

CALIFORNIA COASTAL COMMISSION

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W16c

Filed: 11/25/98
 49th day: 1/13/99
 180th day: 05/24/99
 Staff: SG
 Staff Report: 12/17/98
 Hearing Date: 01/13/99
 Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE and DE NOVO HEARING

LOCAL GOVERNMENT: City of Pismo Beach

DECISION: Approval with conditions

APPEAL NO.: A-3-PSB-98-097

APPLICANT: SHELTER COVE LODGE AGENT: Ray Bunnell

APPELLANTS: Commissioners Wan and Potter, and Mr. Bruce McFarlan

PROJECT LOCATION: 2651 Price Street, Pismo Beach, San Luis Obispo County
(APN: 005-025-08)

PROJECT DESCRIPTION: Construction of a concrete and riprap seawall and related improvements to prevent further erosion and collapse of bluff.

FILE DOCUMENTS: Pismo Beach Certified Local Coastal Program, final Local Action Notice and Negative Declaration for Permit 98-143

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that **substantial issue exists** with respect to the grounds on which the appeal was filed. Staff recommends that the Commission then proceed immediately to a de novo hearing on the merits of the project. Finally, staff recommends that the Commission **approve** the project, as conditioned, and **grant** a permit to the applicant for the proposed seawall on the grounds that, as conditioned to avoid the intertidal area and to determine and mitigate for sand supply impacts as required by the LCP, the proposed development will be consistent with the LCP and the public access and recreation policies of the Coastal Act.

Note: Staff is conducting additional research on a deed restriction concerning development in the bluff top setback, to be addressed in an addendum to this report, that may necessitate a change in this recommendation (See pages 10 and 11 for more detail).

SUMMARY EVALUATION OF SUBSTANTIAL ISSUE

| ISSUE | LAND USE PLAN POLICY | ZONING ORDINANCE | SUBSTANTIAL ISSUE? |
|---------------------|---|--|--|
| Alternatives | Policy S-6, Shoreline Protective Devices: If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. | Section 17.078.060(4): Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development. | YES. According to City finding, information had been received that indicated that other alternatives would "involve construction operations which are far more dangerous than the project, and which are not feasible." Yet, the geologist retained by City for peer review wrote that a different design "appears to be the most feasible solution. . . ." |
| Views | Policy S-6, Shoreline Protective Devices: Design and construction of protective devices shall be constructed to minimize visual impacts. | Section 17.078.060(4): If permitted, seawall design must . . . use visually compatible colors and materials. | YES. The City's conditions do not specify the use of visually compatible colors and materials |
| Landform Alteration | Policy S-6, Shoreline Protective Devices: Design and construction of protective devices shall minimize alteration of natural landforms. | Section 17.078.060(4): If permitted, seawall design must respect natural landforms . | YES. The proposed project would fill a sea cave and create a seawall that slopes back toward the bluff top and cuts across the dip of the natural landforms, which are, tilted seaward with the base farther landward than the bluff top. |
| Sand Supply | Policy S-6, Shoreline Protective Devices: Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. | Section 17.078.060(6): Shoreline structures which serve to protect existing structures and that may alter natural shoreline processes shall not be permitted unless the City has determined that when designed and sited, the project will eliminate or mitigate impacts on local shoreline sand supply. | YES: Bluff erosion is a potential source of sand but there was no analysis of the bluff material to determine percentage of sand nor was there any quantification of loss of sand due to the project. |

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I. SUMMARY OF APPELLANTS' CONTENTIONS

(See Exhibit 1 for the full texts)

Appellant Bruce McFarlan contends that the approval is inconsistent with the LCP for the following reasons:

- The geologic report for the construction of the hotel estimated it would be 60 years before the hotel would be endangered by bluff erosion. A seawall was installed before the hotel opened. Zoning ordinance Section 17.078.060(5) does not allow new development if a shoreline protective device will be needed within 100 years.

- The proposed seawall does not respect natural landforms and does not use visually compatible colors and materials, as required by zoning ordinance Section 17.078.060(4).
- The proposed seawall does not eliminate or mitigate impacts on local shoreline sand supply and does not avoid significant rocky points and intertidal or subtidal areas, as required by zoning ordinance Section 17.078.060(6)(a) and (c).
- Appropriate erosion control measures have not been imposed as required by zoning ordinance Section 17.078.060(9).

[Staff Note: Appellant McFarlan raises other issues that do not apply to consistency with the LCP. These are 1) that the 1980 EIR called for no grass or watering but the hotel now has lots of grass and watering, 2) the emergency road endangered by the bluff failure is not used or recognized by the police and fire departments as an emergency road, 3) a sewage holding station is threatened, 4) a previous permit for a seawall elsewhere on the property required a bluff erosion monitoring plan that has never been established, 5) there are no assurances that the proposed seawall will not further damage the property and the Dinosaur Caves area to the north, and 6) that the rip rap will be placed farther out onto the beach than proposed.]

Appellants Commissioners Wan and Potter contend that the approval is inconsistent with the LCP for the following reasons:

- **Alternatives:** LCP Policy S-6 and zoning ordinance Section 17.078.060(4) allow shoreline protective devices only when necessary to protect existing development and only if there are no other feasible less environmentally damaging alternatives. The City's approval was based, in part, on the City's receipt of information that other alternatives would "involve construction operations which are far more dangerous than the project, and which are not feasible." No such evidence was supplied in the material received from the City. Additionally, according to the geologist retained by the City for per review, another of the alternatives considered, a concrete piling and grade beam structure, "appears to be the most feasible solution." The record from the City contains no information supporting the chosen alternative as the only feasible least environmentally damaging alternative. Therefore, the approval is inconsistent with the LCP.
- **Visual Compatibility:** Policy S-6 and Zoning Ordinance Section 17.078.060(4) require that seawalls use visually compatible colors and materials and minimize visual impacts. The City Council approved the project with the condition that "The design of the proposed seawall. . . shall be approved by the City Planning Commission." There is no indication that the proposed seawall will in fact minimize visual impacts and use visually compatible colors and materials. Therefore, the City's approval is inconsistent with Policy S-6 and Zoning Ordinance Section 17.078.060(4). In addition, construction of the seawall would violate the terms of the Deed Restriction placed on the site in 1984, as a condition of approval for the Lodge.

- Landform Alteration: Policy S-6 and Zoning Ordinance Section 17.078.060(4) require that seawalls respect and minimize alterations of natural landforms. The proposed project would not respect natural landforms because it would fill a sea cave and create a seawall that would slope back toward the bluff top, while the natural landforms are dramatically tilted seaward with the base farther landward than the bluff top. Therefore the approval is inconsistent with the LCP.
- Sand Supply Impact: Policy S-6 and Zoning Ordinance Section 17.078.060(6) require that seawalls be designed and sited to eliminate or mitigate impacts of local shoreline sand supply. According to the geologic report, "No alternative presented would interfere with the transport of sands in the near-shore environment." However, this does not address the fact that the bluff itself, as it erodes, is a potential source of sand. There was no analysis of the bluff material in terms of percentage of sand nor any quantification of potential sand loss due to the project. Without such information, it is not possible to gauge the impacts the project may have on sand supply. Therefore the City's approval is inconsistent with the LCP

II. LOCAL GOVERNMENT ACTION

The applicant applied to the City of Pismo Beach for an emergency permit on July 31, 1998. The City denied the request for an emergency permit on August 21, 1998 (See Exhibit 6). On September 22, 1998, the Pismo Beach City Planning Commission approved the project. That approval was appealed to the City Council, which, on October 20, 1998, denied the appeal and upheld the decision of the Planning Commission, and adopted a mitigated negative declaration. Subsequently, it was discovered that the negative declaration document presented to the Council was the draft negative declaration. On November 17, 1998, the City Council adopted a resolution approving the final mitigated negative declaration for the project (That action constituted the City's final action and receipt by Commission staff on November 24, 1998, of the November 17 action and the final conditions of approval began the Commission 10 working day appeal period.) Please see Exhibit 2 for the complete text of the resolution and the City's findings and conditions.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (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 tideline 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; (3) in a sensitive coastal resource area; (4) for counties; not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the sea and the first public road paralleling the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding must be made in a *de novo* review in this case.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE AND COASTAL DEVELOPMENT PERMIT

A. *Staff recommendation on Substantial Issue:*

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed, because the City has approved the project in a manner that is inconsistent with the certified Local Coastal Program.

MOTION. Staff recommends a **NO** vote on the following motion. This would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. To pass the motion, a majority of the Commissioners present is required.

I move that the Commission determine that Appeal No. A-3-PSB-98-097 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

B. *Staff Recommendation on Coastal Development Permit:*

Staff recommends that the Commission adopt the following resolution:

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned; the development will be in conformity with the certified Local Coastal Program of the City of Pismo Beach, will be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act

V. RECOMMENDED CONDITIONS

A. *Standard Conditions*

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. *Special Conditions*

1. Project Authorized

This approval authorizes construction of a pile and grade beam retaining wall structure as described as alternative three in the June 23, 1998 *Geologic Report On Bluff Instability* at the Shelter Cove Lodge by Robert T. Wooley. No closing of the trench mouth is authorized by this permit nor is any other sort of wall or other structure at the base of the piles authorized.

2. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit two copies of revised plans for a pile and grade beam retaining wall structure to the Executive Director for review and approval.

3. **City Approval**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall provide the Executive Director with evidence that the revised plans have been reviewed and approved by the City of Pismo Beach.

4. **Assumption of Risk**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which shall provide: (a) that the permittee understands that the site may be subject to extraordinary hazard from storm waves, flooding, bluff retreat and erosion and the permittee assumes the liability from such hazards; and (b) that the permittee unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may the interest being conveyed and free of any other encumbrances which may affect said interest. The deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. **Effect on City Conditions**

This Coastal Commission action has no effect on conditions imposed by the City of Pismo Beach pursuant to an authority other than the California Coastal Act.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Description and History

The project is located on the bluff face at the Shelter Cove Lodge, at 2651 Price Street, in the City of Pismo Beach. The Lodge is a 52 unit hotel with on-site parking between the hotel and Price Street. The bluff, about 90 feet high, rises directly from the sea; there is no beach at the base of the bluff. The structure of the bluff here is comprised of beds of rock tilted dramatically seaward with the base of the bluff landward of its top. In June of 1998, a portion of the ocean bluff on the seaward side of the emergency access road/public access path failed. The road/path is approximately 10 feet wide; one of the lodge buildings is sited about 21 feet landward of the landward edge of the road/path, placing the lodge building about 31 feet from the edge of the bluff.

Immediately upcoast of the failed section of bluff, the bluff is parallel to and ± 45 feet from the lodge buildings. At the failed section, the line of the bluff makes a U-turn and runs upcoast for about 120 feet parallel to and approximately 35 feet from the bluff in front of the lodge buildings before making another U-turn downcoast (see exhibit 3, pages 3 and 5). The first U-turn is a function of sea cave erosion. Numerous sea caves exist along this section of coastal bluff. Ten sea caves have been located along the Shelter Cove Lodge bluff. The failed bluff was part of a wall of cave 9, the roof of which collapsed before the lodge was built.

According to the City permit, the approved project is to construct "two concrete retaining walls and a rip-rap structure to stabilize the ocean bluff, fill an existing cave and block the entrance to another sea cave." The City's permit further states that

One concrete retaining wall and associated rip-rap structure will be constructed at the entrance of an existing trench [the area of the now collapsed cave 9] in order to prevent further erosion within the trench. The rip-rap structure will be extended westward from the trench entrance in order to block the entrance of another sea cave that would undermine one of the motel buildings on the site. Another concrete retaining wall will be constructed in the trench approximately 60 feet from its entrance. This structure will provide lateral support for the 90-foot high bluff on the north side of the trench and will utilize detrital material [detritus or talus] to fill the trench and adjoining cave.

The Planning Commission and the City Council approved the hotel, in a different design, in 1982, prior to certification of the Pismo Beach LCP. A Coastal Commission permit was approved in 1983. According to the City's 1984 permit for the hotel, subsequent to LCP certification, the Commission permit was for

approval on a design that differed from that originally approved by the City. The applicant was therefore required to get a subsequent approval of the modified design from the City. As a result of that review process a change in the design approved by Coastal Commission was required by the City. . . . Upon resubmitting an application for modification of the Coastal Permit approval, the applicant was informed by the Commission Staff that because the applicant had failed to comply with all the conditions of the Coastal permit prior to the City being given Coastal permitting authority (April 13, 1984), the applicant's Coastal approval was . . . invalid As a result, the applicant was forced to re-apply for a coastal permit from the authorized governing body—now the City.

The City's 1984 permit did not discuss erosion rates and bluff setbacks. However, the 1983 Commission staff report indicated that at that time, it was estimated that the rate of erosion was approximately 2 inches per year. According to the Commission staff report the setback for the southern part of the site (where the recent bluff failure occurred) was based on erosion over a 100 year period. From the Commission staff report, it appears that the proposed location of the structures was the same as that approved by the City and subsequently constructed. Thus it appears that the location of the hotel buildings was

based on an estimated 100 years of erosion before they would be endangered, rather than 60 years, as claimed by appellant McFarlan.

The hotel was approved in 1984 and construction was completed in 1986. Shortly before the hotel opened, but after all, or virtually all, of the construction was completed, a sea cave upcoast of the present failure, on the northerly end of the parcel collapsed. Both the Coastal Commission and the City issued emergency permits for a seawall at that location. Subsequently, regular coastal permits were applied for and granted (Coastal Commission Permit #4-86-185; City Permit #8-CUP-86 & 23-CP-86). According to the Coastal Commission staff report, the public access strip located immediately inland of the bluff failure contained

a fire lane access route, main gravity sewer collection line for the hotel; irrigation; domestic and fire water lines; and utility line extensions. Adjacent to and landward of the accessway are several hotel unit complexes. The blufftop continued to be undercut landward of the failure thus threatening the stability of the accessway. Therefore, emergency measures were taken as necessary to satisfactorily arrest cliff and blufftop erosion.

The record indicates that a permitted seawall at the bluff failure on the northerly end of the parcel was installed to protect existing development after completion of the hotel in 1986.

Finally, the original coastal development permit for the hotel, issued by the City, contained a condition that required that:

An irrevocable offer to dedicate in fee simple or grant in perpetuity an easement over a strip of land sufficient to include a 25 foot wide lateral public access plus a 100 year bluff retreat setback, shall be made to an appropriate public agency. Such offer shall be for the purposes of providing lateral access and passive recreational opportunities along the coastal bluffs for the general public and visitors to the planning area. The open space easement for lateral access and bluff retreat, if not accepted by a public agency, shall be maintained by the owner.

A second condition required that:

The gazebo, if one is proposed, shall be designed to be easily movable so that as the cliff retreats, the gazebo can be moved further back. The motel operator shall never allow the gazebo to be closer than fifteen (15) feet from the top edge of the bluff. All paving materials, benches and other facilities in the bluff retreat area shall be designed to be easily moved or removed.

Presumably based on this condition, a deed restriction was recorded on the property that provides that in the bluff top setback area, "no development other than public accessways, bluff-top safety fencing and a gazebo as shown on the improvement plans. . . shall occur within the Subject Property. . . ." A seawall at the site of the current bluff failure would be within the bluff top setback area and, without an amendment to the deed restriction, would appear to conflict with the deed restriction (See Exhibit 5). This would also conceivably

apply to the utility lines in the public path/emergency road. However, the applicant has pointed out that in the same permit action, the City required that "The property owner . . . shall provide and protect any public walkways provided on this parcel. . . ." In addition, the Coastal Commission 1986 permit not only approved a seawall, but also specifically called out the sewer and water lines as features endangered by that bluff failure and made no finding that those lines were in conflict with the deed restriction.

Given the need to hear this appeal as soon as possible, staff has not completed its research into the deed restriction and will be providing an additional recommendation on the appropriate treatment of the restriction in an addendum prior to the January meeting.

B. Substantial Issue Findings

LUP Policy S-6 and zoning ordinance Section 17.078.060 of the City's LCP address shoreline protective devices

S-6, Shoreline Protective Devices. *Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and rip rap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion. If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline. Design and construction of protective devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts.*

Zoning Ordinance section 17.078.060(4), Shoreline Protection Criteria and Standards. *Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must (a) respect natural landforms; (b) provide for lateral beach access; and (c) use visually compatible colors and materials and will eliminate or mitigate any adverse impacts on local shoreline sand supply.*

Zoning Ordinance section 17.078.060(6), Shoreline Protection Criteria and Standards. *Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls, or similar structures which serve to protect existing structures, or serve Coastal dependent uses and that may alter natural shoreline processes shall not be permitted unless the City has determined that when designed and sited, the project will: a) Eliminate or mitigate impacts on local shoreline sand supply; b) Provide lateral beach access; c) Avoid significant rocky points and intertidal or subtidal areas; and d) Enhance public recreational opportunities.*

Zoning Ordinance section 17.078.060(9), Shoreline Protection Criteria and Standards. For any development along the bluff top appropriate erosion control measures. . . shall be implemented.

1. Alternatives

Appellants claim in part that the City-approved project is not the least environmentally damaging feasible alternative.

The geologic report prepared for the project discussed three alternatives besides a "no action" alternative.

The first alternative discussed involved filling the trench that was formerly cave 9 with detrital spoil to an elevation that would supply lateral support to the unstable terrace soils and shattered rock along the north side of the trench (the bluff face directly in front of the emergency road/access path and hotel buildings where the recent failure occurred). Rip rap at the base of the trench would be placed and a steep "hardened structural system" (a stair-stepped concrete wall) spanning the trench would be extended to a height of about 50 feet. The entrance to a seacave a few yards upcoast of the bluff-failure area would be blocked and the shattered area above the cave entry filled with concrete. A reinforced fill would extend to about elevation 70 with a structural fill extending to the top of the north side of the trench. From the information supplied by the City, it appears that it is this first alternative, or a modification of it, that the City approved. The information received from the City does not include full-sized, legible plans so it is difficult to tell exactly what the City-approved project would look like.

The second alternative would entail removal of all the debris from the trench and installation of sheet piling "on a keyed bedrock with a reinforced grade beam to span from wall-to-wall." The void created by removal of the debris would be backfilled with compacted fill. It would "be necessary to block (dam) the entrance to the trench for long-term protection of any rock or soil fill." Although not described, the blocking or damming material presumably would be rip rap.

The third alternative "is a proposal to drill a number of piles (three to four foot diameter) holes well into stable bedrock, reinforce the drill holes with steel cages, and fill to terrace level with pumped concrete." The piles would then be tied back to a system of grade beams. "The trench mouth would need to be sealed by a suitable structure. . .to prevent erosion of the pile tips." According to the report, if this alternative was chosen, it would need to be done soon while the bluff remains stable enough to support a heavy drill rig. This is the alternative that the City-retained peer review geologist indicated appeared "to be the most feasible solution."

The City's approval of Alternative 1 or a variation thereof was based, in part, on receipt of information that other alternatives would "involve construction operations which are far more dangerous than the project, and which are not feasible." No information to support such a finding has been forwarded to Commission staff. The peer review geologist opined in his review of the geologic report that "alternative 3 appears to be the most feasible solution." Although in subsequent letters he stated that the structure to be built, Alternative

1 or a variation thereof, is an appropriate structure for the situation and geologic conditions, his letters did not state that alternative three was infeasible or inappropriate,

Finally, there was no discussion of the alternative of moving some of the structures. This may or may not be feasible, but there is nothing in the record by which to evaluate the cost, etc., of moving the hotel buildings closest to the bluff failure area farther from the bluff and of rerouting the utility lines.

Therefore a substantial issue is raised regarding the consistency of the City's approval with Policy S-6 and zoning ordinance Section 17.078.060(4).

2. Visual

The appellants claim in part that the City-approved seawall structure would be incompatible with the surrounding bluff landform.

The City' approval does not specify any colors for the seawall or require any design that would, for instance, closely resemble the local landforms. Although not visible to the public from Highway 101, Price Street, or the ocean (except for immediately offshore of the proposed seawall, due to the U shape of the bluff), the seawall would be visible to hotel guests and members of the public who may use the public path between the hotel and the bluff. The design is to "approved by the City Planning Commission." Yet, there is no indication that the proposed seawall will minimize visual impacts thought the use of compatible colors and/or materials, including the color of any rock used for rip rap.

Therefore, a substantial issue is raised regarding the consistency of the City's approval with Policy S-6 and zoning ordinance Section 17.078.060(4).

3. Alteration of Landforms

The appellants claim in part that the City-approved seawall would not minimize alteration of landforms nor respect the surrounding natural landforms.

The approved project would result in filling of a collapsed sea (cave 9), filling of a non-collapsed sea cave (cave 6), and creation of a seawall structure that would slope up and landward from its base, back toward the top of the bluff, while the natural landforms slope up and seaward from their base. An alternative structure may be more appropriate in terms of minimizing alterations of natural landforms. It is unclear exactly how the approved seawall will affect the landforms, since detailed plans have not been forwarded to Commission staff.

Therefore, a substantial issue is raised regarding the consistency of the City's approval with Policy S-6 and zoning ordinance Section 17.078.060(4).

4. Impact to Sand Supply

The appellants claim in part that the City-approved seawall would not eliminate or mitigate any adverse impacts on local shoreline sand supply.

The geologic report for the project states that "No alternative presented would interfere with the transport of sands in the near-shore environment." The geologic report does not, however, address the issue of sand supply and the effect the project would have on that supply. There was no analysis of the bluff material that fell, and that is now subject to removal by wave action, nor of the bluffs themselves in terms of percentage of sand nor any quantification of potential sand loss due to the project. Without such information, it is not possible to determine what impact the project may have on local sand supply.

Therefore, a substantial issue is raised regarding consistency of the City's approval with Policy S-6 and zoning ordinance Section 17.078.060(6).

5. Previous Erosion, Setback, and Seawall

Appellant McFarlan claims that the City's approval is inconsistent with the LCP because the geologic report for the construction of the hotel estimated it would be 60 years before bluff erosion would endanger the hotel (which was constructed in 1986), that a seawall was installed before the hotel opened, and that no new development is allowed if it would require shoreline protection within 100 years.

As discussed in B above, the erosion rate and setback established when the hotel was approved were based on a 100 year time frame and a previous seawall was installed on the northerly end of the parcel, upcoast from the current failure area, with all required permits. The LCP requires that a seawall be allowed only when necessary to protect existing development. The appellant's contention that a seawall was installed before the hotel was opened is not relevant. Whether the development was "open" is not one of the criteria for determining if a seawall should be approved. Therefore, no substantial issue is raised regarding the bluff setback of the development or the prior shoreline protective device.

6. Intertidal or Subtidal Areas

Appellant McFarlan claims that the City-approved would not avoid significant rocky points and/or intertidal and subtidal areas.

The one page, reduced plan appears to show rip rap extending below the mean high tide line, although the City's approval is only for work above the mean high tide line. Rip rap extending below the mean high tide line could adversely impact intertidal or subtidal habitats. The negative declaration describes the base of the bluff as being a rocky habitat with no vascular plants, dominated by algae and aquatic angiosperms, but did not discuss impacts to that habitat or those species from installation of a seawall structure. Even

though the City's approval legally can be only for work above the mean high tide line, part of the seawall could extend into the area between the high tide line and the mean high tide line and impact the intertidal community, which is not addressed by the City's approval.

Therefore, a substantial issue is raised regarding the consistency of the City's approval with zoning ordinance Section 17.078.060(6)

7. Erosion Control

Appellant McFarlan claims that the City-approved project fails to provide adequate erosion controls.

The City's approval does contain a requirement for a runoff control plan to be designed by a qualified licensed engineer prior to issuance of a building permit. Therefore, no substantial issue is raised regarding erosion control and the project is consistent with zoning ordinance Section 17.078.060(9).

C. De Novo Findings

1. Structure At Risk

The first criterion to be met when considering a request for a permit for a seawall is that there is an existing structure in danger from continued coastal erosion. Policy S-6 and zoning ordinance Section 17.078.060 both require that there be a structure at risk before a seawall can be permitted. The definition of "structure" includes buildings as well as any road or pipe. In this case immediately inland from the bluff failure there is a 10 foot wide road within which are utility lines including a sanitary sewer main. The road was required by the City Fire Department so that emergency vehicles could have access to the back of the hotel. Staff has conducted a site visit to examine the risks to the existing structures. Cracks in the road associated with the recent bluff failure indicate that there is no competent support for the bluff. The hotel buildings are about 20 feet inland from the road. The section of bluff that failed was a portion of the wall of seacave 9, the northern portion of which has collapsed. Seacave 9 continues as a cave under the bluff surface to the southeast of the hotel buildings. The cave formation is such that the effect of continued erosion will likely be the loss of large pieces of bluff at a single time, as happened in the spring of 1998. The applicant's geologic information shows that because of the way in which the bluff in this vicinity fails, all three structures, the road, the sanitary sewer main, and the buildings are in danger from erosion within the next three to five years. In particular, once the detrital material that has recently fallen is washed out of the trench by wave action and storm events, the eroding seacave will once again be subject to direct wave attack. It is likely that this material will not remain in place very long. Therefore, the Commission finds that there are endangered structures at the site of the bluff failure and that the first criterion for approval of a seawall exists.

2. Alternatives

The LCP, through Policy S-6 and zoning ordinance Section 17.078.060, require that if a seawall is to be approved, it must be the least environmentally damaging feasible alternative.

The geologic report prepared for the project discussed three alternatives besides a "no action" alternative. All three of the "action" alternatives involved some type of structure intended to support the bluff. The first two alternatives would involve large structures on the bluff face from the base to near the top of the bluff. The City-retained peer review geologist opined that alternative three, a pile and grade beam retaining structure, appeared to be the most feasible alternative.

There is at least one additional alternative: move the structures landward. The cost of moving the utility lines in the emergency road/access path and of moving the buildings nearest to the failed bluff area is unknown. Before cost can even be considered though, it must be determined if there is anywhere to move the structures.

While the road could probably be physically moved to the landward side of the buildings, that could endanger hotel guests and would violate the hotel's City permit because the permit requires a road to allow access for emergency vehicles to the back of the hotel buildings.

The parcel varies in width from a few feet at either end to a maximum of about 250 feet in the middle. At the bluff failure area the parcel is about 150 feet wide. There is an undeveloped area about 90 feet wide by 120 feet long that lies southeast of the road/path, just east of the bluff failure area. However, placing buildings there would either put them in a situation similar to that that they are already in, i.e., near the bluff edge, or in a worse situation over the part of cave 9 that has not yet collapsed. Further, due to the slope of the land, grading would be required involving cuts and fills of at least several feet. The road/path would have to be realigned as well.

Another similarly sized area is on a promontory near the center of the parcel; however, that is an archaeological area and buildings there would be extremely visible from up and downcoast.

A third relocation alternative would move the buildings back near Shell Beach Road and move the parking lot to where the buildings are now. This would place the parking lot at risk from future bluff erosion.

While it may be physically possible to do one or more of the relocation alternatives, they are not realistic given that the buildings were not designed and constructed to be easily relocated, that major redesign of the layout of the hotel and parking lot would be necessary, that relocation might result in the buildings being placed in a location even more hazardous or destructive of coastal resources, and that the size and shape of the parcel does not allow relocation that would not put some part of the development, whether buildings or parking lots, in danger from bluff erosion. Therefore, the Commission finds that relocation is not a feasible alternative.

The final alternative mentioned in the geologic report is to do nothing and lose at least the eastern hotel building.

The geologic report's alternative number three deserves more attention. This alternative would involve drilling an unspecified number of holes between the bluff edge and the hotel buildings down into the bluff until competent bedrock is reached. Concrete piles would be placed in the drill holes and would be tied back farther into the bluff with concrete beams. This could stabilize the bluff without the need for a seawall or rip rap or some other structure at the mouth of the trench. This alternative would be more of a retaining structure than a seawall because it would not present a hard surface on the face of the bluff and because the base of the bluff there is not in the water but is rather in the bluff detritus. Without a structure at the mouth of the trench, the collapsed bluff debris could be removed by wave action and contribute to the sand supply, rather than being lost to the littoral cell. It may be that sometime in the future the pile and grade beam structure may need protection at the base of the piles – perhaps even within a year or two. However, when that would be and just what would be necessary at that time won't be known until that time arrives. At this time, the Commission finds that this alternative has not been shown to be infeasible and that it is the least environmentally damaging alternative, as required by Policy S-6 and zoning ordinance Section 17.078.060.

3. Visual

According to Policy S-6 and zoning ordinance Section 17.078.060, it must be shown that a proposed seawall will use visually compatible colors and materials and respect natural landforms to minimize visual and landform alteration impacts. In this instance, visual issues and land alteration issues are closely related. It is possible to tint concrete seawalls to be of similar color to the natural bluff material and to obtain rocks for rip rap that are similar in color to the surrounding bluff material. In this vicinity, the geological formations are quite dramatic. The slope of a typical seawall structure here will contrast with that of the bluff. Here the bluff is inclined about 60 degrees from horizontal with the base of the bluff landward of the top of the bluff. Unless the wall was a vertical wall it would slope landward from the base to the top of the bluff, opposite to the slope of the bluff. It would have to be designed so that its face was textured to closely resemble the dip of the bedding planes visible in the bluff. A non-vertical wall at this particular location would also slope across the bedding planes since the wall would be in a U-shaped part of the bluff. Viewed from the promontory immediately upcoast, the steeply dipping bluff rock would be interrupted by a structure very unlike the surrounding bluff. It is possible to design at least the concrete wall portions of a seawall structure so that it has features that closely resemble the surrounding bluff. However, in this case, alternative three, the pile and grade beam retaining structure is preferable because it would be completely underground and would not be visible. The Commission finds that, only through the imposition of Special Condition 1, requiring redesign of the project into a pile and grade beam retaining structure, can a bluff protection structure here be found to be consistent with LCP Policy S-6 and zoning ordinance Section 17.078.060, regarding visual issues.

4. Sand Supply

Both Policy S-6 and zoning ordinance Section 17.078.060 require that seawalls be designed and sited to eliminate or mitigate for adverse impacts to local shoreline sand supply. Construction of a seawall, whether a concrete vertical wall or a rock rip rap revetment, can result in loss of beach because the sand seaward of the wall tends to be eroded over time due to wave energy being transferred downward as it strikes the seawall. At the Shelter Cove Lodge, there is no beach. Except for the collapsed seacave area where the base of the bluff is in the detritus, the bluff rises directly from the sea. Because of this, a seawall here would not have the effect of reducing beach area through increased erosion of beach sand. A wall here could, however, affect shoreline sand supply.

Beach sand is derived from various sources including eroded material from inland carried to the sea by rivers and streams, from offshore deposits carried by waves to the shore, and from the erosion of coastal landforms by waves, runoff, landslides, etc. Coastal bluffs contribute to beach sand supplies in various amounts, depending on the type of material comprising the bluff and local shoreline conditions (width of beach, angle of wave attack, presence or absence of sheltering headlands, etc.). Many bluffs are marine terraces. These terraces are ancient beaches that formed when the relative levels of the sea and the land were different than they are now. Marine terraces, in the geologic past having been beaches, can be an excellent source of present day beach material when eroded and added to the littoral system. When a bluff is protected by a shoreline protective device, the rate of erosion is interrupted and the amount of eroded material is reduced. Although it is not clear how far up the bluff the proposed seawall would extend, for that part of the bluff erosion would be negligible, while there still could continue to be some erosion of material higher up the bluff.

It is possible to quantify how much sand a particular bluff contributes to the littoral system. The formula for such a quantification has been applied in prior Commission actions on seawalls (e.g., 3-97-065, Motroni/Bardwell, City of Capitola, approved April 8, 1998; A-3-PSB-98-049, Cliffs Hotel, City of Pismo Beach, denied November 5, 1998). It is not possible to apply that formula to the Shelter Cove bluff at this time, because the sand content of the bluff is unknown. Although the individual impact on sand supply from a single wall may be considered small by some, the cumulative effect of multiple devices may be significant. Gary Griggs, James Pepper and Martha Jordan, in *California's Coastal Hazards: A Critical Assessment of Existing Land-Use Policies and Practices*, found that since decisions to approve shoreline protective devices

Are usually made on a project-by-project basis, they tend to be evaluated independently, without any systematic consideration of the aggregate or cumulative effects either within or among jurisdictions. Within such a decision-making context any given project can be viewed as small and thus easy to rationalize in terms of approval. Cairns (1986) calls this endemic failure to take into account the aggregate effects of environmental management "the tyranny of small decisions."

Significantly, the LCP does not exempt small amounts of sand supply loss from the requirement for mitigation. Rather, the LCP requires that shoreline protective

devices "eliminate or mitigate adverse impacts on local shoreline sand supply." That cannot be accomplished without knowing the percentage of sand making up a bluff.

Alternative three, however, would have no effect on sand supply because the material filling the trench below the bluff failure area would continue to erode. The Commission finds that the imposition of Special Condition 1, requiring a pile and grade beam structure, is necessary to find that there will be no adverse effect on sand supply, and thereby make the project consistent with Policy S-6 and zoning ordinance Section 17.078.060. Were some other alternative approved that would result in retention of bluff materials, additional information and analyses of sand supply impacts would be necessary.

5. Intertidal or Subtidal Areas

Zoning ordinance Section 17.078.060 requires seawalls to "avoid significant rocky points and intertidal or subtidal areas." The one page, reduced plan appears to show rip rap extending below the mean high tide line, although the City's approval is only for work above the mean high tide line. The intertidal area includes the area above the mean high tide line to the highest high tide line. Rip rap extending below the highest high tide line could adversely impact intertidal habitats by reducing their area and crushing organisms, for example. The negative declaration describes the base of the bluff as being a rocky habitat with no vascular plants, dominated by algae and aquatic angiosperms. However, the negative declaration did not discuss impacts to that habitat or those species. Impacts to the intertidal area can be avoided with a pile and grade beam structure because no portion of it would be near or enter the intertidal area or significant rocky points. Therefore, the Commission finds that the pile and grade beam structure is a preferable alternative with respect to intertidal habitat impacts.

D. Public Coastal Access and Recreation

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

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

Section 30212. *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby. . . .*

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

There is no access to the water at this site because of the nature of the bluffs. However, public access is provided to the bluff edge and along the bluff top and Price Street to areas to the north and south of the subject parcel where access is available to the water and sandy beach. This ocean front property provides for coastal recreation through the rental of hotel rooms. No other recreational use of the property is possible because it is developed. The Commission finds that the proposed seawall will have no adverse impact on coastal access or recreation and is consistent with Coastal Act Sections 30210, 30211, 30212, and 30221.

VII. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. This permit has been conditioned to require that no adverse effects to the environment will occur. Accordingly, the Commission finds that as modified and conditioned by this permit, the proposed project not have any significant adverse impacts on the environment within the meaning of CEQA.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
437-4863
HEARING IMPAIRED: (415) 904-5200



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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Please review attached appeal information sheet prior to completing this form. DEC 09 1998

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Sara Wan; Commissioner Dave Potter
California Coastal Commission
45 Fremont Street, Suite 2000 (415) 904-5200
San Francisco, CA 94105 ZIP Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:
City of Pismo Beach
2. Brief description of development being appealed:
Rock rip rap and concrete seawall structure to retain and protect bluff from further erosion.
3. Development's location (street address, assessor's parcel number, cross street, etc.):
Shelter Cove Lodge, 2651 Price Street, Pismo Beach, San Luis Obispo County, APN 005-025-008.
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: **XX**
 - c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-98-097
DATE FILED: (originally filed) 11/25/98
DISTRICT: Central Coast District

EXHIBIT 1

A-3-PSB-98-097

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

a. ___ Planning Director/Zoning
Administrator

c. ___ Planning Commission

b. **XX** City Council/
Board of Supervisors

d. ___ Other: _____

6. Date of local government's decision: November 17, 1998

7. Local government's file number: 98-143

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Ray Bunnell
Shelter Cove Partnership
141 Suburban Road
Suite A-5
San Luis Obispo CA 93401

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

- (1) Carolyn Johnson, Public Services Department, 760 Mattie Road, Pismo Beach CA 93449
- (2) Bruce McFarlan, 331 Park Avenue, Pismo Beach CA 93449
- ((3) Fred Schott, 200 Suburban Road, Suite A, San Luis Obispo CA 93401
- (4) Billy Rabenaldt, 150 Hinds Avenue, Pismo Beach CA 93449
- (5) Don Hughes, 2174 Costa Brave, Pismo Beach CA 93449

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section that continues on the next page. State briefly your reasons for this appeal. Include a summary description of why you believe the project is inconsistent with the applicable Local Coastal Program, Land Use Plan, or Port Master Plan. Please identify specific

EXHIBIT 1

A-3-PSB-98-097

policies and requirements and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The City authorized a seawall structure consisting of "two concrete retaining walls and a rip-rap structure to stabilize the ocean bluff, fill an existing cave and block entrance to another sea cave. . . ." The approval was "granted only for work performed above the mean high tide line." One retaining wall and rip rap would be constructed at the entrance to the trench where the bluff failure occurred; the rip rap would extend beyond the trench to block the entrance of a sea cave. Another retaining wall would be constructed in the trench 60 feet back from the entrance and higher up the bluff.

The proposed project is inconsistent with the following policies and sections of the City of Pismo Beach Local Coastal Program:

- **Alternatives:** Policy S-6, Shoreline Protective Devices, and Zoning Ordinance Section 17.078.060(4) allow shoreline protective devices only when necessary to protect existing development and only if there are no feasible less environmentally damaging alternatives. The City approved a riprap and concrete seawall structure, one of the alternatives included in the geologic report, finding that information had been received that indicated that other alternatives would "involve construction operations which are far more dangerous than the project, and which are not feasible." Yet no such evidence was supplied in the material received from the City. Additionally, according to the City-requested peer review of the geologic report by a consulting geologist, a concrete piling and grade beam structure "appears to be the most feasible solution. . .and would take the least amount of time." The City's approval is inconsistent with Policy S-6 and Section 17.078.060(4) because no information has been included in the material from the City showing that the approved alternative is in fact the only feasible alternative and the peer review indicates that there is a feasible alternative.

Additionally, it is unclear just what the City has approved, relative to the mean high tide line. The City Council approved the project with the condition that "The design of the proposed seawall. . .shall be approved by the City Planning Commission." The plans appear to show work extending below the mean high tide line, while the conditions state that "Approval is granted only for work performed above the mean high tide line." The proposed project would include blocking the entrance of a sea cave. It is not clear that such work could be accomplished completely above the mean high tide line.

- **Visual Issues:** Policy S-6 and Zoning Ordinance Section 17.078.060(4) require that seawalls use visually compatible colors and materials and minimize visual impacts. The City Council approved the project with the condition that "The design of the proposed seawall. . .shall be approved by the City Planning Commission." There is no indication that the proposed seawall will in fact minimize visual impacts and use visually compatible colors and materials. In addition, construction of the seawall would violate the terms of the Deed Restriction placed on the site in 1984, as a condition of approval for the Lodge. Therefore, the City's approval is inconsistent with Policy S-6 and Zoning Ordinance Section 17.078.060(4).

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- **Landform Alteration:** Policy S-6 and Zoning Ordinance Section 17.078.060(4) require that seawalls respect and minimize alterations of natural landforms. The proposed project would not respect natural landforms because it would fill a sea cave and create a seawall that would slope back toward the bluff top, while the natural landforms are dramatically tilted seaward with the base farther landward than the bluff top.
- **Sand Supply Impact:** Policy S-6 and Zoning Ordinance Section 17.078.060(6) require that seawalls be designed and sited to eliminate or mitigate impacts of local shoreline sand supply. According to the geologic report, "No alternative presented would interfere with the transport of sands in the near-shore environment." However, this does not address the fact that the bluff itself, as it erodes, is a potential source of sand.

There was no analysis of the bluff material in terms of percentage of sand nor any quantification of potential sand loss due to the project. Without such information, it is not possible to gauge the impacts the project may have on sand supply. Therefore the City's approval is inconsistent with Policy S-6 and Zoning Ordinance Section 17.078.060(6).

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Dave Potter
 Signature of Appellant(s)
 Date 12/8/98

SECTION VI. Agent Authorization

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

 Signature of Appellant(s)
 Date 12/8/98

EXHIBIT {

CALIFORNIA COASTAL COMMISSION

RECEIVED



CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863

NOV 02 1998

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

HEARING IMPAIRED: (415) 904-5200

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

BRUCE DAVID McFARLAN
331 PARK AVE. #2
PISMO BEACH, CA. 93449 (805) 773-9406
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of (local) / port government: CITY OF PISMO BEACH, CALIF.

2. Brief description of development being appealed: CONSTRUCTION OF A SEAWALL & RELATED IMPROVEMENTS(?) TO SUPPORT EXISTING STRUCTURES.

3. Development's location (street address, assessor's parcel no., cross street, etc.): SHELTER COVE LODGE 2651 PRICE ST. PISMO BEACH APN 005-025-008

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: YES

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-PSB-98-097

DATE FILED: 11/3/98

DISTRICT: Central Coast

EXHIBIT 1

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

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

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council Board of Supervisors d. Other _____

6. Date of local government's decision: OCT. 20, 1998

7. Local government's file number (if any): PROJECT NO. 98-143
FILE NO. 451.1

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

SHELTER COVE LODGE
2651 PRICE ST
PISMO BEACH, CA 93449

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

(1) FRED SCHOTT
200 SUBURBAN RD.
SAN LUIS OBISPO, CA.

(2) RAY BUNNELL
141 SUBURBAN R.D.
SAN LUIS OBISPO, CA.

(3) BILLY RABENALDT
150 HINDS AVE. #18
PISMO BEACH, CA. 93449

(4) DON HUGHES
2174 COSTA BRAVA
SHELL BEACH, CA 93449

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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A-3-PSB-98-097

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

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

UNDER SHORELINE PROTECTION CRITERIA & STANDARDS -
17.078.060 #5 NO NEW DEVELOPMENT SHALL BE
PERMITTED IF A PROTECTION DEVICE WILL BE NEEDED
WITH IN 100 YEAR, WELL BEFORE THE HOTEL WAS
EVEN OPENED THEY HAD TO PUT IN A SEAWALL & NOW
THEY WANT ANOTHER ONE, THE ~~ORIGINAL~~ GEOLOGIC
REPORT ON BLUFF INSTABILITY BY WOOLEY DIFFERS
GREATLY FROM THE ORIGINAL E.I.R DONE IN 1980

CONT.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Bruce S. McFarlan

Signature of Appellant(s) or
Authorized Agent

Date 10/31/98

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

Section VI. Agent Authorization

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

EXHIBIT 1

A-3-98-98t

GAVE THE HOTEL A 60 YEAR LIFE SPAN. BEFORE IT WOULD BE ENDANGERED, IT ALSO STATES THAT THE PROJECT SHOULD NOT BE BUILT TOO CLOSE TO THE SEA CAVES, ALSO "AT LEAST 30 FT. OF BED ROCK EROSION WOULD HAVE TO OCCUR OVER THE ENTIRE HEIGHT OF THE CLIFF BEFORE THE PROPOSED STRUCTURE WOULD BE THREATENED AT ITS CLOSEST POINT TO THE TOP OF THE CLIFF." THE REPORT ALSO CALLS FOR NO GRASS OR WATERING BUT THE HOTEL NOW HAS LOTS OF GRASS & WATERING GOING ON.

THE PERMIT APPLICANT HAS STATED THAT AN EMERGENCY ROAD IS ENDANGERED, THE CITIES POLICE & FIRE DEPT. DON'T USE IT NOR RECOGNIZE IT AS SUCH. ALSO A PUMPING SEWAGE HOLDING STATION (CLIFF'S HOTEL?) IS THREATENED WAS IT ALSO PLACED TOO CLOSE AND THEREFORE ILLEGAL? THERE WAS TO BE A MONITORING PROGRAM & PROCEDURE IN PLACE WHICH HAS NEVER BEEN ESTABLISHED NOR USED AS STATED BY THE CITIES STAFF REPORT. IN FACT THE STAFF WANTED ONE & FURTHER GEOLOGICAL STUDY ON ~~FURTHER~~ FUTURE PROBLEMS BUT THAT CONDITION WAS DROPPED BY THE CITIES PLANNING

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COMMISSION, WHY?

UNDER 17.078.060 I ASKED ABOUT #4 (A) RESPECT NATURAL LAND FORMS; IT DOESN'T, IT'S THE ONLY ONE LIKE IT AROUND (C) COLOR OF MATERIAL & ADVERSE IMPACTS ON LOCAL SHORELINE SAND SUPPLY, NO STUDY WAS GIVEN ME TO SHOW OR PROVE THAT IT WOULDN'T. I ALSO ASKED ABOUT WAVE RUN-UP, WAVE REFRACTION & DEFLECTION AND AGAIN GIVE NO ASSURANCES THAT THIS WOULDN'T OCCURE AND DAMAGE THE PROPERTY FURTHER AND DINOSAUR CAVES AREA TO THE NORTH. 17.078.060 #6. (A) & (C) ALSO ARE IMPACTED AS WELL AS #9.

I ALSO QUESTION THE FACT THAT THE HOTEL SAID THIS PROJECT COULDN'T BE SEEN AGAIN IN VIOLATION OF THE CITIES L.C.P. AS WELL AS THE STATE COAST ACT.

I FEEL THAT THEY ALSO WANT TO PLACE THE RIP-RAP FURTHER ON TO THE BEACH AS THEY FIRST WANTED TOO. WHO WILL WATCH OUT FOR THIS & MONITOR IT, THE WONT, CANN'T & DOESN'T WANT TOO, HELP PLEASE. ALL THE CONFLICTING REPORTS NEED TO BE ADDRESSER, THE HOTEL, LIKE THE CLIFFS HOTEL WILL NOT FALL INTO THE OCEAN IN THE NEAR FUTURE.

EXHIBIT 1

A-3-PSB-98-097

**FINAL LOCAL
ACTION NOTICE**

**NOTICE OF FINAL ACTION
BY THE CITY OF PISMO BEACH CITY COUNCIL
ON A COASTAL DEVELOPMENT PERMIT**

REFERENCE # 3-PSB-98-041
APPEAL PERIOD 25 Nov. - 30 Dec. 1998

DATE: November 18, 1998
TO: California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
ATTN: STEVE GUINEY

RECEIVED

NOV 23 1998

FROM: City of Pismo Beach
Public Services Department
760 Mattie Road
Pismo Beach, CA 93449

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

*Conditions rec'd.
11/24/98 SG*

RE: Action by the City of Pismo Beach on a Coastal Development Permit for the following project located within the Pismo Beach Coastal Zone:

APPLICANT:

OWNER/AGENT

Name: Shelter Cover Partnership
Address: 141 Suburban Road Suite A-5, San Luis Obispo, CA 93401
Telephone No. 805-544-4300

Application File No.: 98-143
Site Address / APN: 2651 Price Street, APN 005-025-008
Project Summary: Final Neg. Dec and Mitigation Monitoring program for the construction of a seawall and related improvements.

Date of Action: November 17, 1998
Action by: Planning Commission X City Council Staff
Action: X Approved
 Approved with conditions/modifications
 Denied
 Continued: to meeting of:

Attachments: X Resolution No. 98-72
X Staff Report

Appeal Status: No Appealable to the Coastal Commission (see note)

NOTE: Appealable to the California Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within ten working days following Coastal Commission receipt of this notice. Any appeal of this action must be filed in writing to the Coastal Commission using forms obtainable from the Santa Cruz district office at the address identified above.

EXHIBIT 2

A-3-PSB-98-097



CITY OF PISMO BEACH, CALIFORNIA

CITY COUNCIL AGENDA REPORT

SUBJECT: Public hearing on Final Mitigated Negative Declaration and a Mitigation Monitoring Program related to construction of a seawall and related improvements to provide support for existing structures threatened by erosion and bluff retreat at 2651 Price Street, (Shelter Cove).

RECOMMENDATION:

Conduct public hearing. Adopt Resolution with the following motion: "I move to approve Resolution 98-___."

EXECUTIVE SUMMARY:

On October 20, 1998, the City Council adopted Resolution 98-67 to deny the appeal by Bruce McFarlan of the September 22, 1998 Planning Commission action approving a Mitigated Negative Declaration and discretionary permits for the construction of a seawall and related improvements to protect a portion of the Shelter Cove Lodge structure at 2651 Price Street.

Resolution 98-67 referenced approval of the Final Mitigated Negative Declaration as Exhibit A. Exhibit A as presented to the Council on October 20, 1998, was the Draft Mitigated Negative Declaration. Exhibit A should have been the Final Mitigated Negative Declaration. Differences between the Draft and Final Negative Declarations are minimal and there were no changes in mitigation monitoring. A list of the items added in the Final Mitigated Negative Declaration is attached to this report.

This technical oversight can be remedied with a public hearing (to provide members of the public an opportunity to comment on the Final Negative Declaration) and adoption of the attached resolution. (The complete packet of information presented to the Council on October 20, 1998 has been placed in the Council reading file for reference.)

The Council's October 20, 1998 determination to uphold the September 22, 1998 Planning Commission approval of the project has been appealed to the California Coastal Commission. Should the Council adopt the attached resolution, a copy will be forwarded to the Coastal Commission as the City's final action on the proposed project.

Prepared by: Carolyn Johnson, Planner

Reviewed by: Dennis Delzeit, Public Services Director Meeting Date: November 17, 1998

Exhibits:

1. Additions in the Final Mitigated Negative Declaration
2. Resolution

M. Linn
City Manager approval

EXHIBIT 2

A-3-PSB-98-097

AGENDA ITEM:

7B

7B-1

RESOLUTION NO. R-98-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH ADOPTING THE FINAL NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM FOR PROJECT NO. 98-143, CONSTRUCTION OF A SEAWALL AND RELATED IMPROVEMENTS AT SHELTER COVE LODGE, 2651 PRICE STREET

WHEREAS, instead of a Final Negative Declaration and Mitigation Monitoring Program, a Draft Negative Declaration and Mitigation Monitoring Program for Project No. 98-143 was presented to the City Council at the time of adoption of Resolution No.98-67 on October 20, 1998 relative to the appeal by Bruce McFarlan of Planning Commission approval of said project; and

WHEREAS, the Final Negative Declaration and Mitigation Monitoring Program for Project No. 98-143 was presented to the City Council at a public hearing held on November 17, 1998; and

WHEREAS, the City Council has considered the Final Negative Declaration and Mitigation Monitoring Program for Project No. 98-143 and for the appeal of Bruce McFarlan and has considered testimony from City Staff, the Applicant and members of the public.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Pismo Beach as follows:

1. The City Council has considered the Final Negative Declaration together with comments received and considered during public hearings on October 20, 1998 and November 17, 1998, and, having determined that the Final Negative Declaration reflects the independent judgment of the City Council, has been completed in compliance with the California Environmental Quality Act (CEQA) and is adequate for consideration of the appeal of Bruce McFarlan of Project No. 98-143 and of the project itself, hereby adopts said Final Negative Declaration and Mitigation Monitoring Program.
2. All references to the "Mitigated Negative Declaration and Mitigation Monitoring Program" in Resolution No. 98-67 are hereby declared to be references to the "Final Negative Declaration for Project No. 98-143" which document is attached hereto and by this reference made a part hereof and which shall be attached to Resolution No. 98-67 as Exhibit A thereto, replacing the "Draft Negative Declaration for Shelter Cove Lodge Stabilization Project" which was previously attached thereto.

UPON MOTION OF Councilmember Rabenoldt, seconded by Mayor Brown the foregoing resolution was passed, approved and adopted by the City Council of the City of Pismo Beach this 17th day of November, 1998, on the following roll call, to wit:

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AYES: Councilmembers: Rabenaldt, Mayor Brown, Councilmembers Halldin, Mello
NOES: Councilmembers: None and Reiss
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None



John Brown, Mayor

ATTEST:



Sharon Jones, City Clerk

EXHIBIT 2

A-3-PSB-98-097

RECEIVED

OCT 23 1998

CITY OF PISMO BEACH
PLANNING DEPT.

RESOLUTION R-98-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH TO DENY THE APPEAL OF THE SEPTEMBER 22, 1998 PLANNING COMMISSION DECISION BY BRUCE McFARLAN AND APPROVING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM, COASTAL DEVELOPMENT PERMIT, AND ARCHITECTURAL REVIEW PERMIT FOR CONSTRUCTION OF A SEAWALL AND RELATED IMPROVEMENTS TO PROVIDE SUPPORT FOR EXISTING STRUCTURES THREATENED BY EROSION AND BLUFF RETREAT, 2651 PRICE STREET, APN 005-025-008, PROJECT No. 98-143

WHEREAS, Shelter Cove Partnership (the "Applicant") has submitted applications to the City of Pismo Beach for approval of a Coastal Development Permit and Architectural Review Permit for the construction of a seawall and related improvements to provide support for existing structures threatened by erosion and bluff retreat; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the project on September 22, 1998 at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission held a duly noticed hearing on the Mitigated Negative Declaration on September 22, 1998, and proposed modification of Mitigation Measure No. 8 which regulates the hours during which construction activity on the site may occur; and

WHEREAS, the Planning Commission approved the project based on findings adopted at such meeting, including approval of a Coastal Development Permit, Architectural Review Permit, and approved the Mitigated negative declaration and Mitigation Monitoring Program for the project; and

WHEREAS, on October 6, 1998, an appeal from the Planning Commission was filed with the City of Pismo Beach by Bruce McFarlan; and,

WHEREAS, the City Council has considered the appeal of Bruce McFarlan, including written material included in their October 20, 1998 agenda packets, and has considered testimony from City Staff, the Applicant, and members of the public; and

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

A. FINDINGS FOR APPROVAL OF THE MITIGATED NEGATIVE DECLARATION AND MONITORING PROGRAM:

The City Council has considered the Negative Declaration together with the comments received and considered during the public review process. The Negative Declaration reflects the independent judgment of the City Council and has been completed in compliance with the California Environmental Quality Act (CEQA), and is adequate for consideration of this appeal and the project to which the appeal relates.

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The City Council finds that through feasible conditions placed upon the project, the significant impacts on the environment have been eliminated or mitigated to a less than significant level. Although the project could potentially have a significant effect on the environment, the City Council finds that the project as mitigated will not have a significant effect on the environment based on the following findings:

1. *Land Use:* The proposed improvements are consistent with the Land Use Element of the General Plan.
2. *Geologic processes:* The primary purpose of the improvement would be to stabilize the blufftop area and control further retreat of the blufftop area. The Negative Declaration requires the applicant to obtain soil tests for any soil from the site used in the improvements.
3. *Air quality:* No potentially significant long-term impacts to air quality would result from the project. The Negative Declaration requires that measures be taken to control dust during the construction period.
4. *Biological resources:* No potentially significant impact has been identified with regard to biological resources.
5. *Archaeological resources:* The project site includes areas of archaeological importance. The area of improvements would involve potentially significant sites on the blufftop area, and monitoring by a qualified archaeologist would be required for work in this area. Work in other areas would be subject to a condition requiring cessation of work and employment of monitors in the event archaeological remains are discovered.
6. *Noise:* Construction noise could have a potentially significant impact on surrounding properties and visitors. The mitigation measure proposed in the Negative Declaration would limit the time during which construction could occur on the site.
7. *Aesthetic/visual resources:* The Negative Declaration requires that the design of the seawall be submitted to the Planning Commission for approval prior to issuance of building permits.
8. No other potentially significant adverse impacts were identified.
9. The applicant has requested that the hours of construction be modified, due to the nature of the work, which has as its primary purpose stabilization of the blufftop and vicinity, which poses a hazard to property and enjoyment of the area by visitors. The City Council finds that modification of Mitigation Measure No. 8 as set forth in the Negative Declaration is desirable, in that it would permit construction to occur in an expedited manner, avoiding delays which continue the risk to the site; the amended mitigation measure below would be as effective as the original mitigation measure in avoiding potential impacts, and the amended mitigation

measure set forth below would not, in itself, create potentially significant impacts on the environment.

10. Mitigation Measure No. 8 is therefore modified to read as follows:

Construction activity shall be limited to the hours between 7:00 a.m. and 10:00 p.m., Monday through Friday seven days a week. No construction shall occur on State holidays (i.e. Thanksgiving, Labor Day). Construction equipment maintenance shall be limited to the same hours. Signs stating these restrictions shall be provided by the applicant and posted on site. Signs shall be in place prior to the beginning of and throughout grading and construction activities. Violations may result in suspension of permits.

Plan requirements and timing: This condition shall be included on all construction plans.

Monitoring: The City Building Inspector shall spot check and respond to complaints.

11. The Initial Study is a complete and adequate informational document. The project, with the Mitigation Monitoring Program, will not have a significant effect on the environment.
12. The City Council hereby certifies the project's Mitigated Negative Declaration and Mitigation Monitoring Program (attached as Exhibit A).
13. Public Resources Code Section 21081.6. requires the City to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation

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

1. The proposed seawall and related improvements are in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30220) of the California Coastal Act of 1976.
2. The proposed seawall and related improvements are appropriate in size so as to be compatible with the adjacent structures.
3. The proposed seawall and related improvements are compatible with the visual quality and character of the surrounding area and is compatible with the immediate neighborhood.

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4. The proposed seawall and related improvements are consistent with the General Plan, Local Coastal Plan and General Plan Land Use Plan category of Resort Commercial.
5. The proposed seawall and related improvements are in conformance with the requirements of the Zoning Code.
6. The proposed seawall and related improvements are compatible with the nearby existing uses and are not detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the surrounding area of the proposed project.
7. The site is physically suitable for construction of a seawall and related improvements to provide support for existing structures threatened by erosion and bluff retreat.
8. The proposed construction of a seawall and related improvements to provide support for existing structures threatened by erosion and bluff retreat is in keeping with the character of the surrounding area composed of visitor-serving businesses.
9. The proposed seawall and related improvements will not be detrimental to the orderly of in the surrounding area.
10. The proposed seawall and related improvements will not impair the desirability of investment or occupation in the surrounding area.
11. Based upon the mitigation measures relating to archaeology and historic resources, the proposed seawall and related improvements will not impact archaeological or historical resources.
12. The construction of the project is necessary to protect existing structures.
13. There are no feasible alternatives to the project. The City Council has received evidence concerning alternatives, including correspondence from the project engineer attached as Exhibit 5, which would involve construction operations which are far more dangerous than the project, and which are not feasible.
14. Based on the absence of feasible alternatives to the project, the City Council finds that there are no other less environmentally damaging alternatives for protection of the existing development.

The City Council hereby denies the appeal of the September 22, 1998 Planning Commission determination by Bruce McFarlan, and approves the Coastal Development Permit, and Architectural Permit subject to the Conditions of Approval for the project attached hereto as Exhibit B.

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*Shelter Cove Lodge Stabilization Project
City of Pismo Beach; Project No. 98-143
Exhibit 4: R-98-67
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UPON MOTION of Councilmember Rabenaldt, seconded by Mayor Brown, the foregoing Resolution is hereby approved and adopted the 20th day of October, 1998 by the following roll call vote, to wit:

AYES: Councilmember Rabenaldt, Mayor Brown, Councilmembers Mellow and Reiss

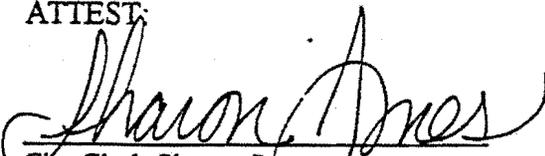
NOES: Councilmember Halldin

ABSTAIN: none

ABSENT: none


Mayor John C. Brown

ATTEST:


City Clerk Sharon Jones

A:\resolution.98-67.wpd

EXHIBIT 2

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| | | | | | |
|------------------|-------------------------|---------|--------------|------------|----|
| Post-It Fax Note | 7871 | Date | 11/24/98 | # of pages | 10 |
| To | Steve Alley | From | [Signature] | | |
| Co./Dept. | | Co. | [Signature] | | |
| Phone # | ortho to follow by mail | Phone # | 805 773-4658 | | |

EXHIBIT B

CITY OF PISMO BEACH CITY COUNCIL
CONDITIONS OF APPROVAL,
OCTOBER 20, 1998
PROJECT NO. 98-143 / CDP / ARP
LOCATION: 2651 PRICE STREET; APN 005-025-008

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

AUTHORIZATION: Subject to the conditions stated below, approval of Permit No. 98-143 grants the permittee a Coastal Development Permit and Architectural Review Permit to: Construct two concrete retaining walls and a rip-rap structure to stabilize the ocean bluff, fill an existing cave and block the entrance to another sea cave near the Shelter Cove Lodge, 2657 Price Street, Pismo Beach, California. One concrete retaining wall and associated rip-rap structure will be constructed at the entrance of an existing trench in order to prevent further erosion with the trench. The rip-rap structure will be extended westward from the trench entrance in order to block the entrance of another sea cave that would undermine one of the motel buildings on the site. Another concrete retaining wall will be constructed in the trench approximately 60 feet from its entrance. This structure will provide lateral support for the 90-foot high bluff on the north side of the trench and will utilize detrital material to fill the trench and adjoining cave. The approved project is as shown on the approved plans with City of Pismo Beach stamp of September 22, 1998.

This Coastal Development Permit and Architectural Permit is based upon and limited to compliance with the project description noted above, the hearing exhibits with the City of Pismo Beach stamp dated September 22, 1998 and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the City for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval. Approval is granted only for the construction and use as herein stated.

Approval is granted only for work performed above the mean high tide line (*amended by the Planning Commission 9/22/98*).

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

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40-3E

EXPIRATION DATE: The applicant is granted two years for inauguration (i.e. building permits issued and construction begun) of this permit. The permits will expire on October 19, 2000 unless inaugurated prior to that date. Time extensions are permitted pursuant to Zoning Code Section 17.121.160 (2).

ENVIRONMENTAL DETERMINATION: This project was reviewed by staff. A draft Negative Declaration was circulated for public review and comment. Staff has determined that all potentially significant environmental effects of the project could be mitigated to a less-than-significant level, and a Final Negative Declaration has been prepared for Planning Commission action. A Mitigated Negative Declaration has been approved by the Planning Commission and the City Council.

The property owner and the applicant (if different) shall sign these Conditions of Approval within ten (10) working days of receipt, the permit is not valid until signed by the property owner and applicant.

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

Approved by the City Council on October 20, 1998

Applicant

Date

Property Owner

Date

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*Shelter Cove Lodge Stabilization Project - City of Pismo Beach
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Conditions as indicated below have been deemed to be of a substantive nature on the basis of the City Council's decision. These conditions cannot be altered without Planning Commission approval.

A. CONDITIONS RESULTING FROM ENVIRONMENTAL REVIEW

1. Detrital soil proposed for use in connection with the project shall be tested by a qualified testing company to determine suitability for use in the project. Soil samples shall be submitted to a qualified soils engineer for determination of suitability for use within the project site. A written report shall be submitted and reviewed, and all recommendations of the report shall be followed during the construction.
 2. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site. Follow the dust control measures listed below:
 - a. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems are to be used to prevent dust from leaving the site and to create a crust after each day's activities cease.
 - b. During construction, water trucks or sprinkler systems shall be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.
 - c. Soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.
- All requirements shall be shown on grading and building plans. Condition shall be adhered to throughout all grading and construction periods.
3. In the event archaeological remains are encountered during construction, work shall be stopped immediately or redirected until a qualified archaeologist and Native American representative are retained by the applicant to evaluate the significance of the find. If remains are found to be significant, they shall be subject to a mitigation program consistent with archaeological guidelines in compliance with State law and funded by the applicant.
 4. If significant archaeological resources cannot be avoided, impacts shall be reduced by filling on top of the sites rather than cutting into the cultural deposits whenever possible. Because site deposits on which fill would be placed would no longer be accessible to research, a data

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collection program shall be conducted. The program shall include the following:

- a. Mapping the location of surface artifacts within the proposed areas of fill;
- b. Surface collection of artifacts;
- c. The excavation of a small sample, determined by a qualified archaeologist, of cultural deposit to characterize the nature of the buried portions of sites. All material used as fill deposit shall be culturally sterile and chemically neutral;
- d. Curation of the excavated sample shall occur as specified by the archaeologist.

The required data collection program shall be conducted by a qualified archaeologist and funded by the applicant. The results of the program shall be reviewed and approved by the Planning Department prior to implementation. All recommendations in the report shall be implemented as approved.

5. All earth disturbances including scarification and placement of fill within the blufftop area shall be monitored by a qualified archaeologist. Prior to issuance of building permits, an agreement shall be prepared between the Applicant and the archaeologist, consisting of a project description and scope of work. The agreement shall be reviewed by the Planner for consistency with the project conditions prior to execution. The agreement must be executed prior to commencement of work at the site. Applicant shall pay for the preparation of the agreement and the monitoring covered therein.
6. Construction activity shall be limited to the hours between 7:00 a.m. and ~~6:00~~ 10:00 (amended by Planning Commission 9/22/98) p.m., seven days a week. Construction equipment maintenance shall be limited to the same hours. Signs stating these restrictions shall be provided by the applicant and posted on site. Signs shall be in place prior to beginning of and throughout grading and construction activities. Violations may result in suspension of permits.
7. The design of the proposed seawall and associated development shall be approved by the City Planning Commission. The design submitted by the applicant shall be approved by the Planning Commission prior to issuance of building permits.

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*Shelter Cove Lodge Stabilization Project - City of Pismo Beach
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B. OTHER PROJECT CONDITIONS PRIOR TO ISSUANCE OF BUILDING PERMITS

1. Building permit application. The applicant shall apply for building permits, and shall submit four (4) sets of construction plans along with four (4) copies of the conditions of approval noting how each condition has been satisfied to the Building Division.
2. Compliance with City Council approval. Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and project elevations are in compliance with the City Council's approval and conditions of approval.
3. The Title Sheet of the plans shall include:
 - a. Street address, lot, block, track and Assessors parcel number.
 - b. Description of use
 - c. Type of construction
 - d. Vicinity Map
 - e. All Conditions of Approval.
4. The title sheet of the plans shall indicate that all construction will conform to the 1994 UBC, UMC & UPC, the 1993 NEC, 1994 California Title 19 & 24, California Energy Conservation Standards and Handicapped Accessibility Standards where applicable and all City codes as they apply to this project.
5. Plans shall be submitted by and shall bear the stamp of a California licensed architect and/or engineer.
6. A separate grading plan complying with Appendix Chapter 33, UBC, and Title 15 PBMC, may be required.
7. A soils investigation may be required for this project.
8. Title 24, Energy Conservation Documentation may be required for this project.
9. Submit 3 complete sets of plans and attachments when applying for permits.

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*Shelter Cove Lodge Stabilization Project - City of Pismo Beach
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10. A Runoff Control Plan shall be submitted to the City Engineer for review and approval prior to the issuance of a building permit for all construction on slopes of 10 percent or greater. The Runoff Control Plan shall be designed by a licensed engineer qualified in hydrology and soil mechanics. This plan shall meet the requirements of Chapter 17.078 of the City's Zoning Ordinance.
11. Utilities. If gas meters, electric utilities or any part of the Fire Protection Water System are subject to vehicular damage, impact protection shall be provided.
12. Fees and permits. Any and all applicable fees and permits shall be secured prior to commencing work.
- 12a. Detailed construction grading and site improvement plans prepared in accordance with the Uniform Building Code shall be reviewed and approved by the City. *(added by Planning Commission 9/22/98)*
- 12b. Design and construction shall be in accordance with the Geologic Report prepared by David Wooley, dated June 23, 1998. *(added by Planning Commission 9/22/98)*
- ~~13. Prior to the issuance of building permits, Coastal Development Permit or Architectural Permit, the applicant and landowner shall execute an agreement with the City, in a form acceptable to the City Attorney, providing for the following:~~
- ~~1. The City shall have the right to issue a Request for Proposal for the purpose of employing consultants to advise the City with regard to the geologic, soil, oceanic and other conditions which affect the project site;~~
 - ~~2. The review of the consultant or consultants selected shall include a review of available information and reports concerning the geology, soil and oceanic conditions at the project site;~~
 - ~~3. If, in the opinion of the Public Services Director, additional reports or information is required, the City shall have the right to direct the consultants selected, following consultation with the applicant and landowner and their selected representatives, to obtain further information and conduct further studies;~~
 - ~~4. The applicant and landowners shall be responsible for the cost of such review;~~

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~~Following selection of the consultant or consultants, the Planner shall advise the landowners and applicant of the estimate of cost submitted by the consultant or consultants, and the applicant shall either deposit such an amount with the City for use in the study, or submit a surety bond acceptable to the Public Services Director in such amount. (Stricken by the Planning Commission 9/22/98)~~

C. CONDITIONS SUBJECT TO COMPLIANCE DURING CONSTRUCTION:

1. **Site maintenance.** During construction, the site shall be maintained so as to not infringe on neighboring property. Said maintenance shall be determined by the Building Official.
2. The developer shall clear the project site of all excess construction debris.
3. During construction, washing of concrete, paint, or equipment shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Washing shall not be allowed near sensitive biological resources. An area designated for washing functions shall be identified. The applicant shall designate a wash off area, acceptable to the City, on the construction plans. The wash off area shall be designated on all plans prior to approval of Building Permits\Coastal Development Permits. The washoff area shall be in place throughout construction.
4. Construction envelopes shall be clearly identified on all plans, and shall be designed to avoid, to the greatest extent possible, areas identified as having archaeological significance. No construction, earth disturbance or construction equipment shall occur or operate outside of envelopes. Subsurface structures including utilities and accessways including roads, driveways and utilities, shall not be placed outside the envelopes. Envelope boundaries shall be staked in the field. Construction envelopes shall be shown on all grading and building plans.
5. The project shall be inspected by the design engineer during construction to ensure proper implementation of the design. *(added by Planning Commission 9/22/98)*
6. Work performed by the construction contractor shall conform to OSHA Construction Safety Order. *(added by Planning Commission 9/22/98)*
7. Construction contractor shall obtain State Division of Industrial Safety Permit. *(added by Planning Commission 9/22/98)*

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8. Construction contractor shall submit a Safety Plan for Construction detailing how the work will be accomplished and the safety measures to be used during construction. *(added by Planning Commission 9/22/98)*
9. Record drawings shall be provided to the City. *(added by Planning Commission 9/22/98)*

D. CONDITIONS SUBJECT TO ONGOING COMPLIANCE:

1. Compliance with applicable laws. All applicable requirements of any law or agency of the State, City of Pismo Beach and any other governmental entity at the time of construction shall be met. The duty of inquiry as to such requirements shall be upon the applicant.
2. Hold harmless. The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
3. Legal challenge: In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project applicant or landowner in a suit filed in a court of law or threatened to be filed, which is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
4. Awareness of hazards and indemnification: Prior to issuance of the building permit, the applicant and landowner shall execute and record a deed restriction, in a form and content acceptable to the City Attorney, which shall provide (a) that the applicant and landowner understand that the site may be subject to extraordinary hazard from bluff erosion and wave damage and that the applicant and landowner assume the liability from such hazards; and (b) that the landowners and applicant unconditionally waive any claim of liability on the City's part and agree to indemnify and hold harmless the City, its agents and advisors relative to the City's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns of the landowner and applicant, and shall be recorded free of prior liens and encumbrances which the City Attorney determines may affect the interest being conveyed.

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A-3-950-98-097

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E. MISCELLANEOUS/FEEES:

1. Required fees. The applicant shall be responsible for the payment of all applicable development and building fees including the following:
 - a. All applicable development impact fees pursuant to Ordinance 93-01 and Resolutions 93-12 and 93-33.
 - b. Water system improvement charge.
 - c. Water meter hook-up charge.
 - d. Sewer public facilities fee.
 - e. Park development and improvement fee.
 - f. School impact fees pursuant to the requirements of the San Luis Coastal School District.
 - g. Building and construction and plan check fees: building fee, grading and paving fee, plan check fee, plumbing, electrical/mechanical fee, sewer connection fee, Lopez assessment, strong motion instrumentation, encroachment fee, and other fees such as subdivision plan check and inspection fees.
 - h. Other special fees:
 1. Assessment district charges.
 2. Other potential fees
 - i. Any other applicable fees.

F. MITIGATION MONITORING PROGRAM

1. Public Resources Code Section 21081.6. requires the City to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation

The applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is built and occupied. To accomplish this the applicant agrees to:

- a. Contact the Planning Department as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities.

EXHIBIT 2

A-3-PSB-98-097

10-42

*Shelter Cove Lodge Stabilization Project - City of Plsma Beach
Project 98-143
City Council Conditions of Approval
Page 10 of 10*

- b. Contact the Public Services Department at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting with the owner, compliance staff, other agency personnel and with key construction personnel.

- c. Pay fees prior to issuance of Building Permits\Coastal Development Permits as authorized under ordinance and fee schedules to cover full costs of monitoring as described above, including costs for the City to hire and manage outside consultants when deemed necessary by City staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the applicant shall comply with City recommendations to bring the project into compliance. The decision of the Public Services Director shall be final in the event of a dispute.

EXHIBIT 2

A-3-PSB-98-097

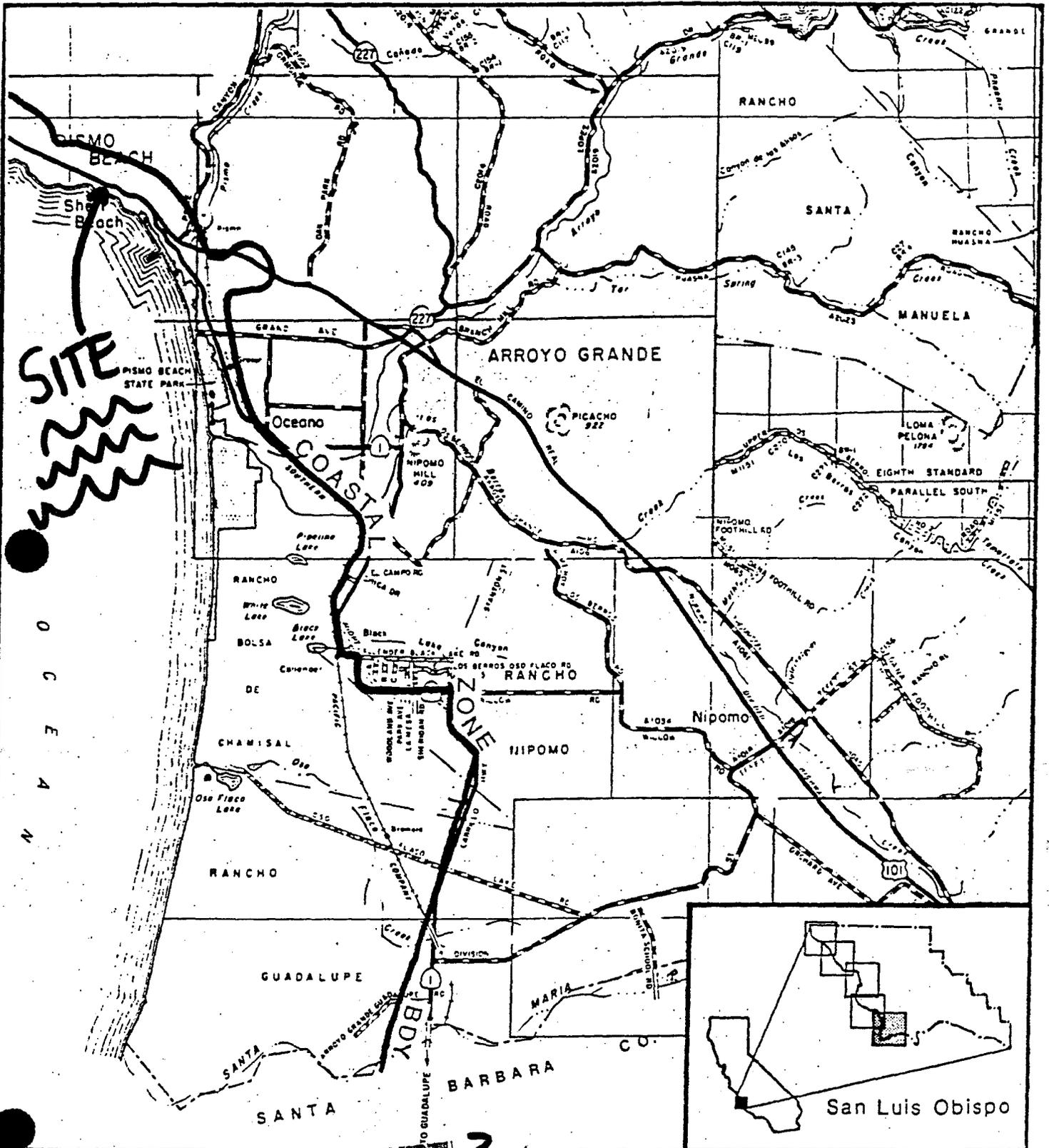
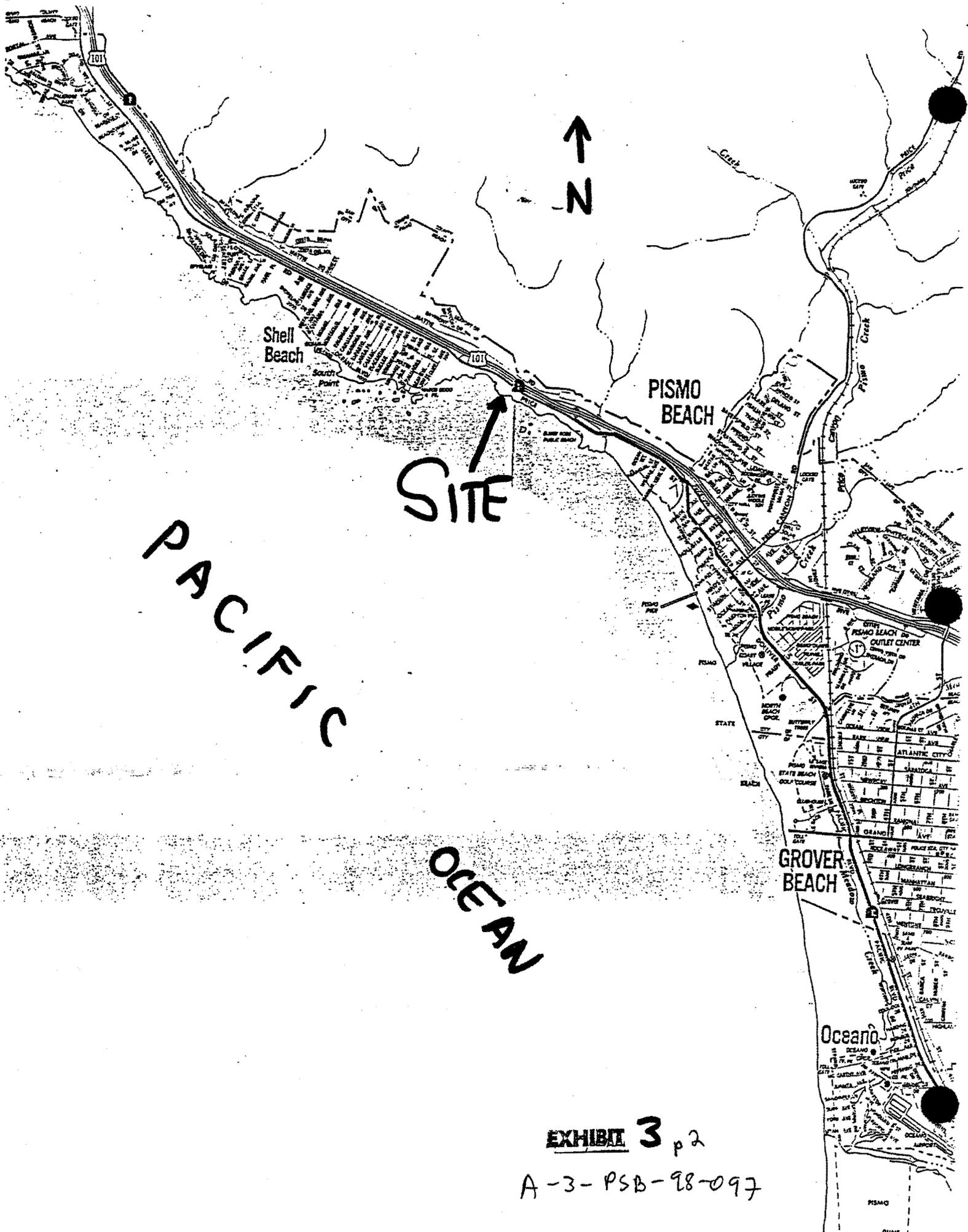


EXHIBIT 3 p1

A-3-PSB-98-097

LOCATION MAP





PACIFIC

OCEAN

SITE

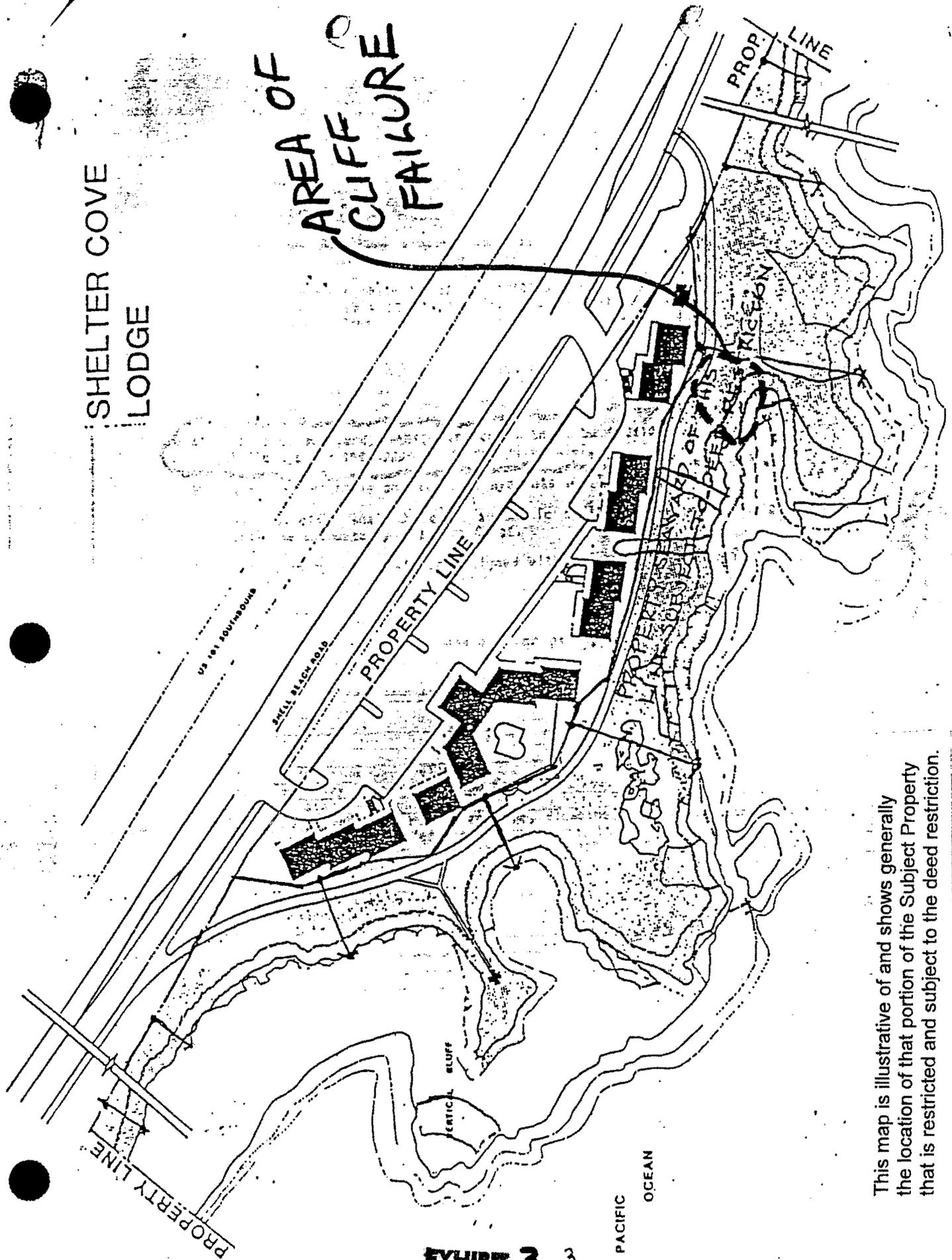
EXHIBIT 3 p2

A-3-PSB-98-097

PSBMC
OCEANO

SHELTER COVE
LODGE

AREA OF
CLIFF
FAILURE



This map is illustrative of and shows generally the location of that portion of the Subject Property that is restricted and subject to the deed restriction.

EXHIBIT 3 p 3

A-3-PSB-98-097

THIS AREA IS IN DANGER OF IMMEDIATE SLUFFING AND COLLAPSE ESPECIALLY DURING THE WINTER STORMS

APPROX PROFILE BEFORE BLUFF FAILURE

TOP OF PROPOSED CONCRETE WALL EL 74 WITH NEW 2:1 SLOPE ABOVE

CRACKS IN EMERGENCY ROAD AND PUBLIC ACCESSWAY

10' 21'

BLDG E

PARKING

SHELL BEACH ROAD

94.83 FF

92.3 BOTTOM FOUNDATION

EL 90.82

SERVICE LINES

SOIL LAYERS

SOFT SAND & SHELLS

ORIGINAL LOCATION TOP OF COLLAPSED SEA CAVE C-9 EL 55

HI POINT OF RUBBLE

BEDROCK

ESTIMATED FUTURE NATURAL PROFILE IF NOT REPAIRED

APPROX CURRENT PROFILE (VARIES) DUE TO OCEAN UNDERCUT AND BLUFF FAILURE

BEDROCK

SEA CAVE C-9

SEA LEVEL 0

APPROX LOW POINT OF COLLAPSED RUBBLE

A-3-158-98-017
EXHIBIT 3 p 4

SHELTER COVE LODGE PISMO BEACH

CROSS SECTION AND PROFILES AT BLUFF FAILURE SITE

SCALE 1" = 30'

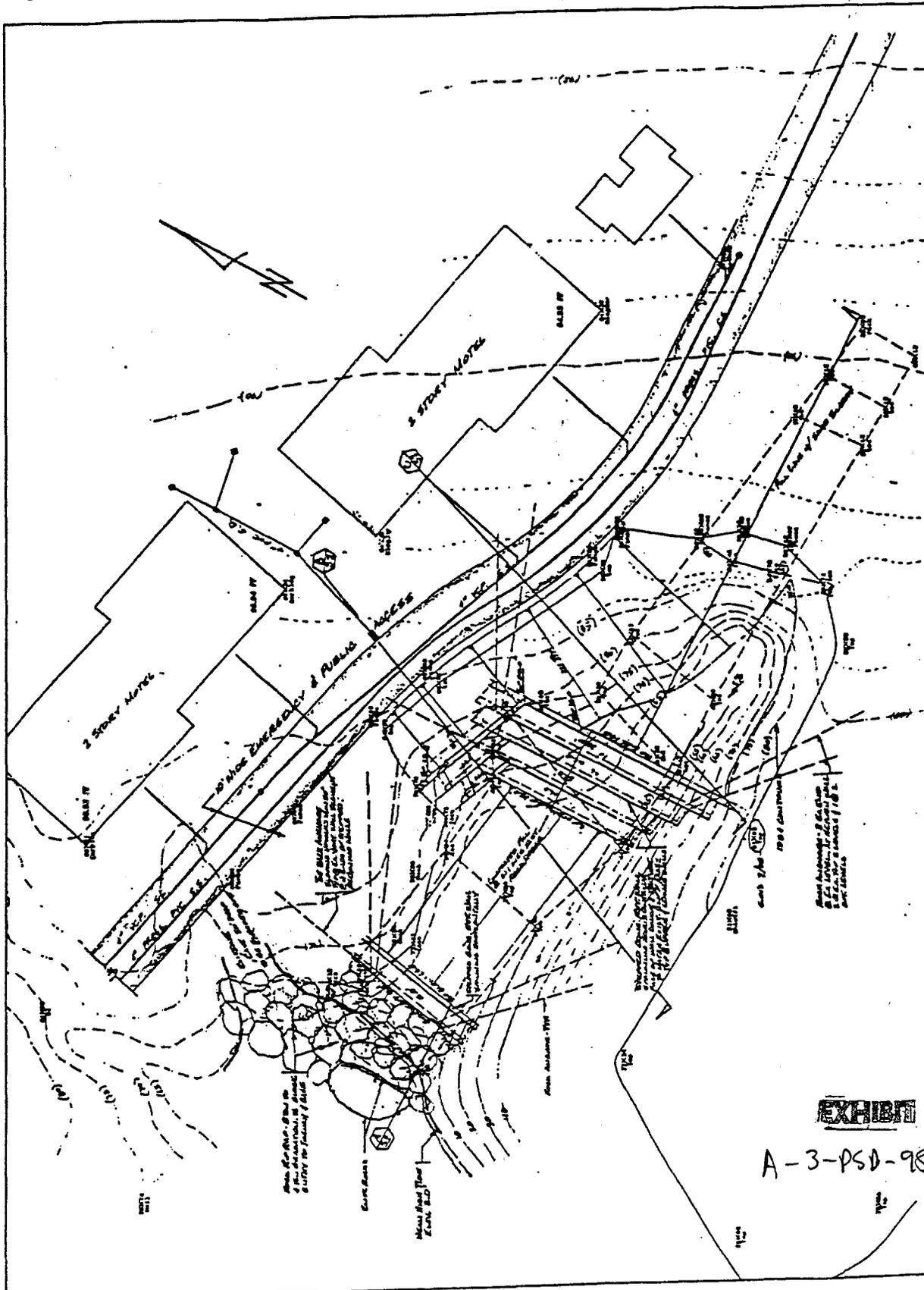


EXHIBIT 3 p5
A-3-PSD-98-097

FIGURE 3: SITE PLAN

SHELTER COVE LODGE

RESPONSE TO APPEAL ITEMS

1. New development not permitted: This item is irrelevant since the hotel is existing and was properly permitted. Shelter Cove was approved under the proper authority of the City of Pismo Beach. No protection devices were expected at that time based on extensive geologic studies, with the exception of riprap placement on the beach as required by the City for the protection of Shell Beach Road. (Condition B 7) Geologic studies are educated estimates, they are not absolute and do not accurately forecast the future. Some variation in retreat rates should be expected as stated in the reports.

2. Seawall before hotel opened: Mr. McFarlan mistakes facts when he says that a seawall was put in well before the hotel opened. This simply is not true! A few days before the hotel opened a sea cave collapsed, creating the need for a seawall that was built after the hotel opened in 1986, with the full approval of the City and State Coastal Commission.

He is also incorrect that we want another one now. We do not want one, but unfortunately, are in need of some protective repair device. What we have proposed is more of a retaining wall than a seawall. Retaining walls and seawalls both already exist on the property and were properly approved by the Coastal Commission and the City. One existing retaining wall was part of the original project and supports the public access way and the emergency vehicle access road. It is within 100 feet of the current proposed project.

3. Wooley geologic report: Mr. McFarlan does not state how Mr. Wooley's report differs greatly from the original EIR done in 1980. Mr. Wooley's report is not intended to go into all of the great detail of the 1980 report, or the various other reports that have been done. His report is for the purpose of evaluating the current situation, causes, and solutions, which he has done with the most recent information at hand. The 1980 EIR was prepared for an 88 unit hotel and is not the original EIR. Various EIR reports for the hotel date back to the early 70s, with the most recent being 1982, just prior to the hotel approval in 1984. Subsequently, two negative declarations were issued for seawall protection in 1986 and 1989. (See permits # 4-86-185 and # 64CP-88, 38-CUP-88)

4. Original EIR done in 1980:

A. The 60 year life again was an estimate that did not work out for a small portion for the project. Some areas may very well be good for 200 - 300 years. The report indicated there would be variations.

EXHIBIT 4

A-3-PSB-98-097

7. Monitoring program: There was a discussion of a monitoring plan in conjunction with the seawall permit 64-CP-88. However, to my knowledge, a formal plan was never negotiated. We do periodically inspect the bluffs for signs of trouble and take action as needed.

It would be extremely difficult for us, or anyone, to predict a cliff failure in advance of its happening. It appears that it would be even more difficult to convince the governmental agency to allow us to take action for prevention such as placing riprap, prior to a real occurrence. This was made clear by the recent discussions and testimony by Staff, Commissioners, and others at the recent Cliffs Hotel hearing.

We do not object to some sort of reasonable monitoring plan, but frankly don't know how it would work or benefit us considering the extreme difficulty of being allowed to take action. The plan that was suggested by City Staff involved more geologic studies, which would be very expensive, and boil down to recommendations for bluff protection devices that no one would want. There was also no estimate or limit on cost, which was unreasonable.

The condition was dropped by the City Planning Commission and the City Council because they agreed it was not reasonable.

We, on the other hand, would like to take some action to plug some of our sea caves which seem to be the main source of problem erosion for our project. We would welcome Coastal Staff suggestions on how to accomplish this.

8. Natural landforms, color, sand supply: We submitted color photographs depicting how the finished project would look, as well as the other similar on site project, which blends very well with the natural bluff. We believe this project will blend with the natural landforms as well.

The appellant is incorrect when he says, "it is the only one around". It is actually very similar to the one constructed in 1986, except that its construction is in two parts and will be completely out of the water except for a small amount of riprap to be placed above mean high tide. We have demonstrated with the 1986 seawall that the color of concrete can blend with the natural bluff rock. We have agreed to add color or staining to effect this result.

Mr. McFarlan was given the same reports that everyone else received involving sand supply. No significant sand supply impact has been reported. There is no beach in this area.

Mr. McFarlan has provided no studies or factual information to back up his points of appeal.

EXHIBIT 4

A-3-PSB-98-097

9. Wave and property damage: There are no properties nearby that would be damaged by this project. This is not a surfing or public beach area, nor is there any public access to this area.

10. Sand Supply:

(6A) There are no significant impacts on sand supply as determined by the geologist (Wooley) report dated June 23, 1998. Due to the relatively hard rock cliffs, and the very slow rate of erosion, very little sand is generated in this area. The soft rock areas (now sea caves) have already eroded into the ocean as sand or rock debris.

(6C) Significant rocky points and Intertidal or subtidal areas: our project actually does avoid the significant rocky points. The retaining protective structures are set back away from the protruding rock points, inside a trench crevice (formerly a sea cave that has caved in). Our work does not protrude beyond the prominent sea cliff rocky points (see photograph). We specifically designed it this way to better blend with the natural landforms and for safety of construction.

Intertidal and subtidal areas are being avoided by limiting the relatively small amount of riprap to a level above the mean high tide.

(9) Erosion control measures: A RUNOFF CONTROL PLAN is required by condition B 10 of the City of Pismo Beach Planning Commission Coastal Permit approval (copy enclosed). The plan must be designed by a qualified, licensed engineer, and approved by the City Engineer, prior to the issuance of the building permit. The plan must meet the requirements of Chapter 17.078 of the City Zoning Ordinance. Mr. McFarlan received a copy of these conditions.

11. Visual: We have never said this project can't be seen. We even presented photographs showing how it would look from a view point on the Shelter Cove property. However, it is very difficult to see except from this one view point and from the ocean cove itself. It cannot be seen from the highway or the adjoining properties, including the Dinosaur Caves property. The view from Dinosaur Caves is blocked by one of the Shelter Cove landform projections.

Mr. McFarlan knows these facts because they were clearly stated at his City Council appeal, and he has had more than adequate time to investigate and see for himself.

12. Riprap encroachment on beach: Mr. McFarlan refers to a beach that does not exist. This is a rocky shore line with vertical rock cliffs and no access. We made it clear to the Planning Commission and the City Council that we did not intend to place any riprap below the mean high tide. Our permit also

EXHIBIT 4

A-3-95B-98-097

does not allow that, since the City does not have jurisdiction. The City conditions require that the mean high tide level be surveyed.

The conditions of approval require a Mitigation Monitoring Program to ensure compliance by the applicant.

Additionally, engineering condition 3 A requires that the project design engineer inspect to insure proper implementation.

Mr. McFarlan himself could inspect at his leisure to insure compliance.

Mr. McFarlan was in attendance at these hearings and knows these facts.

13. Conflicting reports: Mr. McFarlan does not state how the referenced reports conflict, nor does he submit any proof of conflict. It appears that all previous reports have generally agreed on erosion rates, and the approximate location of a 100 year setback line. They also seem to agree that erosion rates can be variable and sometimes unpredictable. They also agree that weak planes, faults, and sea caves can create problems and accelerate erosion.

As to the current reports, the City hired a well respected, independent geologist (Gorman, of Earth Systems Consultants) to review Wooley's report, as well as the engineer's solution. He has agreed with both. Where is the conflict?

There was no public comment against this project at the City-Council appeal other than Mr. McFarlan. All but one Council Member voted to deny the appeal. The only no vote was from Hal Haldin, who clarified his vote as a protest against the procedure that had not allowed us to proceed to repair our damage. Where is the conflict?

Cliffs Hotel: We are not like the Cliffs Hotel. We do not have 20 years of erodable space between us and the cliff failure. We have only 28 feet between our building and the closest bluff fracture that can be seen. It is likely that there are closer fractures hidden by the landscape ground cover. We don't know when the next movement might occur. It could be tomorrow. Our building, as well as our sewer lines, are in danger now!

We do not have a variable, movable public access route, but rather a fixed, required route with no room to move in this area. We also have a required, conditioned, recorded duty to maintain and protect this public access way from bluff retreat. (See Condition # A16 and A34)

The public access way and required emergency access road is now closed and unsafe, due to the current bluff failure. We have no choice but to repair.

EXHIBIT 4

A-3-PSB-98-097

RECORDING REQUESTED BY AND MAIL TO

NAME CITY OF PISMO BEACH

STREET 1000 BELLO ST.

CITY PISMO BEACH CA 93449

DOC. NO 2710
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL

MAY 10 1985

FRANCIS M. COONEY
County Clerk-Recorder

TIME 9:45 AM

5/10/85 7:04

12.00
9.00
21.00P

DEED RESTRICTION

I. WHEREAS, Howard F. Detwiler, M.D. and Dorothy R. Detwiler, (hereinafter collectively referred to as the "Owners") are the record owners of real property located in the City of Pismo Beach, San Luis Obispo County, California, more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference (hereinafter referred to as the "Subject Property"); and

II. WHEREAS, the Subject Property is located within the Coastal Zone as defined in Section 30103 of the California Public Resources Code (hereinafter referred to as the California Coastal Act); and

III. WHEREAS, the Owner applied to the City of Pismo Beach, California ("City") for a Coastal Development Permit for development of the Subject Property; and

IV. WHEREAS, the City is acting on behalf of the people of the State of California; and

V. WHEREAS, on November 8, 1984, Coastal Development Permit No. 69-CP-84 was granted by the City based on the findings adopted by the City Planning Commission and upon the following condition:

EXHIBIT 5

A-3-RB-98-097

VOL 2705 PAGE 954

An irrevocable offer to dedicate in fee simple or grant in perpetuity an easement over a strip of land sufficient to include a 25 foot wide lateral public access plus 100 year bluff retreat setback shall be made to an appropriate public agency. Such offer shall be for the purpose of providing lateral access and passive recreational opportunities along the coastal bluffs for the general public and visitors to the planning area. The open space easement for lateral access and bluff retreat, if not accepted by a public agency, shall be maintained by the owner.

VI. WHEREAS, the City Planning Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a Coastal Development Permit could therefore not have been granted; and

VII. WHEREAS, it is intended by the parties hereto that this Deed Restriction is irrevocable and shall constitute an enforceable restriction; and

VIII. WHEREAS, Applicant have elected to comply with the above condition imposed by Permit No. 69-CP-84 so as to enable Applicant to undertake the development authorized by the permit;

EXHIBIT 5

A-3-PSB-98-097

VOL 2705 PAGE 955

NOW, THEREFORE, in consideration of the granting of Permit No. 69-CP-84 to the Applicants by the City, the Applicants hereby irrevocably covenant with the City that there be and hereby are created the following restrictions on the use and enjoyment of the Subject Property, which shall be attached to and become a part of the deed to the Subject Property. The undersigned Owners, for themselves and for their heirs, assigns, and successors in interest, covenant and agree:

(a) that no development other than public accessways bluff-top safety fencing and a gazebo as shown on the improvement plans for the Subject Property approved by and on file with the City of Pismo Beach, shall occur within the Subject Property shown and described on Exhibit B attached hereto and incorporated herein by reference; (b) that the Applicants understand that the portion of the Subject Property described on Exhibit B is subject to extraordinary hazard from erosion and from bluff retreat and that Applicants assume any liability from these hazards which may result to the City from its granting of Permit No. 69-CP-84; (c) the Applicants unconditionally waive any claim of liability on the part of the City for any damages from such hazards; and (d) the Applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of erosion or landslides.

Said deed restriction shall remain in full force and effect during the period that Permit No. 69-CP-84, or any modification or amendment thereof, remains effective, and during the period that the development authorized by Permit No. 69-CP-84

EXHIBIT 5

A-3-PSB-98-097

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned on behalf of the City of Pismo Beach pursuant to authority conferred by the City when it granted the Coastal Development Permit No. 69-CP-84 on November 8, 1984, and the City consents to recordation thereof by its duly authorized officer.

DATED:

City of Pismo Beach, a political subdivision of the State of California

BY *Nebb Edwayer*

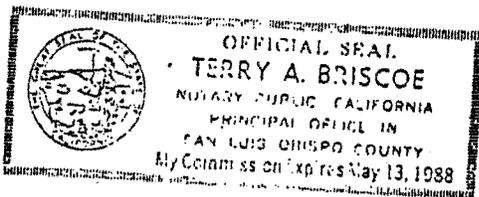
Approved as to form and content:

Arthur Shaw

Arthur Shaw
City Attorney
City of Pismo Beach, California

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

On MAY 9, 1985, before me TERRY A. BRISCOE,
a Notary Public, personally appeared NEBB EDWAYER
personally known to me to be the person who executed this
instrument as the MAYOR an authorized representative
TITLE
of the City of Pismo Beach, and acknowledged to me that the
City of Pismo Beach executed it.



Terry A. Briscoe
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

EXHIBIT 5

A-3-PSB-18-097

That portion of Lot 8 of the Subdivision of a portion of the Rancho El Pismo and San Miguelito, City of Pismo Beach, County of San Luis Obispo, State of California, as shown on a map filed in Book A, at Page 157 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at an intersection point in the Southwesterly right-of-way line of California State Highway Route 101 and the Southeasterly right-of-way line of Cliff Avenue in Tract No. 24, as shown on a map filed in Volume 5, at Page 44 of Maps, in the Office of the County Recorder of said County, said point being the most Northerly corner of the property shown on a map recorded March 19, 1965, in Book 14, at Page 61 of Record of Surveys; thence along the Southwesterly right-of-way line of said Route 101, as shown on said survey, the following described courses and distances: South $62^{\circ} 59' 47''$ East, 48.97 feet; South $50^{\circ} 46' 17''$ East, 306.96 feet; South $55^{\circ} 24' 05''$ East, 151.33 feet; South $62^{\circ} 59' 47''$ East, 150.00 feet; South $70^{\circ} 53' 23''$ East, 254.94 feet; South $76^{\circ} 35' 49''$ East, 191.33 feet to the TRUE POINT OF BEGINNING; thence South $58^{\circ} 54' 34''$ East, 158.72 feet; thence continuing along the Southwesterly right-of-way line of said Route 101, as shown on said survey, the following described courses and distances: South $58^{\circ} 54' 34''$ East, 388.75 feet; South $51^{\circ} 30' 31''$ East, 300.55 feet; South $53^{\circ} 10' 52''$ East, 302.75 feet; South $65^{\circ} 02' 21''$ East, 195.85 feet; South $50^{\circ} 20' 15''$ East, 70.68 feet, to the bluff bank of the seashore; thence Northwesterly following the meanders of said shore line to a point which bears South $31^{\circ} 05' 26''$ West, from the TRUE POINT OF BEGINNING; thence North $31^{\circ} 05' 26''$ East, 50.00 feet, more or less to the TRUE POINT OF BEGINNING.

EXHIBIT 5

A-3-ASB-98-097

That portion of Lot 8 of the Subdivision of a portion of the Rancho El Pismo and San Miguelito, City of Pismo Beach, County of San Luis Obispo, State of California, as shown on a map filed in Book A, at Page 157 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at an intersection point in the Southwesterly right-of-way line of California State Highway Route 101 and the Southeasterly right-of-way line of Cliff Avenue in Tract No. 24, as shown on a map filed in Volume 5, at Page 44 of Maps, in the Office of the County Recorder of said County, said point being the most Northerly corner of the property shown on a map recorded March 19, 1965, in Book 14, at Page 61 of Record of Surveys; thence along the Southwesterly right-of-way line of said Route 101, as shown on said survey, the following described courses and distances: South $62^{\circ} 59' 47''$ East, 48.97 feet; South $50^{\circ} 46' 17''$ East, 306.96 feet; South $55^{\circ} 24' 05''$ East, 151.33 feet; South $62^{\circ} 59' 47''$ East, 150.00 feet; South $70^{\circ} 53' 23''$ East, 254.94 feet; South $76^{\circ} 35' 49''$ East, 191.33 feet to the TRUE POINT OF BEGINNING; thence South $58^{\circ} 54' 34''$ East, 158.72 feet; thence continuing along the Southwesterly right-of-way line of said Route 101, as shown on said survey, the following described courses and distances: South $58^{\circ} 54' 34''$ East, 388.75 feet; South $51^{\circ} 30' 31''$ East, 300.55 feet; South $53^{\circ} 10' 52''$ East, 302.75 feet; South $65^{\circ} 02' 21''$ East, 195.85 feet; South $50^{\circ} 20' 15''$ East, 70.68 feet, to the bluff bank of the seashore; thence Northwesterly following the meanders of said shore line to a point which bears South $31^{\circ} 05' 21''$ West, from the TRUE POINT OF BEGINNING; thence North $31^{\circ} 05' 26''$ East, 50.00 feet, more or less to the TRUE POINT OF BEGINNING.

EXHIBIT 5

A-3-PSB-98-097

EXCEPTING that portion of Lot 8 of the Subdivision of a portion of the Rancho El Pismo and San Miguelito, in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on a map filed in Book A, at Page 157 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at an intersection point in the Southwesterly right-of-way line of California State Highway Route 101 and the Southeasterly right-of-way line of Cliff Avenue in Tract No. 24, as shown on a map filed in Volume 5, at Page 44 of Maps, in the Office of the County Recorder of said County, said point being the most Northerly corner of the property shown on map recorded March 19, 1965, in Book 14, at Page 61 of Record of Surveys; thence along the Southwesterly right-of-way line of said Route 101, as shown on said survey, the following described courses and distances: South $62^{\circ} 59' 47''$ East, 48.97 feet; South $50^{\circ} 46' 17''$ East, 306.96 feet; South $55^{\circ} 24' 05''$ East, 151.33 feet; South $62^{\circ} 59' 47''$ East, 150.00 feet; South $70^{\circ} 53' 23''$ East, 254.94 feet; South $76^{\circ} 35' 49''$ East, 191.33 feet to the TRUE POINT OF BEGINNING; thence South $58^{\circ} 54' 34''$ East, 500.46 feet; thence leaving the Southwesterly right-of-way line of said Route 101, the following described courses and distances: South $3^{\circ} 05' 54''$ East, 56.80 feet; South $21^{\circ} 30' 31''$ East, 26.76 feet; South $68^{\circ} 29' 29''$ West, 4.67 feet; South $21^{\circ} 30' 31''$ East, 32.42 feet; South $68^{\circ} 29' 29''$ West, 4.67 feet; South $21^{\circ} 30' 31''$ East, 47.56 feet; North $68^{\circ} 29' 29''$ East, 4.79 feet; South $21^{\circ} 30' 31''$ East, 29.50 feet; South $26^{\circ} 29' 35''$ East, 82.41 feet; South $67^{\circ} 03' 17''$ East, 68.75 feet; South $42^{\circ} 52' 17''$ East, 37.68 feet; South $76^{\circ} 08' 23''$ East, 60.70 feet; South $13^{\circ} 51' 37''$ West, 4.67 feet; South $76^{\circ} 08' 23''$ East, 84.66 feet; South $74^{\circ} 10' 03''$ East, 58.11 feet; South $76^{\circ} 08' 23''$ East, 26.76 feet; South $13^{\circ} 51' 37''$ West, 4.67 feet; South $76^{\circ} 08' 23''$ East, 35.16 feet; North $13^{\circ} 51' 37''$ East, 2.83 feet; South $76^{\circ} 08' 23''$ East, 49.37 feet; North $88^{\circ} 41' 00''$ East, 48.46 feet to a point on the Southwesterly right-of-way line of said Route 101; thence Northwesterly along said Southwesterly right-of-way line the following described courses and distances; North $65^{\circ} 02' 21''$ West, 17.00 feet; North $53^{\circ} 10' 52''$ West, 302.77 feet; North $51^{\circ} 30' 31''$ West, 300.57 feet; North $58^{\circ} 54' 34''$ West, 39.04 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING therefrom any portion of said land lying below the mean high tide line.

EXHIBIT 5

A-3-PSB-98-097

VOL 2705 PAGE 981

"B-2"



City of Pismo Beach, Planning Division

760 Mattie Road,

Pismo Beach, CA 93449

Tel: (805)773-4658 • Fax: (805) 773-4684

RECEIVED

August 21, 1998

AUG 27 1998

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Ray Bunnell
Bunnell Construction
141 Suburban Road #A-5
SLO, CA 93401

RE: Emergency Coastal Permit request of July 31, 1998 for 2751 Price Street, the Shelter Cove Lodge

Dear Ray:

The City has reviewed the above request and finds that an Emergency Coastal Permit cannot be issued based on current information. Additionally, an emergency does not exist that requires action more quickly than permitted by a regular Coastal Development permit process.

The following requested information was absent from your request; leaving staff unable to issue the Emergency Coastal Permit due to lack of information:

1. There are possible solutions to the threatened sewer lines, for example, the force main could be rerouted, and the gravity sewer could be modified to a pumped system.
2. Current measurements reported along the bluff do not indicate any additional bluff movement.
3. Other options to stabilize the bluff are mentioned in the geology report submitted with the application but do not specify each option's pros or cons. It is not clear that the proposal is the only option available to stabilize the bluff.
4. Surface and subsurface drainage has not been addressed.
5. Last, the building on the site referenced as threatened by the current conditions of the bluff has not been vacated. If a true emergency were in place, evacuation of the building would be completed.

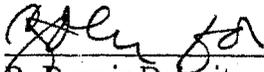
EXHIBIT 6

A-3-PSB-98-097

Ray Brunnell
Page 2
August 21, 1998

Your request for an Emergency Coastal Permit has been analyzed in accordance with the provisions of Ordinance No. 95-14 (you and Mr. Schott have previously been provided a copy). While I agree that the situation is urgent, this application must go through the regular permit process. We will do our best to expedite your application.

Sincerely,



R. Dennis Delzeit
Public Services Director

c: Carolyn Johnson - Planner
Mike Cardona - Building Official
Fred Schott
Steve Guiney - Coastal Commission

cj/CJ/RDD

EXHIBIT 6

A-3-PSB-98-097

