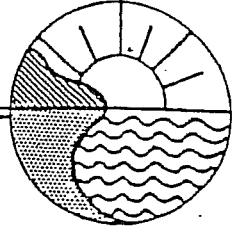


AGENDA



Planning Commission – City of Pacifica

DATE: September 8, 2009
LOCATION: Council Chambers, 2212 Beach Boulevard
TIME: 7:00 PM
ROLL CALL:
SALUTE TO FLAG:
ADMINISTRATIVE BUSINESS:

Approval of Order of Agenda

Approval of Minutes: August 17, 2009

Designation of Liaison to City Council Meeting of: September 14, 2009

CONSENT ITEMS:

PUBLIC HEARINGS:

1. HLD-06-09 **HISTORIC LANDMARK DESIGNATION**, filed by the applicant, City of Pacifica, to designate Sharp Park Golf Course as an Historic Landmark (APN's 016-430-020 & 016-441-020) Recommended CEQA status: Exempt. Proposed Action: Table to a date uncertain (Continued from August 17, 2009)
2. UP-006-09 **USE PERMIT and VARIANCE**, filed by the agent, Charnel James, on behalf of the applicant, Verizon Wireless, and the owner, City of Pacifica, to extend an existing police station monopole and add nine wireless communications antennas, two GPS antennas and related equipment at 2075 Coast Highway, Pacifica (Assessor's Parcel Number 018-051-050). Recommended CEQA status: Exempt. Proposed action: Approval as conditioned (Continued from August 17, 2009)
PV-500-09
3. CDP-316-09 **COASTAL DEVELOPMENT PERMIT**, filed by the owner and applicant, Penny Keating of the Shoreside Residents Association, to legalize an existing chain link fence along Shoreside Drive, Pacifica (APN 023-730-200). The project is located in the Coastal Zone. Recommended CEQA status: Exempt. Proposed action: Approval as conditioned

OTHER AGENDA ITEMS:

COMMUNICATIONS:

Commission Communications:

Staff Communications:

Oral Communications:

This portion of the agenda is available to the public to address the Planning Commission on any issue within the subject matter jurisdiction of the Commission that is not on the agenda. The time allowed for any speaker will be three minutes.

ADJOURNMENT

Anyone aggrieved by the action of the Planning Commission has 10 calendar days to appeal the decision in writing to the City Council. If any of the above actions are challenged in court, issues which may be raised are limited to those raised at the public hearing or in written correspondence delivered to the City at, or prior to, the public hearing. Judicial review of any City administrative decision may be had only if a petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.

The City of Pacifica will provide special assistance for disabled citizens upon at least 24-hour advance notice to the City Manager's office (738-7301). If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

NOTE: Off-street parking is allowed by permit for attendance at official public meetings. Vehicles parked without permits are subject to citation. You should obtain a permit from the rack in the lobby and place it on the dashboard of your vehicle in such a manner as is visible to law enforcement personnel.

CITY OF PACIFICA

MEMORANDUM

DATE: September 8, 2009

TO: Planning Commission

FROM: Michael Crabtree, Planning Director 

SUBJECT: **Agenda Item No. 1** – Designation of Sharp Park Golf Course as an Historic Landmark (APN's 016-430-020 & 016-441-020) **HLD-06-09**

On July 20, 2009, the Planning Commission considered designation of Sharp Park Golf Course as an Historic Landmark. The Commission took extensive public testimony during the public hearing, then closed the public hearing and began deliberations. Due to the lateness of the hour, the matter was continued to the meeting of August 17, 2009. However, the matter was again continued to the meeting of September 8, 2009 to allow more time for the property owner (City and County of San Francisco) to respond to the proposed designation.

As the Commission is aware, the San Francisco Recreation and Park Department is in the midst of conducting a study evaluating the future of the Golf Course. The Recreation and Park Department recently sent a letter to the San Francisco Board of Supervisors requesting more time to complete the study. According to sfgate.com, "the department said it needs more time for three reasons: to explore financing for the restoration, to clarify the long term impacts of sea rise on the park and to "develop a set of options for partnership opportunities with (Golden Gate National Recreation Area) and City of Pacifica."" Staff does not believe a time frame for completion of the study has been set.

Although staff believes that the issues identified above are ultimately not germane to the Golf Course's qualification for local landmark status, it does seem appropriate and reasonable to allow San Francisco time to complete its studies prior to taking action on the proposal for landmark designation. Therefore, staff recommends that the Planning Commission defer action on the proposal for landmark designation. When the matter is ready for reconsideration by the Commission, the matter will be renoticed and the public hearing will be reopened.

As of this writing, staff has not received anything in writing from the City and County of San Francisco indicating its position regarding the proposed landmark status. If such is received prior to tonight's meeting it will be forwarded to the Commission. However, several pieces of

correspondence (letters and emails) have been received and are attached hereto. The Commission may consider these communications when the matter is rescheduled for consideration.

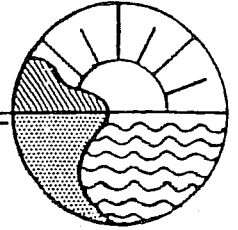
COMMISSION ACTION

Move that the Planning Commission TABLE consideration of HLD-06-09 to a date uncertain.

Attachments:

1. Letters (3) and Email correspondence (22)

STAFF REPORT



PLANNING COMMISSION-CITY OF PACIFICA

DATE: September 8, 2009

ITEM: 2

PROJECT SUMMARY/RECOMMENDATION AND FINDINGS

Notice of Public Hearing was published in
The Pacifica Tribune on August 5, 2009.
14 surrounding property owners were
notified by mail.

FILE: UP-006-09
PV-500-09

APPLICANT: Verizon Wireless
2785 Mitchell Drive Ste 9
Walnut Creek, CA 94598

AGENT: Charnel James
12647 Alcosta Blvd Ste 110
San Ramon, CA 94583

OWNERS: City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

LOCATION: 2075 Coast Highway

APN: 018-051-050

PROJECT DESCRIPTION: Proposal to extend existing police station monopole and add nine (9) wireless communications antennas and two (2) GPS antennas with associated equipment.

General Plan: Commercial

Zoning: C-1 (Neighborhood Commercial District)

**RECOMMENDED
CEQA STATUS:** Exempt Section 15303 (d)

**ADDITIONAL
REQUIRED
APPROVALS:** None

**RECOMMENDED
ACTION:** Approval as conditioned

PREPARED BY: Lily Lim, Planning Intern

ZONING STANDARDS CONFORMANCE:

<u>Standards</u>	<u>Min./Max.</u>	<u>Existing</u>	<u>Proposed</u>
Monopole Height	35' (max.)	50'6"	86'
Antenna Area (Verizon Only)	N/A	N/A	17.84 s.f.
Setback to Property Line	25' (min.)	~70'	No Change

PROJECT SUMMARY

A. STAFF NOTES:

1. Background: The proposed project was scheduled and noticed for Planning Commission review on August 17, 2009; however, staff was awaiting submittal of missing materials.

1. Existing Site Conditions: The subject site is approximately 5 acres in size and is located along the east side of Highway 1 and north of Reina Del Mar. The site is relatively flat and contains an 18,000 square foot, one story building which holds the Pacifica Police Department and two parking lots. Landscaping and trees surround the east and south portions of the property. There is an existing 50 foot high monopole with police station antennas located at the top. The height of the existing monopole and antennas exceed the maximum allowable height limit; however, a permit was not necessary for wireless facilities related to public safety and/or emergency services.

2. Project Description: The applicant proposes to extend the existing police station monopole and install nine wireless communication facility panel antennas. Currently, the police station monopole is located 50 feet 6 inches above grade and the total height of the existing antennas is 71 feet above grade. The existing antennas will be raised 15 feet for a total height of 86 feet above grade. The proposed Verizon Wireless antennas will be placed on the monopole 50 feet above grade below the proposed relocation of the existing antennas. In addition, two GPS antennas will be located on the proposed equipment cabinet. The two GPS antennas are 1 foot in height and the equipment cabinet is 11 feet in height. The cumulative antenna area for all panel antennas and GPS antennas will be 17.84 square feet. Access to the facility will be through an existing paved path which leads to a parking lot used by the Pacifica Police Department.

3. General Plan, Zoning, and Surrounding Land Use: The General Plan designation for the subject property is Commercial and the zoning classification is C-1 (Neighborhood Commercial District). Surrounding land uses include Highway 1 to the west, vacant uses to the north and east and commercial uses to the south.

4. Municipal Code and Regulatory Standards: Verizon Wireless is a public utility regulated by the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC). Pursuant to the Pacifica Municipal Code, a Use Permit is required for all ground-mounted antenna structures and associated equipment facilities. The applicant is proposing to add nine (9) antennas and two (2) GPS antennas with a cumulative area of 17.84

square feet to the existing police station monopole; therefore a Use Permit is necessary. Additionally, a Variance is required to exceed the maximum allowable height limit of 35 feet. The Code also requires that the antennas must be setback 25 feet from any property line or public right-of-way. The proposed antennas will be on an existing monopole set back more than 25 feet from the property line.

5. Use Permit: The Planning Commission shall grant approval of a Use Permit for a wireless communications facility only when all of the following findings are satisfied:

- A. That the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City;
- B. That the use or building applied for is consistent with the applicable provisions of the General plan and other applicable laws of the City and, where applicable, the Local Coastal Plan; and
- C. Where applicable, that the use or building applied for is consistent with the City's adopted Design Guidelines.
- D. That the project will not cause localized interference with reception of area television or radio broadcasts or other signal transmission or reception.
- E. That the information submitted proves that a feasible alternate site that would result in fewer visual impacts does not provide reasonable signal coverage.
- F. That the application meets all applicable requirements of Section 9.4.2608 of the Pacifica Municipal Code.

6. Variance: The Planning Commission shall grant a Variance only when all of the following findings are made:

1. That because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
2. That the granting of such Variance will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the subject property and will not, under circumstances of the particular case, be materially detrimental to the public welfare or injurious to the property or improvements in the area;
3. Where applicable, that the application is consistent with the Design Guidelines

On the basis of such findings, the Commission may grant, conditionally grant, or deny the application for a Variance.

In addition to complying with the above requirements and findings for a Variance, the following findings must be met as determined by the Planning Commission:

1. That the strict application of the ordinance prevents or imposes unreasonable limitations on the provision of wireless communication services;
2. That the standards as set forth in this chapter have been met to the maximum extent feasible.

7. California Environmental Quality Act: Staff recommends that the Planning Commission find this project is exempt from CEQA pursuant to the following sections of the California Environmental Quality Act:

15303. New Construction or Conversion of Small Structures: Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.

Examples include but are not limited to:

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

The proposed panel antennas will be a utility extension; furthermore, the proposed antennas will not increase the number of monopoles. Additionally, there are existing antennas at the project location. All existing equipment areas have minimal visual impacts because they are located behind an existing building.

8. Staff Analysis

Use Permit: A Use Permit is required for the proposed Verizon Wireless antennas per Section 9-4.2606 of the Pacifica Municipal Code. Presently, the parcel is being used as a site for the Pacifica Police Department. The proposed use and existing use are both consistent with the General Plan designation, zoning and all other applicable laws of Pacifica. It does not appear that the new antennas will interfere with the reception of signal transmission or reception in the area. No alternative sites could have minimized visual impacts further than the current proposal because of the existing police station antennas.

Variance: A Variance is required to exceed the maximum height limit of 35 feet. The existing police station monopole is 50'6 inches. In order to provide adequate coverage, the applicant has proposed to place the Verizon Wireless antennas at the location where the existing police station antennas are currently located. Raising the existing police station antennas will not require a Variance according to Section 9-4.2606 (a) of the Pacifica Municipal Code which states that all wireless communication facilities which are related to public safety and/or emergency services are exempt from additional permits. The proposed antennas will be placed 50 feet above grade;

however, the proposed antennas are not related to public safety and/or emergency services therefore a Variance is required.

Staff believes that the proposed Verizon Wireless antennas would not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the subject property and will not, under circumstances of the particular case, be materially detrimental to the public welfare or injurious to the property or improvements in the area. Furthermore, staff feels that the proposed project is consistent with the City's Design Guidelines.

Design: The Design-Related Standards specify that "all wireless communications facilities shall be screened to the fullest extent possible and located to minimize visibility from surrounding areas and rights-of-way." Further, "the use of colors and facility designs shall be compatible with surrounding buildings and/or uses in the area or those likely to exist in the area and shall prevent the facility from dominating the surrounding area."

Photo simulations have been submitted illustrating the proposed antennas on the existing monopole. The proposed antennas will be located below the existing police station antennas; however the police station antennas will be raised 15 feet from their current location. The current monopole is partially screened by the existing one story building but is still visible from Highway 1 and Reina Del Mar. The proposed antennas and monopole extension will be painted to match the existing white monopole and police station antennas. Although the existing antennas are visible from the public right-of-way, the addition of Verizon Wireless antennas will not create a substantial visual impact to those driving along Highway 1 and Reina Del Mar. Furthermore, the proposed equipment cabinet and GPS antennas will be fully screened by the existing building and existing landscaping.

RF Report: According to the Radio Frequency (RF) Report submitted by the applicant, the RF exposure level for the proposed project will have a minimal impact and therefore, will not be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City. The report states that the cumulative radio frequency electromagnetic fields for the proposed antenna will be 3.6% of the applicable public exposure limit allowable by the FCC.

9. Summary: Based on the information the applicant has provided, it appears that the proposal to extend the existing police station monopole and add nine (9) wireless communications antennas and two (2) GPS antennas with associated equipment at an existing police station wireless communications facility would not be detrimental to the health, safety and welfare of those residing or working in the neighborhood. Because the existing monopole has been screened to the maximum extent feasible, the new antennas would also have minimal visual impact on the site. Additionally, the proposed equipment cabinet will be located in an area with existing police station equipment; therefore no landscaping will be removed. Furthermore, the project is consistent with the City's Design-Related Standards for wireless communications facilities. Staff believes that the findings for a Use Permit and Variance can be made.

RECOMMENDATION AND FINDINGS

B. RECOMMENDATION:

Staff recommends that the Planning Commission approve Use Permit, UP-006-09 and Variance, PV-500-09, to extend an existing police station monopole and add nine (9) antennas and two (2) GPS antennas and related equipment, subject to the following conditions:

Planning Department:

1. Development shall be substantially in accord with the plans entitled “Verizon Wireless, HWY 1 & South Pacifica, 189790” consisting of eight (8) sheets dated April 16, 2009 except as modified by the following conditions:
2. All outstanding and applicable fees associated with the processing of this project shall be paid prior to the issuance of a building permit.
3. The applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Planning Director’s satisfaction prior to approval of a building permit.
4. The applicant shall hereby agree to indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter “City”) from any claim, action or proceeding (hereinafter “Proceeding”) brought against the City to attack, set aside, void or annul the City’s actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and /or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the applicant’s project. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, City, and /or parties initiating or bringing such Proceeding. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

Building Department:

5. Structural calculations shall be required for the monopole extension.

Engineering Department:

6. All trench detail and restoration shall be per City Standards and to the satisfaction of the City Engineer. City Standard drawing for trench backfill and restoration shall be included in the plans and referenced on the Site Plan.
7. Applicant shall slurry seal the portion of the parking lot within the construction area to the satisfaction of the City Engineer. Slurry specification shall be obtained from the City Engineer's office. All pavement striping and markings to be replaced in kind.

C. FINDINGS:

1. Findings for Approval of a Use Permit: The Planning Commission finds that the proposal to extend the existing police station monopole and add nine (9) wireless communications antennas and two (2) GPS antennas with associated equipment at an existing police station wireless communications facility would not be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or the general welfare of the City. The Commission finds that the proposal is consistent with the applicable provisions of the General Plan and other applicable laws of the City. Specifically, the Commission finds that the project meets all Zoning Code requirements and complies with the applicable provisions of the Design Guidelines.

2. Findings for Approval of a Variance: The Planning Commission finds that a special circumstance applies to the subject property, which necessitates the need for a Variance for the nine (9) Verizon Wireless antennas to be located 50 feet above grade on an existing police station monopole. The strict application of the Zoning Code would deprive the property of privileges enjoyed by other wireless providers in the vicinity under the same zoning. The Commission finds that the strict application of the Zoning Code imposes unreasonable limitations on the provision of wireless communication services at this location. The proposed site is appropriate for a wireless communication facility because a monopole currently exists. Placing the Verizon Wireless antennas on the existing police station monopole will minimize the number of new monopoles in the surrounding area which will subsequently minimize visual impacts. No viable alternative sites were found. The surrounding land use is predominately commercial; however, by locating the Verizon Wireless antennas on the police station monopole, the number of monopoles in the area will be minimized. Furthermore, the Commission finds that the requested Variance would not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the subject property and will not, under circumstances of the particular case, be materially detrimental to the public welfare or injurious to the property or improvements in the area. Lastly, by granting the requested Variance, the Commission finds that the use is consistent with the City's adopted Design Guidelines.

COMMISSION ACTION

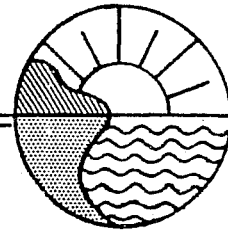
D. MOTION FOR APPROVAL:

Move that the Planning Commission find the project exempt from CEQA, and **APPROVE** Use Permit, UP-006-09 and Variance, PV-500-09, subject to conditions 1 through 7 and adopt findings contained in the September 8, 2009 staff report, and incorporate all maps and testimony into the record by reference.

Attachments:

- a. Land Use and Zoning Exhibit
- b. Site Plans
- c. RF Report
- d. Photo Simulations

STAFF REPORT



PLANNING COMMISSION-CITY OF PACIFICA

DATE: September 8, 2009

ITEM: 3

PROJECT SUMMARY/RECOMMENDATION AND FINDINGS

Notice of Public Hearing was published in the Pacifica Tribune on August 26, 2009. 54 surrounding property owners and residents were notified by mail.

FILE: CDP-316-09

APPLICANT & OWNERS: Penny Keating for the Shoreside Residents Association, 69 Shoreside Drive, Pacifica, CA 94044

LOCATION: Shoreside Drive near the intersection with Danmann Avenue (APN 023-730-200)

PROJECT DESCRIPTION: Legalize an existing black 4 foot chain link fence approximately 250 feet in length along the edge of the bluff at Shoreside Drive near the Danmann Avenue intersection.

General Plan: Commercial

Zoning: C-R (C-2/Community Commercial)/CZ (Coastal Zone)

CEQA STATUS: Exempt Section 15303 (e)

ADDITIONAL REQUIRED APPROVALS: None. The project is appealable to the City Council and Coastal Commission.

RECOMMENDED ACTION: Approval with conditions.

PREPARED BY: Kathryn Farbstein, Assistant Planner

ZONING STANDARDS CONFORMANCE: The fence cannot exceed 6 feet in height and the existing fence does not exceed 4 feet in height.

PROJECT SUMMARY

A. STAFF NOTES:

1. Project Description: The applicant is seeking legalization of an existing 4 foot black chain link fence along Shoreside Drive near the intersection with Danmann Avenue (see Attachment b). The fence is approximately 250 feet long and was constructed by the Shoreside Residents Association without obtaining approval of a Coastal Development Permit. A complaint was filed with Code Enforcement and the applicant was notified by Code Enforcement that approval of a Coastal Development Permit was necessary to legalize the fence. A Planning application was filed on June 4, 2009. The applicant claims that the owner was told by the Police Department that erecting a fence would provide a safety barrier at the edge of the bluff. The ownership of the property is unique in the City of Pacifica because although it appears that several separate dwellings exist along Shoreside Drive, it is actually one large lot with nine owners (tenants in common) that form the Shoreside Residents Association.

2. General Plan, Zoning, and Surrounding Land Use: The General Plan designation for the subject property is Commercial and a majority of the surrounding properties have the same designation. The zoning classification for the subject site and much of the surrounding area is C-R (C-2/Community Commercial) along with two lots zoned R-1 and several C-1 zoned properties fronting onto Danmann Avenue. The surrounding land uses are the Pacific Ocean to the north, Shelter Cover with approximately 20 multiple-family dwellings along the beach and single-family dwellings on Pedro Point above to the west, and a shopping center, vacant land, and more single-family dwellings to the south and east of the subject site.

3. Municipal Code and Regulatory Standards: As stated previously, no regulatory standards for a fence less than 6 feet in height are required. The proposed project is located within the appeal area of the Coastal Zone (CZ). Therefore, approval of a Coastal Development Permit (CDP) is necessary as stated in Section 9-4.4303 (h) 2 (iv) because development on property located between the sea and the first public road paralleling the sea are not exempt and even a fence requires approval of a Coastal Development Permit. In Section 9-4.4302 (z) (1), development in the Coastal Zone is defined as "the placement or erection of any solid material or structure" and a chain link fence is considered a solid structure. No building permit is necessary for a fence less than 6 feet in height and in this case, the fence is only 4 feet in height.

4. CEQA Recommendation: Staff recommends that the Commission find the fence categorically exempt from CEQA based on the following section of the California Environmental Quality Act:

15303. New Construction or Conversion of Small Structures

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor

modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

As stated above, construction of a fence is considered categorically exempt by CEQA because in this case, the fence is an accessory structure that is minimally visible from the public right of way and the beach.

5. Coastal Development Permit Regulations and Findings: The Coastal Development regulations apply to all new development within the Coastal Zone to address a variety of special conditions as described in Zoning Code Section 9-4.400

Section 9-4304(k) of the Municipal Code allows the Planning Commission to issue a Coastal Development Permit based on the findings specified below:

1. The proposed development is in conformity with the City's certified Local Coastal Program.
2. Where the Coastal Development Permit is issued for a development between the nearest public road and shoreline, the development is in conformity with the public recreation policies of Chapter 3 of the California Coastal Act.

6. Staff Analysis:

Coastal Development Permit - The City of Pacifica's Local Coastal Program indicates that infill residential development should be located in close proximity to existing development (Coastal Act Policy #23), and it should be designed and scaled for compatibility of surrounding uses (Coastal Act Policy #23). The fence extends along the vacant portion of the property and adjacent to a dwelling at 291 Shoreside Drive. Various types of fencing are included in the surrounding mostly residential neighborhood; and therefore, this fence is compatible within the neighborhood of primarily residential uses. Additionally, a chain link fence is more appropriate at this location than a fence constructed of solid materials such as wood or a block wall in order to minimize obstruction of the view of the ocean while ensuring that the protective barrier is in place.

The subject site is located between the nearest public road and the shoreline; therefore, the public recreation policies of Chapter 3 apply. However, the fence is placed on private property and does not obstruct public access to the shore and safe public access is provided nearby at the Pacifica State Beach. Additionally, the fence was constructed to protect people and other objects from falling off the bluff and provides a safety barrier.

One concerned citizen provided informal comments to staff about the project. Concerns were expressed about the view blockage, the illegal construction of the fence and that additional fences

might be constructed on the site. Staff has addressed the issues regarding the impacts to the view and the illegal construction of the fence. Any additional fences constructed on the site would require review and approval of a Coastal Development Permit; however, if the applicant continues to construct illegal fences, the Planning Commission may not approve those fences in the future and they would have to be removed.

Another neighbor submitted handwritten comments in support of the fence to protect erosion of the bluff and as a safety barrier for people viewing the ocean from that area. The comments are contained in Attachment b.

Design – The chain link fence was selected by the applicant to protect public safety near the edge of the bluff and to allow as much view as possible of the ocean. In addition, the fence is only 4 feet in height which was the minimum height needed for the protective barrier instead of a higher fence that would have blocked more of the ocean view. The fence was also painted black to reduce the glare from an unpainted shiny chain link fence and to blend in with the existing landscaping. As shown in the photos included in Attachment b, it is difficult to ascertain where the fence is located in some of the photos. However, the plants adjacent to the fence grow in the spring and then die back in the fall. Thus, staff recommends that the applicant plant landscaping along the fence that will grow year round to better screen the fence and a condition to that effect is included in the report.

7. Summary: Based upon analysis of the project, staff believes that the findings necessary to approve the Coastal Development Permit, CDP-316-09 to legalize the fence can be made.

RECOMMENDATION AND FINDINGS

B. RECOMMENDATION:

Staff recommends that the Planning Commission **APPROVE** Coastal Development Permit CDP-316-09 to legalize the fence along Shoreside Drive near Danmann Avenue, subject to the following conditions:

1. Development shall be substantially in accord with the plans entitled “Shoreside Drive Fence,” consisting of two (2) sheets, dated June 4, 2009 except as modified by the following conditions.
2. The applicant shall landscape along the fence with plants that grow year round to the satisfaction of the Planning Director.
3. The applicant shall hereby agree to indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter “City”) from any claim, action or proceeding (hereinafter “Proceeding”) brought against the City to attack, set aside, void or annul the City’s actions regarding any development or land use permit, application, license, denial, approval or authorization,

including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and /or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the applicant's project. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, City, and /or parties initiating or bringing such Proceeding. If the applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

C. FINDINGS:

1. **Findings of Approval of the Coastal Development Permit:** The Planning Commission finds that the existing fence, as conditioned, is in conformity with the City's Local Coastal Program and Public Recreation policies of Chapter 3 of the California Coastal Act. Specifically, the fence will provide a protective barrier to help ensure public safety. In addition, the design and scale of the fence is unobtrusive and allows views of the ocean. The project will not negatively impact any access to existing coastal recreation facilities, nor will it increase the demand for additional facilities or negatively affect any existing oceanfront land or other coastal area suitable for recreational use. The proposal will not have significant adverse effects, either individually or cumulative, on coastal resources. By replacing the existing plants with attractive plants that grow year round, the fence will be better screened with landscaping.

COMMISSION ACTION

D. MOTION FOR APPROVAL:

Move that the Planning Commission **APPROVE** CDP-316-09, subject to conditions 1 through 3, based on findings contained within the September 8, 2009 staff report and incorporate all maps, documents, and testimony into the record by reference.

Attachments: (Planning Commission only)

- a. Land Use and Zoning Exhibit
- b. Handwritten Comment from Neighbor
- c. Plans and Elevations (2 - 8 ½ by 11 inch pages)