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W13b

Appeal Filed: 12/13/2019
Action Deadline: 2/26/2020
Staff: Katie Butler - SC
Staff Report: 1/24/2020
Hearing Date: 2/12/2020

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-PSB-19-0216

Applicant: Addie Street Land Group, Ltd.

Appellants: Commissioners Donne Brownsey and Katie Rice

Local Decision: Approved by the City of Pismo Beach Planning Commission on November 12, 2019 (City CDP Application Number P19-000034).

Project Location: On the sandy backbeach area just inland of Pismo State Beach, between Addie Street and Pismo Creek (136 Addie Street), in the City of Pismo Beach (APN 005-163-028).

Project Description: Authorize after-the-fact bedroom and deck additions and expansions, including 5 new wooden piles (previously constructed without a coastal development permit (CDP)), and construct a new raised driveway and parking deck, including 6 new concrete piles, for a single-family residence originally erected atop poles on the beach. The project also includes street widening and new street improvements over the bluff and sandy beach.

Staff Recommendation: Substantial Issue Exists

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the

appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City-approved project would authorize after-the-fact (ATF) a 195 square-foot bedroom addition and a 265 square-foot deck addition to an existing single-family residence that were previously constructed without a CDP,¹ as well as provide for construction of a new 475 square-foot raised driveway and parking deck to connect the residence to Addie Street. The project includes 11 new piles associated with the ATF and proposed development. In addition, the City-approved project includes an expansion of the portion of Addie Street that fronts the subject parcel, including a new sidewalk, curb, and gutter, and a new retaining wall and paved fill to connect to the proposed raised driveway, resulting in about 150 square feet of new beach/dune coverage onsite, and about 1,000 square feet of beach/dune coverage directly offsite (i.e., on the City's property).²

The residence was originally constructed in 1963 on piles on the backbeach dune area just inland of Pismo State Beach and directly adjacent to Pismo Creek and the Pismo Creek Estuary, lying between Addie Street and these creek areas, and is currently operated as a vacation rental often referred to as “the pole house” or “the beach house.” The appeal contends that the City’s approval of the project raises questions of consistency with the City of Pismo Beach certified Local Coastal Program (LCP) because: (1) the site is located in an area of high flood and shoreline hazards and the project was approved absent the site-specific geotechnical and engineering review required by the LCP to ensure appropriate siting and design to avoid hazard risks; and (2) the site is located within and adjacent to environmentally sensitive habitat areas (ESHA, in this case made up of dunes, wetlands, and riparian areas) and the City did not evaluate the project for consistency with the ESHA, ESHA setback and other ESHA requirements of the LCP; and (3) despite the project’s prominent location in the public viewshed, the City did not adequately evaluate it for consistency with the LCP’s requirements to protect views of the ocean, creek, and estuary.

With regard to the issue of coastal hazards, the LCP requires that all new development be sited and designed to minimize risk from such hazards by, among other means, avoiding the placement of development in high hazard areas. Specific to the 100-year floodplain, the LCP includes requirements for site- and project-specific reports that identify and address flood

¹ Thus, the project is partially to resolve Coastal Act and LCP violations related to unpermitted development. Consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to these violations.

² The approved plans also indicate an interior remodel and new bathroom, but those are not described in the City’s approval.

hazards before any new development may be allowed in such areas. The City did not require such a report, despite the site's location in the mapped flood hazard zone and in an area with a known history of flooding, and despite that fact the project includes 11 new piles in the flood zone and development above that. The City instead appears to have relied on analysis from the adjacent property to conclude that the site would be safe from coastal hazards, but then included a condition of approval that requires the Applicant to submit an engineering study *post-approval* regarding flooding related to the project site. So the City concluded, without site specific engineering or hydrologic information, that the project was consistent with LCP floodplain and coastal hazard requirements, but then conditioned the approval to require the actual requisite information to make these consistency determinations prior to issuance of the building permit but following approval of the CDP. This approach is inconsistent with clear LCP requirements for reports related to safety and flood hazards *prior* to approval of any new development in the floodplain, and is an example of impermissible "deferred mitigation" which raises a substantial issue with respect to LCP compliance.

In addition, the City did not evaluate the potential impacts of 5 ATF and 6 proposed new piles (a total of 11 new piles) and new retaining walls and fill in the floodplain. The LCP specifically prohibits new fill, structures, or other obstruction within a floodway unless a detailed hydrologic study shows that the project will not obstruct, in any way, passing floodwaters. The site has previously flooded, and the project would not only introduce new development that could obstruct floodwaters but also expand and extend the life of an existing development with a known history of same. The City also did not analyze the project against LCP provisions that prohibits new development on bluff faces and the dry sandy beach. The City-approved project would allow for both of these to occur, and it is unclear how any new development on this site can be found consistent with these shoreline coastal hazard requirements. Finally, the City did not evaluate the project's consistency with LCP requirements that prohibit shoreline protection for new development. The proposed retaining wall and 11 new piles would serve not only as structural support but also as a form of shoreline armoring under the Commission's evolving understanding of shoreline development in light of increasing coastal hazards.

With respect to ESHA, the City-approved project is located within the backbeach dunes and is adjacent to (and potentially at least partially on top of) the riparian/wetland area associated with Pismo Creek and the Pismo Creek Estuary. The LCP categorically identifies such dune and wetland/riparian resources as ESHA and requires such habitats to be protected, including through a prohibition against non-resource-dependent development in ESHA and a requirement for a minimum setback of at least 25 feet from the inland extent of riparian vegetation at this location. In its approval, the City did not evaluate the project for consistency with the LCP provisions protecting biological resources and ESHA. The site appears to constitute dune ESHA (and the Commission found the adjacent site just inland of this site with similar characteristics 100% ESHA in past analyses), but the City did not find the site to be ESHA nor otherwise mention the potential presence of ESHA at the site, nor was a wetland delineation or other biological study prepared for the project. If the site is ESHA, as it appears to be, the proposed residential and street expansions approved cannot be found consistent with the LCP's ESHA requirements,³ including because such development is not allowed in ESHA. The City also did not analyze the

³ And if the development overall constitutes redevelopment, triggering the requirement for *full* LCP compliance, then none of the development could be found LCP consistent on these points or the above coastal hazard points.

project against the minimum 25-foot riparian setback requirement nor the ESHA setback requirements. As such, the approved project raises substantial issues of conformance with LCP provisions protecting biological resources and ESHA.

Finally, the existing residence is extremely prominent from various public vantage points, including but not limited to Pismo State Beach, both up- and downcoast; from the public promenade and boardwalk that spans the downtown area shoreline; the Pismo Pier; and the Cypress Street pedestrian/bicycle trail over Pismo Creek. The City found that the proposed parking deck had the potential to intrude on scenic views and conditioned the approval for transparent railings on the proposed raised parking deck. While this could lessen the project's visual impact, the site and the existing residence's prominence in the public viewshed necessitates a more thorough evaluation of all project elements with respect to LCP requirements. The City's approved project would lead to a larger, bulkier structure overall, with the parking deck elevated in the air on piles, and with significant area of new street improvement over what is currently backbeach and vegetated areas, all within a significant public viewshed, and the LCP requires new development to be sited and designed to protect and enhance views of the ocean, creek, and estuary. As such, the approved project raises a substantial issue of conformance with the LCP's visual resource protection policies.

In short, the City's approval authorizes new development at a backbeach site that is subject to known coastal and flooding hazards, and that also raises significant ESHA (dune, riparian, and estuary) and public viewshed concerns. The full extent of hazards and ESHA impacts are not clearly defined because the City did not require the appropriate reports to be prepared prior to CDP approval. The City-authorized development would not only extend the life of the existing nonconforming structure,⁴ but it would also significantly *increase* its LCP nonconformities, all of which raises significant land use, planning, and coastal resource concerns, including in light of expected ongoing and worsening flooding and other hazards related to sea level rise. In addition, the City-approved project potentially constitutes redevelopment of an existing structure that does not conform to a myriad of LCP resource protection requirements that apply to this site, and additional review of the site's development history is needed in order to conclude on the appropriateness of the project in light of these inconsistencies.

For all of these reasons, staff believes that the City's approval raises substantial LCP conformance issues related to core LCP coastal resource protection requirements, and staff recommends that the Commission find substantial issue and take jurisdiction over the CDP application for this project. If the Commission does so, then the *de novo* hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found on page 6.

⁴ The existing residence does not conform to the LCP because, at the very least, it constitutes development on the sandy beach and seaward of the bluffs, on what appears to be ESHA, and that could be considered shoreline protection (i.e., new piles and retaining wall) when the LCP prohibits all of these things. Although originally constructed in 1963, it also appears that there have been improvements since then without the benefit of all required approvals, including CDPs (including as evidence by the ATF approvals sought here) and it is not clear that the residence enjoys legal non-conforming status. What is clear is that it could not be constructed today consistent with the LCP.

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EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Project Vicinity Map

Exhibit 3 – Photos of Project Site

Exhibit 4 – City’s CDP Final Local Action Notice

Exhibit 5 – City-approved Project Plans

Exhibit 6 – Appeal of City’s CDP Action

Exhibit 7 – Applicable LCP Provisions

I. MOTION AND RESOLUTION

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

***Motion:** I move that the Commission determine that Appeal Number A-3-PSB-19-0216 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-PSB-19-0216 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION AND BACKGROUND

The City-approved project is located in the back beach dunes between Addie Street and Pismo Creek and just inland of Pismo State Beach, approximately four blocks downcoast of the Pismo Pier near downtown Pismo Beach. The site is at the beach and creek elevation and is about five feet below the elevation of Addie Street. The site is currently developed with a single-family residence that was originally constructed in 1963 on elevated and exposed wood piles above the beach dunes, and it is currently significantly nonconforming in terms of the LCP.⁵ State Parks' Pismo State Beach unit fronts the site, and Pismo Creek is directly adjacent and downcoast. This section of the creek becomes part of the Pismo Creek Lagoon/Estuary annually in the spring/summer when beach sand builds up to close off the creek mouth, which remains closed off to the ocean until winter creek flows push open the sand berm. The site has experienced significant flooding since its construction, including as evidenced by storm photos (see **Exhibit 3**). On the inland (east) side, the project site is adjacent to a parcel that was the subject of a 2010

⁵ The existing residence does not conform to the LCP because, at the very least, it constitutes development on the sandy beach and seaward of the bluffs, on what appears to be ESHA, and that could be considered shoreline protection when the LCP prohibits all of these things. Although originally constructed in 1963, it also appears that there have been improvements since then without the benefit of all required approvals, including CDPs (including as evidence by the ATF approvals sought here) and it is not clear that the residence enjoys legal non-conforming status. What is clear is that it could not be constructed today consistent with the LCP.

Coastal Commission appeal,⁶ and on which a vacation rental was recently approved by the City in 2018 but has not yet been constructed.⁷ The terminus of Addie Street, public beach access, and a City-owned public parking lot are located adjacent and just upcoast of the project site. The project site is located in the City's Mixed Residential District, Downtown Planning Area K and is zoned R-4 (Hotel-Motel and Visitor Serving District).

The original residence was constructed as a two-bedroom residence, and according to the City, it also at one time included a ground-level garage.⁸ The residential structure was also constructed partially on the adjacent inland property, and that encroaching 125 square-foot portion of the structure was required to be removed by the City in its 2018 CDP action for the vacation rental on the adjacent parcel. A separate CDP was issued to the Applicant in 2018 for the removal.⁹ Because the residence also had been using the inland adjacent property as a parking area, the 2018 City action for the adjacent parcel also effectively eliminated that parking. At around that time, the City's code enforcement division identified that unpermitted improvements to the residence, including the addition of a 195 square-foot bedroom and additional deck area (265 square feet) on the seaward side of the structure, had occurred sometime between 2011 and 2015 without proper CDP authorization. Although the City required the Applicant to provide a complete CDP application to address the unpermitted additions within 90 days (where such application must include appropriate soils engineering reports, sea level rise analysis, FEMA floodplain certification, and a biologic survey), according to City staff, such reports were never provided by the Applicant. The current City CDP approval that has been appealed in this case is intended to provide after-the-fact approval for those unpermitted activities, in addition to not yet completed construction now proposed by the Applicant.

The residence is currently operated as a vacation rental through an arrangement with the adjacent (across the public parking lot) Sea Venture Hotel (which is located nearby at 100 Ocean View Avenue),¹⁰ and, according to the City, the residence has been operated as a vacation rental since the 1970s.

⁶ Appeal number A-3-PSB-10-062 (Koligian), for which the Commission ultimately denied a CDP for the proposed development.

⁷ City of Pismo Beach CDP P16-000090 (Coastal Commission final local action number 3-PSB-18-1306)

⁸ If the garage was ever constructed, it is no longer there, and it is unknown what, if any, CDP authorization allowed for its removal.

⁹ City of Pismo Beach CDP P18-000020 (Coastal Commission final location action number 3-PSB-18-1023), which authorized removal of a 125 square-foot portion of the subject residential structure, left the subject residence a zero-foot side setback. Commission staff commented on the proposed action to the City on June 21, 2018, prior to the Planning Commission hearing, that the structure should be further modified to bring it into conformance with the LCP-required five-foot minimum side yard setback, at a minimum. It should also be noted that the approved plans for the removal of the portion of the Applicant's house state that a new helical support pier was previously installed near the southeast corner of the residence (near the portion of the structure that was approved for removal). Those plans also reference structural details and calculations dated June 20, 1996 for shoring, bracing, and new foundation and supports. No CDP(s) appears to exist for such work, and it is unknown whether such improvements were made to the structure.

¹⁰ <https://www.seaventure.com/pismo-accommodations/vacation-rental/>

See **Exhibit 1** for a regional location map, **Exhibit 2** for a project vicinity map, and **Exhibit 3** for photos of the site and surrounding area.

B. CITY OF PISMO BEACH APPROVAL

On November 12, 2019 the City of Pismo Beach Planning Commission, by a 4-1 vote, approved a CDP for the proposed project (both after-the-fact and newly proposed development – see below). That Planning Commission approval was not appealed to the City Council, and the City’s Final Local CDP Action Notice was received in the Coastal Commission’s Central Coast District Office on December 2, 2019 (see **Exhibit 4**). The Coastal Commission’s ten-working-day appeal period for this action began on December 3, 2019 and concluded at 5pm on December 16, 2019. One valid appeal was received during the appeal period (see **Exhibit 6**).

C. PROJECT DESCRIPTION

The City-approved project includes after-the-fact authorization of a 195 square-foot bedroom addition and 265 square-foot deck expansion, and a proposed new 475 square-foot raised driveway and parking deck providing new vehicular access from adjacent Addie Street, at the existing single-family residence. The project includes five previously-installed wood piles underneath the deck and bedroom expansion as well as six new proposed concrete piles that would support the new raised driveway and parking deck.¹¹ In addition, the project includes a proposed expansion of the portion of Addie Street that fronts the entirety of the 50-foot long front property line of the subject parcel to which the new raised driveway would connect, along with a new concrete ADA-accessible sidewalk and new curb and gutter. These street improvements would extend about 20 feet from the edge of the existing Addie Street sidewalk onto bluff and sandy beach area (about 1,000 square feet of coverage on the City’s property)¹² that would be filled and delineated by a new concrete retaining wall structure under the proposed raised driveway and on the Applicant’s property. That retaining wall structure would be one-foot wide, approximately three to four feet high, and 15 feet long, for a total square footage of 150 square feet on the Applicant’s property. The approved project plans also indicate an interior remodel and new bathroom, but those are not described or analyzed in the City’s approval. See **Exhibit 5** for the City-approved project plans.

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive

¹¹ Neither the City’s approval nor the project plans identify the dimensions of the 11 piles.

¹² The approved plans are unclear as to the exact square footage of coverage on the City’s property.

coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of a beach, and within 300 feet of a wetland, estuary, and stream.

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

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

E. SUMMARY OF APPEAL CONTENTIONS

The appeal contends that the City’s approval of a CDP for the project raises questions of consistency with the City of Pismo Beach certified Local Coastal Program (LCP) because: (1) the site is located in an area of high flood and shoreline hazards and the project was approved absent the geotechnical and engineering review required by the LCP to ensure appropriate siting and design to avoid hazard risks; (2) the site is located within and adjacent to ESHA (dunes and wetlands) and the City did not evaluate the project for consistency with ESHA, ESHA setback and other ESHA requirements of the LCP; and (3) despite the project’s extremely prominent location in the public viewshed, the City did not evaluate it for consistency with the LCP’s requirements to protect views, including of the beach, ocean, creek, and marsh. See **Exhibit 6** for the full text of the appeal.

F. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The Coastal Act requires that the Commission shall hear an appeal unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (see Section 30625(b)(2)). Section 13115(c) of the Commission regulations provides that the Commission may consider, including but not limited to, the following five factors when determining if a local CDP action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.
2. The extent and scope of the development as approved or denied by the local government.
3. The significance of the coastal resources affected by the decision.
4. The precedential value of the local government's decision for future interpretations of its LCP.
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. In this case, for the reasons discussed further below, the Commission determines that the development as approved by the City presents a substantial issue.

1. Coastal Hazards

The appeal raises concerns with regard to the project's consistency with the coastal hazard provisions of the LCP, including with respect to avoiding hazard risks in the floodplain and along the shoreline. The LCP's flood hazards provisions identify Pismo Creek as one of two areas with potential flood hazards in the City, and the site is within the City's mapped floodplain overlay zone and mapped hazards overlay zone. The LCP requires that all new development be sited and designed to minimize risk from such hazards by, among other means, avoiding the placement of development in high hazard areas, or by identifying and establishing siting and design standards (including long-term development setbacks) that can appropriately minimize such risks, based upon a geologic review of all existing and potential impacts at the site. The LCP also specifically addresses the risks due to bluff and shoreline hazards. It defines bluffs and blufftops, it prohibits most new development on bluff faces, it requires adequate setbacks from bluffs. In addition, new development is not allowed where it is determined that shoreline protection and/or other shoreline altering development will be necessary for protection of the development now or at any time in the future based on at least a 100-year time frame, taking into account all relevant coastal hazards.

Specific to the 100-year floodplain, LCP Land Use Plan (LUP) Policy S-9 includes the following restrictions on development: (1) no habitable structures shall be approved within the floodplain unless the applicant demonstrates that the finished floor elevations are at least one foot above the projected elevation of the 100-year flood; (2) no new fill, structure, or other obstruction shall be permitted within a floodway unless a detailed hydrologic study has been prepared and approved

by the City Engineer ensuring that the project will not obstruct, in any way, passing floodwaters; (3) no new development shall be allowed in the 100-year floodplain which will contribute to or increase flood hazards on the same or other properties or which would require construction of flood control devices; and (4) any application for development within the 100-year floodplain shall be required to submit a hydrological engineer's report which assesses the nature of the flood risks, identifies the boundary of the 100-year floodplain, and specifies the protective measures that should be undertaken to attain compliance with the City's floodplain zoning and with FEMA regulations.

The project site is located in a backbeach area that is directly adjacent to the mouth of Pismo Creek where it outlets to the Pacific Ocean. The site is in FEMA's VE zone, which is an area subject to the 100-year coastal flood with wave velocity. In addition, coastal flooding at this location is expected to be more severe in the future due to compounding factors associated with sea level rise, and the site is also subject to tsunami hazards and liquefaction. In short, the project site is part of an active, dynamic shoreline where coastal hazard concerns are high, and where any development is in harm's way. In its approval, the City stated that the floodplain elevation is 13 feet and that project plans show the deck to be at a height of 20.5 feet. However, the City did not provide any evidence to support this statement. The City's approval goes on to state that in addition to flooding, other coastal influences, such as wave-run-up and sea level rise, contribute to the ultimate water level at the site, and that "analysis on the adjacent property indicates that a total of 18.13 feet in elevation for living area is necessary to be above the potential flood level due to these additional coastal influences." It appears from these statements that the City concluded that the project will be safe and consistent with LCP hazards requirements, but the approval also includes a condition that requires the Applicant to submit an engineering study regarding flooding related to the project site. The City also did not evaluate the ATF and new proposed piles (a total of 11 piles; 5 ATF wooden piles and 6 new concrete piles, the exact dimensions of which are not identified in either the City's approval or the project plans), nor the proposed new retaining wall and other fill associated with Addie Street improvements and the parking ramp, for potential impacts on the floodplain. LUP Policy S-9 specifically prohibits new fill, structures, or other obstruction within a floodway unless a detailed hydrologic study has been prepared that shows that the project will not obstruct, in any way, passing floodwaters. The City concluded, without site specific evaluation or information, that the project was consistent with LCP floodplain requirements, but then conditioned the approval to require submittal of the necessary information to show same prior to issuance of the building permit; information that is actually required in order to come to a conclusion that the project as designed is consistent with LCP coastal hazard policies. This approach is inconsistent with clear LCP requirements that such coastal hazard reports and analyses are required *prior* to approval of any new development in these kinds of areas, and is an example of impermissible "deferred mitigation" which raises a substantial issue with respect to LCP compliance (including by way of CEQA compliance).¹³

Furthermore, the LCP clearly requires *site-specific* reports, and therefore an analysis prepared for an adjacent property cannot be used to make determinations on the subject property. A site- and project-specific geotechnical report is necessary in order to evaluate the project for consistency

¹³ See *CBE v. City of Richmond* ((2010) 184 Cal.App.4th 70, 92-93) where deferred mitigation does not comply with CEQA, and see also Title 14 Section 13057(b)(2) of the California Code of Regulations indicating that staff report findings for approval of a CDP require feasible mitigation measures per CEQA.

with the hazards provisions of the LCP. Given the proximity of the project site to Pismo Creek and the Pacific Ocean and given the geologic conditions and hazard concerns attributable to the site, it is essential for the City to have all of the necessary information to ensure the project is sited and designed to avoid risk from hazards, and to minimize those that are unavoidable. Therefore, because the City did not require all of the necessary geotechnical information, the City did not have sufficient evidence at the time of its approval to fully analyze whether the project was designed to avoid and minimize hazards as required by the LCP.

In addition, the City did not analyze or determine consistency with LCP provisions that prohibit new development on bluff faces and permanent aboveground structures on the dry sandy beach. The City-approved project would allow for both of these to occur, and it is unclear how *any* new development on this site can be found consistent with these requirements. Further, the City did not evaluate the project's consistency with LCP requirements that prohibit shoreline protection for new development. The proposed retaining wall and 11 ATF and proposed piles would serve not only as structural support but also as a form of shoreline armoring under the Commission's evolving understanding and treatment of shoreline development in light of increasing coastal hazards. The LCP clearly prohibits such development.¹⁴ See **Exhibit 6** for the relevant LCP provisions.

As such, the City's approval of the project raises a substantial issue of conformance with the LCP's hazards provisions, including those specifically requiring adequate technical information prior to approval of a project in a hazardous location like this one, and those requiring new development to avoid and minimize risks due to hazards, and prohibiting new development on bluff faces, on the sandy beach, and that constitutes or requires shoreline protection.

2. Environmentally Sensitive Habitat Area (ESHA)

With regard to ESHA, the appeal contends that the site is within and adjacent to dunes, riparian areas, and wetlands that constitute ESHA, and that the City did not evaluate the project for consistency with any LCP provisions related to biological resources or ESHA.

The City-approved project is located within the backbeach dunes and adjacent to (and potentially on top of) the riparian/wetland area associated with Pismo Creek and the Pismo Creek Estuary. The LCP categorically identifies such dune and wetland/riparian resources as ESHA (again, see **Exhibit 7** for the relevant LCP provisions). The LCP requires ESHA to be protected, and explicitly specifies that development must comply with Coastal Act policies protecting biological resources (including Coastal Act Sections 30230, 30231 and 30240). Further, LCP Policy CO-21 requires a minimum setback of at least 25 feet from the inland extent of riparian vegetation or top of bank at this location. In its approval, the City did not evaluate the project for consistency with the LCP provisions protecting biological resources or ESHA. To begin, the site is located at the backbeach dune area transitioning to Pismo Creek Estuary habitat, and demonstrates dune ESHA characteristics. Coastal Action Section 30240 (referenced in LCP Section 17.006.0435) prohibits non-resource dependent development in ESHA, and it is not clear

¹⁴ And if the development overall constitutes redevelopment, triggering the requirement for *full* LCP compliance, then none of the development could be found LCP consistent on these points. There is insufficient information present in the City's action to be able to determine whether the proposed project constitutes redevelopment, which is yet another reason to find substantial issue.

how the City-approved project, which allows for expansion of non-resource dependent development (i.e., residence and street) in dune ESHA, can be found consistent with that prohibition. The City did not find the site to be ESHA or otherwise mention the potential presence of ESHA, nor was a wetland delineation or other biological study prepared for the project. And finally, bracketing the question of direct disturbance in ESHA (which the LCP prohibits at this location), Coastal Act Section 30240, referenced in the LCP, requires that development adjacent to ESHA and recreation areas must be sited and designed to prevent impacts to those areas. Given the proximity of beach dunes, riparian areas, Pismo Creek, and associated Pismo Creek Estuary habitat values, the City should have evaluated whether an ESHA setback (typically a minimum of 100 feet, as per the Commission's ecologist) was required at this site to address adjacency impacts as required by Coastal Act Section 30240. As such, the approved project raises substantial issues of conformance with LCP provisions protecting biological resources, including those specifically prohibiting non-resource dependent development in ESHA and otherwise requiring protection and enhancement of the dune and wetland/riparian resources present in this case, as well as policies protecting ESHA.

3. Public Views

The appeal contends that the after-the-fact additions and proposed raised driveway and parking deck and Addie Street expansions have the potential to conflict with LCP policies that require new development to be sited and designed to protect and enhance shoreline views, including of the beach, ocean, creek, and marsh, and that the City did not evaluate the project against these requirements, nor against a specific LCP policy that states that the purpose of the beach is to make available to the public, for their benefit and enjoyment forever, the scenic resources of the immediate ocean shoreline (LUP P-14). The City found that the proposed picket rails on the sides of the driveway and parking platform would intrude on scenic views due to the height of the parking structure in the front setback area. The City's approval includes a condition that the parking deck be re-designed with 90% transparent (see-through) railings. While this could lessen the project's visual impact very slightly, it only addresses said railings, and doesn't affect any of the other problematic development in the viewshed. The site and the existing residence's prominence in the public viewshed necessitate a thorough evaluation of *all* project elements against the LCP.

The existing residence is extremely prominent from various public vantage points, including but not limited to Pismo State Beach, both up- and downcoast; from the promenade boardwalk that spans the downtown area shoreline; the Pismo Pier; and the Cypress Street pedestrian/bicycle trail over Pismo Creek. The City-approved project would lead to a larger and bulkier structure overall, with the driveway and parking deck elevated into the air on piles, and a new significant expansion of Addie Street over the back beach and vegetated area currently present there, all within a significant public viewshed at a site that is at the intersection of Pismo Creek and Estuary and Pismo State Beach and its associated dunes, all of which are protected resources for, among other things, their scenic value. The LCP requires new development to be sited and designed to protect and enhance views of the ocean, creek, and estuary. In conflict with these requirements, the approved project would further obstruct and otherwise degrade public views of Pismo Creek, Pismo Creek Estuary, Pismo State Beach, and the Pacific Ocean, including as seen from the beach, the public street, and various locations along a nearby public recreation trail (even with transparent railings for the parking platform as conditioned by the City). As such, the

approved project raises a substantial issue of conformance with the LCP's visual resource protection policies.

4. The "Five Substantial Issue" Factors

When considering a CDP action for a project that has been appealed to it, the Commission must first determine whether the CDP action for such project raises a substantial issue of LCP conformity such that the Commission needs to assert jurisdiction over a the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. The Commission has in the past considered the following five factors in its decision of whether the issues raised in a given case are "substantial," now expressly set forth in Section 13115(c) of the Commission's regulations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the City's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, strongly support a conclusion that this project *does* raise a substantial issue of LCP conformance. In terms of factual and legal support, the City did not require site or project specific flooding or hazards studies or information, as required by the LCP's hazards provisions, nor ESHA and biological analyses as required by the LCP's ESHA provisions, prior to making its determination that the project would be properly sited and designed to be safe, and thus the City's conclusion in this regard is largely unsubstantiated at this time. In terms of the extent and scope of development, although it could be argued that the City-approved project is relatively minor, additional development at this site was both originally undertaken without a permit and would extend the life of the existing significantly nonconforming structure, at a location where a newly proposed structure could not be built in compliance with LCP requirements, particularly in light of expected ongoing and worsening flooding and other hazards related to sea level rise, as well as ESHA and public view considerations. Therefore, the extent and scope of development raises a substantial issue. As approved, the project could have a precedential impact on future City interpretations of its LCP with respect to shoreline hazards and redevelopment given that the City appears to have misapplied them by requiring the requisite studies and information necessary to determine LCP compliance with respect to coastal hazards policies *after* project approval, in the case of hazards, or not at all, in the case of ESHA. Further, the project did not include the requisite information necessary to determine if the project constitutes redevelopment in such a way as to require *all* development at the site to be brought in LCP conformance. In addition, the City's approval did not adequately analyze the project's impacts to ESHA, or to public views, which, given the project location directly adjacent to a public beach, are critically important coastal resources. Finally, extending the life of nonconforming development and allowing it to remain in dune ESHA that is the backbeach of Pismo State Beach and in a hazardous shoreline location (including in the 100-year floodplain) raises issues of statewide significance as these are core issues of importance for implementation of the Coastal Act vis-a-vis LCPs. Taken together, the City-approved project does not adequately address LCP coastal resource protection issues, and the five factors on the whole support a finding of substantial issue as to conformity with the certified LCP.

For the reasons stated herein, the Commission finds that Appeal Number A-3-PSB-19-0216 raises substantial LCP conformance issues in terms of hazards, ESHA, and visual resources. Therefore, the Commission finds that **a substantial issue** exists with respect to the City-approved project's conformance with the certified City of Pismo Beach LCP, and takes jurisdiction over the CDP application for the proposed project.

5. Information Needed for De Novo Review of Application

Prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the Applicant will need to provide the information necessary to evaluate the project for consistency with the LCP and with the public access and recreation policies of the Coastal Act, including in terms of the issues and omissions described above. Absent more complete information regarding the coastal hazards, ESHA, and the site development history, the Commission will not be in a position to evaluate the proposed project against these LCP and Coastal Act requirements, and does not intend to schedule a hearing until the City and/or the Applicant have developed and provided further information to bridge the analytic gaps that are currently present and associated with the proposed project. Such information includes the following:

- A current coastal hazards evaluation of the proposed project and the project site that evaluates the coastal hazard risks associated with the site, including flooding and related impacts in light of expected sea level rise and climate change impacts, and ultimately makes a determination as to the safety and appropriateness of the proposed development at this location (including as further detailed in LUP Policy S-9).
- A current biological evaluation prepared for the project site that identifies the biological resources present on and adjacent to the site, including specific habitat types and any special-status plant and animal species, and analyzes the project's potential impacts on such resources, including as related to ESHA, setbacks, avoidance and mitigation measures.
- A report clearly describing all development undertaken on the site from the time of the structure's original construction to current time, including all associated authorizations (e.g., use permits, CDPs, building permits, grading permits, variances, etc.) associated with same. Such report shall include substantial evidence in support of its conclusions, including project plans and reports, permits, and photographic evidence clearly identifying changes over the years.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS¹⁵

- Coastal Commission file for City CDP P18-000020 (Addie Street Land Group, Ltd.), Final Local Action Number 3-PSB-18-1023
- Coastal Commission file for City CDP P16-000090 (Koligian), Final Local Action Number 3-PSB-18-1306
- Coastal Commission file for Appeal Number A-3-PSB-10-062 (Koligian)

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Pismo Beach, Planning Division

¹⁵ These documents are available for review in the Commission’s Central Coast District office in Santa Cruz.