marshall@slolegal.com

Website: www.slolegal.com

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Please consider the environment before printing this email.

From: O'Neill, Brian@Coastal [mailto:Brian.O'Neill@coastal.ca.gov]

Sent: Monday, August 24, 2015 1:46 PM

To: Tarren Collins

Cc: marshall@slolegal.com

Subject: RE: Rozo OTD

Hello Tarren,

You are correct that the CCC is not allowed to hold an interest in land. The grantee would need to be another entity. You can contact the Coastal Conservancy directly to see if they would be willing to accept the offer. Although we often work closely on specific projects, the Conservancy is a separate entity. Trish Chapman is the manager in your area and can be reached here: tchapman@scc.ca.gov

In regard to CCC's ability to enforce an easement condition, it would make no difference whether the condition was on an amended CDP issued by the City as I suggested or conditioned through the hearing process. We would have the authority to enforce a city-approved CDP in the same manner as all other CDPs. There is also no guarantee that our staff would recommend substantial issue or that the Commission would find it. We would need to discuss the implications of that action internally.

From: [Tarren Collins](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Carl, Dan@Coastal](#); [Craig, Susan@Coastal](#); [Kahn, Kevin@Coastal](#)
Subject: RE: Rozo Letter in Support of Staff Report (Appeal No A-3-PSB-15-0030)
Date: Tuesday, April 05, 2016 10:56:05 PM

PS – The link I gave you in my previous email tonight concerned the city planning commission's approval of 367 Boeker. This was appealed to the City Council, which upheld the requirement for the existing easement.

Here is the link to the staff report:

http://pismobeach.granicus.com/MetaViewer.php?view_id=2&clip_id=514&meta_id=45176

This staff report discusses the LCP policies concerning connecting Boeker with Windward. I draw your attention to page 10, which shows the alternative paths to get from the easement on 367 Boeker to Windward – and it includes the option of a jogged path like the one we seek through 388 Windward. Referring to the design on page 10, the staff report states on Page 9: "One option clearly extends in a straight line across the Windward property, **while the other option jogs along the rear and side property line before connecting with Windward.**" (Emphasis added.)

Thus, the City envisioned this alignment when requiring the easement on 367 Boeker.

I also draw you attention to page 8, wherein it is acknowledged that the owner of 398 Windward states he will not redevelop and trigger the easement requirement. I believe this is why the City provided the option for a jogged path on pages 9 and 10. The city now claiming its preferred alignment is through the garage at 398 Windward is disingenuous and unrealistic. **The City proposed the jogged option in the staff report for 367 Boeker.**

And, the easement on 367 Boeker was required despite no connection YET to Windward. In this regard, the City writes: " The dedication of the access path in the proposed location **furtheres the intent of the policy to provide thru access between Boeker and Windward.**"

From: Tarren Collins [mailto:tarrencollins@charter.net]
Sent: Tuesday, April 5, 2016 9:16 PM
To: 'Chaver, Yair@Coastal' <Yair.Chaver@coastal.ca.gov>
Cc: 'Carl, Dan@Coastal' <Dan.Carl@coastal.ca.gov>; 'Craig, Susan@Coastal' <Susan.Craig@coastal.ca.gov>; 'Kahn, Kevin@Coastal' <Kevin.Kahn@coastal.ca.gov>
Subject: RE: Rozo Letter in Support of Staff Report (Appeal No A-3-PSB-15-0030)

Dear Yair,

Thank you for forwarding the letter from Paul Beard. Had I known that my hastily drafted arguments would fall into the hands of the law firm that co-counseled with Latham and Watkins on the Georgia Pacific deal back in 2005, ("Represented Koch Forest Products Inc., a subsidiary of Koch Industries, alongside [Latham & Watkins](#) in its \$21 billion purchase of the [Georgia-Pacific Corporation](#) in 2005" -Wikipedia listing for Alton & Bird), I may have tried to find the time to be more articulate. I've just taken a few minutes to glance at the letter, but I am happy to see that despite the hasty draft of my arguments, Mr. Beard was not able to adequately refute them.

I stand by my arguments which clearly show the grounds for the Commission to find that our appeals raise Substantial Issue, and I trust that Coastal staff realizes that the letter from Beard states no sufficient legal grounds for the Commission to avoid finding that our appeals raise Substantial Issue. And I have confidence that Commission staff can refute Mr. Beard's "takings" argument based on the Nolan Case. The City of Pismo Beach has required these public pedestrian easements in the past, with no fear of the constitutional takings argument. In fact, just last month the City required an easement similar to the one they should have required at 388 (the Harbor View project with the "jogging" easement I forwarded to you last night).

Of even more relevance are the conditions of approval for 367 Boeker in Pismo – which clearly state that the existing easement at 367 Boeker is to connect to one of the abutting properties on Windward. The findings in the staff report for 367 Boeker point to the same LCP policies which rule over the project application at 388 Windward.

Page 2 of the staff report for 367 Boeker states: "The project also includes **the requirement** for recordation of a five (5') foot public access easement along left (east) side property line **to provide future access between Boeker and Windward as required by General Plan Policy LU-H-9 & Figure PR-2.**

The easement will not be open to the public until a similar easement is acquired from the abutting property on Windward (See Planning Condition A-4)." (Emphasis added.)

Pages 31-32 contain this statement: "PUBLIC ACCESS PATH. The applicant/owner shall dedicate a five (5') Public pedestrian access path along the left or east side property line. The easement shall be submitted to the Planning Division for review and approval prior to recordation. The applicant shall not be required to open the path to the public until such time as a similar easement has been **acquired from the abutting properties to complete the path thru to Windward Avenue or Ocean Boulevard.**" (Emphasis added.)

Therefore, the City of Pismo Beach conditioned the CDP at 367 Boeker by requiring the pedestrian public access easement in compliance with the same LCP Policies that apply to the 388 Windward CDP. And the City was not adverse to creating a "jogging" easement at the Harbor View project. Clearly, these Pismo Beach neighborhoods will require a jog in the pathway easements set forth in the LCP Policies because the property lines from one street to the next do not line up in straight lines.

You can link to the complete staff report for 367 Boeker here:

<http://www.pismo-beach.org/documentcenter/view/9252>

The Commission should find Substantial Issue on our appeals. And should the Commission find Substantial Issue, it would not appear worth the legal fees for the Rozos to hire Beard to sue the Commission based on the losing arguments he presented in his letter.

April 4, 2016

VIA UPS

Chairman Steve Kinsey and Honorable
Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Re: Appeal No. A-3-PSB-15-0030 ("Substantial Issue" Hearing Date:
4/13/2016)

Dear Chairman Kinsey and Honorable Commissioners,

On behalf of the applicants, Ernie and Pam Rozo, we write in full support of your staff's recommendation that you find no substantial issue and dismiss the appeals. The purpose of this letter is to provide the Commission with some additional insights and clarification that buttress your staff's recommendation.

I. BACKGROUND

By way of background, the City of Pismo Beach granted a CDP to the Rozos to demolish a single-family home and construct a new single-family home with attached 2-car garage and secondary dwelling unit at 388 Windward Avenue. The City's decision was appealed by two individuals, Tarren Collins and Laurie Cummings.

The appeals allege that the City-approved project is inconsistent with the City's LCP policies, because (1) the City did not require dedication of a public-access easement across the Rozos' property, (2) the house allegedly is out of character with other homes in the neighborhood, and (3) the house precludes access to a City sewer easement that traverses the property.

As reflected in the Staff Report, staff has thoroughly reviewed the City's evidence, findings, and conclusions in support of permit approval, and determined that the appeals raises no substantial issue. Your staff consequently recommends that the Commission decline to take jurisdiction over the Rozos' project.

II. LEGAL POINTS

A. The Appeals Raise No Substantial Issue

Our comments will not address all of the appeal contentions. It is our view that the Staff Report more than adequately addresses the reasons why there is no substantial issue with respect to the “character” and “sewer easement” contentions raised in the appeals. On these issues, we support fully the Staff Report’s findings and conclusions. Instead, these comments focus exclusively on the public-access issue.

1. The City’s Decision To Approve the Project Without Seizing a Public-Access Easement from the Rozos Is Consistent with the LCP

The Staff Report’s comprehensive analysis of the public-access issue in light of the City’s LCP is spot-on. LCP Policy LU-H-8 (“Lateral Access at Boeker Street”) provides that the City “should pursue opportunities to create lateral pedestrian pathways connecting [Boeker] Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south.” LCP Policy LU-H-8 further provides that “[t]his requirement shall be implemented as part of project approval, private gifts or dedications or possib[ly] through public acquisition.” Significantly, the policy preserves the City’s very broad discretion to determine the timing and means of securing lateral access at Boeker Street.

The City’s approval of the Rozos’ project without a public-access requirement is consistent with LCP Policy LU-H-8. As the staff report correctly explains, “Policy LU-H-8 does not *require* the City to condition specific development projects to create this public access path, and it allows the City discretion as to when and where to create these connections.” Staff Report at 8 (emphasis in original). Moreover, as the Staff Report observes, the City rightly concluded that provision of public access on the Rozos’ property would be totally impractical and unnecessary, particularly given other opportunities in the area to directly connect Boeker Street to either Windward Avenue or Ocean Boulevard. *Id.* The City thoroughly considered whether a public easement across the Rozo property was appropriate, concluding that such an easement would lack any connection to existing pathways, thereby providing no ready access to the public. *Id.* Simply put, the City exercised its broad discretion to conclude, with adequately supported findings and conclusions, that requiring the Rozos to dedicate a public-access easement would not advance the goals of LCP Policy LU-H-8.

2. Independent of the LCP, the City Was Constitutionally Barred from Seizing a Public-Access Easement from the Rozos

There is an independent reason why the City was correct to approve the project without a condition mandating dedication of a public-access easement. Had the City

required the Rozos to dedicate a public-access easement across their property as a condition of permit approval, the City would have been liable for a taking of private property without just compensation in violation of the Federal Constitution. U.S. Const. amend. V (mandating “just compensation” for the taking private property for public use), XIV (applying the Fifth Amendment to state and local governments); *see also Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226 (1987) (applying the Takings Clause to state and local governments).

As the Supreme Court’s precedents make clear, government may not impose permit conditions that bear no “essential nexus” or “rough proportionality” to identified public impacts caused by the project. *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994). This ruled is based on the “unconstitutional conditions” doctrine as applied in the context of the Takings Clause, whereby the government may not condition a benefit (permit approval) on a property owner’s relinquishment of a constitutional right (payment of just compensation for taken property). A permit condition that is not direct and proportional mitigation for specific public impacts caused by a project is, in the Supreme Court’s words, “an out-and-out plan of extortion”—and unconstitutional. *Nollan*, 483 U.S. at 837 (internal citation omitted).

Here, not only was the City not required by its LCP to seize a public-access easement from the Rozos; it was constitutionally **barred** from doing so. The Rozos’ project does not in any way eliminate or otherwise negatively affect an existing public easement or pathway. Consequently, there is nothing for the Rozos to mitigate in terms of public access. Had the City required a public-access easement from them—with no evidence that such a condition was mitigation for public access lost as a result of their project—the City would have opened itself to an easily-successful taking claim. In sum, the City’s decision to approve the project without a public-access condition is consistent both with its LCP *and* federal constitutional requirements.

B. Appellant Tarren Collins Misrepresents Background Facts about the Viability of Public Access on the Rozo Property, Public Support and Negotiations with the Rozos

With respect to the public-access issue, appellant Tarren Collins has made serious factual misrepresentations to your staff since they issued their Staff Report. Though many of the allegations she raises are irrelevant to the legal question of whether the appeals raise a substantial issue in light of the LCP and the Coastal Act’s public-access policies, we feel compelled to correct the record.

First, Ms. Collins asserts that there is a history of the Rozos’ agreement to dedicate an easement across the property. **This is absolutely false.** The Rozos have never agreed to dedicate an easement across their property. Though they knew that the law did not require them to dedicate an easement, the Rozos in good-faith tried to

negotiate a settlement with Ms. Collins to avoid the time and expense of having to defend against the appeals and possible litigation.

The settlement would have consisted of an Offer to Dedicate an easement to the City or a reputable nongovernmental organization, to be effective only after dismissal of these appeals. But a number of irresolvable issues ultimately precluded consummation of a settlement. For example, neither party was able to identify an entity or organization that would accept the offer; with no one to accept the offer, there would be no one to maintain and regulate use of the easement. Moreover, negotiations highlighted basic public-safety concerns shared by the Rozos and the City's police department. Those concerns stemmed in part from the discontinuous configuration of the proposed easement on the Rozo property in relation to existing easements on adjacent properties, which made it physically impossible for the public to safely travel along the proposed route. The appeals were not dismissed, and the Rozos withdrew from further negotiations, as was their right to do. Contrary to what Ms. Collins claims, failed negotiations do not constitute agreement of anything and, more importantly, are completely immaterial to the question of whether the pending appeals raise a substantial issue.

Second, Ms. Collins points to petitions signed by members of the community supporting a public-access easement across the Rozo property. The Rozos also have significant community support for *not* requiring a public-access easement across their property, as evidenced in part by the supportive testimony of neighbors who appeared at the City Council meeting for their project. The Rozos also have the support of the City's representatives—namely, a supermajority of the City Councilmembers (including Councilperson and Commissioner Howell) and the City Mayor. But, in reality, public opinion about the public-access issue is irrelevant to the purely legal question of whether such an easement is required by the LCP or even allowed by federal constitutional principles. Put differently, even if every member of the public had demanded that the City seize an easement from the Rozos against their will, such unanimous public support could not have trumped the City's discretion under the LCP or the City's obligations under the Fifth Amendment to the United States Constitution.

Third, Ms. Collins argues that the LCP *requires* the City to force the Rozos to dedicate a public-access easement across their property. But Ms. Collins' interpretation is at odds with the plain language of the LCP policies she relies upon. LCP Policy LU-H-8 provides that the "City *should* pursue opportunities to create lateral pedestrian pathways" (emphasis added). The provision conveys a recommendation, not a mandate.¹ Moreover, the provision does not mandate where, when, or how the City should create lateral pedestrian pathways. That is within the sole discretion of the City. Indeed, the policy identifies three possible means of securing easements: (1) requiring dedication of

¹ See, e.g., <http://asq.org/standards-shall-should> ("Because of the built-in flexibility of the word ["should"], if the document writer intends to mandate a requirement, *should* is not an appropriate choice"—"shall" is).

an easement as a condition of permit approval (as long as it is direct and proportional mitigation for loss of public access caused by the project, consistent with *Nollan* and *Dolan*), (2) acquiring an easement by eminent domain, or (3) accepting a gift of an easement. In light of the circumstances, the City exercised its discretion to conclude that an easement across the Rozos' property was unnecessary and impractical.

Ms. Collins also relies on LCP Policy PR-5 Multi-Use Path System. That policy only reinforces the City's goal of establishing a "system of public paths . . . to connect the various parks, scenic aspects and open space of the city." The Rozos' property is not a park, or a scenic or open space area of the City. It is private property. Indeed, the policy goes on to say that "[i]deally, the paths should be located within designated greenbelt areas," but that "in areas of the community that have already been developed, the system can include sidewalks and right-of-way shoulders of less traveled streets." But any easement across the Rozos' property would run along its private side-yard and backyard. It would not be along a "sidewalk[]" or a "shoulder[] of [a] . . . street." Most importantly, like Policy LU-H-8, Policy PR-5 does not in any way, shape, or form **mandate** that the City seize a particular easement from a particular property owner's side- or backyard.

In any event, even if the LCP said what Ms. Collins thinks it says—namely, that it mandates the taking of the Rozos' property for a public use without just compensation—it would be unlawful and unenforceable. The reason is simple: The Federal Constitution prohibits uncompensated takings of private property for a public use. And local law cannot require what the Federal Constitution prohibits. U.S. Const. art. VI, ¶ 2 ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

Fourth, Ms. Collins speculates that the City will never be able to obtain another, more direct connection between Boeker and Windward. But this is sheer speculation that flies in the face of the facts in the City's record. The City already has identified 398 Windward as a far better location for a pathway connection between Boeker Street and Windward Avenue. Ms. Collins claims that the 398 Windward lot is too small for a pathway, but that lot is nearly *twice* the size of the Rozo property. In any event, the City's findings and conclusions concerning alternative locations for a connecting easement are substantiated and well-reasoned, notwithstanding Ms. Collins' unsubstantiated speculation.

Finally, Ms. Collins argues that lateral access will be lost for generations unless an easement is illegally seized from the Rozos. Ms. Collins has used this doomsday prediction to repeatedly urge the City—and now the Commission—to obtain the public access that she wants by any means necessary, even if it requires violating the Constitution and trampling on the property rights of City residents. Luckily, the LCP offers the City a number of **constitutional** ways to procure (at its discretion) lateral access between Boeker and Windward: It can either acquire access through eminent domain,

accept a voluntary dedication of access, or require a dedication as direct mitigation for a project's impacts on existing public access (as per *Nollan* and *Dolan*). The City should be applauded for honoring its obligations under the LCP and the Constitution, and approving the Rozo project without unlawfully seizing the family's property for a public-access easement.

CONCLUSION

For all the reasons stated above, and the reasons stated in the Staff Report, the Commission should find no substantial issue and decline jurisdiction over the project.

Sincerely,

ALSTON & BIRD LLP



Paul J. Beard II
Counsel for the Applicants

cc: Yair Chaver (via e-mail: Yair.Chaver@coastal.ca.gov)

Dear Mr. Carl and Mr. Howell:

As co-representative of the Rozos with respect to the pending appeals, I received this email chain from Marshall. I'm writing to clarify a few points that I hope will help to inform Coastal Commission staff's recommendation:

1. Mr. Howell's email states that my correspondence "would seem to argue for statewide issues associated with this easement." Mr. Howell must be confusing Tarren Collins' correspondence with mine. In two separate emails to Coastal Commission staff (dated 3/25 and 3/29), Ms. Collins unsurprisingly described her appeals as raising "statewide" issues.
2. By contrast, my correspondence agrees with the original Coastal Commission staff report that the appeals raise no substantial issue (let alone statewide issues). The purpose of that correspondence was to provide an additional reason for a NSI recommendation: The City's decision not to require a public pathway through the Rozos' backyard is not only consistent with the City's LCP, but *constitutionally compelled* by the Takings Clause of the Fifth Amendment to the U.S. Constitution under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). A NSI recommendation and Coastal Commission concurrence may not be a "slam dunk" at this point (for reasons that we cannot understand), but the takings argument definitely is. There is no way, constitutionally, that a public pathway can be required of the Rozos as a condition of their project. *Nollan*, 483 U.S. 825 (a permit condition that bears no essential nexus to the impacts of the project is unconstitutional and "out and out an plan of extortion"); *see also Bowman v. California Coastal Commission*, 230 Cal.App.4th 1146 (2014) (holding, in part, that the Coastal Commission's taking of a public-access easement failed *Nollan*, because there was "no rational nexus, no less rough proportionality" between the project's impacts and the need for a pathway).

Of course, if Tarren Collins and her supporters want a pathway across the Rozos' backyard, they are free to try to persuade the Rozos to *sell* them such an important interest in their private property. But the Rozos cannot be *forced* give up a public pathway for nothing. The LCP does not require it. And the Constitution forbids it.

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If any of you have any questions, please do not hesitate to reach out to me or Marshall.

Paul J. Beard II | ALSTON & BIRD LLP

1115 11th Street, Sacramento CA 95814

Office: 916-498-3354 | Mobile: 818-216-3988

paul.beard@alston.com | <http://www.alston.com/professionals/paul-beard/>

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----- Forwarded message -----

From: "Carl, Dan@Coastal" <Dan.Carl@coastal.ca.gov>

Date: Mon, Jul 4, 2016 at 3:23 PM -0700

Subject: RE: Easement

To: "Erik Howell" <erik@erikhowell.com>, "marshall@slollegal.com"
<marshall@slollegal.com>

Hi Erik,

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scheduled, we have not yet set a preliminary date as we are still working through the various resolution options internally. Hope that helps clarify.

Dan

From: Erik Howell [erik@erikhowell.com]
Sent: Sunday, July 03, 2016 8:43 AM
To: marshall@slolegal.com; Carl, Dan@Coastal; Erik Howell
Subject: Re: Easement

Marshall,

I met with the Rozos yesterday. They stated that they are not willing to offer the easement. Obviously, that is their business. As you know, I was merely attempting to address the issues raised in the appeal while still allowing them to move forward with their project. I also expressed to the Rozos my belief that the Commission staff is more likely than not to place the matter on the March 2017 agenda. Typically staff wants hearings to take place locally. They disagreed with my assessment. I can only presume delays are not an issue for them.

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Well, good luck with this. If I were the Rozos, I would have long since made the offer to dedicate and put this thing to bed. Hope you're having a great weekend. I will talk to you soon.

-Erik

On Jul 2, 2016, at 2:10 PM, Marshall E. Ochylski <mochylski@slolegal.com> wrote:

Erik,

Thank you for your efforts in trying to resolve this matter.

I can change the addresses of the future connections. The addresses that I included were based the attached Exhibit that I was given by the Rozos.

I can easily add the Coastal Conservancy as an alternate Grantee, if the Rozos agree.

The dates will all be made current.

I will wait to hear from the Rozos as to how they want to proceed.

I hope you have a great 4th of July weekend!!

Thank you.

<image001.gif>

Marshall E. Ochylski,
Attorney at Law

The Law Office of Marshall E. Ochylski
Mailing Address: Post Office Box 14327
San Luis Obispo, CA 93406-4327

Telephone: 805-544-4546 (Direct Line)
Cell Phone: 805-441-4466

Email: marshall@slolegal.com
Website: www.slolegal.com

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<image004.jpg> **Please consider the environment before printing this email.**

From: Erik Howell [<mailto:erik@erikhowell.com>]
Sent: Friday, July 01, 2016 9:43 AM
To: mochylski@slolegal.com
Subject: Easement

Marshall,

I am going to be meeting with the Rozos this weekend. I think the addresses on the draft offer to dedicate for the future easements to connect through 388 Windward may not be correct. I think the correct addresses for future connections are 367 Boeker or 398 Windward. Also, could you add to the offer to dedicate the addition of Coastal Conservancy as an alternate to the City of Pismo Beach?

Thank you.

-Erik

P.S. Of course the dates on everything need to be changed. :-)
<Pathway Diagram.pdf>

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Erik Howell

- 1) Name or description of project: 388 Windward
- 2) Date and time of receipt of communication: June 29, 2016
- 3) Location of communication: Pismo Beach, Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Tarren Collins
- 5) Identity of person(s) on whose behalf communication was made: Tarren Collins
- 6) Identity of persons(s) receiving communication: Erik Howell
- 7) Identity of all person(s) present during the communication: Erik Howell,
Tarren Collins

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Tarren stated her continued willingness to withdraw her appeal of the project if the
applicants were willing to dedicate a future easement. This easement would only
come into effect upon connection to the neighboring property. She affirmed
co-appellants concurrence. She also reiterated that the Rozos had promised to record
said easement. Unfortunately, upon learning of staff's recommendation of no
substantial issue, the applicants had reneged on their promise.

07/3/16

Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Erik Howell

1) Name or description of project: 388 Windward

2) Date and time of receipt of communication: July 2, 2016 2:00 pm

3) Location of communication: 388 Windward, Pismo Beach

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Erik Howell

5) Identity of person(s) on whose behalf communication was made: Erik Howell

6) Identity of persons(s) receiving communication: Erik Howell

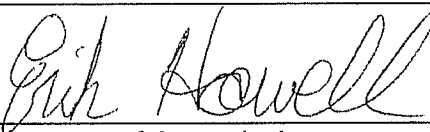
7) Identity of all person(s) present during the communication: Erik Howell,
Mary Ann Reiss, Pam Rozo, Ernie Rozo

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Pam and Ernie Rozo shared that they are no longer willing to dedicate the future
easement at 388 Windward because they believe it will lower the value of their property
and they have been told that they cannot be required to do so. They shared their
belief that the Coastal Commission will be hearing their matter in the near future and
their confidence that the recommendation from staff will be for no substantial issue.

07/3/16

Date


Signature of Commissioner

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From: [Beard, Paul](#)
To: [Carl, Dan@Coastal](#)
Cc: [Marshall E. Ochylski \(mochylski@slolegal.com\)](#); [erik@erikhowell.com](#); [Yair Chaver](#)
Subject: RE: Easement
Date: Wednesday, July 06, 2016 9:50:12 AM
Attachments: [image001.emz](#)
[image002.png](#)

Yair – I'm available to discuss at your earliest convenience. 818-216-3988. Thanks.

Paul J. Beard II | ALSTON & BIRD LLP

Office: 916-498-3354 | Mobile: 818-216-3988

From: Carl, Dan@Coastal [mailto:Dan.Carl@coastal.ca.gov]
Sent: Wednesday, July 6, 2016 9:34 AM
To: Beard, Paul <Paul.Beard@alston.com>
Cc: Marshall E. Ochylski (mochylski@slolegal.com) <mochylski@slolegal.com>;
erik@erikhowell.com; Yair Chaver <Yair.Chaver@coastal.ca.gov>
Subject: RE: Easement

Mr. Beard:

Thank you for your additional input. We understand your position on behalf of the Rozos. As I indicated in my email below, we are continuing to evaluate and internally discuss options for possible resolution of the issues raised. And we have already reevaluated our original recommendation in light of all of the new information received since it was first distributed, and the current facts and context here suggest we will almost certainly not be recommending NSI moving forward. Mr. Chaver will be in contact with you and/or Mr. Ochylski once we have a firmer sense of potential options for resolution and a potential hearing schedule. Thank you for your continued patience.

Dan Carl
District Director
Central Coast and North Central Coast Districts
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
831-427-4863
dan.carl@coastal.ca.gov
www.coastal.ca.gov

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and Drought.CA.gov

From: Beard, Paul [<mailto:Paul.Beard@alston.com>]
Sent: Wednesday, July 06, 2016 12:54 AM
To: Carl, Dan@Coastal; [erik@erikhowell.com](#)
Cc: Marshall E. Ochylski ([mochylski@slolegal.com](#))
Subject: RE: Easement

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They also seem fairly confident that staff will find no substantial issue and that the Commission will concur. Given the correspondence from Paul Beard, however, this may not be a slam dunk. His letter would seem to argue for statewide issues associated with this easement and thus, substantial issue. They also run the risk that the Commission may send them back to the drawing board on all of this.

Well, good luck with this. If I were the Rozos, I would have long since made the offer to dedicate and put this thing to bed. Hope you're having a great weekend. I will talk to you soon.

-Erik

On Jul 2, 2016, at 2:10 PM, Marshall E. Ochylski <mochylski@slolegal.com> wrote:

Erik,

Thank you for your efforts in trying to resolve this matter.

I can change the addresses of the future connections. The addresses that I included were based the attached Exhibit that I was given by the Rozos.

I can easily add the Coastal Conservancy as an alternate Grantee, if the Rozos agree.

The dates will all be made current.

I will wait to hear from the Rozos as to how they want to proceed.

I hope you have a great 4th of July weekend!!

Thank you.

<image001.gif>

Marshall E. Ochylski,
Attorney at Law

The Law Office of Marshall E. Ochylski
Mailing Address: Post Office Box 14327
San Luis Obispo, CA 93406-4327

Telephone: 805-544-4546 (Direct Line)
Cell Phone: 805-441-4466

Email: marshall@slolegal.com
Website: www.slolegal.com

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<image004.jpg> **Please consider the environment before printing this email.**

From: Erik Howell [<mailto:erik@erikhowell.com>]
Sent: Friday, July 01, 2016 9:43 AM
To: mochylski@slolegal.com
Subject: Easement

Marshall,

I am going to be meeting with the Rozos this weekend. I think the addresses on the draft offer to dedicate for the future easements to connect through 388 Windward may not be correct. I think the correct addresses for future connections are 367 Boeker or 398 Windward. Also, could you add to the offer to dedicate the addition of Coastal Conservancy as an alternate to the City of Pismo Beach?

Thank you.

-Erik

P.S. Of course the dates on everything need to be changed. :-)
<Pathway Diagram.pdf>

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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th13e

Prepared January 9, 2017 for January 12, 2017 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, Central Coast District Manager
Subject: Additional hearing materials for Th13e
Appeal Number A-3-PSB-15-0030 (Rozo Residence)

Where checked in the boxes below, this package includes additional materials related to the above-referenced hearing item as follows:

- ☐ Staff report addendum
- ☒ Additional correspondence received in the time since the staff report was distributed
- ☐ Additional ex parte disclosures received in the time since the staff report was distributed
- ☐ Other:

Th13e

ALSTON & BIRD LLP

1115 11th Street
Sacramento, CA 95814

916-498-3354
Fax: 213-576-2864
www.alston.com

Paul J. Beard II

Direct Dial: 916-498-3354

Email: paul.beard@alston.com

January 6, 2017

VIA UPS NEXT-DAY AIR DELIVERY
AND VIA EMAIL (WHERE AVAILABLE)

Chairperson Bochco and Honorable
Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RECEIVED

JAN 06 2017

CALIFORNIA
COASTAL COMMISSION

Re: Appeal No. A-3-PSB-15-0030
Hearing Date: 1/12/17
Item No. Th-13e

Dear Chairperson Bochco and Honorable Commissioners,

We represent the project applicants, Ernie and Pam Rozo, in the above-referenced appeals. As explained more fully below, we respectfully request that:

- the Commission hold a hearing on substantial issue, and
- the Commission determine that the Rozos' project, as approved by the City of Pismo Beach, raises **no substantial issue**—just as your staff originally and correctly concluded in its March 25, 2016, Staff Report (attached hereto as Exhibit 1).

REASONS FOR HOLDING A HEARING AND FINDING NO SUBSTANTIAL ISSUE

Brief Background

After the appeals were filed, Appellants lured the Rozos into negotiations over a public-access easement with the promise of dismissing their costly and time-consuming appeals if an easement could be obtained. The Rozos did not, and do not, believe that the City or anyone else could take a trail easement from them without just compensation. But the Rozos engaged in good-faith settlement discussions in the hopes of negotiating an easement that would fully address their privacy and safety concerns, while saving them the time and expense of defending against the appeals and possible litigation. As

negotiations dragged on, Appellants constantly moved the goal posts, making it clear that no public-access trail would satisfy them and that they would proceed with their appeals anyway. This prompted the Rozos to walk away from negotiations, as was their right to do. No settlement was ever reached or promise ever made to record anything, as Appellants falsely claim.

Around that same time, staff issued its March 25, 2016, Staff Report, recommending a finding of “no substantial issue.” As the record of correspondence attached to the current Staff Report shows, Appellant Tarren Collins applied pressure on staff to reverse that recommendation. Much to the Rozos’ disappointment, the staff subsequently reversed its original “no substantial issue” recommendation. The current Staff Report incorrectly finds “substantial issue,” in part on grounds that not even the appeals allege and have never been presented to the City.

The appeals raise only three grounds as to why the City-approved project fails to conform to the City’s LCP or the Coastal Act’s public-access policies. The appeal is barred, as a matter of law, because there is no substantial issue with respect to any of the three grounds on which the two appeals were filed.

Issue No. 1: Public Access

The appeals contend that the City’s failure to condition the project on the Rozos’ dedication of a public-access easement across their property violates the law. But the appellants have it exactly backward. Not only was the City’s refusal to require a public-access easement consistent with the LCP and the Coastal Act’s public-access policies; it was constitutionally *required*.

Under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and a slew of precedents since that have reaffirmed it, an agency can exact a public-access easement as the condition of project approval only if the agency establishes that such condition is mitigation for the project’s impacts on existing public access. If now such showing can be made, then the condition is an “out-and-out plan of extortion” and effects an unconstitutional taking of private property without just compensation.

Speaking in terms of the *Nollan* case without explicitly citing it, the Staff Report all but admits that the Rozos’ residential project causes no adverse impacts to existing public access.¹ That comes as no surprise, since the Rozos’ property has no existing

¹ The Staff Report, at page 3, finds: “[T]his project appears to have limited public access impacts (if any). That is not to say that some other similarly-situated residential project could not have more significant access impacts that would require an easement, but the facts of this particular case do not appear to warrant a trail easement as compensatory mitigation for impacts to public access caused by approval of this development proposal.”

trails to begin with that the project *could* affect. Since the City's refusal to exact a public-access easement as a condition of project approval was constitutionally *required*, the absence of a public-access condition cannot—and does not—constitute legitimate grounds for the appeals.

The Staff Report acknowledges that the absence of a public-access condition against the Rozos does not violate the LCP or the Coastal Act's public-access policies. But the Staff Report goes even further. It concludes that a trail on the Rozos' property would be impractical given the absence of connectivity to other existing trails.

Nevertheless, the Staff Report inexplicably recommends a finding of "substantial issue," because "issues associated with a potential trail at this location are significant, and raise statewide [California Coastal Trail] concerns given the trail gap at this location." That is not the correct application of the "substantial issue" test. The question is not whether any issue raised by the appellant—here, completion of the California Coastal Trail—is, in and of itself, significant or of statewide concern. Rather, the question is whether "substantial issue exists *with respect to the grounds on which an appeal has been filed*." Pub. Res. Code § 30625(b)(2) (emphasis added). The answer turns on whether the project violates the LCP or the Coastal Act's public-access policies. If no such violation exists, the appeal grounds cannot, as a matter of law, raise a "substantial issue." *Hines v. Cal. Coastal Comm'n*, 186 Cal. App. 4th 830 (2010) ("A substantial issue is defined as one that presents a 'significant question' *as to conformity with the certified local coastal program*." (emphasis added)).

Here, as the Staff Report readily acknowledges, the project does not violate the law on "public access" grounds. No matter how significant the CCT may be, the appellants' "public access" grounds for their appeals raise no substantial issue, precisely because there is no *legal* support for their allegations.

Issue No. 2: The Overall Size of the House

Appellants next contend that the overall size of the approved project violates the LCP. Appellant Tarren Collins claims that "the overall size of the home does not meet the Neighborhood Compatibility requirement per the General Plan."² She thinks the "total building area needs to be further reduced to meet the requirement." Appellant Laurie Cummings similarly claims, in the same vein, that "[t]he overall size of the structure is inconsistent with the Neighborhood Compatibility requirement and Residential Guidelines of the General Plan/LCP." Cummings cites to LU-H-4a, concerning the "scale of structures."

Like its March 25, 2016, Staff Report, the current Staff Report finds that the project "is within the applicable LCP maximum standards with respect to height,

² Both appeals are at Exhibit 7 of the Staff Report.

setbacks, lot coverage, and floor area.” Staff Report at 9. But unlike the original Staff Report, the current Staff Report finds a new ground for “substantial issue”—namely, that the second story’s gross floor area is more than 80% of the first story’s gross floor area, in alleged violation of the LCP’s “80% ratio” rule. The Staff Report reaches its conclusion by including, against City policy, the floor area covered by the project’s second-story stairwell and the elevator, thereby artificially increasing the second story’s floor area relative to the first story’s floor area. Staff Report at 9-10. But alleged violation of the LCP’s 80% ratio rule is not a valid ground for finding substantial issue.

As stated above, “substantial issue” can be found only “with respect to the grounds on which an appeal has been filed”—not on any ground the staff chooses. Pub. Res. Code § 30625(b)(2). The Appellants do not allege violation of the LCP’s “ratio” policy. They only take issue with the project’s “overall size.” As the current Staff Report itself finds, the project is in conformance with the LCP’s maximum standards with respect to height, setbacks, lot coverage, and floor area—i.e., with the LCP’s overall-size requirements. The *ratio* policy does not speak to a house’s overall size, but only to the relationship of the first story to the second. Simply put, the Staff Report purports to find a “substantial issue” with respect to grounds not alleged by the appeals, violating section 30625(b)(2)’s mandate.

Finally, the Appellants never even raised the “ratio” issue at the hearings before the Planning Commission or the City Council. Thus, neither the Rozos nor the City ever had the opportunity to consider and address the allegation that the project violates the LCP’s “ratio” policy. Had they been given that opportunity, evidence would have been presented establishing that the City’s policy is to exclude stairwells and elevators from their calculation of a second floor’s gross floor area under the LCP’s “ratio” policy, which is why the project is entirely consistent with that policy.³

Having failed to exhaust their administrative remedies with respect to the “ratio” issue and having failed even to mention the issue in their appeals, Appellants cannot now benefit from the issue as a *manufactured* ground for the appeals. The Staff Report’s improper reliance on the LCP’s “ratio” policy effectively puts before the Commission an issue that the City never adjudicated, that the Appellants have waived, and that fails—as a matter of fact and law—to support a “substantial issue” determination.

Issue No. 3: The Sewer Easement

³ Homes approved in Shell Beach at, or very close to, 80% square footage of the second floor in relation to the first floor, where a second floor’s staircase and elevator were not counted, include: 343 Palomar, P15-000019 (8-25-15); 250 Vista Del Mar, P15-000104 (11-24-15); 1026 Ocean lot 3, P15-000123 (4-26-16); 364 Windward, P09-0057 (8-11-09); 2631 Spyglass, P13-000133 (7-8-14); 342 Morro, P14-000158 (10-28-14).

The Appellants' third and final ground for appeal is that the project will be built over a City-owned sewer easement. But as the current Staff Report states, there is no "substantial issue" with respect to that allegation. The *existing* residence already is built on top of the sewer easement. Staff Report at 11. The project ameliorates the already-existing encroachment. The second story would have a bridge *over* the easement, "allow[ing] the City access to the sewer in case of needed repairs or other issues." No City policy prohibits this. The easement itself does not prohibit this. And the project does not burden, in any way, the easement. Consequently, there is no substantial issue with respect to the "sewer easement" ground for appeal.

Incomplete Record

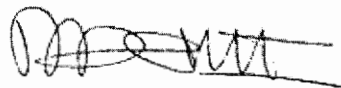
The record supplied by the current Staff Report is incomplete. Besides excluding its original Staff Report, it also excludes important comment letters from public-interest organizations, which we attach as Exhibit 2. Those letters raise concerns particularly with the public-access issue, and support the Rozos' view that the City was constitutionally precluded from exacting a public-access trail from them as the condition of project approval.

CONCLUSION

For all the reasons stated above, we urge the Commission to hold a hearing on "substantial issue" and find that there is no substantial issue with respect to the three grounds upon which the appeals were filed.

Sincerely,

ALSTON & BIRD LLP



Paul J. Beard II

Exhibit 1 – March 25, 2016, Staff Report

Exhibit 2 – Letters to California Coastal Commission (Pacific Legal Foundation and California Cattlemen's Association)

cc: Yair Chaver (via Email at: Yair.Chaver@coastal.ca.gov)

Exhibit 1

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



W11b

Appeal Filed:	5/6/2015
49th Day:	Waived
Staff:	Yair Chaver - SC
Staff Report:	3/25/2016
Hearing Date:	4/13/2016

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number:	A-3-PSB-15-0030
Applicants:	Ernie & Pam Rozo
Appellants:	Tarren Collins; Laurie D. Cummings
Local Government:	City of Pismo Beach
Local Decision:	Coastal development permit (CDP) application number 14-000080 approved by the Pismo Beach Planning Commission on July 8, 2014, and upheld on appeal by the Pismo Beach City Council on April 21, 2015.
Location:	388 Windward Ave, Pismo Beach, San Luis Obispo County (APN 010-371-012)
Project Description:	Demolition of an existing single-family residence and construction of a new two-story single-family residence with an attached two-car garage and an attached secondary dwelling unit.
Staff Recommendation:	No Substantial Issue

total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (*Id.* § 13115(b).)

SUMMARY OF STAFF RECOMMENDATION

The City of Pismo Beach approved a coastal development permit (CDP) authorizing demolition of an existing 1,319 square-foot single-story single-family residence and, in its place, construction of a 3,575 square-foot, two-story, single-family residence with an attached secondary dwelling unit and an attached garage. The project parcel is located in the residential Shell Beach neighborhood and is zoned Single Family Residential (R-1), surrounded by existing residences on three sides (the fourth side fronting Windward Avenue).

The Appellants contend that the City-approved project is inconsistent with City of Pismo Beach Local Coastal Program (LCP) policies regarding the establishment of a public path to address and abate existing access connectivity deficiencies in this portion of the Shell Beach neighborhood, the protection of neighborhood character, and access to a City sewer easement that traverses the property.

After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the City of Pismo Beach LCP. The local action is factually and legally supported by the record, and the project complies with applicable LCP requirements. The City-approved project authorizes a residential structure located on an appropriately zoned parcel surrounded by existing, similarly-situated residential homes.

With respect to public access, the project site is located in an area identified in the LCP as having lateral bluff top public access connectivity deficiencies. The City extensively considered where the proper public access connections in this area should be, including whether or not a public access easement should be required on the Applicant's property. Ultimately, the City concluded that an access easement on the Applicant's property was not necessary at this time because it would not connect with any existing access easements or pathways and therefore would not provide or improve public access in the area. The City concluded that an easement on the Applicant's property did not comport with the City's vision and goals for the provision of public access in this area, and thus its decision to not require a public access easement on the Applicant's property was not inconsistent with the LCP's access goals and requirements in the project area.

Finally, with respect to City utility easements, the project parcel includes a ten-foot wide sewer easement. While the LCP contains no policy to explicitly address building on existing City utility easements, the City appropriately conditioned the residence to avoid it being built directly over the easement in order to ensure that the City will be able to repair and maintain the sewer. Thus, the City-approved project will not adversely impact the City's ability to access the sewer easement.

In short, the City-approved project on appeal does not raise substantial LCP conformance issues. As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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EXHIBITS

- Exhibit 1 – Project Location Map
- Exhibit 2 – Project Site Photos
- Exhibit 3 – Approved Project Plans
- Exhibit 4 – Final Local Action Notice (FLAN)
- Exhibit 5 – Appeal Text
- Exhibit 6 – Existing Pedestrian Path and Existing Easement
- Exhibit 7 – Figure PR-2 and Table PR-4
- Exhibit 8 – Project Design with Bridge

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-PSB-15-0030 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-PSB-15-0030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project authorizes the demolition of an existing 1,319 square-foot single-family residence and subsequent construction of a 3,575 square-foot single-family residence, consisting of a 2,470 square-foot primary residence with an attached 495 square-foot garage and a 610 square-foot attached secondary dwelling unit, on a 5,236 square-foot lot at 338 Windward Avenue (APN 010-371-012) in the Shell Beach neighborhood of the City of Pismo Beach. Shell Beach is an urbanized residential neighborhood located upcoast from downtown Pismo Beach, set between Highway 101 and large coastal bluffs. The subject parcel is surrounded by existing residences and is the second parcel inland from the coastal bluff. The parcel is zoned Single Family Residential (R-1), and the surrounding neighborhood contains a mix of one-, two-, and three-story houses, of varying sizes and architectural styles.

See Exhibit 1 for the project location map, Exhibit 2 for project site photos, and Exhibit 3 for the approved project plans.

B. CITY OF PISMO BEACH CDP APPROVAL

The City of Pismo Beach Planning Commission approved CDP 14-00080 by a 4-0 vote on July

Commission's Central Coast District office on May 6, 2015 (Exhibit 4). The Coastal Commission's ten-working day appeal period for this action began on May 7, 2015 and concluded at 5pm on May 20, 2015. Two valid appeals of the City's CDP decision were received during the appeal period (see below and see Exhibit 5).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Pub. Res. Code § 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* § 30603(a)(5).) This project is appealable because it is located between the first public road and the sea, and because it is located within 300 feet of the mean high tide line and the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. (*Id.* § 30603(b).) Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.² (*Id.* § 30625(b)(2).) Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the Pismo Beach certified LCP) if the Commission were to approve the project following a de novo hearing.

² The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. (14 CCR §13117.) Testimony from other persons regarding substantial issue must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal, if there is one.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the City-approved project is inconsistent with a number of Pismo Beach Local Coastal Program (LCP) policies, including those that protect public access, those that regulate development size to protect community character, and those that protect City public utility easements. Specifically, with respect to public access, the Appellants contend the approved project is inconsistent with LCP Policy LU-H-8 because the approved project does not include a public access easement through the Applicant's property to allow for a pedestrian connection between Boeker Street and Windward Avenue. With respect to development size, the Appellants contend that the size and scale of the approved project are inconsistent with LCP Policy LU-H-4(a), which encourages new development to reflect the small scale image of the Shell Beach neighborhood. Finally, with respect to utility easements, the Appellants contend the City-approved project is not consistent with an informal City policy that prohibits construction over City easements, in this case a sewer easement.

See Exhibit 5 for the full appeal text.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Public Access

Applicable Pismo Beach Local Coastal Program Policies

The applicable Pismo Beach LCP policies regarding lateral pedestrian pathways in the Shell Beach Planning Area read:

LCP Policy LU-H-8 Lateral Access at Boeker Street. *The City should pursue opportunities to create lateral pedestrian pathways connecting Booker[sic] Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility[sic] through public acquisition. (See Parks and Recreation Element, Policy PR-5, Path System.)*

LCP Policy PR-5 Multi-Use Path System (Trails). *A system of public paths as delineated on Figure PR-2 shall be developed to connect the various parks, scenic aspects and open space of the city. Ideally the paths should be located within designated greenbelt areas. However, in areas of the community that have already been developed, the system can*

LCP Figure PR-2 and Table PR-4(11)(b): (see Exhibit 7)

The Shell Beach neighborhood is bounded on its ocean side by Ocean Boulevard, which provides nearly continuous lateral pedestrian and vehicular access along the ocean bluff all the way from Vista Del Mar Avenue upcoast to Dinosaur Caves Park downcoast. However, Ocean Boulevard does not connect between the two blocks between Placentia Avenue and Windward Avenue. This two block segment fragments Ocean Boulevard, and results in a gap in Shell Beach's lateral bluff top public access (see Exhibit 6). To remedy this public access gap, LCP Policy LU-H-8 encourages the City to create a lateral pedestrian pathway between Placentia Avenue and Windward Avenue, including through publicly acquiring and building such a pathway, accepting private gifts or dedications, or through requiring a public access easement on private property as part of project approval. The policy does not state a timeframe for achieving the completion of the pathway, a preference for one method over others in its implementation, or a specific preferred alignment. Similarly, LUP Figure PR-2 and Table PR-4(11)(b) (Exhibit 7) show the need for access improvements in this area, envisioning a connection between Placentia Avenue and Windward Avenue to provide public access and fill in the access gap.

Consistent with these policies, the city, as a condition of approval for a CDP for the construction of a residence at 374 Boeker Street,³ required a public access easement/pedestrian path connecting Boeker Street with Ocean Boulevard, which has since been built (Exhibit 6), thereby solving half of this area's lateral access deficiencies. Furthermore, the City required, via condition of another CDP,⁴ an access easement at the property at 367 Boeker Street, which abuts the Applicant's western property line. However, this easement terminates at the property line and does not extend all the way to Windward Avenue. Thus, a full connection between Boeker Street and Windward Avenue is still lacking. Because of this, pedestrians need to walk one quarter-mile along Boeker Street to Shell Beach Road, and then continue one quarter-mile along Windward Avenue in order to reach Ocean Boulevard to continue along the bluff. A pedestrian path from Boeker Street to Windward Avenue passing through the Project site would shorten this half-mile (one way) journey to approximately 130 feet (Exhibit 6).

Appellants' Contentions

The Appellants contend that the City-approved project does not conform with LCP Policy LU-H-8 because the approved project does not require an easement through the property to connect Windward Avenue with Boeker Street. The Appellants go on to state that the redevelopment of 388 Windward presents an exceptional opportunity to enrich the community by "adhering to the General Plan mandate to obtain an access easement to complete a pedestrian path connecting the south end of Shell Beach with Ocean Boulevard"⁵ and that to allow the project without requiring a path as mandated by the General Plan/Land Use Plan would deprive the public of an opportunity to connect a missing coastal access link.

Analysis

As described above, Policy LU-H-8 does not *require* the City to condition specific development projects to create this public access path, and it allows the City discretion as to when and where to create these connections. As discussed above, in implementing Policy LU-H-8, the City conditioned a public access easement at 367 Boeker Street to help fill in the remaining access gap on the block between Boeker Street and Windward Avenue. The City's vision is for this access easement to connect with a future easement at the property at 398 Windward Avenue, which is adjacent to, and seaward of, the Applicant's property at 388 Windward Avenue. Thus, the City would require an access easement on the property at 398 Windward Avenue when this property redevelops in the future. Securing an easement in this manner would create a linear public access pathway crossing both 367 Boeker Street and 398 Windward Avenue, and would connect Boeker Street with Windward Avenue, thereby achieving the goal outlined in Policy LU-H-8.

In its review of the Applicant's CDP application at 388 Windward Avenue, the City extensively considered where the proper public access connections in this area should be, including whether or not the City should require a public access easement on the Applicant's property. Ultimately, the City concluded that an access easement on the Applicant's property was unneeded because any easement segment would not actually provide ready public access without securing future access easement connections on neighboring property. The City found that the existing easement at 367 Boeker Street is offset by roughly 20 to 25 feet from the Applicant's western property line, and abuts the rear of the property at 398 Windward Avenue instead. Due to this 20 to 25-foot offset, any easement along the western property line at 388 Windward Avenue would not actually connect with the existing easement at 367 Boeker Street and would not create a public access path as envisioned in Policy LU-H-8 (Exhibit 6). Thus, a better approach to ensure continuous lateral access is provided in this area, and to meet the LCP's access objectives, would be to require an easement on the adjacent property at 398 Windward Avenue, thereby creating a linear access connection that would provide superior access utility, and would be easier to monitor and maintain. Because of all of these factors, the City concluded that an access easement was not necessary on the Applicant's property, that its decision to not require an easement was not inconsistent with the LCP, and that the best way to meet the LCP's access goals and policies is to pursue a public access easement on the property at 398 Windward Avenue when that property redevelops in the future.

In conclusion, the City extensively studied the access issues and preferred alignments of pathways and trails in the project area, and concluded that an easement on the Applicant's property did not comport with the City's vision and goals for the provision of public access in this area. Thus, the City's action does not raise a substantial issue with respect to the recommendation in LCP Policy LU-H-8 to create lateral pedestrian pathways connecting Boeker Street to Windward Avenue.

LCP Policy D-2 Building and Site Design Criteria. (a) Small Scale. New development should be designed to reflect the small-scale image of the city rather than create large monolithic buildings. Apartment, condominium and hotel buildings should preferably be contained in several smaller massed buildings rather than one large building. Building mass and building surfaces such as roofs and exterior 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.

LCP Policy LU-H-1 Concept. Shell Beach Road is bordered by a narrow commercial strip backed by a narrow band of High Density Residential. Behind the High Density residential area to the Ocean, a medium density land use accommodates single family homes in the area. The focus of this area is a more traditional beach community with small single-family lots, street activity, and views of the ocean to the west, and the foothills to the east. The emphasis is on assuring that new and expanded homes are compatible with the scale, bulk, and character of existing neighborhood.

LCP Policy LU-H-4 Residential Guidelines. (a) Scale of structures. New development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal and roof articulation of building faces. Where two-story buildings are proposed, the second story should normally be stepped back.

IP Policy 17.102.010(A). Building heights, Residential.

Except as provided in Chapter 17.081 or unless a variance has been granted pursuant to Chapter 17.121, no structures in the... R-1 ... zones shall exceed twenty-five feet in height as measured above the center of the building footprint at site grade, nor shall the vertical measurement of any portion of the structure exceed thirty-five feet in height above site grade....

IP Policy 17.102.020(4)(a). Minimum front yard requirements. Residential.

The minimum front yard setback required may be the lesser of the following situations: The average front yard setback of the nearest improved lots on each side of the subject property on the same side of the street, but in no case less than ten (10) feet, nor required to be more than twenty (20) feet.

IP Policy 17.102.030(A) Minimum side yard setback requirements. Residential.

In the ... R-1 ... zones each corner and interior lot shall have a rear yard setback of not less than ten percent of the average lot depth, but in no case shall the setback be less than five feet nor be required to be more than ten feet.

IP Policy 17.102.060(B) Minimum lot size and/or area requirements for new lots.

R-1 ... Zones ... The minimum lot size for all lots created after the date of adoption of this ordinance shall be five thousand sq. ft.

IP Policy 17.102.080(B) Maximum allowable lot coverage for all structures. R-1 Zone.

Total maximum lot coverage for subdivided parcels: Fifty-five percent.

IP Policy 17.102.090(B) Maximum allowable total building floor area for all structures as a percentage of lot area. R-1 Zone

Eighty-six percent of the first two thousand seven hundred square feet of lot area plus sixty percent of any lot area in excess of two thousand seven hundred square feet.

IP Policy 17.105.135(A) Development and design standards applicable to single-family dwellings in certain zones.

The following additional development and design standards shall be applicable to the development, enlargement or alteration of single-family dwellings in the R-1 ... Zones ...: To avoid "boxy" structures that have unrelieved exterior wall planes extending in height for two or more stories and to promote vertical articulation of wall planes, the amount of gross floor area on any second floor shall not exceed eighty percent of the amount of gross floor area on the ground floor. Any "stepbacks" of the second-floor living area from the building footprint on the ground level shall be required to be provided at least in part on the street-side of the house unless infeasible.

....

Pismo Beach LCP Policies D-2, LU-H-1, and LU-H-4 are designed to maintain the nature and character of Pismo Beach as a small coastal town by avoiding very large buildings and excessive massing. The policies propose to achieve this through the use of articulated roofs and exterior walls, second stories that step back from the first story, and specific height and setback regulations. Specifically, regarding the residential area of Shell Beach, the intent of Policy LU-H-1 is to retain the traditional beach-town community feel of small single-family lots with views to the ocean to the west and the foothills to the east by making homes compatible with the character of the surrounding development. These policies are implemented by Implementation Plan (IP) Chapters 17.102 and 17.105, which describe detailed structural height, setback, and bulk requirements.

Appellant's Contentions

The City-approved project meets all applicable LCP policies and standards with respect to height, setback, and bulk, and is consistent with existing, similarly-situated residences in the surrounding area. First, with regard to IP Section 17.102.010(A), which limits structure height in the R-1 zoning district to 25 feet, the project's approved height is 24 feet-7 inches. In terms of lot size, IP Section 17.102.060(2) states that the minimum lot size must be 5,000 square feet. The existing lot is 5,236 square feet. With regard to IP Section 17.102.80(B), the maximum lot coverage allowable is 55%. The project's total lot coverage is 2,683 square feet, which is 51%. In regards to IP Section 17.105.135(A), to avoid a "boxy" look by way of step-backs, the second floor to lower floor ratio must be 80%. The approved project has a gross upper floor area of 1,590 square feet and a gross lower floor area of 1,985. The ratio is 80%, consistent with IP Section 17.105.135(A). In regards to setbacks, the approved project's front yard setback is 12.25 feet, its side yard setbacks are 5 feet, and the rear yard setback is 8.5 feet, all of which are consistent with IP standards. Therefore, the City-approved project meets all of the LCP's detailed site development standards.

Policy LU-H-1 requires new homes to be compatible with the scale, bulk, and character of the existing neighborhood. The houses within approximately 200 feet of the project site include ten single-story residences and eighteen two-story residences. The square footage of residences within the neighborhood varies greatly, mainly because lot size also varies greatly. The floor area ratio of the approved project is 68%, while the LCP allows a maximum floor area of 73%⁶. The floor area ratio of the last seven redevelopment projects on Windward Avenue ranged from 54% to 78%, with an average floor area ratio of 68%. Thus, in terms of number of stories (two) and floor area ratio, the approved project is compatible with the scale and bulk of the surrounding neighborhood.

In regards to design and massing, the design of the house includes articulated roofs and articulated exterior walls, stepping back of the second floor to break up the wall lines, and other design elements. These architectural and design elements will limit the project's mass and create a design that is compatible with the character of the neighborhood, consistent with LCP policies D-2, LU-H-1 and LU-H-4.

In short, the project represents construction of a residential structure in an existing, urbanized residential neighborhood, and meets all applicable LCP policies and standards with respect to siting and design. Thus, the City's approval does not raise a substantial LCP compliance issue with respect to neighborhood compatibility and community character.

3. Sewer Easement

Applicable LCP Policies and Standards
(None applicable.)

Appellant's Contentions

Analysis

The existing residence at 388 Windward Avenue is built directly on top of a sewer easement and does not currently provide any type of access to the sewer line within the property boundaries (Exhibit 8). The City-approved project includes the demolition of the existing single-family dwelling and construction of a new single-family dwelling with an attached garage, which as designed, incorporates a second-floor "bridge" above the sewer easement, and thus does not build directly on the sewer easement. (Exhibit 8)

The City of Pismo Beach LCP does not have a policy that prohibits constructing buildings over utility easements. The policy cited by the Appellants prohibiting construction over City easements in new development is an informal policy of the City's Department of Public Works. As such, there is no LCP requirement to avoid building over the sewer easement on the subject lot. Thus, building over the easement is not inconsistent with the LCP.

In any event, as approved, the project design includes a "bridge" that is eight feet above the easement, which is sufficient clearance for repair equipment and crews to access the City sewer line in case of needed repairs or maintenance. In addition, the project was approved with conditions (Utility Conditions 21(a)-(i) – see Exhibit 4) that protect the sewer line and allow the City to access the sewer line in the case of needed repairs. Condition 21(d) states that the first floor of the structure "may not be built over the existing ten-foot-wide sewer easement. The second floor may span over the easement." The approved project's Utility conditions act to fully protect the sewer easement, and require the Applicants to keep the easement accessible to the City of Pismo Beach should the sewer line need repairs. The City Engineer stated that, as designed, the project provides sufficient access for the City to work on the existing sewer line if repairs are needed in the future.

As a result of these conditions and the approved project's design, the project does not raise a substantial issue in regard to building over the utility easement because the project provides sufficient space for the City to access the sewer line and is conditioned to ensure that the existing sewer line is not compromised by the project.

Thus, the City-approved project does not raise a substantial issue with respect to utility easements.

F. CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission is guided in its decision of whether the issues raised in a given appeal are "substantial" by the following five factors: the degree of factual and

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, the City's conclusion that, as conditioned, the approved residence would not have significant adverse impacts to public access, community character, or to the City's sewer easement, is well supported by the record (as discussed extensively by staff in Section II.E of this staff report), weighing against finding a substantial issue. Second, the approved project is consistent with the purpose of the LCP's single-family residential zoning district and complies with the LCP's development standards, including with respect to building size and architectural attributes. Thus, the extent and scope of this project weigh in favor of a finding of no substantial issue. Third, the project is located within an existing residential community which is already substantially developed, and no significant coastal resources are expected to be adversely affected by this approval, so this factor also weighs against finding a substantial issue. The proposed project is consistent with all relevant LCP policies, so this project should not create an adverse precedent with respect to LCP interpretation, and thus this factor weighs against finding a substantial issue. Finally, the decisions made here are site- and LCP-specific and therefore do not raise issues of regional or statewide significance, also weighing against a finding that a substantial issue exists.

Therefore, all five factors weigh against a finding that the City's approval raises a substantial issue with respect to the LCP. Given that the record supports the City's action and the City's analysis did not result in the approval of a project with significant coastal resource impacts, and given that the approved project complies with applicable LCP provisions and raises no statewide issues, the Commission finds the appeal does not raise a substantial issue of conformance with the LCP and thus the Commission declines to take jurisdiction over the CDP for this project.

For the reasons stated above, the Commission finds that Appeal Number A-3-PSB-15-0030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act and finds the project is consistent with the certified LCP and the public access policies of the Coastal Act.

Exhibit 2



PACIFIC LEGAL FOUNDATION

April 6, 2016

Mr. John Ainsworth
Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal No. A-3-PSB-15-0030 ("Substantial Issue" Hearing Date: 4/13/2016)

Dear Director Ainsworth:

Pacific Legal Foundation has become aware of "substantial issue" appeals pending before you that raise serious questions regarding the unconstitutional exaction of protected private property rights. In Appeal No. A-3-PSB-15-0030, Appellants Tarren Collins and Laurie Cummings seek review of the City of Pismo Beach's approval of a coastal development permit to Ernie and Pam Rozo. The permit authorizes the demolition of a single family home and its replacement with a single family home and secondary structures. Among the grounds for the appeals is the City's failure to demand a public access easement from the Rozos in exchange for authorizing their home construction project. This basis for the appeals has no merit because an easement condition in these circumstances would be unconstitutional.

The Fifth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, forbids state and local governments from taking private property without just compensation. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 306 n.1 (2002). The California Constitution provides congruent protections. *San Remo Hotel L.P. v. City & County of San Francisco*, 27 Cal. 4th 643, 664 (2002). These protections impose direct as well as indirect limitations on government power. For example, the government may not directly condemn an easement without paying compensation. *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979) ("And even if the Government physically invades only an easement in property, it must nonetheless pay just compensation."). But the government also is forbidden from indirectly exacting protected property interests—such as through conditions on land-use approvals—when the exaction is not reasonably related to mitigating the impacts of the permitted activity. The seminal decision for this "indirect" limitation on the power of land-use agencies is *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

HEADQUARTERS: 930 G Street | Sacramento, CA 95814 | (916) 419-7111 | FAX (916) 419-7747
ATLANTIC: 8645 N. Military Trail, Suite 511 | Palm Beach Gardens, FL 33410 | (561) 691-5000 | FAX (561) 691-5006
DC: 300 New Jersey Avenue, NW, Suite 900 | Washington, DC 20001 | (202) 888-6881 | FAX (202) 888-6855
HAWAII: P.O. Box 235856 | Honolulu, HI 96823-3514 | (808) 733-3373 | FAX (808) 733-3374
NORTHWEST: 10940 NE 33rd Place, Suite 210 | Bellevue, WA 98004 | (425) 576-0484 | FAX (425) 576-9565
ALASKA: (907) 278-1731 | OREGON: (503) 241-8179

E-MAIL: plf@pacificlegal.org
WEB SITE: www.pacificlegal.org

Mr. John Ainsworth
August 6, 2016
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In *Nollan*, the property owner sought a permit to demolish and replace a beach bungalow. *Nollan*, 483 U.S. at 827-28. The Commission granted the permit but only on the condition that the property owner dedicate a public easement across his hitherto private beach. *Id.* at 828. The United States Supreme Court ruled that the permit condition was unconstitutional. *See id.* at 837 (likening the condition to an “out-and-out plan of extortion” (quoting *J.E.D. Associates, Inc. v. Atkinson*, 432 A.2d 12, 14-15 (N.H. 1981))). An agency, the Court allowed, can impose conditions on proposed development that are designed to mitigate the impacts of that development. *Id.* at 836. But the agency may not impose a condition that it could not impose directly, outside the permitting context, if that condition lacks an “essential nexus” to the proposed development’s impacts. *Id.* at 836-37. The absence of any connection between the bungalow replacement and the public access easement rendered the Commission’s condition infirm. *Id.* at 837.

In its defense, the Commission argued that the easement condition was necessary to ameliorate the loss of various types of public access to the beach resulting from the bungalow replacement. *See id.* at 829 (noting the Commission’s position that, because the project “would cumulatively burden the public’s ability to traverse to and along the shorefront,” the agency “could properly require the Nollans to offset that burden by providing additional lateral access to the public beaches in the form of an easement across their property”). The Court found this argument unconvincing. The proposed easement would not have provided any type of access—visual or otherwise—for those off the beach. Rather, it would have provided access for those already on the beach to continue to cross the beach in front of the *Nollan* property owner’s home. Hence, the Commission’s condition was directed at remedying the wrong access problem. *See id.* at 838-39 (finding no nexus between (i) “a requirement that people already on the public beaches be able to walk across the Nollans’ property” and (ii) any visual, “psychological,” or other barrier for members of the public wishing to access the beach). It therefore lacked an essential nexus and could not be imposed. *Id.* at 841-42.

Under *Nollan*, demanding a public access easement from the Rozos would be unconstitutional. As far as the Foundation is aware, the Appellants have never asserted, nor is there any evidence in the permitting proceedings before the City, that the public currently may access the Rozos’ property. Moreover, there is no assertion or evidence that the Rozos’ modest home-building project will have any impact on public access. Rather, the Appellants simply seek to take advantage of the fortuity of the Rozos’ permit application to extort from them a public easement. That such an easement might benefit the public is irrelevant and cannot make it constitutional. *See Nollan*, 483 U.S. at 841 (“The Commission may well be right that . . . a continuous strip of publicly accessible beach along the coast . . . is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization.”).

Indeed, it is important to emphasize that alleged facts about the popularity, propriety, or necessity of a public access easement across the Rozos’ lot do nothing to change the constitutional analysis. However desirable it would be to use the Rozos’ property for a public access easement, the

Mr. John Ainsworth
August 6, 2016
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Constitution precludes such an easement from being taken without just compensation. As the Supreme Court has put it, "[a] strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Dolan v. City of Tigard*, 512 U.S. 374, 396 (1994) (internal citation and authorities omitted).

The Foundation has significant experience successfully litigating exaction issues. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013) (counsel of record for petitioner in case establishing that monetary exactions in the land-use permit context are subject to heightened scrutiny under *Nollan*); *Nollan*, 483 U.S. 825 (counsel of record for petitioner); *Bowman v. Cal. Coastal Comm'n*, 230 Cal. App. 4th 1146 (2014) (counsel of record for appellant in case striking down a public access easement as unconstitutional under *Nollan*). For that reason, the Foundation is very familiar with the types of conditions that may constitute unconstitutional exactions. The Foundation believes that the Appellants' proposed access easement, if imposed by the City or the Commission, would be just such an exaction. The appeals should be rejected.¹

Sincerely,



DAMIEN M. SCHIFF
Principal Attorney

cc: Mr. Yair Chaver (via email: Yair.Chaver@coastal.ca.gov)

¹ The Foundation respectfully requests that, once this letter has been added to the Commission's official record, you provide copies of the letter to the Commissioners prior to their consideration of the matter.

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W11b

January 6, 2017

Chairman Steve Kinsey
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Via: Yair Chaver, Coastal Program Analyst (via e-mail: Yair.Chaver@coastal.ca.gov)

Re: Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach)

Dear Chairman Kinsey and Honorable Commissioners:

The California Cattlemen's Association (CCA) appreciates the opportunity to provide input upon this appeal, which challenges the City of Pismo Beach's grant of a Coastal Development Permit (CDP) to Ernie and Pam Rozo to raze an existing home and construct a new home on their property. CCA urges the California Coastal Commission (Commission) to accept staff's recommendation finding that the appeal raises no substantial issue. CCA also urges the Commission to dispose of this matter in a timely manner, allowing the Rozos to move forward with this development.

CCA is a statewide trade association representing more than 1,700 cattle ranchers throughout the state, including nearly 200 beef producers ranching in San Luis Obispo County. CCA members own or lease property and graze cattle on land subject to the jurisdiction of the Commission throughout many of California's coastal counties, and CCA has established a Coastal Subcommittee with the express purpose of "help[ing] members located in this state's coastal zone with land use issues." Additionally, protection of private property rights is the utmost priority of CCA and its members. For these reasons, CCA is keenly interested in the present appeal, specifically Appellant's contention that CDP approval must be contingent upon the City of Pismo Beach mandating dedication of a public access easement upon the property, a claim which troublingly implicates private property rights within the coastal zone.

The Appellant's claim that the Rozos' permitted project violates policy LU-H-8 of the Pismo Beach Local Coastal Plan (LCP) is wholly without merit. Policy LU-H-8 states that the City "should pursue opportunities to create lateral pedestrian pathways connecting Bo[e]ker Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south." In using the word "should" rather than "shall" or "must," the LCP is permissive rather than mandatory, allowing the City to exercise its discretion in seeking public access at Boeker Street. Additionally, in approving the City of Pismo Beach's LCP, this Commission implicitly supported the City's retention of broad discretion in determining whether

BILLY FLOURNOY PRESIDENT LIKELY	ROB VON DER LIETH TREASURER COPPEROPOLIS	BILLY GATLIN EXECUTIVE VICE PRESIDENT HERALD	MIKE WILLIAMS SECOND VICE PRESIDENT ACTON	MARK LACEY SECOND VICE PRESIDENT INDEPENDENCE
DAVE DALEY FIRST VICE PRESIDENT CHICO	BILL BRANDENBERG FEEDER COUNCIL CHAIR EL CENTRO		JACK LAVERS SECOND VICE PRESIDENT GLENNVILLE	MIKE SMITH FEEDER COUNCIL VICECHAIR SELMA

and when to seek such pathways securing lateral access at Boeker Street. In approving the Rozos' CDP, the City exercised its discretion and determined that requiring a public access easement on the Rozos' property was both impractical and unnecessary. CCA urges the Commission to defer to the City's judgement and dismiss the present appeal.

Indeed, Commission deference to the City's determination would accord with the spirit of the California Coastal Act, in which the Legislature declared that to "achieve maximum responsiveness to local conditions...it is necessary to rely heavily on local government and local land use planning."¹

Counsel for the Rozos has rightly argued that requiring the Rozos to dedicate a public access easement over their property would violate the United States Constitution's prohibition against taking private property without just compensation. As counsel notes, "The Rozos' project does not in any way eliminate or otherwise negatively affect an existing public easement or pathway," and thus the City is barred from requiring a public access easement under the United States Supreme Court's decision in *Nollan v. California Coastal Commission*, which dictates that permit conditions (such as the dedication of a public access easement) be directly related to public impacts caused by a development project, and seek to proportionally mitigate those impacts.²

Consequently, mandating a public access easement on the Rozos' property would also violate the California Coastal Act, the very Act the Commission is charged with faithfully enforcing. In drafting the Act, the Legislature declared that it "shall not be construed as authorizing the commission...or local government...to exercise their power to grant or deny a permit in a manner which will take or damage private property" and that the Act "is not intended to increase or decrease the rights of any owner of property under the Constitution of...the United States."³

The City of Pismo Beach elected not to condition the Rozos' CDP upon dedication of a public access easement because it was unnecessary and impractical, and the City was well within its discretion under the LCP approved by the Commission to do so. Appellants argue that the City must require dedication of a public access easement, but this claim is at odds with the United States Constitution and the California Coastal Act. For these reasons, CCA urges the Commission to formally adopt Commission staff's recommendation finding that the appeal raises no substantial issue, and to dispose of this matter so that the Rozos may finally undertake the development of their new home.

Sincerely,



Kirk Wilbur
Director of Government Affairs, California Cattlemen's Association

¹ CALIFORNIA COASTAL ACT § 30004(a).

² Alternately, LU-H-8 allows the City to seek an easement via eminent domain. However, the City elected not to condemn the property, and should it seek to do so, it would remain liable for just compensation to the Rozos.

³ *Id.* at § 30010.

Name: JOHN BURGENER Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 316 MORRIS AVE, SHELL BEACH, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

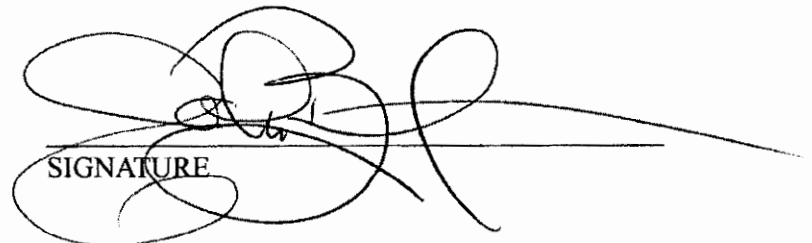
After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

The recent staff report of December 2016 recognizes all these things. Yet it raises a brand new issue that no one—not even the appellants—raised at any time before the planning commission or the city council—namely, that the second floor exceeds 80% of the first floor's square footage. The appeal forms do not make the argument, and they do not cite to the relevant policy concerning the 80% rule. This violates the basic principle that all appellants must exhaust their administrative remedies. Here, the city did not have the opportunity to consider the argument, so the appellants waived it. Even if the 80% ratio issue were before the commission, the City has consistently interpreted the relevant policy as excluding stairwells and elevators—so there still is no substantial issue on that ground, even if the commission could properly consider it.

In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. We are concerned that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support – as the staff found in April 2016 – a finding of no substantial issue. Please call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Sincerely,

JOHN BURGENER
PRINT NAME


SIGNATURE

Name: RONALD LACEY Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 335 MONROE AVE, STELLER BEACH Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. We are concerned that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support – as the staff found in April 2016 – a finding of no substantial issue. Please call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Sincerely,

RONALD LACEY
PRINT NAME

Ronald Lacey
SIGNATURE

Name: Mike McIntyre Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 1780 Ocean Blvd. Suite B100, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Mike McIntyre
PRINT NAME

[Signature]
SIGNATURE

Name: Shannon Warner Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 242 Pallisade Ave, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Shannon Warner
PRINT NAME

Shannon Warner
SIGNATURE

Name: ALAN PAUL Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 129 WINDWARD AVE., Pismo Beach. I adamantly oppose the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds no substantial issue, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

ALAN PAUL

PRINT NAME

Alan Paul

SIGNATURE

Th 13 e

Chaver, Yair@Coastal

From: Beard, Paul <Paul.Beard@alston.com>
Sent: Friday, January 06, 2017 11:38 AM
To: Chaver, Yair@Coastal
Cc: Ernie and Pamela Rozo (rozosonthebeach@att.net)
Subject: Rozo Postponement Request - Appeal No. A-3-PSB-15-0030
Attachments: Rozo Postponement Request.pdf

Hi Yair,

On behalf of the Rozos, I have attached our request that the *de novo* hearing (if there is one) be postponed to February or as soon thereafter as possible in order to allow us adequate time to respond to the Staff Report. The request should not be construed as our agreement with the Staff Report's "substantial issue" recommendation. And, in fact, we will be submitting our letter opposing substantial issue later today.

Please confirm receipt of this postponement request and that it has been granted.

Thanks,

Paul J. Beard II | ALSTON & BIRD LLP
Office: 916-498-3354 | Mobile: 818-216-3988

RECEIVED

JAN 06 2017

CALIFORNIA
COASTAL COMMISSION

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that you may not read, copy, distribute or otherwise use this message or its attachments. If you have received this message in error, please notify the sender by email and delete all copies of the message immediately.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



POSTPONEMENT REQUEST

By signature below, I (as the Applicant or the Applicant's designated representative) am making the following postponement request (check only one):

- ☒ I am exercising the Applicant's one right to postpone the Coastal Commission hearing on this application pursuant to California Code of Regulations (CCR) Section 13073(a). I acknowledge that the Applicant has only one such right and that use of it here will extinguish that right in regard to future hearings regarding this application.
- ☐ The Applicant's one right of postponement pursuant to CCR 13073(a) has already been exercised, and I am requesting that the hearing on this application be postponed pursuant to CCR 13073(b). I understand that this request may or may not be granted by the Executive Director or the Commission, at their discretion, pursuant to CCR 13073(b).

In making this request, the Applicant hereby waives any and all applicable time limits for Coastal Commission action on this application (as required by CCR 13073(c)). If the request is granted, then the Applicant agrees to submit additional stamped and addressed envelopes for future noticing as detailed in CCR 13054 (as required by CCR 13073(c)).

Application Number: Appeal No. A-3-PSB-15-0030 Date: Jan. 6, 2017

PAUL BEARD II,

APPLICANTS' DESIGNATED REPRESENTATIVE

A handwritten signature in dark ink, appearing to read 'PAUL BEARD II'.

Signature of Applicant or Applicant's Designated Representative (identify which one)

RECEIVED

JAN 06 2017

CALIFORNIA
COASTAL COMMISSION

Name: Victoria Thomas Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 376 Windward Ave., Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

The recent staff report of December 2016 recognizes all these things. Yet it raises a brand new issue that no one—not even the appellants—raised at any time before the planning commission or the city council—namely, that the second floor exceeds 80% of the first floor's square footage. The appeal forms do not make the argument, and they do not cite to the relevant policy concerning the 80% rule. This violates the basic principle that all appellants must exhaust their administrative remedies. Here, the city did not have the opportunity to consider the argument, so the appellants waived it. Even if the 80% ratio issue were before the commission, the City has consistently interpreted the relevant policy as excluding stairwells and elevators—so there still is no substantial issue on that ground, even if the commission could properly consider it.

In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. We are concerned that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support – as the staff found in April 2016 – a finding of no substantial issue. Please call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Sincerely,

Victoria Thomas
PRINT NAME

Victoria Thomas
SIGNATURE

Name: Tyler Eck Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 244 WINDWARD AVE, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Tyler Eck
PRINT NAME

Tyler Eck
SIGNATURE

Name: Rich Wike Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 324 WINDWARD AVENUE, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Rich Wike
PRINT NAME

Rich Wike
SIGNATURE

Name: MIKE EHRENBURG Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 154 WINDWARD AVE, Pismo Beach. I adamantly oppose the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds no substantial issue, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

MIKE EHRENBURG
PRINT NAME

Mike Ehrenburg
SIGNATURE

Name: Georgiann Cole Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 216 Windward, Pismo Beach. I adamantly oppose the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds no substantial issue, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Georgiann Cole
PRINT NAME

Georgiann Cole
SIGNATURE

Name: JEFF FREDERICKS Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 190 WINDWARD AVE., Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

JEFF FREDERICKS
PRINT NAME

Jeff H. Fredericks
SIGNATURE

Name: Cheryl McGinity Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 190 Palisade Ave, Shell Beach, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.


After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

Cheryl McGinity
PRINT NAME


SIGNATURE

Name: DARIA MALIN Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 236 Windward Ave., Pismo Beach. I adamantly oppose the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds no substantial issue, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

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Sincerely,

DARIA MALIN
PRINT NAME

Daria Malin
SIGNATURE

Name: Maria Miller Item No. **Th-13e**
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 343 MORRO AVE, Pismo Beach. I adamantly **oppose** the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

After a hearing, the Commission should support its staff's original report and recommendation – issued in April 2016 – that finds **no substantial issue**, because: (1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; (2) neither the city nor the commission can simply take a public-access easement without just compensation; and (3) the second story bridge over the city's sewer easement is consistent with the LCP and violates no city policy.

The recent staff report of December 2016 recognizes all these things. Yet it raises a brand new issue that no one—not even the appellants—raised at any time before the planning commission or the city council—namely, that the second floor exceeds 80% of the first floor's square footage. The appeal forms do not make the argument, and they do not cite to the relevant policy concerning the 80% rule. This violates the basic principle that all appellants must exhaust their administrative remedies. Here, the city did not have the opportunity to consider the argument, so the appellants waived it. Even if the 80% ratio issue were before the commission, the City has consistently interpreted the relevant policy as excluding stairwells and elevators—so there still is no substantial issue on that ground, even if the commission could properly consider it.

In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. We are concerned that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support – as the staff found in April 2016 – a finding of no substantial issue. Please call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Sincerely,

Maria Miller
PRINT NAME

M. Miller
SIGNATURE

Name: ERIC MILLER Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

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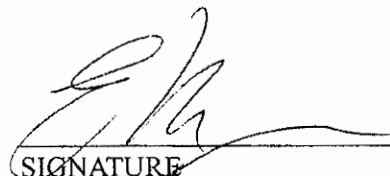
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Sincerely,

ERIC MILLER
PRINT NAME


SIGNATURE

Chaver, Yair@Coastal

From: Jim Schlagel <jamesschlagel@mac.com>
Sent: Friday, January 06, 2017 3:14 PM
To: Chaver, Yair@Coastal
Cc: rozosonthebeach@att.net
Subject: Re: Rozos Residence (Item No. Th-13e - hearing date 1/12/17 - Appeal No. A-3-PSB-15-0030)
Attachments: Ernie & Pam Letter.pdf

To Whom it May Concern,

Please find attached our letter in opposition to the Commission Staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue, raises a substantial issue. By this letter, I urge the Commission to ask for a hearing and find there is no substantial issue with the proposed residential project.

Please feel free to contact us with any questions or concerns:

Jim & Terri Schlagel
316 Windward Ave.
Pismo Beach, CA

Email: Jamesschlagel@me.com

Cell: (909) 260-1536 (Jim)

(909) 260-1537 (Terri)

Sincerely,

Jim & Terri Schlagel

Name: Terri Schlagel Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

Dear Honorable Commissioners:

I live at 316 Windward Ave, Pismo Beach. I adamantly oppose the staff's December 2016 report recommending that the commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue. I urge the commission to ask for a hearing on the issue and find there is no substantial issue.

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Sincerely,

Terri Schlagel
PRINT NAME

Terri Schlagel
SIGNATURE

Name: Jim Schlager Item No. Th-13e
SI Hearing Date: 1/12/17 - Appeal No. A-3-PSB-15-0030

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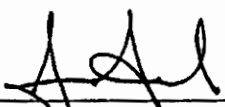
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Sincerely,

Jim Schlager
PRINT NAME


SIGNATURE

Th 13e



BOARD OF SUPERVISORS

1055 MONTEREY, ROOM D430 • SAN LUIS OBISPO, CALIFORNIA 93408-1003 • 805.781.5450

January 6, 2017

California Coastal Commission

DEBBIE ARNOLD
SUPERVISOR DISTRICT FIVE

RE: Appeal A-3-PSB-15-0030 SI Hearing Date: 1/12/17
Item No. Th-13e

Dear Honorable Commissioners:

As a member of the San Luis Obispo County Board of Supervisors, I am writing to express my opposition to the staff's December 2016 report recommending that the Commission find that the City of Pismo Beach's approval of Ernie and Pam Rozos' residential project at 388 Windward Avenue raises a substantial issue.

After the hearing, the Commission should support its staff's original report and recommendation - issued in April 2016 - that finds no substantial issue, because: 1) the size, design, and placement of the Rozos' house are consistent with other homes in the neighborhood; 2) neither the City nor the Commission can simply take a public-access easement without just compensation; and 3) the second story bridge over the city's sewer easement is consistent with LCP and violates no City policy.

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In closing, we have real concerns with the process that led to the second staff report (December 2016). The staff issued its April 2016 staff report finding no substantial issue. After appellants loudly protested the April 2016 staff report, the staff reversed course and issued a totally different report in December. There is concern that staff did so under intense pressure from appellants whose ultimate goal has been to leverage the prospect of a de novo hearing on the project to extract an easement from the Rozos or even kill the project altogether. Substantial issue should be found based on the facts and the law; staff and the Commission should not allow outside influences to misuse the process in order to extract concessions from applicants. Here, the facts and the law continue to support - as the staff found in April 2016 - a finding of no substantial issue. I respectfully request that you call a hearing on the substantial issue question and find that the appeals raise no substantial issue.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Arnold".

Debbie Arnold
Supervisor, 5th District

RECEIVED

JAN 06 2017

CALIFORNIA
COASTAL COMMISSION