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Filed: 5/7/2015
Action Deadline: None
Staff: Yair Chaver - SC
Staff Report: 1/20/2017
Hearing Date: 2/8/2017

STAFF REPORT: DE NOVO HEARING

Application Number: A-3-PSB-15-0030

Applicants: Pam and Ernie Rozo

Project 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: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicants propose to demolish an existing 1,319-square-foot single-story single-family residence and construct 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.

On January 12, 2017, the Commission found that the City's action approving the project raised a substantial issue of conformance with the City's LCP due to questions about community

character and neighborhood compatibility as well as public access. The Commission now considers the project *de novo*.

In terms of the community character, the LCP seeks to maintain the small-scale nature of the Shell Beach neighborhood by prohibiting “boxy” structures, for example by limiting the second story of a dwelling to 80% of the first story. The project does not meet LCP requirements limiting second-story gross floor area to 80% of the first story, and in this case the proposed second story is nearly 90% of the size of the first story. Although there are some similar two-story residences in the area, the proposed project does not comply with the LCP’s maximum size requirements. Therefore, staff recommends a special condition that would require re-design of the project, limiting the second story to 80% of the size of the first story, which will 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 increased so much as to 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, 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 Applicants are not proposing any such trail easement to connect the CCT between Boeker and Windward Avenues. Although staff believes that a trail easement would indeed be beneficial to helping to close the CCT gap at this location, staff has analyzed the public access impacts of the proposed project and does not believe that any impacts associated with approval of the development proposal 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 to mitigate for such impacts, 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.

Therefore, as conditioned the proposed project can be found consistent with the requirements of the certified City of Pismo Beach LCP and the public access and recreation policies of the Coastal Act. The motion and resolution to approve the project subject to the staff recommendation are found on page 4 of this report.

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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: Applicable LCP and Coastal Act Provisions
- Exhibit 7: Trail Easements and Potential Connections
- Exhibit 8: Ex Parte Communications
- Exhibit 9: Correspondence

I. MOTION AND RESOLUTION

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

In this de novo review of the proposed CDP application, the standard of review is the City of Pismo Beach certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act. (Pub. Res. Code § 30604(c).)

A. PROJECT LOCATION

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 (see **Exhibit 1**). 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 2**).

B. PROJECT DESCRIPTION

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 proposed residence is designed to include a “bridge” over an existing sewer easement running through the property north to south, ensuring adequate access to the easement by City equipment in case of needed maintenance (see **Exhibit 3** for project plans, and **Exhibit 4** for before (i.e., photo) and after (i.e., photo simulation) street views of the site).

C. COMMUNITY CHARACTER AND NEIGHBORHOOD COMPATIBILITY

The LCP provides a series of principles and objectives for protecting the small-town character of the Shell Beach neighborhood in Pismo Beach. To achieve these objectives, a number of LCP policies and Implementation Plan (IP) sections regulate the size, architectural style and visual impacts of new buildings. The LCP states:

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-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.

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. (emphasis added)*

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.

Analysis

Pismo Beach LCP Policies D-2a, LU-H-1, and LU-H-4(a) (see all applicable LCP provisions in **Exhibit 6**) 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 IP Chapters 17.102 and 17.105, which describe detailed structural height, setback, and bulk requirements.

The proposed project is within applicable LCP maximum standards with respect to height, setbacks, lot coverage, and floor area.¹ However, the proposed project is not consistent with 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 6**).

IP Section 17.006.0485 (see **Exhibit 6**) 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. 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

¹ 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 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 x (5,236 – 2,700) = 1,522), and the project floor area is 3,741 square feet.

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.² This makes sense because the specifically 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 proposed project is a two-story structure and therefore IP Section 17.105.135 related to maximum second floor gross area applies. The proposed project plans exclude 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 or elevator shafts from the calculation of gross floor area. Thus, the elevator shaft and the stairwell should have been included in the 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 proposed project is not consistent with respect to the neighborhood compatibility requirements of IP Section 17.105.135.

Conclusion

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 (see Section E. below). If the second story were brought into LCP conformance then the project would meet objective LCP mass and scale maximums. It should be noted that the house is not unlike the size and scale of many houses in the area, and aside from the “bridge,” provides a similar design. Thus, in this case, if the second story were brought into LCP square footage conformity, the house will be consistent with LCP community character requirements. Accordingly, the project is conditioned to require the second story to meet the LCP’s maximum 80% threshold for the second story (see **Special Condition 1**).

D. PUBLIC ACCESS AND RECREATION

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

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

² Any 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 thus they are properly included under the LCP for the purpose of calculating gross floor area.

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

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

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

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

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

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

In addition, the Pismo Beach LCP provides for extending blufftop public access through the Shell Beach neighborhood in close proximity to the project location:

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-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.

Analysis

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 7**). 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. The proposed 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 providing a public easement as part of the project. However, although the City has required easements in similar cases in the past,³ the Applicants are not proposing such an access easement.

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 anyway. This is because the only complementary trail easement on Boeker Avenue does not connect to the Applicants' property, 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 7**). That said, an easement on the Applicants' property would provide for more possible trail siting options in the future (e.g., if a connecting easement were secured at some point from Boeker Avenue in the future), furthering the LCP goal of developing a connecting trail segment in this area. However, although the LCP indicates that the City should pursue such a trail, 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 to public access that warrant this level and type of exaction as mitigation for those impacts. 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

³ 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.

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 warrant exaction of an easement to mitigate for those impacts, 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.

Conclusion

While the LCP directs the City to pursue opportunities to connect the gap in the CCT in this general location through creation of public access easements, the facts of this particular development do not warrant the requirement of a public easement for constitutional reasons.

E. SEWER EASEMENT

The City of Pismo Beach LCP does not have policies or regulations pertaining to construction of sewer easements. Regardless, this is an important element of the proposed project to evaluate from the perspective of sound public policy.

Analysis

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, though the City's Public Works Department does have such an informal policy. 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. Nonetheless, the proposed project addresses access to the sewer easement 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**).

F. 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(a) 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 Woodward Ave

Exhibit 1
A-3-PSB-15-0030 (Roza SFD)
Page 1
Google earth

6909 ft
1994

© 2016 Google
Data CSUMB SFML, CA OPC

35°08'55.14" N 120°39'38.83" W elev -20 ft eye alt 31178 ft



388 Windward Ave

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



388 Windward Ave

Ocean Blvd.

Ocean Blvd.

Boeker Ave

Windward Ave

Shell Beach neighborhood

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

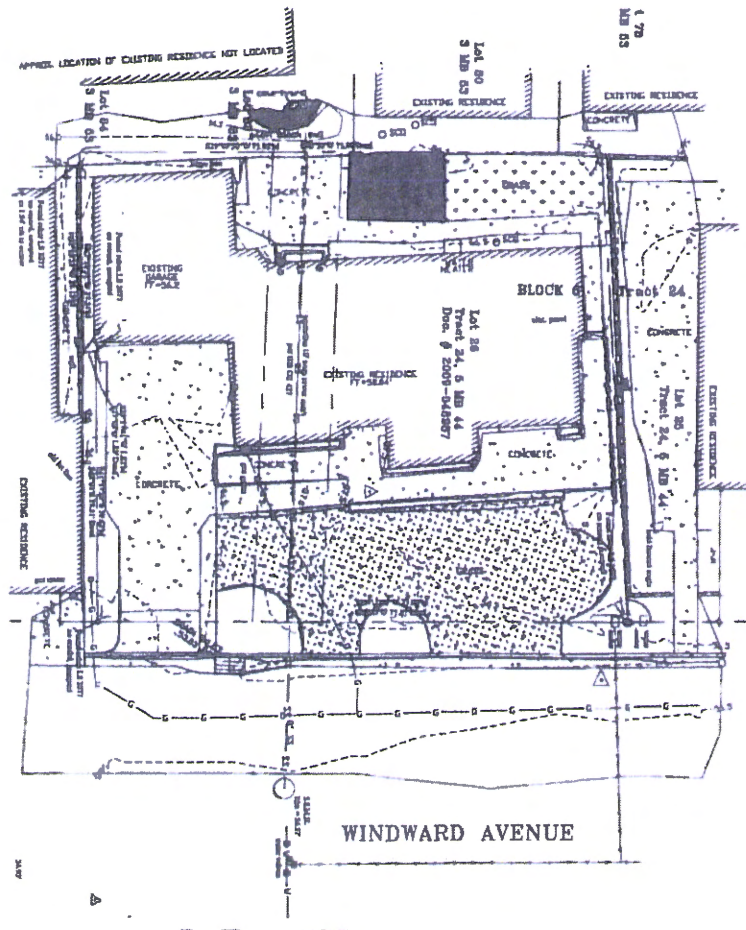


Location of existing easement at 367 Boeker





EXISTING SITE PLAN



City of Pismo Beach
Approved by City Council
Date: 4.21.2015

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

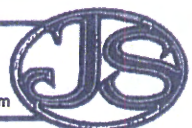
INDEX TO DRAWINGS
2.0 SITE PLAN
2.1 EXISTING RESIDENCE
2.2 EXISTING RESIDENCE
2.3 EXISTING RESIDENCE
2.4 EXISTING RESIDENCE
2.5 EXISTING RESIDENCE
2.6 EXISTING RESIDENCE
2.7 EXISTING RESIDENCE
2.8 EXISTING RESIDENCE
2.9 EXISTING RESIDENCE
2.10 EXISTING RESIDENCE

Attachment 9

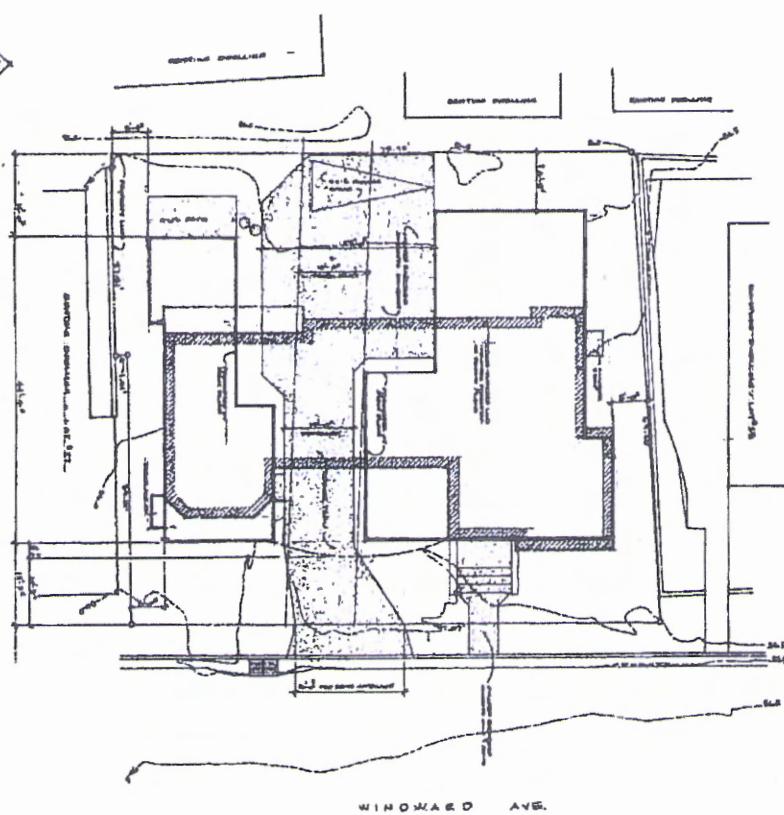
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A NEW CUSTOM RESIDENCE FOR:
ERNIE & PAMELA ROZO
388 WINDWARD AVE. PISMO BEACH, CA 93419

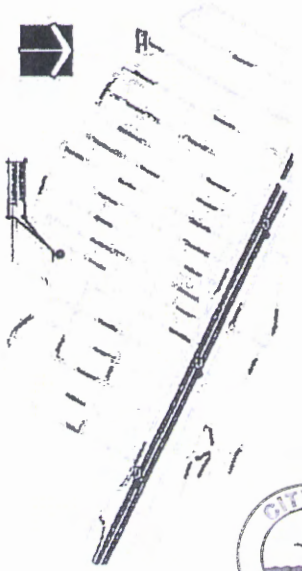
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Residential Design
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www.jerryshawdesign.com



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



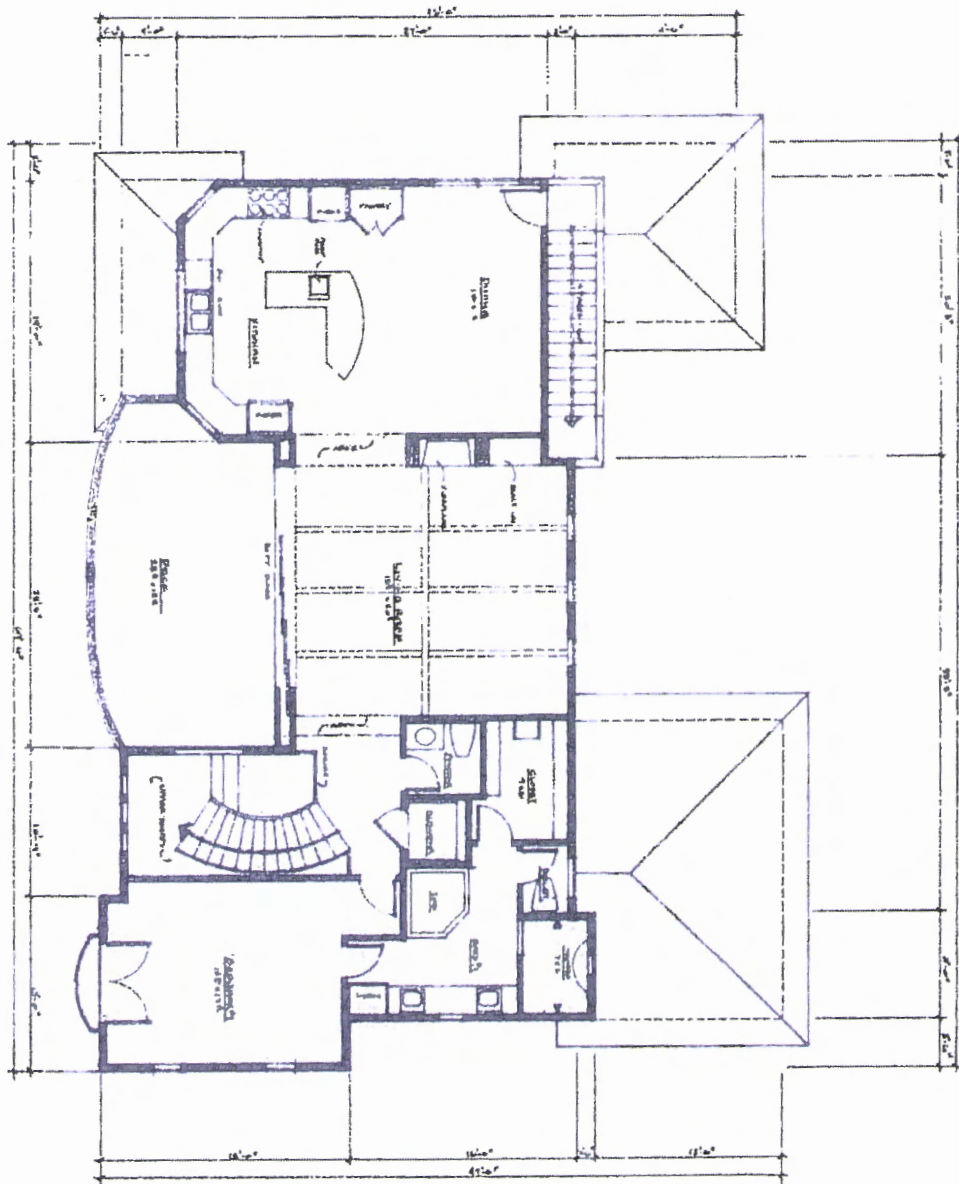
PROJECT TEAM	
OWNER: ERNIE & PAMELA ROZO	ARCHITECT: JERRY SHAW
DESIGNER: JERRY SHAW	ENGINEER: JERRY SHAW
GENERAL CONTRACTOR: JERRY SHAW	LANDSCAPE ARCHITECT: JERRY SHAW
PLANNING: JERRY SHAW	PERMITS: JERRY SHAW
PROJECT DESCRIPTION	
CONCEPT: PROPOSED TWO STORY RESIDENCE WITH	
CONCEPT: PROPOSED TWO STORY RESIDENCE WITH	
COVERAGES	
Lot Area: 10,000 sq. ft.	Setback: 10 ft.
Front Yard: 10 ft.	Side Yard: 10 ft.
Back Yard: 10 ft.	Front Setback: 10 ft.
Side Setback: 10 ft.	Back Setback: 10 ft.
FLOOR AREA RATIO	
Lot Area: 10,000 sq. ft.	Floor Area: 10,000 sq. ft.
SCULPTURE & HANDSCAPE	
ARTIST: JERRY SHAW	
ARTIST: JERRY SHAW	
UTILITIES	
WATER: CITY OF PISMO BEACH	
SEWER: CITY OF PISMO BEACH	
PAVING	
PAVING: CITY OF PISMO BEACH	
MAXIMUM BUILDING HEIGHT	
MAXIMUM BUILDING HEIGHT: 10 ft.	



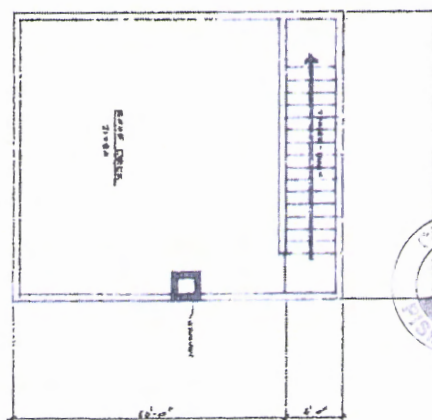
City of Pismo Beach
 Approved by City Council
 Date: _____
 as submitted
 with changes
 Planner: _____

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

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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

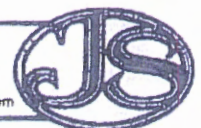
Planner: *agaw for*
Jon Biggs



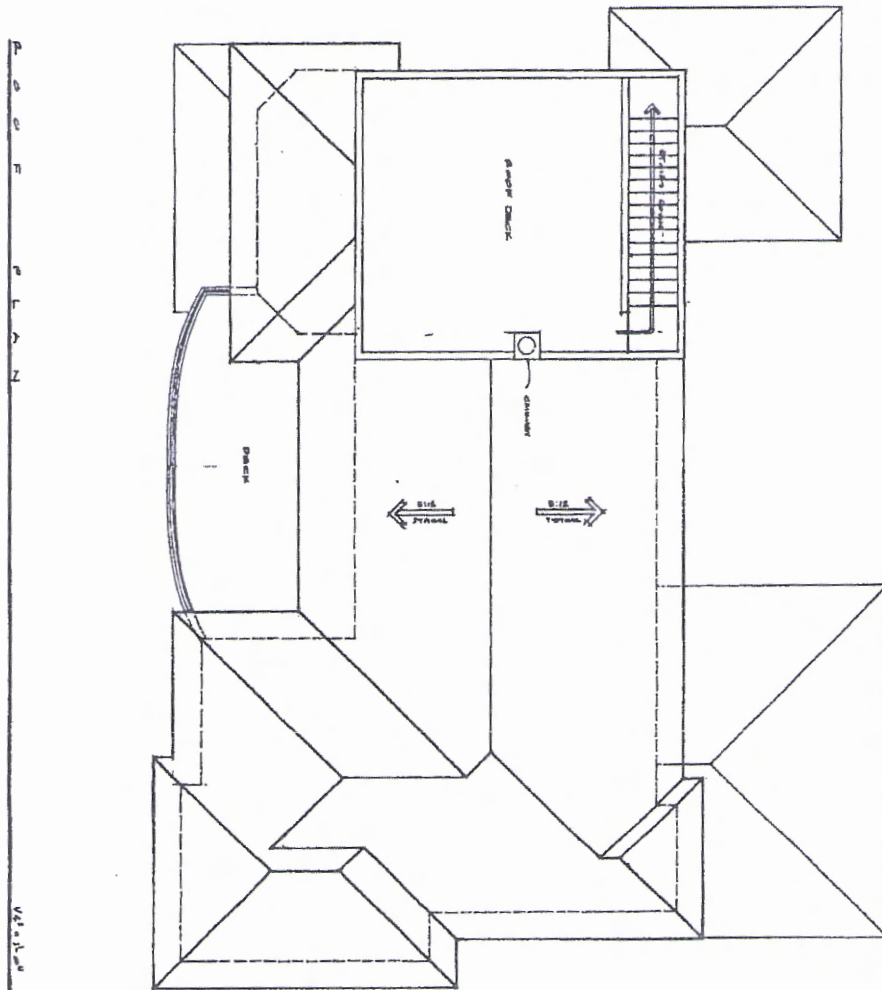
DATE / COMMENTS
A-4

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

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

✓ as submitted
with changes

Planner: Cym for

Jon Biggs

A-5	DATE / COMMENTS
	SHEET

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

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PREFACE

J. Schaefer '14

$$V_{AB} = \int_A^B \vec{E} \cdot d\vec{s}$$

EXTENSION FINISH KEYWORDS


1	CONCRETE "F" TAG
2	"F" F BRICK TILES
3	"F" F BRICK
4	GLASS
5	PAINTING
6	UNDERLAYMENT UNDER
7	CARP CARPENTRY (F&I)
8	FINISH CARPENTRY W/ ALUMINUM CLADDING
9	FINISH CARPENTRY
10	"F" F "WOOD-GRANITE"



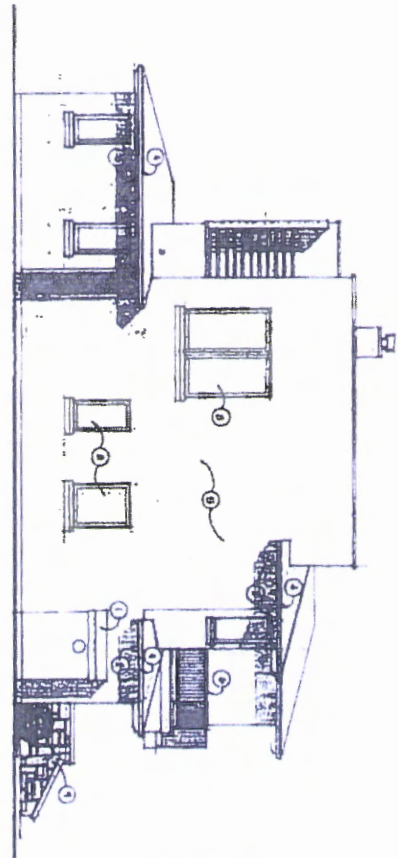
Date: 4.21.2015

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with changes

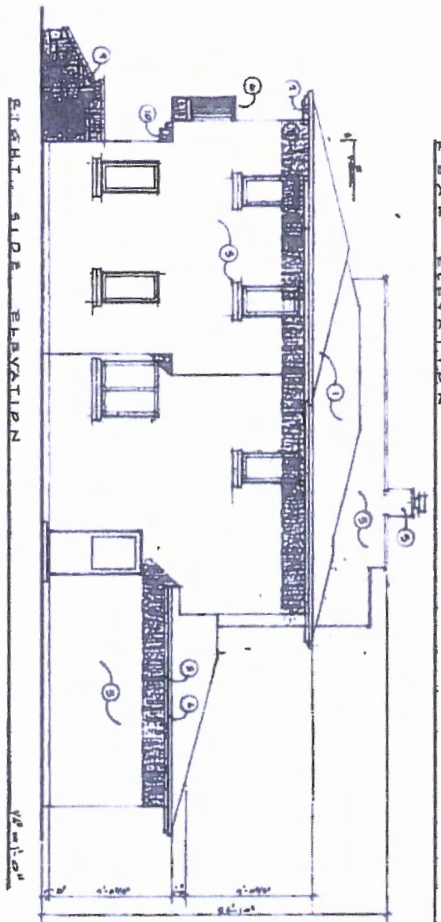
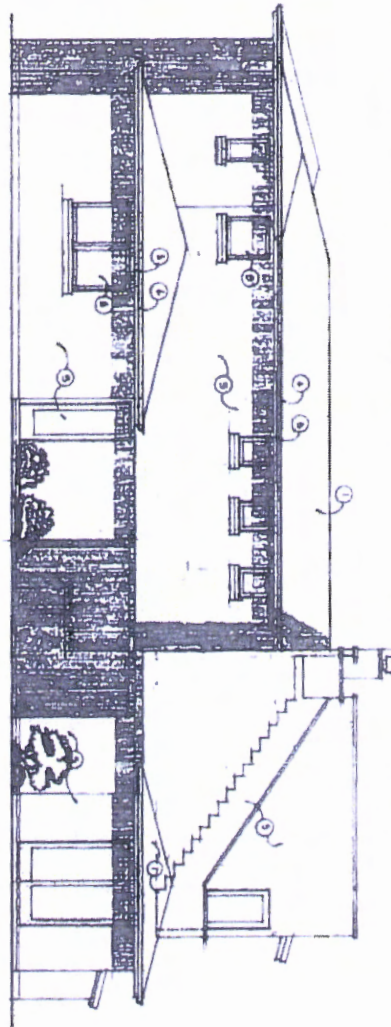
Agm For
Jon Biggs

A-6	SHEET	DATE / COMMENTS <hr/> <hr/> <hr/>	A NEW CUSTOM RESIDENCE FOR: ERNIE & PAMELA ROZO 888 WINDWARD AVE. PISMO BEACH, CA 93449	JERRY SHAW Residential Design (805) 481-0308 www.jerryshawdesign.com	
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- EXTERIOR FINISH KEYNOTES**
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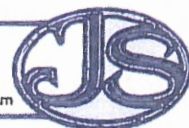
City of Pismo Beach
Approved by City Council
Date: 4.21.2015

✓ as submitted
with changes
Planner: Jon Biggs

DATE / COMMENTS

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

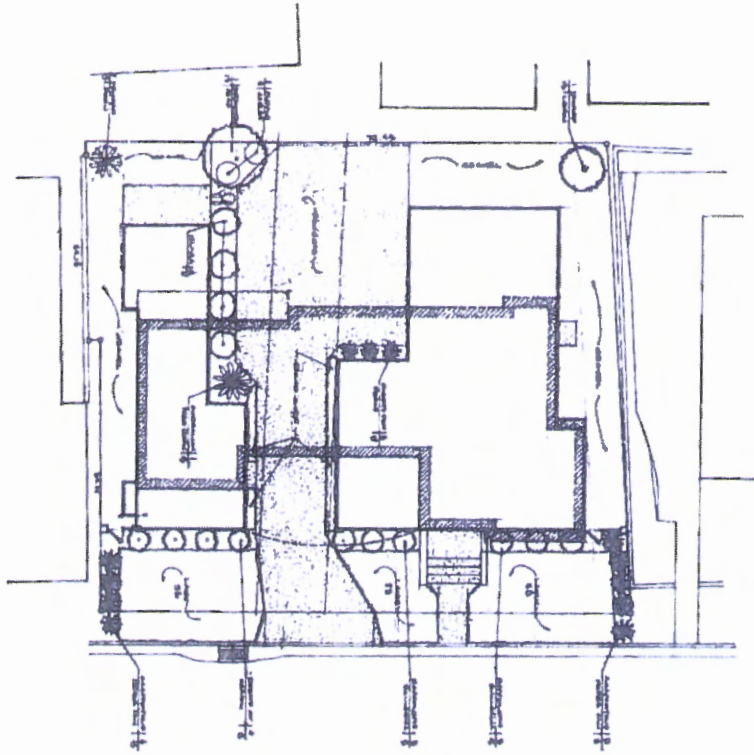
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LANDSCAPE PLAN



WINDWARD AVE.

Irrigation Schedule

Area	Frequency	Flow Rate	Notes
Front Yard	2x/week	1.5 GPM	Hand watered
Back Yard	2x/week	2.0 GPM	Hand watered
Pool Area	1x/week	1.0 GPM	Hand watered
Driveway	1x/week	1.0 GPM	Hand watered
Garage	1x/week	1.0 GPM	Hand watered
Patios	1x/week	1.0 GPM	Hand watered
Lawns	1x/week	1.0 GPM	Hand watered
Shrubs	1x/week	1.0 GPM	Hand watered
Trees	1x/week	1.0 GPM	Hand watered
Other	1x/week	1.0 GPM	Hand watered

REGISTRATION NOTES

- INITIAL, ANTI-SIPHON ELECTRIC CONTROL VALVES ON GRAVE BOX SHALL BE FOR THE SERVICE.
- INITIAL, & SPRINKLER ANTI-SIPHON CONTROLS IN GRAVE, INITIAL, SHALL BE FOR THE SERVICE IN ANTI-SIPHON LOCATION.
- INITIAL, & PWC SHALL BE 24 INCHES DEEP UNDER DRIVEWAY FOR PWC.
- INITIAL, DRY INSULATION DETAILS ON SHEET "S-1"
- P-10000, 3/4" PWC, 24 INCHES DEEP UNDER DRIVEWAY FOR PWC.
- P-10000, 3/4" PWC, 24 INCHES DEEP UNDER DRIVEWAY FOR PWC.
- P-10000, 3/4" PWC, 24 INCHES DEEP UNDER DRIVEWAY FOR PWC.



City of Pismo Beach
Approved by City Council

Date: 4-21-2015

✓ as submitted
with changes

Signature: C. Jones for

Jon Biggs

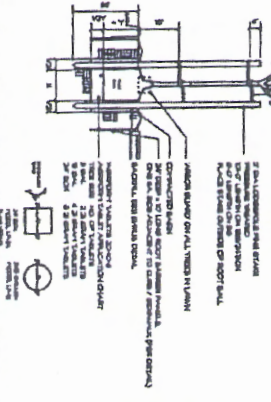
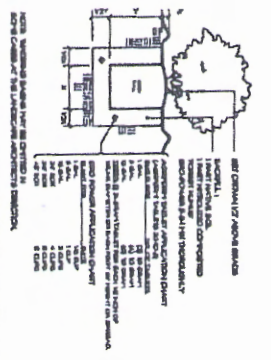
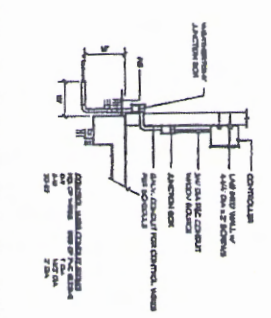
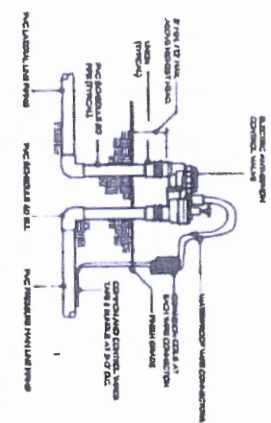
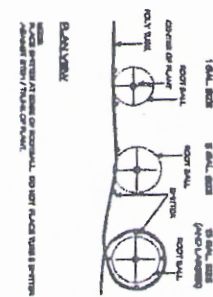
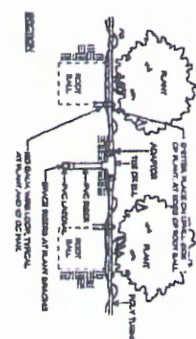
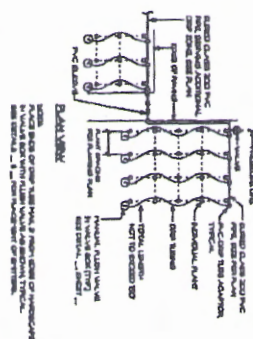
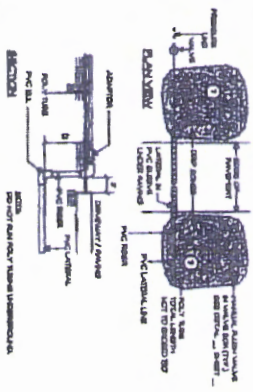
A-8	DATE / COMMENTS

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

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PLANTING & IRRIGATION NOTES

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

A-9	SHEET	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	

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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 11, 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 note 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 his address hereinafter set forth.

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

Notary Public in and for said County and State.
My Commission Expires Feb 26, 1955

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. 123 Official Records P. 426
SAN LUIS OBISPO COUNTY, CALIF.
MAY 12 1955
J. E. Newman
County Registrar
By: [Signature]
Fee \$2.00 In Cash

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

8303

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
Secty

Document No. 6303
RECORDED AT REQUEST OF
Richard F. Bragg
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VOL. 10 Official Records 122
SAN LUIS OBISPO COUNTY, CALIF.

MAY 12 1955

J. E. Brown
County Recorder
By *Mary Hamilton*
Fee 5 Indexed

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.

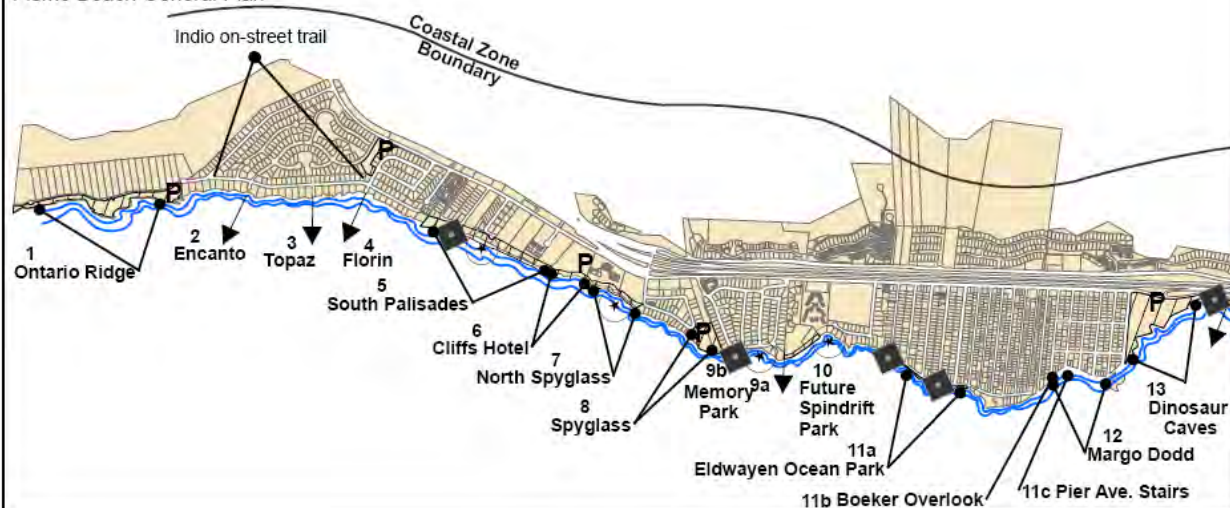
Table PR-4 Physical and Visual Ocean Access/California Coastal Trail (See Figure PR-3 for map locations)												X - Existing # - Proposed
Planning Area	Access Points	Public Beach Access Stairs	Walking Path and/or Walking with View Access	Direct Beach Access No Stairs	View Points	Lateral Open Space 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



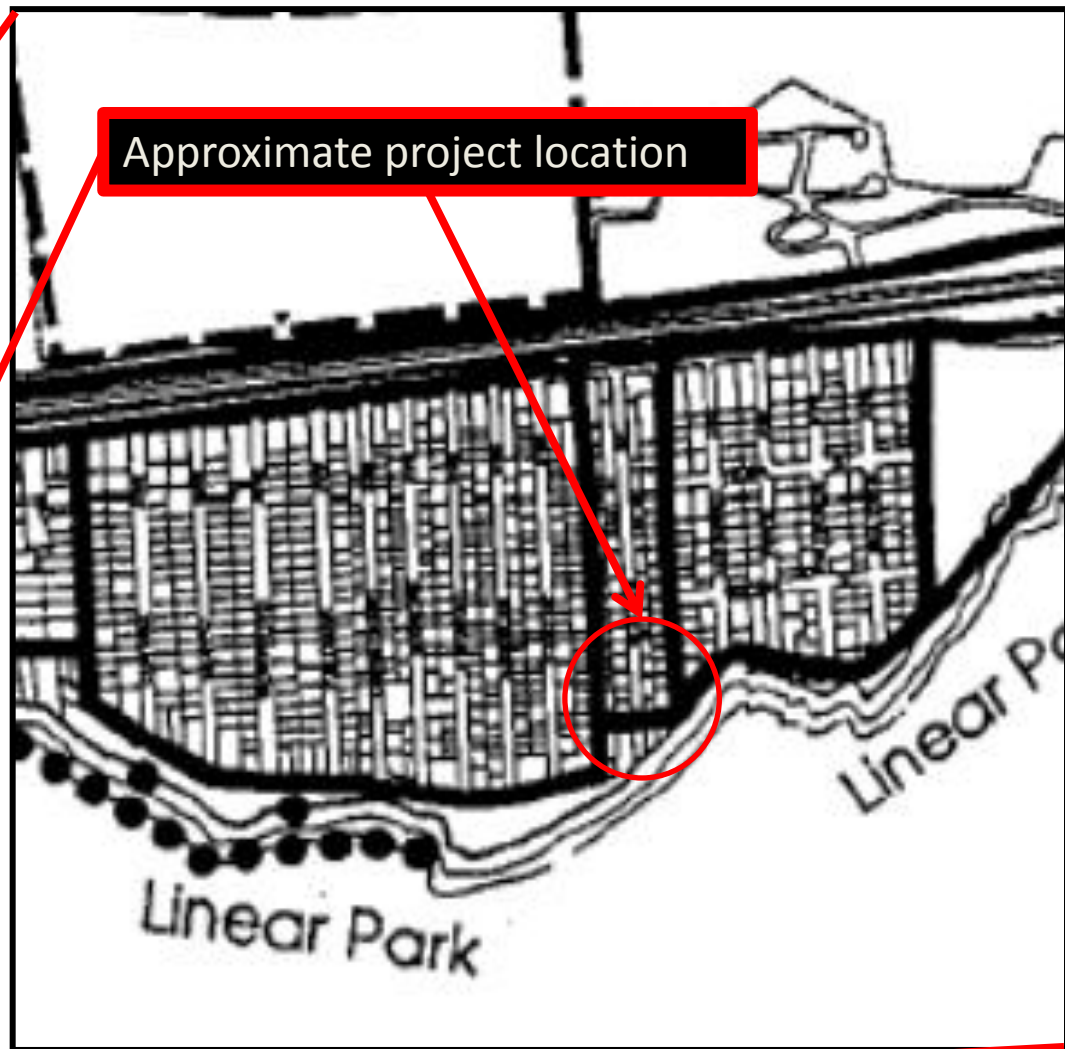
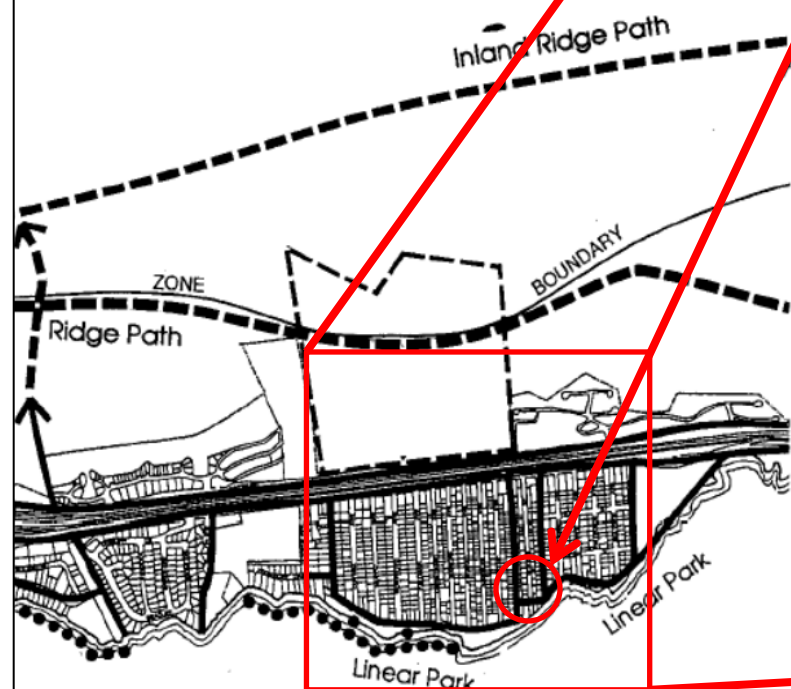
PATHS IN SPHERE



BOARDWALK



Figure PR-2



River Mouth



Project Site

Existing Easement

Windward Ave

Ocean Blvd

Boeker Ave

Ocean Blvd

Boeker to
Placentia

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 rescission 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.

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

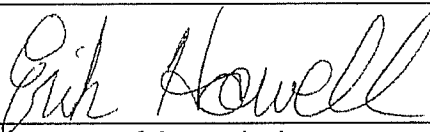
7) Identity of all person(s) present during the communication: Erik Howell,
Mary Ann Reiss, Pam Rozo, Ernie Rozo

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

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.

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.Bead@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

Every Californian
should conserve
water. Find out
how at
SaveOurWater.com
and Drought.CA.gov

From: Beard, Paul [<mailto:Paul.Bead@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

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.

3. That being said, if Ms. Collins, Coastal Commission counsel, or anyone else has any legal authority making such a permit condition constitutionally permissible, we would be more than happy to review that authority and reconsider whether to settle these appeals with an offer to dedicate a pathway, thereby saving everyone—especially Coastal Commission staff—precious time and expense working on the appeals. Conversely, if no such authority exists, and there is no good reason why *Nollan*, *Bowman*, and other precedents do not categorically bar such a permit condition, then the original staff report recommending NSI should be reinstated and the appeals placed on calendar as soon as possible so that the Rozos can move on with their lives.
4. The Rozos appreciate Mr. Howell's efforts in trying to resolve these appeals, including taking time out of a holiday weekend to meet with them. They are especially appreciative of Mr. Howell's representation, made at that meeting, that he would support the Rozos' City-approved project (which he rightly voted for) against a

“substantial issue” determination. Mr. Howell’s backing gives the Rozos the moral support they need during this very trying time and reflects Mr. Howell’s moral courage in the face of a very vocal minority led by Ms. Collins.

5. Ms. Collins has engaged in a number of serious omissions and misrepresentations about both the project and efforts in 2015 to settle the appeals with the Rozos. Among other things, those omissions and misrepresentations likely explain Mr. Howell’s misunderstanding about the viability of pathway connections at the addresses he cites below. Marshall will contact you (Mr. Carl) to discuss this and other factual issues related to the appeals.

To reiterate my earlier offer, we will immediately reconsider our position, and potentially spare everyone a time-consuming and costly appeal process, if a single authority constitutionally justifying Collins’ demand for a public pathway across the Rozos’ backyard can be produced. Short of that, the Rozos are of the view that they should not have to give up their federally protected constitutional rights so that they can obtain a permit to build a house on their lot. We sincerely hope that you share that view.

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,

Thanks for including me in the email exchange. Your understanding regarding the Rozo's interest in an easement dedication at the current time is the same as mine. In any case, we are continuing to evaluate the flood of information we received when the first staff report was initially distributed, including both from Mr. Beard and his associates as well as from Ms. Collins. For the record, and as I understand has been communicated to the parties involved, at this point there is almost no chance we intend to recommend NSI. There are issues of statewide and LCP implementation importance for sure, and we are evaluating all possible options for resolution through a de novo hearing. As to when the hearing may be

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.

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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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.

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:

I am an appellant 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, Tarren Collins, 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.

The proposed project raises a substantial issue because the proposed demolition and construction of the residence, as proposed by the Rozos, raises substantial City of Pismo Beach General Plan & Local Coastal Program (LCP) conformance issues. It does not include an essential pedestrian coastal access path easement, as required by the General Plan LU-H-8, and LCP Policy PR-5 which states:

"Lateral Access at Boeker Street – 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. This requirement shall be implemented as part of project approval, private gifts or dedications or possibility through public acquisition."

Our appeal also raises substantial issue because 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 LU-H-4a which states:

"Scale of Structures – New residential development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings."

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 proposed project is inconsistent with the community character of the surrounding neighborhoods, and therefor violates Chapter 3 of the Coastal Act. Also, the proposed project impacts the important scenic and visual qualities of this coastal area, making this project inconsistent with the policies of Sections 30251 and Section 30116(c) of the Coastal Act

Comment re Appeal No. A-3-PSB-15-0030 (Rozo, Pismo Beach)
January 9, 2017
Page Two

The proposed size of the project is not consistent with the visual resources and minimization of adverse impacts policies of the Coastal Act. In particular, the proposed project is inconsistent with the scale, mass, and character of the surrounding residential neighborhood.

Also, the applicant's proposed project will be built over a sewer line, which is not only inconsistent with Pismo Beach City policy, it would jeopardize the whole of south Shell Beach Village for the benefit of one property owner, and it poses a risk to the ocean water quality should the new building prevent a sewer leak from being immediately repaired. The city engineer would not allow any building over the sewer line that traversed the property at 374 Boeker nearby. The property at 388 Windward can be developed without building over the sewer line.

This commission should deny the Coastal Development Permit.

I have lived in Shell Beach Village since 2000. I first moved to this area in 1982 when I attended Cal Poly. I have come to love this community and as a licensed landscape architect I take pride in the many projects I have completed to help enhance this very special place.

One of the major purposes of the Coastal Act and our 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. To allow this development to be approved would be a travesty negatively impacting the community for generations to come.

Staff's proposal to approve with conditions reducing the upper floor still does not meet the Neighborhood Compatibility requirement per the General Plan, it does not identify an easement for the pedestrian path thoroughway, and it still is of a mass and scale which is incompatible with the community character of this Shell Beach neighborhood.

Please find the appeals raise Substantial Issue, please schedule the de novo hearing for your September meeting on the Central Coast, and, at the de novo hearing, please deny the project and preserve the special community character of Shell Beach.

Thank you,



Laurie D. Cummings

Appellant

Cc Tarren Collins

Encl.

4.21.15

4:49 PM

RECEIVED
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.

**LU-
H-6 Public Improvements**

a. Street Lights

Where possible, pedestrian scaled street lights should be used throughout the Shell Beach area. (See Design Element, Policy D-22, Pedestrian Scale Street Lights.)

b. Street and Front Yard Paving

Street rights-of-way and front yards shall not be paved except for driveways or parking spaces officially approved by the city. The City shall not approve parallel parking that is outside the normal area needed for travel ways and related street parking. (See Design Element, Policy D-15, Front Yards and Street Right-of-Ways.)

c. Shell Beach Road improvements

Shell Beach Road improvements should retain the existing curb and gutter flow line and profile of the street and ADA compliance through use of bulb outs and street corner improvements. Additional improvements will include a multi-use trail, benches, decorative light poles, bike racks, public art, trash receptacles, and receptacles for recyclable material. A variety of paving changes and textures with street furniture and decorative lights and street trees will enhance this area.

Existing public sidewalks and street amenities shall be maintained, and future improvements shall be maintained in perpetuity.

Consistent with policies D-36 and D-37, Shell Beach Road overhead utilities shall be placed underground. Undergrounding to the first adjacent residential street is required.

d. Ocean Blvd improvements

Public improvements to Ocean Blvd shall include public art features where possible. Examples include but are not limited to artistically sandblasted bollards and posts, mosaic tiled trash and recycled containers, decorative paving , or art work on utility boxes.

**LU-
H-7 Street and Front Yard Paving**

Street rights-of-way and front yards shall not be paved except for driveways or parking spaces officially approved by the city. The City shall not approve parallel parking that is outside the normal area needed for travel ways and related street parking. (See Design Element, Policy D-15, Front Yards and Street Right-of-Ways.)



**LU-
H-8 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.)

To fully utilize the natural advantages of Pismo Beach's location and climate, park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles. This means that:

- a. The beach shall be free to the public.
- b. Some parking and/or public transportation access to the beach shall be free to the public.
- c. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.
- d. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use and all-purpose parks.

PR-2 Ocean and Beach are the Principal Resources

The ocean beach and its environment is, and should continue to be, the principal recreation and visitor- serving feature in Pismo Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

PR-3 Parks and Recreation Policy Plan

The city Park and Open Space Policy Plan shall be as shown in Figure PR-1, as summarized in Table PR-1, and as set forth in the policies of this Element. The plan shows the conceptual system of parks and open spaces but is not intended to preclude additional areas of open space or parks as found appropriate through environmental reviews, the development process, and annexations.

PR-4 Master Parks and Recreation Plan

The City's Parks and Recreation vision includes:

- a. Specific park standards - The standards shown in Table PR-2 should be used as a basis for city park development, including annexation areas. Where feasible, park standards should enable efficient and sustainable use for and maintenance of City parks and recreation facilities.
- b. The use of concept plans for each park or open space reflecting active, passive and natural open space uses.
- c. The development of an operation and maintenance plan for each facility.
- d. A Parks and Recreation Commission oversight of:
 - 1) A citizen participation program to determine facility needs and
 - 2) A periodic survey of residents and visitors to determine resident and visitor services and community program needs and desires.
- e. A periodic review and update of criteria for new development contribution of land and/or fees for park development.

*** 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. Key trail connections are shown for future annexation areas. Motorized vehicles shall not be permitted on trails, except as used by handicapped persons.

Rest areas, picnic areas, view platforms and similar facilities shall be located along the path systems. The ridge path should provide for equestrian use. See also:

Circulation Element
Circulation Element
Land Use Element
Land Use Element
Land Use Element
Circulation Element

C-11
C-12
LU-G-5
LU-H-9
LU-J-9

Bikeways Plan
Bikeways Encouraged
Ocean Boulevard Access
Lateral Access at Boeker St.
Lateral Access
Bikeway Plan

PR-8

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.

**LU-
H-2 Shoreline Qualifies**

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.
- c. Instituting measures, such as signing and policing, to prohibit removal of tide-pool marine life.
- 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.
- e. Making drainage pipes in the park areas as inconspicuous as possible and landscaping park areas with drought resistant, low maintenance plants.
- f. Continuing the program of erosion and animal control to protect the park areas.

**LU-
H-3 Commercial Revitalization**

- a. For the Shell Beach Road commercial strip, a funding plan shall be prepared for amenities such as but not limited to signage, street trees, sidewalk improvements, pedestrian scale street lights, public parking, and public art.
- b. The city shall consider the use of Grant funds to provide for the plan and for low interest loans for commercial revitalization.

**LU-
H-4a Residential Guidelines**



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.

b. Orientation of doors, windows, and balconies to street.

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 (i.e., units at street level, rather than raised) and in distance from the street (minimum set back). This type of orientation reinforces the traditional beach and street active environment and increases street safety with "eyes" on the street. (See Design Element D-4, Multi-family Design Criteria.) Where two-story buildings are proposed, the second story shall be stepped back a minimum of 30% along the front elevation.

c. Incentives for single level development

Incentives for one level development will only be provided for proposals compatible with the surrounding area with building articulation and site design reflective of the Shell Beach small- scale image. While a 20' setback to a garage is required, incentives for single level development without a requirement for a variance include:

- expanded total building area in excess of that specified in the implementing ordinance
- front, side, and rear yard setbacks reduced from that specified in the implementing ordinance
- a single car garage

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	Lawrence L. Silva	372 BOEKER, SHELL BEACH
5	<u>[Signature]</u> S. LOPEZ	368 BOEKER, 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

13	Christy Serpa	246 Windward Shell Beach
14	Jeremiah Serpa	246 Windward Shell Beach
15	William Pains	288 WINDWARD AVE SHELL BEACH
16	John B. Bravich	269 WINDWARD AVE SF
17	Tanya Bernal	269 Windward Ave SB
18	Cheri Pajares	288 Windward SB
19	Frank Rodriguez	298 Windward Ave. RB
20	K. Kelly	253 WINDWARD AVE S.B.
21	Alumino	305 WINDWARD AVE SHELL BEACH
22	EVA CASTRO	317 WINDWARD AV SHELL BEACH
23	CHRIS KEFER	253 WINDWARD AVE SHELL BEACH
24	EDDIE STANTFIELD	359 Placentia Shell Beach
25	Debra Sievers	342 Morro Ave Shell Beach

②

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 Wawona ave, SB, CA
28	Karen Leonard	250 Cuyama Ave
29	Diana DeBarmo	251 Capistrano S.B.
30	Joe Leonard	250 Cuyama Ave
31	Loes Kester	289 Windward S.B.
32	Whitney Eliott	216 Windward Ave 93449
33	Avery Fleming	216 Windward Ave
34	Michael Lutz	2014 Lundgren Ave
35	Lynn LaMorie	206 Leeward AVE
36	Bartene Guilem	190 Leeward ave
37	Paul Greco	318 LEEWARD AV.
38	Cheryl Tidals	324 WINDWARD AVE.

(3)

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.

ADDRESS

39	David Garg.	243 Vista Del Mar
40 & 41	Sandra & Jesper Nielsen	313 Vista del Mar
42 & 43	Susan & Phil Middleton	1956 Ocean Blvd.

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.

ADDRESS

44	Paul Schier	127 Cayana	Shell Beach CA
45	Rich Wike	324 Windward	SHELL 93449 130444 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
46	Tarren Collins	P.O. Box 3063, Shell Beach
47	Kelly LeMay	PO Box 2424 Shell Beach
48	Cheryl Seibert	214 Capistrano S.B.
49	Shanna Cern	214 Capistrano SB.
50	Shawn Ray	214 Capistrano SB
51	214 EDWARD D. LOCKHART	109 Capistrano Ave Shell Beach, CA
52	Rhea Rogers	114 Capistrano SB
53	Nick Jones	114 Capistrano SB
54	Rachel Bradford	114 Capistrano SB
55	Rhemi Waltz	114 Capistrano Ave.
56	Peggy Spragino	126 Capistrano SB
57	PAT MITCHELL	138 Capistrano Ave
58	CARUSA PHELPS	138 Capistrano Ave
59	Bob Turbin	151 Capistrano Ave

(S)

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 Booker street to Windward Ave similar to what was done connecting Booker 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 Ayler	262 Capistrano
62	S. Ayler	262 Capistrano
63	Tacoma	257 CAVISTA AVE
64	Brenda Jane	257 CAPISTRANO
65	Stanley	232 Capistrano ave
66	Hugh	233 Capistrano Ave.
67	TABER LEO GRIGOLI	302 CAPISTRANO AVE
68	Charles Anderson	180 Ocean View, Pismo
69	Heather Stone	180 Ocean View Ave Pismo Beach CA
70	John Goh	785 1st St
71	John	227 Capistrano
72	Melinda Reason	239 Capistrano Ave

7

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

73	Sue Chasin	362 Capistrano Ave
74	Paul and Toni McCracken	309 Placentia Ave.
75	Mike McCracken	309 PLACENTIA AVE.
76	PAUL BRAGG	375 Santa Fe
77	Gue Beckett	258 Montecito Ave
78	Paul Beckett	258 Montecito Ave
79	Charles D. Dunning	330 Wawona Ave
80	Justin J. Farnham	330 Wawona Ave

8

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 Walker</u>	<u>178 WINDWARD AVE SB</u>
84	<u>Cathy Kilmer</u>	<u>6670 Bellvue Orchard Ln. SLO CA.</u>
85	<u>CRAG CUMMINGS</u>	<u>305 WINDWARD AVE SHELL BEACH</u>
86	<u>Hani Bhana</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)

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NAME

ADDRESS

88 Carol Burn	12036 43000 Ranch Rd. GRANADA Hills 91344
89 Markin Fridolf	P.O. Box 698 Kingsburg CA
90 Kate Capela	210 Montecito Ave
91 John Capela	210 Montecito Ave
92 Janice Fridolf	P.O. Box 698 Kingsburg, CA
93 Bill HANNA	288 WINDWARD AVE
94 Michael Byrd	814 Pomeroi rd mpsom CA 93444
95 FABIAN JACO	142 WINDWARD Av #2 93449
96 Douglas Malobla	508 Ocean Shell Beach 93449
97 Shelley Malobla	508 Ocean Bl Shell Beach-93449
98 Robine Erb	260 Hillsdale Ave Santa Clara 95051
99 Aggie Walters	4704 Talmadge Rd Moorpark, CA 92031

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NAME

ADDRESS

100	<u>Theresa McEwen</u>	<u>8 Bullflower Lane, San Carlos, CA 94070</u>
101	<u>Janine Post</u>	<u>653 Shell Beach Rd SB 93449</u>
102	<u>Wendy Smith</u>	<u>204 Windward Ave Shell Beach, CA 9314</u>
103	<u>Jim Harding</u>	<u>190 Windward</u>
104	<u>Art Dy</u>	<u>178 Windward</u>
105	<u>Alan 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 Stres</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

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NAME

ADDRESS

112	Samantha melone	574 Sweet pea Pl.
113	Shelly melone	574 Sweet Pea Pl.
114	Nick Moses	311 Leeward
115	max melone	574 Sweet pea Pl.
116	CHELEA BRESCIA	289 LEEWARD AVE
117	Tony BRESCIA	289 LEEWARD AVE.
118	KAREN LIBBY	253 LEEWARD AVE
119	MARK LIBBY	253 LEEWARD AVE.
120	MIKE LYNN	319 N Hwy 1
121	Laurie Davis	241 Leeward Ave.
122	Cheryl Sidle	324 Windward Ave.
123	EVA Castro	317 Windward 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.

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NAME

ADDRESS

124	Susan Middelton	1956 Ocean Blvd. P.B.	92449
125	Phil Middelton	1956 OCEAN Blvd Pismo Beach	93449
126	Deborah Winter	273 Boeker Ave. Shell Beach CA	
127	Edwin R. Winter	273 Boeker Ave Shell Beach ca.	
128	[Signature]	245 Boulevard Ave Shell Ct	93449
129	Jacquyn Griffith	269 Windward Ave Shell Beach	
130	[Signature]	316 WINDWARD AVE "	93449
131	[Signature]	298 Windward Ave	
132	DK 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.

From: [Tarren Collins](#)
To: [Chaver_Yair@Coastal](#)
Cc: [Laurie Cummings](#); [Carl_Dan@Coastal](#)
Subject: FW: 388 Winward Shell Beach CA Appeal of Rozo project
Date: Tuesday, March 29, 2016 1:42:18 PM
Attachments: [388 Winward CCC Appeal - T. Collins's letter to Pismo and 2 petitions submitted.pdf](#)
[CCC Appeal Idc_050216 from Laurie Cummings.pdf](#)
[Rozo \(Offer to Dedicate\) \(10-26-2015\).pdf](#)
[Rozo \(Tarren Collins\) \(11-15-2015\).pdf](#)

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 entourage 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@slolegal.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.

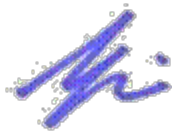
~Brian

From: Marshall E. Ochylski [mailto:mochylski@slolegal.com]
Sent: Monday, August 24, 2015 3:03 PM
To: 'Tarren Collins'; marshall@slolegal.com; O'Neill, Brian@Coastal
Cc: marshall@slolegal.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@slolegal.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,

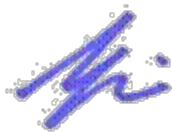
Tarren

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@slollegal.com

Website: www.slollegal.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@slollegal.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.

With respect to a deed restriction, Marshall is correct that a deed restriction would be valid regardless of whether the CDP was acted upon. If the deed restriction were not part of the

CDP, CCC would have no authority to enforce it. We would also have no authority to enforce a condition on a CDP that is not acted upon. Our team is not prepared to offer you legal advice on who could enforce a deed restriction outside of a CDP condition and the benefits/drawbacks of that option. You could try talking to the Conservancy about that issue if they are interested in accepting an OTD.

~Brian

From: Tarren Collins [<mailto:tarrencollins@charter.net>]
Sent: Monday, August 24, 2015 12:26 PM
To: O'Neill, Brian@Coastal
Cc: marshall@slolegal.com
Subject: RE: Rozo OTD

Hell Brian,

I am glad that you contacted me today. I have been communicating with the project applicants' attorney, Marshall Ochylski. I see that you copied Marshall on your email, and I have as well. I have communicated to Marshall my lack of confidence in the City of Pismo Beach as the holder of the OTD. I appreciate Marshall's efforts to attempt to fashion a solution that will make the OTD enforceable by another government entity, and avoid a CCC hearing. However, it is my understanding that the only way to make the OTD enforceable by the CCC would be to have the hearing on substantial issue, followed by the CCC making the OTD a condition of approval of the CDP.

It would assist our negotiations greatly if your legal staff could answer a few questions regarding a proposed solution which Marshall emailed to me last night.

In an email last night, Marshall proposed a "solution containing the following components: • My [Marshall's] clients agree to record the Offer to Dedicate as a Deed Restriction against their property. This actually would give more assurances to you and the other Appellant than a Condition of Approval since the Condition would go away if the project does not move forward. • Prior to its recordation, the Offer to Dedicate would be revised to replace the City of Pismo Beach with the California Coastal Commission as the Grantee. • Concurrent with recordation, the appeal at the Coastal Commission would be dismissed."

I know that the CCC can't hold property, so the OTD would have to be revised to replace the City of Pismo Beach with the Coastal Conservancy. And while I prefer a permit condition because the CCC will then have continuing jurisdiction over it, I am hoping that you might speak with your legal staff to find out if they believe Marshall's proposed solution with an OTD naming the Coastal Conservancy as the Grantee, would have the same force and effect as a condition of approval of the CDP by the CCC.

If we are able to negotiate a solution whereby the public's opportunity to have a pedestrian access through the Rozo's property is secured absent a hearing, that would be great. However, I am not willing to forgo a hearing absent an OTD enforceable by the CCC or by the Coastal Conservancy. If a hearing becomes necessary, here is what I had proposed to Marshall as a resolution to the access issue of my appeal of the Rozo's project:

- 1) He communicate to CCC staff that the Rozo's are willing to accept a condition of approval that requires them to record the OTD for the access pathway, and that they will not contest a finding of substantial issue regarding the access issue of the appeal.
- 2) We all agree that no separate hearing needs to be held for the appeal (in other words, once substantial issue is found, we move directly to the appeal hearing solely on the issue of the pathway). Then at the appeal hearing, the OTD is made a condition of approval of the CDP.

I am in communication with the other appellant. We are both willing to settle our appeals for an OTD that is enforceable by the CCC as a condition of approval of the CDP. If I am able to have assurances from your legal staff that the solution proposed by Marshall in his email last night would have the same force and effect, I believe the other appellant will agree to settle her appeal on the same terms that I would settle my appeal.

I look forward to hearing the response of your legal staff.

Thank you,

Tarren

From: O'Neill, Brian@Coastal [mailto:Brian.O'Neill@coastal.ca.gov]

Sent: Monday, August 24, 2015 11:05 AM

To: tarrencollins@charter.net

Cc: marshall@slollegal.com

Subject: Rozo OTD

Hello Tarren,

I am the planner working on the Rozo appeal. I was forwarded information regarding the Applicant's proposed OTD. Do you intend to withdraw your appeal if the OTD is included in the project?

Speaking with our legal staff, we believe the best course of action would be for the Rozo's to apply for an amendment to the CDP with the City to include the OTD in the

City's approval. The City would then send our office an amended Final Local Action Notice. This would make the prior appeals moot and open up a new ten day appeal period. We may still require a formal withdrawal of the prior appeals.

Has anyone spoken to the other appellant?

~Brian

Brian O'Neill, Coastal Program Analyst

Central Coast District Office

Coastal Commission

725 Front Street, Suite 300

Santa Cruz, CA 95060

(831) 427-4864

TH 13E

January 11, 2017

California Coastal Commission

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

REC'D 1/12/17
@ HEALING IN SLO
DGA

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

Honorable Chair Kinsey and Coastal Commission Members:

I am a resident of Pismo Beach and a newly elected Pismo Beach city council member. I support this appeal because of the project's elimination of coastal access pedestrian path, building over a sewer line and neighborhood incompatibility of the building size.

I oppose the elimination of the pedestrian coastal trail which is required by our General Plan LU-H-8. Historically, prior projects in the area have been required to include the pedestrian path as mandated by LU-H-8. Coastal access which include pedestrian paths should be coveted and preserved always.

I'm completely dismayed that the city modified previous decisions for this property and have allowed the current owners to build over a sewer line. This could not only jeopardize the Rozo's property but others in the neighborhood. The cities position on this issue has been clear as the previous owners of this property and another at 374 Boeker, Shell Beach had requested to build over the sewer line and were denied that request. By denying their request to build over the sewer line will NOT prevent the Rozo's from improving their property.

Finally, the size of the structure is completely incompatible with the neighborhood as requested in the General Plan. It is completely out of character for the neighborhood and needs to be reduced in size. It is projects like this one which has caused the city to begin the process on design and building guidelines for the Shell Beach Area. These new guidelines should be in place by February 2017 and would not allow this project to go forward as it sits today.

Please support this appeal and allow the pedestrian coastal access to remain, not allow building over a sewer line and reduce the size of the current project.

Thank you,

Marcia Guthrie

Marcia Guthrie
Pismo Beach

From: [Marshall E. Ochylski](#)
To: [Chaver, Yair@Coastal](#)
Cc: [Craig, Susan@Coastal](#)
Subject: Re: Rozo Residence 388 Windward Ave., Pismo Beach
Date: Thursday, January 21, 2016 4:01:32 AM

Yair,

Sorry for the delay in getting back to you but are still working on reaching a mutually agreeable solution to resolve the appellants' issues. We currently have a proposal out to a local environmental group to be the Grantee on an Offer to Dedicate an easement over a portion of the property. We hope to have a final answer from them within the next few days. At that point the appeal will either be withdrawn or it will move forward.

We have set a deadline for resolution of this matter on January 29, 2016. I will get back to you as soon as we have a definitive answer.

If you are going to be attending the Commission meeting next month, I look forward to meeting you in person.

Thank you.

Marshall E. Ochylski,
Attorney at Law

*The Law Office of Marshall E. Ochylski
Mailing Address: Post Office Box 14327
San Luis Obispo, California 93406-4327*

*Telephone: 805-544-4546 (Direct Line)
Cell Phone: 805-441-4466*

*Email: marshall@slollegal.com
Website: www.slollegal.com*

Sent from my iPad

On Jan 19, 2016, at 1:26 PM, Chaver, Yair@Coastal <Yair.Chaver@coastal.ca.gov> wrote:

Hi Marshall,

Can you give me an update on this?

Thank you,

Yair

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Yair Chaver, Coastal Program Analyst

Central Coast District Office

Coastal Commission

725 Front Street, Suite 300

Santa Cruz, CA 95060

(831) 427-4865

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From: Marshall E. Ochylski [<mailto:mochylski@slolegal.com>]

Sent: Tuesday, December 01, 2015 4:36 PM

To: Chaver, Yair@Coastal

Cc: Craig, Susan@Coastal

Subject: Re: Rozo Residence 388 Windward Ave., Pismo Beach

Yair,

We are still in discussions with the appellants. Tarren Collins has been out of town and she will be returning tomorrow. I hope to have an answer back regarding whether the appeal will move forward or not by the end of this week. I will get back to you on Friday to give you a status update.

Thank you.

Marshall E. Ochylski,
Attorney at Law

The Law Office of Marshall E. Ochylski
Mailing Address: Post Office Box 14327
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Telephone: 805-544-4546 (Direct Line)

Email: marshall@slolegal.com

Website: www.slolegal.com

Sent from my iPad

On Dec 1, 2015, at 10:17 AM, Chaver, Yair@Coastal <Yair.Chaver@coastal.ca.gov> wrote:

Dear Marshal,

We spoke on the phone November 13 regarding the Rozo residence at 388 Windward Ave., in Pismo Beach. At the time you mentioned that as far as your clients were concerned, the resolution of the public easement was "up to the appellants" at this point. You also thought that there will be some resolution within two weeks.

I am only following up to see if there has been any movement on the resolution of this item. Please let me know.

All the best,

Yair Chaver

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Yair Chaver, Coastal Program Analyst

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725 Front Street, Suite 300

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From: [Tarren Collins](#)
To: [Chaver, Yair@Coastal](#); [laurie.d.cummings@gmail.com](#)
Cc: [Carl, Dan@Coastal](#); [Ng, Michael@Coastal](#); [Craig, Susan@Coastal](#)
Subject: Rozo Appeal (A-3-PSB-15-0030)
Date: Tuesday, October 04, 2016 8:32:05 PM

Dear Yair,

Thank you for calling today to let me know that staff is considering putting our appeal on the November 2016 agenda for the meeting in Half Moon Bay. I have often requested that, due to the public interest in this project, this appeal be heard locally when the CCC meets in Pismo Beach in January. Also, as I told you in our phone conversation today, I have travel secured to Idaho for an 8 day holiday to celebrate Thanksgiving with my daughter and grandchildren from November 21st through 29th. It will pose a hardship to try to get away from my law practice to add in a trip to Half Moon Bay earlier in the month. If staff believes this appeal must be heard before the end of the year, then the December meeting in Ventura would pose less of a hardship for my fellow appellant and I. If the hearing on our appeals takes place out of the Central Coast, please assure me that if, as I hope, the CCC finds Substantial Issue, then the De Novo hearing will take place on the Central Coast.

During our conversation today, I also pointed out that while we have focused on the coastal access issues of our appeals, both Ms. Cummings and I also emphasized in our appeals the fact that the project, as proposed, is not consistent with the community character of this old Shell Beach neighborhood. Specifically, my appeal states: "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."

I told you today that I had recently reviewed the revised staff findings for the CCC's denial of a residential project in Venice Beach in August 2016, Application No. A-5-VEN-15-0027. You can link to the staff report: <https://documents.coastal.ca.gov/reports/2016/2/f21c-2-2016.pdf> The findings apply to our appeals of the Rozo project as well.

The Rozo's proposed project is inconsistent with the community character of the surrounding neighborhoods, and therefor violates Chapter 3 of the Coastal Act. Also, the proposed project impacts the important scenic and visual qualities of this coastal area, making this project inconsistent with the policies of Sections 30251 and Section 30116(c) of the Coastal Act.

The proposed size of the project, with a rooftop deck and secondary dwelling unit, is not consistent with the visual resources and minimization of adverse impacts policies of the Coastal Act. In particular, the proposed project is inconsistent with the scale, mass, and character of the surrounding residential neighborhood. There are few other rooftop decks or secondary dwelling units here. Also, the Pismo City Council is in the process of creating new Shell Beach Development Standards and Design Guidelines – an update was on the City Council agenda tonight. I participated as a stakeholder in this process, and can verify that the need to preserve our community character and protect against the increased size and mass of new residences, and rooftop decks, in the unique Shell Beach neighborhoods, has driven this process. It is expected that

the **new Shell Beach Development Standards and Design Guidelines will prohibit projects such as the huge house with a rooftop deck and secondary dwelling unit proposed by the Rozos.**

The Rozos project, as proposed, would have **an adverse cumulative effect on the special coastal community of old Shell Beach.**

The surrounding residential blocks of the neighborhood features predominately one-story residences without rooftop decks or secondary dwellings. The fact that other large houses, and a few other rooftop decks or secondary dwelling units exist in the area and are allowed by the current zoning code **does not mean that every property owner is entitled to maximize the development potential of every site. Section 30251 of the Coastal Act states that the scenic and visual qualities of an area shall be considered as a resource of public importance and Section 30253 states that special communities and neighborhoods shall be protected.**

The Rozo's proposed project of such mass and scale, with a rooftop deck and secondary dwelling unit, would not be consistent with the scenic and visual resources of the area and would have an adverse cumulative effect on the community character of the old Shell Beach neighborhood.

The cumulative impact of houses of this scale and mass, with a rooftop deck and secondary dwelling unit, in this neighborhood of old Shell Beach would not only **further destroy the ambiance and low key character of this community**, it will cumulatively impact the visual and scenic resources of this area.

Because the current zoning code is being modified by new Development Standards and Design Guidelines for Shell Beach, and because the current zoning code does not mean that every property owner is entitled to maximize the development potential of every site, I request that Coastal Commission staff take a closer look at the community character aspects of our appeals.

And please assure us that should the hearing for our appeals take place out of the area before the end of the year, if the Coastal Commissioners find Substantial Issue at the hearing on our appeals, the De Novo review hearing will take place locally when the CCC meets in Pismo Beach either in January 2017 or when it meets in Cambria in September 2017.

Your assistance is greatly appreciated.

Thank you,

Tarren Collins

Law Office of Tarren Collins
PO Box 3063
Shell Beach, CA 93448
(805)773-0233

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From: Chaver, Yair@Coastal [mailto:Yair.Chaver@coastal.ca.gov]
Sent: Wednesday, April 6, 2016 4:04 PM
To: Tarren Collins <tarrencollins@charter.net>; laurie.d.cummings@gmail.com
Cc: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>; Ng, Michael@Coastal <Michael.Ng@coastal.ca.gov>
Subject: Postponement of item W11b

Dear Ms. Collins and Ms. Cummings,

Item W11b, the Rozo Appeal (A-3-PSB-15-0030), set for April 13th, 2016 has been postponed.

Please contact me with any questions or concerns you may have,

Yair

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Yair Chaver, Coastal Program Analyst

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