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 Staff: Katie Butler - SC
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 Hearing Date: 4/7/2022

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-PSB-22-0005

Applicant: Addie Street Land Group, Ltd.

Appellants: Commissioners Escalante and Hart

Local Government: City of Pismo Beach

Local Decision: City coastal development permit number P21-000075 approved by the City of Pismo Beach Planning Commission on December 14, 2021

Project Location: 136 Addie Street, Pismo Beach (APN 005-163-028)

Project Description: Authorize after-the-fact (ATF) bedroom and deck additions, including 5 new wood piles (previously constructed without a coastal development permit (CDP)); and authorize new construction consisting of a new raised concrete parking deck, including 7 new steel piles, and removal of an existing exterior stairway and replacement with a raised ramp that connects the parking deck to the front door, all at an existing one-story residence that is currently used as a vacation rental originally erected atop a series of piers on the beach. The project also includes ATF improvements in the Addie Street right-of-way that provide a connection for the new raised parking deck.

Staff Recommendation: Substantial Issue Exists

IMPORTANT HEARING PROCEDURE NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request

it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

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/vacation rental that were previously constructed without a CDP,¹ as well as provide for construction of a new 490 square-foot raised driveway and parking deck to connect the residence to Addie Street and a new raised ramp to connect the parking deck to the front door. The project includes 5 ATF wood piles associated with the unpermitted residence additions and 7 proposed steel piles for the proposed parking deck. 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).^{2,3}

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 "Beach House." 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)

¹ Thus, the project is partially to resolve Coastal Act and LCP violations related to unpermitted development. The Commission has an open violation case pertaining to those violations. 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 Photos submitted with the City's approval (and confirmed by Commission staff site visit) indicate that such improvements (specifically, road widening and a new retaining wall) in the Addie Street right-of-way and in the sandy beach area have already occurred. Absent a CDP, such development appears to be unpermitted, and would be considered ATF as well if part of the City's action here.

³ The approved plans also indicate an interior remodel and new bathroom, but those are not described in the City's approval.

because: (1) the site is located in an area of high flood and shoreline hazards and it does not appear that the project has been adequately designed to minimize hazards consistent with the LCP or that the City adequately evaluated the project for conformance with the LCP's strict restrictions on development in this area; (2) the site is located within and adjacent to ESHA (dunes and wetlands) and the City did not adequately 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 adequately evaluate it for consistency with the LCP's requirements to protect views, including of the beach, ocean, creek, and marsh.

After reviewing the local record, staff recommends that the Commission find the City's CDP approval raises substantial issues of LCP conformity and take jurisdiction over the CDP for the proposed project. As explained in more detail in the remainder of this report, 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 City-authorized development would not only extend the life of the existing nonconforming structure, 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* portion of the 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 5 below.

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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 – City’s Response to Appeal
- Exhibit 8 – Applicable LCP Provisions

1. 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-22-0005 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-22-0005 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.*

2. FINDINGS AND DECLARATIONS

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.⁴ 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

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 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.

subject of a 2010 Coastal Commission appeal,⁵ and on which a vacation rental was recently approved by the City in 2018 and has recently been constructed.⁶ 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.⁷ The residential structure was also constructed partially on the adjacent inland property, and the 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.⁸ 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. The City required the Applicant to provide a complete CDP application to address the unpermitted additions within 90 days (where such application was required to include appropriate soils engineering reports, sea level rise analysis, FEMA floodplain certification, and a biologic survey). The CDP application lacked these LCP-required reports and information but the City approved the CDP regardless in November 2019.⁹ That approval was intended to provide after-the-fact authorization of the unpermitted activities, in addition to the proposed parking deck. That CDP decision was appealed to the Coastal Commission, and was subsequently set for a substantial issue hearing in February 2020.¹⁰ The Applicant withdrew their CDP application with the City prior to the hearing, citing the need to prepare the LCP-required reports necessary for project

⁵ Appeal number A-3-PSB-10-062 (Koligian), for which the Commission denied a CDP for the proposed development.

⁶ City of Pismo Beach CDP P16-000090.

⁷ If the garage was ever constructed, it is no longer there, and it is unknown what, if any, CDP authorization allowed for its alleged construction or removal.

⁸ City of Pismo Beach CDP P18-000020 authorized removal of a 125 square-foot portion of the subject residential structure, leaving the subject residence with a non-conforming 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 CDPs appear to exist for such work, and it is unknown whether such improvements were made to the structure.

⁹ City of Pismo Beach CDP P19-000034.

¹⁰ Appeal number A-3-PSB-19-0216.

evaluation, and mooted the appeal. The Applicant submitted a new CDP application to the City in 2021 with supplemental studies, and the City's approval of that application is the subject of the current appeal.

The residence is currently operated as a vacation rental through an arrangement with the adjacent (upcoast of the public parking lot) Sea Venture Hotel (which is located at 100 Ocean View Avenue),¹¹ and, according to the City, the residence has been operated as a vacation rental since the 1970s.

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 December 14, 2021 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 January 19, 2022 (see **Exhibit 4**). The Coastal Commission's ten-working-day appeal period for this action began on January 20, 2022 and concluded at 5pm on February 2, 2022. One valid appeal was received during the appeal period (see **Exhibit 6**).

C. Project Description

The City-approved project includes after-the-fact (ATF) authorization of a 195 square-foot bedroom addition and 265 square-foot deck expansion; a proposed new 490 square-foot raised driveway and parking deck providing new vehicular access from adjacent Addie Street; and proposed removal of an existing exterior stairway and replacement with a raised ramp that connects the parking deck to the front door, at the existing single-family residence. The project also seeks to permit ATF five previously-installed 12-14-inch diameter wood piles underneath the deck and bedroom expansion as well as seven new proposed 10-inch diameter steel piles that would support the new raised driveway and parking deck.

In addition, the project includes improvements in the Addie Street right-of-way fronting the entirety of the 50-foot long front property line of the subject parcel that would provide a connection for the new raised parking deck, along with a new concrete ADA-accessible sidewalk and new curb and gutter.¹² Project plans show that the 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 these bluff and beach areas)¹³ that would be filled and delineated by a new concrete

¹¹ See <https://www.seaventure.com/pismo-accommodations/vacation-rental/>.

¹² Photos submitted with the City's approval and Commission staff photos (see **Exhibit 3**) indicate that such improvements (specifically, road widening and a new retaining wall) in the Addie Street right-of-way and in the sandy beach area appear to have already at least partially occurred. Absent a CDP, such development appears to be unpermitted, and would be considered ATF as well if part of the City's action here.

¹³ The approved plans are unclear as to the exact square footage of coverage in this area.

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 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 CDP decision is appealable to the Commission 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.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.¹⁴ At this stage, the Commission may only consider issues brought up by

¹⁴ The term substantial issue is not defined in the Coastal Act. Rather, the Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on

the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it. If not, then a substantial issue is found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

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 it does not appear that the project has been adequately designed to minimize hazards consistent with the LCP, or that the City adequately evaluated the project for conformance with the LCP's strict restrictions on development in this area; (2) the site is located within and adjacent to ESHA (dunes and wetlands) and the City did not adequately evaluate the project for consistency with ESHA, ESHA setback and other ESHA requirements of the LCP; and (3) despite the project's extremely prominent

which the appeal was filed under Section 30603 (Section 30625(b)(2)). And the Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue..." (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR Section 13115(c) also provides that the Commission may consider the following five factors when determining if a local 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; and 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, and may make a substantial issue determination for other reasons as well.

location in the public viewshed, the City did not adequately 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

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, and 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. See **Exhibit 8** for the relevant LCP provisions.

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 AE 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. The field investigation undertaken for the site and described in the Applicant's soils engineering report (GeoSolutions, Inc. 2021) concluded that the upper approximately 15 feet of the site is dune sands, which are

underlain with interbedded layers of alluvial soils (sands, silts, and clays) associated with the Pismo Creek Estuary. The report found that the primary geotechnical concerns at the site are the potential for liquefaction-induced ground settlement and surface manifestation of sand boils; potential for groundwater seepage; and the presence of loose surface and subsurface soils. 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.

The wave run-up report prepared for the project indicates that the 100-year flood elevation is +15.87 feet NAVD88,¹⁵ the 100-year wave run-up elevation is +17.87 feet NAVD88, and that a flood event in Pismo Creek in conjunction with a wave run-up event could cause a surge that would raise water to +19.87 feet NAVD88. The report recommends that the residence should be designed to incorporate living areas above these elevations, and notes that at these elevations, Addie Street, the adjacent parking lot, and other surrounding buildings will be flooded. Project plans show the finished floor elevation of the residence to be at elevation +20.5 feet NAVD88. In its approval, the City concluded that at the 20.5-foot elevation, the project meets the requirement of the report, but it failed to analyze the project against the applicable LCP requirements. LUP Policy S-9 specifically prohibits habitable structures in the 100-year floodplain unless the finished floor elevation is at least one foot above the projected elevation of the 100-year flood. In this case, the minimum elevation required by the LCP would be 20.87 feet, and the residence and deck additions, at 20.5 feet, do not meet this requirement.

In addition, the soils engineering and geotechnical report prepared for the project (GeoSolutions, Inc. 2021) concluded that the site is suitable for the project (portions already constructed and proposed) provided a number of recommendations are incorporated into the project plans and specifications. Most notably, the report recommends that the residence be supported by driven steel piles or high-capacity helical piles driven to a depth of approximately 60 feet below ground surface given the existing conditions at the site (namely, soft soils and potential for earthquake-induced settlements, lateral displacements, and scour from a flood event associated with Pismo Creek). The ATF addition to the residence is supported by five wood piles and the proposed new parking deck would be supported by seven steel piles. The City's analysis noted that the proposed new steel piles were consistent with the report's recommendations (although it is unclear whether or not the piles would be driven to the depth recommended by the report and whether or not other technical specifications recommended by the report would be met). With respect to the five ATF wood piles, the City only stated that they already existed, and did not provide any analysis. LUP Policy S-9 requires the preparation of a geotechnical report for development in the floodplain that specifies the protective measures that should be undertaken to attain compliance with floodplain requirements. The City did not evaluate the full project for consistency with this requirement, and it appears as though the project is at least partially

¹⁵ NAVD88 is the North American Vertical Datum of 1988, and it is the vertical control datum of orthometric height established for vertical control surveying in the United States based on the general adjustment of the North American Datum of 1988. The published NOAA datum used for the project site is from Port San Luis (9412110). Zero NAVD88 is approximately -2.72 feet in terms of mean sea level. As a result, +15.87 feet NAVD88 is approximal 13.15 feet above mean sea level.

inconsistent given that the City did not condition the CDP or otherwise require that all piles be the type recommended by the report.

Furthermore, the City also did not evaluate the ATF and new proposed piles 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. Policy S-9 also prohibits new development where it will contribute to or increase flood hazards on the same or other properties or which will require construction of flood control devices. Neither the soils engineering/geotechnical report nor the wave run-up analysis prepared for the project provide any site-specific evaluation or information on these points, and the City only concluded that no enclosed floor area is proposed at ground level and the support system is open to allow floodwaters to circulate unimpeded and will not create displacement of water levels. Absent an analysis of potential flooding risks, including as related to the newly-constructed residential structure immediately adjacent (i.e., within five feet) to the subject residence, and potential future protective measures (particularly in light of sea level rise and increasing intensity of storms and associated coastal hazards), the project's consistency with these aspects of the LCP's floodplain requirements is unclear.

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 12 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.¹⁶

In sum, it does not appear that the project has been adequately sited and designed to minimize hazards consistent with the LCP, or that the City adequately evaluated the project for conformance with the LCP's strict restrictions on development in this area. Given the proximity of the project site to Pismo Creek and the Pacific Ocean, the geologic conditions of the site, and the hazard concerns attributable to the site (including known flooding history), such design and evaluation is critical to avoid hazards risks, and to minimize those that are unavoidable.

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 new development to avoid and minimize risks due to hazards, and prohibiting new

¹⁶ 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.

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 8** 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 properly 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 it demonstrates dune ESHA characteristics (and indeed, the project's geotechnical report identified the first 15 feet of the site as dune sands). Coastal Action Section 30240 (referenced in LCP Section 17.006.0435) prohibits non-resource dependent development in ESHA, and it is not clear how the City-approved project, which allows for expansion of non-resource dependent development (i.e., residence and street improvements) in dune ESHA, can be found consistent with that prohibition. The biological report prepared for the project stated that no wetland indicator species were observed during a one-day visual survey of the site (while acknowledging that a full wetland delineation was not undertaken) and did not mention or describe the presence or absence of dune habitat. Based on this report, the City did not find the site to be ESHA or otherwise mention the potential presence of ESHA, but only found that the natural site vegetation had been previously disturbed and the site possessed reduced habitat value. The City also did not make findings related to Pismo Creek, creek vegetation, and the LCP-required setback, nor any findings or requirements regarding restoration for site disturbance.

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 at least 100 feet, as per the Commission's ecologist team) 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 ATF additions and Addie Street expansion and the proposed raised driveway and parking deck 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 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.¹⁷

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. City's Response to Appeal

On March 11, 2022, the City provided a response to the appeal contentions, including as related to flooding/wave runup, ESHA, and public views (see **Exhibit 7**). In general, the City's letter does not provide any significant new information, and the City continues to assert that the ATF and proposed project elements are consistent with the LCP. At a fundamental level, the City's letter only underscores the differing LCP interpretations and project complexities that warrant Commission consideration of the project in a *de novo* review. First, the City disagrees that the LCP prohibition against aboveground structures on the sandy beach applies in this case because the site is located beyond

¹⁷ Particularly should the residence be understood as redeveloped and thus all of it be evaluated against the LCP as if it were new.

the wave run-up area of the open beach and the site “consists of stabilized soil adjacent to loose sand that temporarily shifts onto the site due to lack of foredunes caused by frequent beach access across the lots directly to the west of the project site.” As described above under ‘Coastal Hazards,’ the Applicant’s soils engineering report concluded that the upper approximately 15 feet of the site is dune sands. Furthermore, proximity to the immediate wave run-up area of the beach or purported disruption of the dunes by heavy public use do not in some way dictate presence or location of dry sandy beach or negate that the site is comprised of sandy material and subject to this provision.

Next, the City states that the site is developed with an existing structure that has already been designed to minimize risk from coastal hazards, and to avoid effects that contribute to increased flood hazards on this or other properties because it is elevated on piles. Regardless of whether or not a structure already exists on the site, the ATF and proposed project amounts to new development that must be evaluated against the applicable LCP policies that require hazards and flooding-related risk avoidance. And as discussed above, the existing structure is non-conforming under the LCP, and it is not clear that it enjoys any legal non-conforming status given an unknown history of improvements without CDPs. So, reliance on the fact that an elevated structure already exists at the site to conclude that development that would expand and extend the life of that structure is somehow safe does not follow the LCP-required analysis for all new development in such hazardous locations. The fact that a structure already exists on the site and it is elevated on piles does not somehow by extension make it safe from coastal hazards. And perhaps most importantly, it is unclear whether the entire structure should be considered as redeveloped and thus the entirety of it subject to the LCP’s coastal hazards provisions. This is a key analytic step missing from the City’s analysis.

Also with respect to hazards, the City states that the combined 100-year flood elevation and wave run-up level of +19.87 feet NAVD88 is the incorrect elevation to use for evaluation of flooding risks and that only the 100-year Pismo Creek flood event elevation of +15.87 feet is appropriate. In making this argument the City argues that evaluation of Pismo Creek flooding alone (i.e., and not to include the effects of ocean storms and sea level rise) is all that is required by the LCP. However, the LCP, like the Coastal Act from which it derives its statutory authority, requires that risks be minimized in light of these hazards, and it is appropriate to evaluate these risks as they present themselves, including at a location such as this which is subject to both creek and ocean influences, particularly during a major winter storm event. In such an analysis, it is appropriate to understand not only creek flooding, but also the potential effects of creek flooding when combined with ocean-related impacts and multipliers, including sea level rise over time.

On ESHA, the City states that the existing development on the site is approximately 85 feet from the creek bank and approximately 35 feet from the nearest riparian vegetation. Neither the biological report prepared for the project nor the City’s staff report describes riparian vegetation in relation to the site, and it’s unclear how this was determined. The City’s letter reiterates that no wetland indicator species were found on the site, but again fails to note that a full wetland delineation was not performed.

On public views, the letter reiterates the CDP findings that the ATF and proposed development meet the required setbacks and states that the raised parking deck would create no further impact to the view than any other driveway at street level. This is simply not true – as described above under ‘Public Views,’ the raised parking deck, as well as the ATF additions to the residence, would create a larger and bulkier structure overall at a highly visually prominent location that boasts expansive views of the beach and coastline. And finally, the City asserts that the project, including the street improvements and new onsite parking, would improve overall public access at this location. However, the public had access along the Addie Street frontage on this site before, and It is not clear that the improvements identified actually enhance such access, including as they create a potential barrier to public access by introducing a driveway (with vehicular back and forths) where no such impediment existed before. In addition, it appears that they were not permitted, and thus not evaluated for LCP consistency, and it is not clear that these improvements, that extended Addie Street structurally over the edge of the bluff and onto the sand, were even approvable under the LCP.

5. The “Five Substantial Issue” Factors

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over 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. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial 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; and 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, and may find substantial issues for other reasons. In this case, these five factors, considered together, support a conclusion that the City’s approval of CDP for this project does raise substantial LCP conformance issues.

In terms of factual and legal support, the applicant’s geotechnical report identified extensive potential hazards related to the site given its location and provided recommendations for the development that would address and/or reduce risks of such hazards, as required by the LCP. The City, however, did not condition or otherwise require the project to comply with all of the report’s recommendations, including most notably the recommendation that the residence be supported by deep, high strength piles. But even that recommendation raises issues of LCP conformity in terms of shoreline armoring and addressing coastal hazards via structural means. In addition, the City did not analyze hazards issues for the street infrastructure improvements fronting the site nor with respect to redevelopment, including how cumulative permitted and unpermitted improvements to the home would affect LCP coastal hazards

consistency. And with respect to ESHA, the biological report prepared for the project, on which the City based its ESHA findings and conclusions, inadequately addressed the habitat characteristics of the site, including (among other reasons) by not mentioning the presence or absence of dune habitat. As such, the City's conclusions that the project has been both properly sited and designed to be safe from hazards and would not result in ESHA impacts, consistent with the LCP, is largely unsubstantiated and the degree of factual and legal support for the City's decision strongly supports a determination that the appeal raises a substantial issue.

As to the second factor (the extent and scope of the development as approved by the City), 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. The second factor thus also suggests a substantial issue.

Regarding the third factor, the site is located in a dynamic and prominent coastal setting, in and adjacent to Pismo State Beach, Pismo Creek, and dune and potentially wetland habitat, where these resources in addition to public views, recreational access, and concerns about public hazards all come into play. These coastal resources, particularly when taken together, constitute significant coastal resources in the eyes of the LCP and Coastal Act. Therefore, the third factor supports a finding of substantial issue as well.

Regarding the fourth factor, allowing a project to be only partially consistent with the LCP's explicit flood requirements and prohibition against development in ESHA, for example, would create adverse precedent for future interpretation of the LCP. Such a precedent could lead to additional new development in the floodplain and hazards-prone areas which is especially problematic given increasing concerns regarding sea level rise, climate change-related storm intensification, and related erosion and flooding. Therefore, the fourth factor also supports a finding of substantial issue. 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.

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-22-0005 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.

6. Violation

Violations of the LCP exist on the subject property including, but not limited to development previously constructed without CDPs. Said development includes a 195-square-foot bedroom addition; 265-square-foot deck addition; five 12-14-inch-diameter wood piles to support the residence additions; and improvements in the Addie Street right-of-way that 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 of the City's right-of-way property on the bluff and beach)¹⁸ that was filled and delineated by a new concrete retaining wall structure under the proposed raised driveway area and 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 and such work absent a CDP may also constitute further violations of the LCP. It also appears that there may well have been a series of improvements at the site for which the Commission has found no record of a CDP, including improvements that might be applicable in determining whether the residence has been or would be through this CDP redeveloped, which would require that it be considered as a new replacement structure overall in terms LCP and Coastal Act conformance.

Although development took place prior to submission of a CDP application to the City, consideration of the City's action on the application by the Commission has been based solely upon the LCP. Commission review of the City's action does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a CDP. Accordingly, the applicant remains subject to enforcement action for engaging in unpermitted development, unless and until the violations are fully resolved through CDP authorization, enforcement action, or other legal means.

¹⁸ The approved plans are unclear as to the exact square footage of coverage on the City's property.

3. APPENDICES

A. Substantive File Documents¹⁹

- 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)
- Coastal Commission file for Appeal Number A-3-PSB-19-0216 (Addie Street Land Group, Ltd.)

B. Staff Contact with Agencies and Groups

- City of Pismo Beach Planning Division

¹⁹ These documents are available for review in the Commission's Central Coast District office.