

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

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Hearing Date: 12/12/96

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO ACTION

LOCAL GOVERNMENT: City of Pismo Beach
LOCAL DECISION: Approved with conditions
APPEAL NUMBER: A-3-PSB-96-100
APPLICANT: TOKYO MASUIWAYA CALIFORNIA CORPORATION
APPELLANT: Marc Kent; Surfrider Foundation
PROJECT LOCATION: 2757 Shell Beach Road (at Cliffs Hotel), City of Pismo Beach, San Luis Obispo County, APN 010-041-044
PROJECT DESCRIPTION: Construction of a bluff protection device and modification to the existing private drainage system to minimize further bluff erosion.
SUBSTANTIVE FILE DOCUMENTS: City of Pismo Beach LCP, City of Pismo Beach permit file 96-080, Coastal Commission permit file 4-83-490.

SUMMARY OF STAFF RECOMMENDATION

The public hearing on this matter was opened and continued at the Commission's October 10, 1996 meeting. 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 for the reasons discussed below. If the Commission so finds, staff further recommends that a de novo public hearing on this project immediately follow and that the Commission deny the permit.

SUMMARY EVALUATION OF CONSISTENCY WITH LCP

ISSUE	LCP POLICIES	ZONING ORDINANCE SECTION	CONSISTENCY DETERMINATION
Alternatives to approved proposal	S-6, Shoreline Protective Devices	17.078.060, Shoreline Protection Criteria and Standards	Inconsistent. Only bluff protection devices were considered. Possibility of other feasible alternatives or less environmentally damaging alternatives such as moving the sewage holding tank were not explored.
Natural Landforms and Sand Supply	S-6, Shoreline Protective Devices	17.078.060, Shoreline Protection Criteria and Standards	Inconsistent. Approval contains no provision to eliminate or mitigate loss of shoreline sand supply.
Lateral Access	PR-22, Lateral Beach/Shoreline Access Required; PR-23, Lateral Bluff-Top Open Space and Access Required; S-6, Shoreline Protective Devices	17.066.020, Coastal Access criteria and Standards; 17.078.060, Shoreline Protection Criteria and Standards	Consistent. Lateral access along the beach and the blufftop was acquired as part of the original coastal development permit approved by the Coastal Commission in 1983. But, proposed rip rap is not necessary to protect existing access.
Visual Impacts	D-2(c), Building and Site Design Criteria, Views; LU-C-3, North Spyglass Planning Area, Views; S-6, Shoreline Protective Devices	17.078.060, Shoreline Protection Criteria and Standards; 17.096.020, View Considerations Overlay Zone, Criteria and Standards	Inconsistent. Section 17.078.060 specifically states that seawall design must use visually compatible colors and materials. City approval did not address this issue.
Development in Blufftop Access Areas	PR-33, Permitted Development in Blufftop Access Areas	17.066.020(17), Coastal Access Overlay Zone Criteria and Standards	Inconsistent. The LUP Policy and the Zoning Ordinance section allow only that development which is designed to accommodate passive recreational use.

STAFF NOTE

Research into the history of the development on this site revealed that the Coastal Commission approved coastal development permit 4-83-490 in 1983 for the hotel and restaurant that are on the site. **It appears that the location of the sewage holding tank is in violation of the conditions of that permit because it was placed closer to the bluff edge than allowed.** The permit was conditioned to, among other things, require a 100 foot setback from the then existing edge of bluff within which no development was to occur. The sewage holding tank was placed approximately 50 feet from the edge of bluff, but with continued shoreline erosion is now about 20 feet from the edge of bluff. Special Conditions 1 and 3 of permit 4-83-490 each addressed the 100 foot setback. Special Condition 1 required recordation of a deed restriction to ensure public access. Both vertical and lateral access easements were required with the lateral accessway to be located *"...within the 100 feet setback line on the blufftop. . .and the entire beach area seaward of the motel structures. . .The only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that in the opinion of the Executive Director would impede public access shall not be undertaken within the accessway areas."* Special Condition 3 required the recordation of a deed restriction regarding geologic hazard setback from the bluff edge and a waiver of liability. Among other things, the condition provided *"(a) that no development other than pathways and stairways shall occur within the 100 foot setback line shown in Exhibit 1; (b) that the applicants understand that the site is subject to extraordinary hazard from erosion and from bluff retreat and that applicant assumes the liability from these hazards. . ."* Yet, despite these conditions and restrictions, the sewage holding tank was placed within the 100 foot setback. Had it been placed no closer than 100 feet from the bluff edge, as the permit required, there would have been no need for the applicant to seek a permit for any shoreline and bluff protection at this time.

List of Exhibits

1. Appeal of Marc Kent
2. Appeal of Surfrider Foundation
3. Pismo Beach Findings and Conditions
4. Cross section and revetment detail from Geologic Bluff Study
5. Location Map
6. Project Plans
7. Copy of Deed Restriction
8. Correspondence

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I. SUMMARY OF APPELLANT'S CONTENTIONS (See Exhibits 1 and 2 for the full text)

- A. Appellant Marc Kent** contends that there are alternatives to the City-approved project, such as moving the sewage holding tank back farther away from the blufftop edge.
- B. Appellant Surfrider Foundation** contends that the sewage holding tank can be moved back farther away from the blufftop edge, that the rip-rap proposed at the base of the bluff will interfere with sand supply and public lateral access, that the geotechnical report is inadequate, and that the City-approved project is contrary to the LCP visual policies.

II. LOCAL GOVERNMENT ACTION

The City of Pismo Beach conditionally approved the proposal on August 6, 1996, including a mitigated negative declaration, architectural review permit, and coastal development permit for a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to stabilize sewage holding tanks in the upper part of the bluff; rock rip rap at the base of the bluff to reduce the rate of erosion; and modification of the existing surface and underground drainage system to minimize further erosion at the top of the bluff.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). Because this project is appealed on the basis of its location between the sea and the first public road paralleling the sea, the grounds for an appeal to the Coastal Commission include not only the allegation that the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

IV. 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.

- A. **Appellant Marc Kent** contends that there are alternatives to the City-approved project, such as moving the sewage holding tank back farther away from the blufftop edge.
- B. **Appellant Surfrider Foundation** contends that the sewage holding tank can be moved back farther away from the blufftop edge, that the rip-rap proposed at the base of the bluff will interfere with sand supply and public lateral access, that the geotechnical report is inadequate, and that the City-approved project is contrary to the LCP visual policies.

Although neither appellant has identified specific Pismo Beach LCP policies or sections with which they contend the City's approval is inconsistent, the issues they raise are subject to readily identifiable parts of the LCP, as discussed below.

- C. **MOTION.** Staff recommends a NO vote on the following motion:

I move that the Commission determine that Appeal No. A-3-PSB-96-059 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a NO vote which 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.

V. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

The staff recommends that the Commission, after public hearing, deny a coastal development permit for the project, for the reasons discussed below.

Denial Resolution

The Commission hereby denies a permit for the proposed development since it is inconsistent with the certified City of Pismo Beach Local Coastal Program, will have adverse impacts on the environment within the meaning of the California Environmental Quality Act, for which feasible alternatives exist.

- MOTION** Staff recommends a NO vote on the following motion:

I move that the Commission approve a permit for the proposed development.

Staff recommends a NO vote which would result in a denial of the permit. To pass the motion, a majority of the Commissioners present is required.

VI. FINDINGS AND DECLARATIONS

A. Project Description and Background

1. Location and Description. The proposed project is located on the grounds of the Cliffs Hotel at 2757 Shell Beach Road in the northern portion of the City of Pismo Beach in southern San Luis Obispo County. The property slopes from an elevation of approximately 100 feet above sea level at Shell Beach Road to approximately 77 feet above sea level at the blufftop on the south side of the property, approximately 400 feet from Shell Beach Road.

The proposed work would be at the blufftop portion of the southwest corner of the site and at the toe of the bluff. The project consists of a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to stabilize a sewage holding tank in the upper part of the bluff; rock rip rap at the base of the bluff to reduce the rate of erosion; and modification of the existing surface and underground drainage system to minimize further erosion at the top of the bluff (please see Exhibit 6). According to the geologic bluff study done for the current proposal, the bluff retreat at the southern part of the property, where the bluff protection is proposed, from 1982 - 1996 was 30 feet, or a rate of 26 inches per year. The geologic report for the original project estimated the erosion rate at 3 inches per year. The geologic bluff study for the current proposal concluded that the increased rate of retreat may be due to *"...an increase or an above normal amount of intense winter storms that occurred since 1982. Another factor that appears to have significantly contributed to this retreat rate is the landscape irrigation."* Further geological information indicates landscape irrigation may be less of a factor (see second paragraph below).

The sewage holding tank is approximately 20 feet inland from the top of the bluff. The holding tank stabilization system would be as close as ten feet to the bluff edge. It would consist of nine concrete piles, founded in the rock underlying the less stable material above, with seven piles at the seaward side of the holding tank connected by a cap beam and with two grade beams which would extend back from the seaward piles on either side of the holding tank to connect to the remaining two piles. The work at the toe of the bluff would consist of rock rip rap extending from approximately 20 feet onto the property to the south of the subject property to a point approximately 300 feet north along the toe of the bluff. All work is shown on the plans as being inland of the mean high tide line. A portion of the blufftop varying from 35 to 50 feet wide starting five feet inland from the bluff edge would be graded to direct drainage away from the bluff edge and into an underground drainage system. Landscaping practices would be changed by eliminating the existing lawn adjacent to the bluff edge and replacing with drought resistant native plants. This would reduce the amount of water introduced into the top of the bluff. An existing dewatering well near the sewage holding tank would be replaced with a new dewatering well.

The Commission's engineer reviewed the proposal and initial information and expressed concern that the cause, or causes, of the increased erosion rate had not been sufficiently identified. Further information received from the applicant since indicates that the cause of the increased erosion is the loss of a more erosion-resistant rock in the intense storms of 1982-83 and the exposure of rock that is more easily eroded. According to the applicant's engineering geologist, *"Prior to the severe winter of 1982-83, the section of bluff at the southern end of the property probably exposed bituminous sandstone of the (Edna Member) Pismo formation in the face of the bluff. . . .It appears that the severe storms that occurred during the 1982-83 winter*

eroded the bituminous sandstone from the bluff face and exposed the underlying older, weaker, shale of the Monterey formation. After the removal of the bituminous sandstone, the shale, now exposed in the lower part of the bluff face, retreated at a much faster rate." The engineering geologist also states that the landscape watering on the top of the bluff may have *"been responsible for minor sloughing and some shallow slope instability in the bluff top soils, but the large scale landsliding seen in the southern end of the bluff face and the accelerated retreat of the bluff in this area is definitely due to the retreat of the weak shale exposed in the lower part of the bluff."* This additional information presents a plausible explanation for the increased erosion rate. Nevertheless, as discussed later in this report, shoreline protection is not necessarily the only way to deal with the threat to the sewage holding tank at this time.

The design of the revetment raised four questions. First, the geologic bluff study recommended a key at the base of the revetment to anchor it to the bedrock below the beach sand. The plans do not show a key at the base of the revetment, just the rock resting on the sand with no means of anchoring the revetment to keep the rocks from moving. Second, the bluff study estimated that the maximum wave run-up, i.e., the maximum vertical height a wave would be expected to reach on the bluff, would be to an elevation of 14.5 feet. The bluff study recommends that the revetment extend to *"at least"* elevation 14.5. The plans show the revetment extending up to an elevation of 20 feet, 5.5 feet above that recommended by the bluff study, with no explanation for the increased height. The applicant's engineer has responded to these two concerns by stating that *"placing a piece of equipment large enough to gouge out a two foot deep by ten to twenty foot wide trench in the horizontal rock adjacent to the bluff bottom would be dangerous and possibly counter productive, in that it could de-stabilize the bluff more than it already is. After consultation with Mr. Gorman [the project engineering geologist], we decided that a solution where larger rock is placed at the bottom face & extension of the rock upward an additional few ft. would give an equivalent, if not superior, degree of protection."* Placement of rock without a key may be successful if the rock is large enough to resist ocean wave forces. According to the applicant's engineer, six to eight ton rock would be placed at the bottom of the rip rap with four ton rock on the face and two ton rock behind the face. This size rock may very well be capable of withstanding the force of the waves without being keyed into the bedrock. Nevertheless, as discussed later in this report, shoreline protection is not necessarily the only way to deal with the threat to the sewage holding tank at this time.

Third, the plans show the revetment with a relatively steep slope and with the larger rocks against the bluff and the smaller rocks on the face of the revetment. Slopes for ocean facing revetments are normally flatter than 1.5:1 for stability and the Corps of Engineers Shore Protection Manual recommends using the largest rock as facing or armor with the smaller rock as filter material. As discussed in the preceding paragraph, the applicant's engineer indicates that the plans reviewed by Commission staff are a preliminary design and not a construction drawing, that they note that larger rock would be placed at the base and on the face on the rip rap with smaller rock behind, and that the construction drawings call for larger rock at the base and on the face of the rip rap.

The fourth concern expressed by the Commission's engineer is that it is unclear what the proposal has done to eliminate or minimize impacts on local shoreline sand supply. Individually, each shoreline protective structure may not have any noticeable impacts on local shoreline sand supply. However, when taken together on a regional basis, these structures may have a great impact on local shoreline sand supply, which in turn can impact regional sand supplies. According to ReCAP, the Coastal Commission's Regional Cumulative Assessment Project, *"A regional overview for individual shoreline activity would provide coastal planners*

and analysts a perspective on how an individual project would fit into the overall cumulative approach to shoreline management. Without a regional overview, the piecemeal approach to shoreline protective devices will continue to impact shoreline processes and resources."

2. Background. On October 13, 1983, the Coastal Commission granted permit 4-83-90 for the construction of a four story, 170 unit motel and 251 seat restaurant on the subject property. The project had several conditions including the requirement for a 100 foot setback from the blufftop along the entire ocean front portion of the property and lateral public access along the entirety of the beach fronting the project site and across the 100 foot setback area along the top of the bluff. Those two conditions also stated that the only development permitted in the 100 foot setback was pathways and stairways for public access. The 100 foot setback incorporated a 50 foot wide lateral public accessway and a 100 year bluff erosion setback. The geotechnical report for the construction of the hotel concluded that "a recession rate of 3 inches per year is applicable for the site" which would equal 25 feet in 100 years. That 25 feet plus a 50 foot wide lateral accessway would equal a setback of 75 feet. However, the City LUP required a minimum 50 foot erosion setback. That 50 feet plus the 50 foot lateral accessway equaled 100 feet; the Commission permit was conditioned accordingly. The Commission found that the proposed project, as conditioned, consistent with the Coastal Act

and will assure stability and structural integrity and neither create or significantly contribute to erosion, geologic instability, or destruction of the site or surrounding area, nor require the construction of bluff or cliff protective devices (seawalls, etc.)

The hotel and restaurant were constructed behind the 100 foot setback. However, the sewage holding tank was placed within the 100 foot setback, about 50 feet back from the edge of the bluff at that time. The preventive intent of the 100 foot setback with respect to the need for shoreline protection structures would be circumvented if such a major component of the development as the holding tank were allowed within the 100 foot setback. Erosion would reach it well before the restaurant and hotel were threatened. The Commission file on permit 4-83-490 does not contain any discussion or plans or notes about the sewage holding tank except for the City staff report from then which says that a private wastewater lift station would be required, but does not discuss location.

B. Issue Discussion

As mentioned above, although neither appellant has identified specific Pismo Beach LCP policies or sections with which they contend the City's approval is inconsistent there are City policies and sections that are readily identifiable as being applicable to this proposal and the appellants' contentions. These include:

1. Shoreline Protection

Land Use Plan Policy S-6, Shoreline Protective Devices states that

Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap 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...maintain public access...shall minimize alteration of natural landforms...and shall minimize visual impacts.

Zoning Ordinance section 17.078.060, Shoreline Protection Criteria and Standards, states

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.

a. Alternatives. The City did not make a specific finding that the proposed development was the least environmentally damaging alternative nor did the City specifically find that there were no feasible alternatives. One alternative is to move the sewage holding tank to the east, back away from the bluff edge.

The geologic bluff study states

It is our understanding that the existing sewage holding tank operates by gravity flow. The tank presently is situated at the lowest elevation on site. Relocating the holding tank to the southern part of the site is not feasible, as the topography rises to the east. An alternative bluff protection structure, such as a concrete sea wall, will generally have the same impact on shoreline sand supply as the proposed revetment structure, however, because the sea wall is a smooth, vertical structure, erosion at the ends of the structure may be more significant. If no bluff protection structure is constructed, the sewage holding tank would eventually (possibly within the next 5 years) be undermined by bluff erosion and would fall to the beach, possibly spilling the sewage into the ocean.

Only one other area of the property is lower than the area where the holding tank is now; the most northerly portion. Relocating the tank there is likely to be infeasible. That area is an environmentally sensitive wooded arroyo providing public access to the beach. Relocation of the holding tank there would also entail rerouting all of the sewer lines from the hotel and restaurant to the north side of the property as well as relocating the sewer line from the holding tank to the sewer main at Shell Beach Road. Relocating the sewage holding tank farther south on the site would accomplish nothing since, according to the preliminary plans, the holding tank lies approximately 10 feet from the southern property line. Also, that would not remove the tank from the area of greatest erosion.

The most logical place to relocate the holding tank is approximately 60 feet inland from its present location. That location would place the holding tank back at about 80 feet from the bluff edge, approximately the same distance from the bluff edge as is the restaurant. Whether it would be more costly than the City-approved proposal and, if so, by how much, is unknown.

The land rises to the east, inland from the bluff and the holding tank. As shown on the preliminary plans for the proposal, the top of the tank is about 9 or 10 feet below the surface of the bluff, which is about 77 feet above sea level. The top of the tank is shown on the preliminary plans at about 68 feet above sea level and the bottom at about 60 feet. Relocating

the tank to the east would entail excavating a portion of the existing parking lot, which lies at about 80 to 82 feet above sea level, and relatively minor rerouting of sewer lines. This alternative, during construction, would disrupt the parking lot and could create objectionable noise, etc., at the restaurant. However, it would have the advantage of eliminating the need for any shoreline protection until the lateral blufftop access and the main structures, the restaurant and hotel, are endangered by shoreline erosion and would thus be less environmentally damaging than the proposed project.

Therefore, the City-approved proposal is inconsistent with LUP Policy S-6, which does not allow shoreline protective devices unless no feasible alternative is available, and zoning ordinance section 17.078.060, which does not allow seawalls unless it is shown that there are no other less environmentally damaging alternatives.

b. Natural Landforms and Sand Supply. The proposed rip rap would alter natural landforms in its long-term effects, rather than requiring excavation of the bluff face, etc. The proposed rip rap would, for all intents and purposes, stop erosion at the toe of the bluff which will "freeze" the current landforms more or less as they are now. Bluff protection devices can displace wave energy to either side of the ends of the device and result in increased erosion of the landforms at either or both ends. Here, the geologic bluff study states that *"Negligible bluff erosion impacts are anticipated at the ends of the proposed structure"* because the proposed rip rap would be placed between two points of land extending farther seaward than the rip rap.

Features, whether human-made or occurring by natural processes, that extend into the tidal zone trap sand on the side against which the longshore currents move. This is particularly evident with groins which extend well into the tidal zone. According to the geologic bluff study, the proposed rip rap *"...should not affect the southerly transportation of the shoreline sand. This is due to the fact that the toe of the proposed revetment structure will be above the mean high tide elevation, while the majority of the sand transportation occurs within the tidal zones."*

Another aspect of sand supply is the introduction of sand into the ocean from erosion of bluffs. Regarding this sand supply source for this site, the geologic bluff study states:

There may be some reduction in the coastal sand supply due to the presence of the bluff revetment structure, however, the sand supply would only be from the sandstone unit within the Pismo formation. Very little, if any, of the shale or siltstone eroded from the bluff face would become beach sand as these rock units are not sand bearing. When these two rock units break down, they become silt which would wash out to the deeper ocean depths. The shale may remain within the beach area as gravel or cobbles for a period of time, until it decomposes to silt. The siltstone probably washes out to sea shortly after it is eroded from the bluff face. It is estimated that over a period of 5 years the sand supply at the site would only be reduced by a few dump truck loads."

Both LUP Policy S-6 and Zoning Ordinance section 17.078.060 require that shoreline protective devices eliminate or mitigate adverse impacts on local shoreline sand supply. The City found that:

- "5. The development complies with the shoreline erosion and geologic setback requirements as established in the City's certified Local Coastal Program."*

- "6. These findings can be made based on the small-scale and limited scope of the structural design and placement of the seawall improvements on a small and limited portion of the lot and on the bluff face."*

According to the geologic bluff study and the City's findings, the proposal would not adversely affect sand transport or sand supply because of the relatively small size of the proposal. However, there is no quantification of sand transport or sand supply, either site-specific or in a regional context. How much sand was delivered to the beach by the erosion of 25 feet of the bluff over the past 12 years? The rip rap would extend along approximately 300 feet of shoreline. How much sand could that length of bluff supply if erosion were allowed to proceed until it reached the point at which shoreline protection was imperative for protection of the lateral access and the restaurant? These questions are not addressed.

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.'*

That is precisely what is happening with this proposal, and with many others elsewhere. If, however, the holding tank were relocated 60 feet farther inland in alignment with the restaurant, then it would be approximately 80 feet back from the bluff edge and no shoreline protection would be needed at this time and there would be no impacts to sand supply.

It is entirely likely that at some time in the future shoreline protection will be necessary to protect the blufftop lateral public access and the restaurant and hotel. How far can the natural process of shoreline erosion proceed before intervention with shoreline protection structures is allowed? The LCP does not provide specific guidance, but it is implicit that retention of public lateral access will be a critical factor when the time comes to consider a (future) coastal development permit application for such structure. If, for example, it is determined that at least 50 feet should remain between the structures and the bluff edge, to allow for continued lateral access and to protect the structures, then another 20 to 30 feet of bluff could be eroded before that point is reached and shoreline protection work would occur. In the meantime, an unknown quantity of sand, perhaps several dozen (?) or a few hundred (?) dump truck loads, would be available to the beach through the natural progression of shoreline erosion.

Conclusion: Because the current proposal cannot eliminate and does not mitigate (perhaps cannot mitigate) for loss of sand supply, it is inconsistent with LUP Policy S-6 and Zoning Ordinance 17.078.060.

c. Lateral Access. When approving development between the first through public road and the sea, the City is required to find that the proposal is consistent with the certified LCP and with the public access and recreation policies of the Coastal Act. Here, lateral access already exists along the beach front of the property as well as along the blufftop. At the northerly and southern ends of the property there are points of land which protrude out past the mean high tide line. When the tide is high, access along the beach is blocked. At low tide, it is possible to

walk along the beach. According to the preliminary plans for the proposal, the rip rap would be above -- inland -- of the mean high tide line. Assuming the rip rap was placed where indicated, then there should not be any blockage of lateral access along the beach (during the period when the beach can be accessed).

Normally the City would require a lateral access dedication when shoreline protection is approved, however, that is not necessary here since lateral access already exists. The City made findings that the proposal is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act as well as the LCP. The City's action is consistent with LUP policy S-6 and Zoning Ordinance Section 17.078.060. However, the proposed rip rap is not necessary to protect existing lateral access along the beach, and is premature with respect to lateral access along the blufftop.

d. Visual Impacts. According to the negative declaration for the proposal, there would be no adverse scenic or visual impacts from the rip rap and the sewage holding tank stabilization system. The City made no specific finding about scenic or visual impacts nor did it condition the permit to require the rock rip rap to be compatible in color with the bluff. The holding tank stabilization system would be below ground and so not visible at all once installed. The only visible part of the bluff top drainage system would be a three foot wide concrete drainage swale. The most visible portion of the proposal would be the rock rip rap at the base of the bluff. It would be visible from above, from offshore, and from the beach immediately seaward of the rip rap. Because of the points of land at either end of the property, and if the rip rap is placed where shown on the preliminary plans, the proposed rip rap would be only minimally visible from other beaches, if at all.

Section 17.078.060 specifically states that seawall design must use visually compatible colors and materials. This measure helps to maintain the scenic character of the Pismo Beach shoreline by requiring that shoreline protective structures visually blend with the naturally-occurring rock materials on the site. There is no condition requiring compatibility of the proposed rip rap with the existing bluff in terms of color. There was no discussion of why this is not possible, if it is not. Because of this, the approval is inconsistent with Zoning Ordinance Section 17.078.060.

2. Blufftop Development

Land Use Plan Policy PR-33, Permitted Development in Blufftop Access Areas, states:

Development permitted in the areas reserved for public blufftop access or recreation shall be limited to structures and facilities designed to accommodate recreational use of the area, including but not limited to stairways, benches, tables, refuse containers, bicycle racks, public parking facilities, seawalls, groins, etc. In no case shall any development except public access paths and access facilities and public stairways be permitted within the bluff retreat setbacks identified in site specific geologic studies.

Although seawalls are allowed in blufftop access areas by LUP Policy PR-33, the policy is clear that whatever structures are proposed, they are limited to those designed to accommodate recreational use of the area. A seawall could be allowed in a blufftop access area, for example,

if without it public access would be lost. Similarly, other structures could be allowed in blufftop access areas if they accommodate recreational use of the area. Neither the proposed rip rap nor the proposed holding tank stabilization system are necessary at this time for the purpose of accommodating recreational use of the area. Therefore the City-approved proposal is inconsistent with LUP Policy PR-33.

C. 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 the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. The Commission finds that the proposed project will have significant adverse impacts on the environment and cannot be found consistent with CEQA.

D. Violation

As discussed in the staff note on page two, research into the history of the development on this site revealed that the location of the sewage holding tank is in violation of the conditions of Coastal Development Permit 4-83-490 because it was placed closer to the bluff edge than allowed. The permit required a 100 foot setback from the then existing edge of bluff within which no development was to occur. The sewage holding tank was placed approximately 50 feet from the edge of bluff.

Special Condition 1 required recordation of a deed restriction to ensure public access. Both vertical and lateral access easements were required with the lateral accessway to be located ". . . within the 100 foot setback line on the blufftop. . . and the entire beach area seaward of the motel structures. . . . The only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that in the opinion of the Executive Director would impede public access shall not be undertaken within the accessway areas."

Although the placement of the holding tank within the 100 foot setback has not impeded access because it is buried below grade, by being within the 100 foot setback it has caused a premature application for shoreline protection. Special Condition 3 leaves no doubt that the Commission intended that there be nothing like the holding tank within the 100 foot setback.

Special Condition 3 required the recordation of a deed restriction regarding geologic hazard setback from the bluff edge and a waiver of liability which provided "(a) that no development other than pathways and stairways shall occur within the 100 foot setback line shown in Exhibit 1; (b) that the applicants understand that the site is subject to extraordinary hazard from erosion and from bluff retreat and that applicant assumes the liability from these hazards. . . ."

The preventive intent of the 100 foot setback regarding the need for shoreline protection structures could be circumvented if such a major component of the development as the holding tank were allowed within the 100 foot setback. Erosion would reach it well before the restaurant and hotel were threatened.

In the findings for the 100 foot setback, in permit 4-83-490, the Commission found that

The 100 foot setback proposed in the plans as submitted, incorporates the 50 feet of lateral access area required by the approved LUP policy E.3.a above, and an area of an additional 50 feet of geologic setback which according to the geologic reports should be sufficient to protect that accessway from erosion for 100 years. Condition 3 provides for the establishment of this setback and for a waiver of liability.

Yet, despite these conditions and findings, the sewage holding tank was placed some 50 feet from the bluff edge. Had it been placed no closer than 100 feet from the bluff edge, as the permit required, there would have been no need for the applicant to prematurely seek a permit for any shoreline and bluff protection. The appropriate time for shoreline protection at this site is when the erosion is very near the 50 foot public lateral accessway. Accordingly, this existing but non-permitted sewage holding tank structure is not entitled to shoreline protective structures.

FROM

88-14-96 05:48PM TO

057739767

*58 P.1/3

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-3200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant(s)

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

Marc Kent - 211 Cuyama, Shell Beach, CA 93449Zip(805) 773-3410Area CodePhone No.SECTION II. Decision Being Appealed1. Name of local/port
government: Pismo Beach2. Brief description of development being
appealed: Seawall built to protect sewer system from eroding
bluffs.3. Development's location (street address, assessor's parcel
no., cross street, etc.): 2757 Shell Beach Rd., Pismo
Beach CA, 93449

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: explanation in section 4.
- c. Denial: would rather not see project happen,

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-96-100DATE FILED: 9/4/96DISTRICT: Central Coast

HS: 4/88

EXHIBIT 1

A-3-PSB-96-100

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.)

There are alternatives to this project. The sewer can be moved. The Cliffs Hotel is taking the cheap and short term way out, therefore endangering a valuable recreation area, "Reef Rights". If the project can not be halted or changed we would like assurances that if the recognized recreational area is impaired that the project applicant responsibility and rehabilitate this area at its own cost without delay. "Reef Rights" is a surfing area.

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.

Man Kw

Signature of Appellant(s) or
Authorized Agent

Date 8/16/96

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.

Signature of Appellant(s)

Date _____

Ex 1
A-3-P38-96-100
p2

FROM

08-14-96 05:41PM TO

18057739767

#58 P.3/3

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: August 6, 19967. Local government's file number (if any): project 96-080SECTION 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:

Cliff's Hotel - Tokyo Masuiwaya California Corporation
2757 Shell Beach Rd.
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.

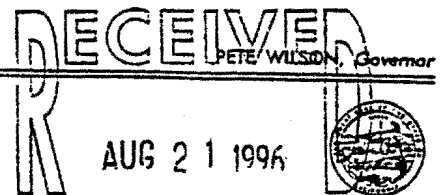
- (1) Rick Kipe - President of Central Coast Salmon Enhancement Program
203 Woodplace
Arroyo Grande CA, 93420
- (2) Mark Burns
791 Price St. #140
Pismo Beach CA, 93449
- (3) David Chaffardina
P.O. Box 489
Oceano CA, 93445
- (4) Phil Davis
2635 Grell Lane
Oceano CA, 93445

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.

Ex 1, p 3

A-3-PSB-96-100



CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA OFFICE
MONT STREET, STE. 300
SAN LUIS OBISPO, CA 95060
TEL 427-4863
HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

SECTION I. Appellant(s)

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

SURFRIDER FOUNDATION, SAN LUIS BAY CHAPTER
331 PARK AVE. #2
PISMO BEACH, CA. 93449 (805) 773-1489 / 773-9406
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: CONSTRUCTION OF A BLUFF PROTECTION DEVICE AND
MODIFICATION TO THE EXISTING PRIVATE DRAINAGE
SYSTEM PLUS THE ADDITION OF RIP RAP ON THE BEACH.

3. Development's location (street address, assessor's parcel
no., cross street, etc.): 2757 SHELL BEACH ROAD
APN 010-041-044

4. Description of decision being appealed:

- a. Approval; no special conditions: # 96-080
- (b.) Approval with special conditions: 21 OF THEM PLUS LANDSCAPING
- 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-96-100

DATE FILED: 9/4/96

DISTRICT: Central Coast

EXHIBIT 2

A-3-PSB-96-100

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: AUG. 6, 1996

7. Local government's file number (if any): PERMIT NO. 96-080/COP, ARP

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:

TOKYO MASUIWAYA CALIF. CORP.
2757 SHELL BEACH ROAD
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. 93401

(2) PHILIP TERESI
354 MAIN AVE. SUITE C.
PISMO BEACH, CA. 93449

(3) BRUCE MCFARLAN
331 PARK AVE. #2
PISMO BEACH, CA. 93449

(4) _____

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.

Ex 2, p2

A-3-P5B-96-100

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.)

WE BELIEVE THAT THIS PROJECT (NO. 96-080) GOES TO FAR IN ITS' STATED INTENDED AIM "TO PROTECT SEWAGE HOLDING TANKS" AND "TO MINIMIZE FURTHER EROSION AT THE TOP OF THE BLUFF," AS SEEN IN "EXHIBIT 3", UNDER "AUTHORIZATION. IF THAT IS REASON FOR THIS PROJECT WE STRONGLY FEEL THAT THE SEWAGE HOLDING TANKS BE MOVED FURTHER AWAY FROM THE BLUFFS EDGE AND ALL WATERING OF PLANTS ON THAT EDGED BE STOPPED. ALSO

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.

(CONT.)

SECTION V. Certification

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

Bruce D. McFarlan
Signature of Appellant(s) or
Authorized Agent

Date 8/18/96

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

Section VI. Agent Authorization

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

Surfside Foundation, San Luis Bay
Signature of Appellant(s) Chapter

Date 8/18/96

Ex 2, p 3

A-3-PSB-96-100

RE: APPEAL PROJECT NO. 96 080 PISMO BEACH

REASONS FOR APPEAL CONT.

Ex2, p4

A-3-P50-96-100

WE BELIEVE THE RIP RAP WILL DO FURTHER DAMAGE TO THE SAND SUPPLY, (THE LOSS OF SAND).

A FULL GEOTECHNICAL REPORT AND STUDY ON THIS MATTER FOR THIS PROJECT HAS NOT BEEN ADDRESSED NOR PRESENTED AT THIS TIME TO SUPPORT THE NEED FOR RIP RAP TO PROTECT THE HOLDING TANK OR TO "MINIMIZE FURTHER EROSION AT THE TOP OF THE BLUFF."

A GEOTECHNICAL REPORT WOULD NEED TO CONTAIN INFORMATION SUCH AS DESIGN WAVE HEIGHT, EXPECTED FREQUENCY OF OVERTOPPING OR WAVE RUN-UP AND TO POTENTIAL IMPACTS TO LOCAL SHORELINE SAND SUPPLY. THE REPORT ALSO NEED TO STUDY THE "FLANKING" THAT WILL INEVITABLY OCCUR TO THE CLIFFS AND BEACHS ON BOTH SIDES OF THIS PROJECT

SURFRIDER FOUNDATION ALSO QUESTIONS THE NEGATIVE DECLARATION IN THE ENVIRONMENTAL REVIEW BECAUSE SINCE THIS AREA IS DESCRIBED BY THE "CITY'S COASTAL PLAN" AS "ENVIRONMENTALLY SENSITIVE HABITAT" (SHORELINE AND COASTAL BLUFFS) THERE WILL BE SIGNIFICANT IMPACT ON THE ENVIRONMENT. BECAUSE OF NON-EXISTENT SAND SUPPLY STUDY WILL AFFECT MARINE HABITATS, THIS IS IN DIRECT INDIFFERENCE TO POLICY #37 OF COASTAL PLAN POLICIES, COUNTY OF SAN LUIS OBISPO THAT SHORELINE STRUCTURES "SHALL BE DESIGNED OR SITED TO AVOID AND NOT CAUSE SIGNIF-

ICANT, TO MINIMIZE IMPACTS ON MARINE HABITATS."

THE SURFRIDER FOUNDATION SAN LUIS BAY CHAPTER FURTHER CONTENDS THAT THIS PROJECT WILL INTERFERE WITH THE PUBLIC'S RIGHT OF ACCESS TO THE SEA WHICH IS CONTRARY TO POLICY #1, COASTAL PLAN POLICIES, COUNTY OF SAN LUIS OBISPO, THE CITY OF PISMO BEACHS L.C.P. AND THE STATES' COASTAL ACT. THE PROPOSED STRUCTURE WILL LIMIT LATERAL ACCESS SOUTH OF THE POINT BECAUSE THE BEACH WILL CONSIST OF RIP RAP ROCKS AND WATER.

WE BELIEVE AND HAVE TOLD THE CITY THAT AESTHETICS ARE ALSO AN ISSUE HERE AND ARE AGAINST THERE OWN L.C.P. WHERE AESTHETICS ARE TO BE CONSIDERED AND WERE NOT ON THIS PROJECT. ALL OF THIS TO PROTECT THE HOLDING TANK AND THE TOP OF THE BLUFF WHEN ALL THE PERMIT APPLICANT NEEDS TO DO IS STOP WATERING AND MOVE THE TANK AWAY FROM THE EDGE OF THE BLUFF.

WE ALSO QUESTION THE GEOLOGY REPORT ALL THE WAY BACK WHEN THE CLIFFS' HOTEL WAS FIRST BUILT TO THE PLACEMENT OF WELLS THAT WERE TO STOP OR SLOW DOWN THE EROSION BUT THAT THEY NOW SAY IS NOT DOING THE JOB. HAS THE HOTEL BUILT MORE AND FURTHER THAN THEY WERE FIRST PERMITTED TO?

Ex2, p5

A-3-PSB-96-100

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

DATE: August 27, 1996

TO: California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

ATTN: STEVE GUINEY

FROM: City of Pismo Beach
Community Development Department
PO BOX 3760 MATTIE ROAD
Pismo Beach, CA 93449

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: Tokyo Masuiwaya California Corporation
Address: % Fred H. Schott & Assoc., 200 Suburban Rd A, San Luis Obispo, CA 93401
Telephone No. (805)544-1216

Application File No.: 96-080
Site Address / APN: 2757 Shell Beach Rd (Cliffs Hotel)/ 010-041-044
Project Summary: Construction of a bluff protection device and modification to the existing private drainage system to minimize further erosion of the bluff.

Date of Action: August 6, 1996
Action by: Planning Commission X City Council Staff
Action: X Approved
 Approved with conditions/modifications
 Denied
 Continued: to meeting of:

Attachments: X Conditions of Approval
 X Findings
 X Staff Report

Appeal Status: Yes 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.

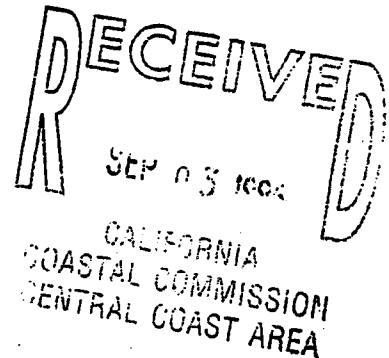


EXHIBIT 3

A-3-PSB-96-100

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-PSB-96-031
APPEAL PERIOD 09/04 - 09/17/96

EXHIBIT 1

RESOLUTION NO. 96-60

A RESOLUTION OF THE CITY COUNCIL REGARDING FINDINGS FOR APPROVAL OF A COASTAL DEVELOPMENT PERMIT AND DENIAL OF AN APPEAL OF A COASTAL DEVELOPMENT PERMIT AND OTHER RELATED PERMITS FOR PROJECT NO. 96-080 LOCATED AT 2757 SHELL BEACH ROAD ADJACENT TO THE CLIFFS FOR THE CONSTRUCTION OF A BLUFF STABILIZATION SYSTEM.

WHEREAS, Tokyo Masuiwaya Corporation (the "Applicant") has submitted applications to the City of Pismo Beach for approval of a Mitigated Negative Declaration and the applications for a Coastal Development Permit, Architectural Review Permit and Landscape Permit to construct a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to protect sewage holding tanks and rock rip rap at the base of the bluff adjacent to the Cliffs hotel to reduce the rate of erosion. The project would include modification of the existing surface and underground drainage system to minimize further erosion at the top of the bluff; and

WHEREAS, On May 28, 1996, the Planning Commission held a noticed public hearing on the project. The Commission considered the written material included in their May 28, 1996 agenda packet, testimony from city staff, the applicant and members of the public; and

WHEREAS, The Planning Commission granted approval of the abovementioned permits on May 28, 1996; and

WHEREAS, On June 11, 1996, the City Clerk received a letter of appeal from Philip Teresi, Surfrider Foundation, San Luis Bay Chapter, requesting the City Council to address less environmentally damaging alternatives outlined in the letter; and

WHEREAS, A staff report and recommendation to the City Council meeting of August 6, 1996 was prepared and considered by the City Council on that date; and

WHEREAS, In considering this appeal, the City Council has considered all information submitted by the appellant together with the staff report and other comments and testimony from the general public.

Ex 3, p 2

A-3-PSB-96-100

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

SECTION 1:

FINDINGS AND DECISION

A. FINDINGS FOR DENIAL OF THE APPEAL OF THE PLANNING COMMISSION DECISION TO APPROVE PROJECT NO. 96-080:

1. The development does not interfere with public access to the beach as set forth in the city's certified Local Coastal Program.
2. The development does not interfere with the public views from any public road or from a recreational area to and along the coast as set forth in the city's certified Local Coastal Program.
3. The development is compatible with the established physical scale of the area and is also consistent with the level and scale of development provided for the area in the city's certified Local Coastal Program.
4. The development does not significantly and adversely alter existing natural landforms.
5. The development complies with the shoreline erosion and geologic setback requirements as established in the city's certified Local Coastal Program.
6. These findings can be made based on the small-scale and limited scope of the structural design and placement of the seawall improvements on a small and limited portion of the lot and on the bluff face.

B. THE CITY COUNCIL HEREBY DETERMINES TO DENY THE APPEAL AND TO UPHOLD THE PLANNING COMMISSION DECISION OF MAY 28, 1996 TO APPROVE THE COASTAL DEVELOPMENT PERMIT AND OTHER PERMITS AND NEGATIVE DECLARATION FOR PROJECT NO. 96-080.

1. The City Council hereby requires that all permits as approved by the Planning Commission on May 28, 1996 be issued to the applicant.

Ex 3, p 3

A-3-PSB-96-100

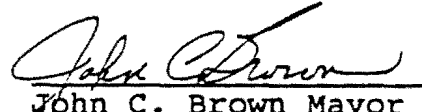
Page 3
Resolution No. 96-60
Pismo Beach City Council

UPON THE MOTION of Councilmember Halldin, seconded by
Councilmember Chapman, the foregoing resolution is hereby
approved and adopted this 6th day of August 1996 by the following
roll call vote, to wit:


AYES: Councilmembers Halldin, Chapman, Reiss and Mayor Brown

NOES: Councilmember Mello

ABSENT: None


John C. Brown Mayor

ATTEST:


Sharon Jones
CITY CLERK

Ex 3, p4

A-3-PSB-96-100

subsidy program (passed 5-0).

PUBLIC HEARINGS:

- 7A. SPECIAL DEVELOPMENT IMPACT FEE IN THE FREEWAY FOOTHILLS ASSESSMENT DISTRICT AREA (HUNT/DELZEIT - File #240.11 - 30 min.)

Council held its continued public hearing to consider imposition of a special development impact fee on certain land owners based on special benefit to the land owners within the Freeway Foothills Assessment District No. 86-AD-02 (continued from 7-2-96).

ACTION(S): On motion of Councilmembers Mellow/Chapman, to continue to date certain, Tuesday, September 3 1996, at 6:30 p.m.

- 7B. APPEAL OF A PLANNING COMMISSION DECISION REGARDING CONSTRUCTION OF BLUFF PROTECTION AT 2757 SHELL BEACH ROAD (CLIFFS HOTEL) (DELZEIT - File #451.1 - "Appeal of Surfrider Foundation v. Cliff's Hotel Bluff Protection" - 30 min.)

Council held a public hearing to consider an appeal by Surfrider Foundation, San Luis Bay Chapter, of a Planning Commission decision to approve a Coastal Development Permit and Architectural Review Permit for construction of a bluff protection device and modification to the existing private drainage system to minimize further erosion of the bluff. The project is located at 2757 Shell Beach Road (Cliffs Hotel), APN 010-041-044. The site is zoned R-4 and is located within the North Spyglass Planning Area and the Coastal Zone.

ACTION(S): On motion of Councilmembers Halldin/Chapman, Resolution No. R-96-60 was adopted denying the appeal and upholding the Planning Commission decision to approve the permits for the Cliffs Hotel (passed 4-1, Councilmember Mellow voting no).

Staff to provide information to Council concerning current policies on bluff top setbacks for developments.

8. BUSINESS ITEMS:

- 8A. WATER/SEWER RATE STUDY (BEGGS - File #265.2)

ACTION(S): On motion of Mayor Brown/Councilmember Mellow, staff was authorized to approve a contract with Karen Keese to update the Water and Sewer Rate Study, not to exceed \$14,080 (passed 5-0).

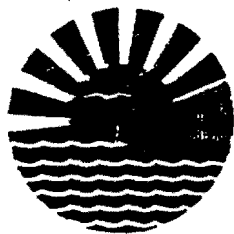
Staff to set up a meeting on August 22, 1996, with Karen Keese to meet with Council and the public.

Ex 3, p 5

A-3-PSB-96-100

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City of Pismo Beach, California

COUNCIL AGENDA REPORT

RECEIVED
SEP 05 1996

CALIFORNIA
COASTAL COMMISSION
COAST AREA

SUBJECT: Public hearing to consider appeal of a Planning Commission approval of Project 96-080, a Coastal Development Permit and related permits for the construction of a bluff revetment device at 2757 Shell Beach Road (The Cliffs Hotel).

RECOMMENDATION:

Uphold the Planning Commission approval of Project 96-080 and deny the appeal.

RECOMMENDED MOTION: "I move to approve Resolution No. to uphold the May 28, 1996 Planning Commission approval of Project 96-080."

EXECUTIVE SUMMARY:

1) Background:

The Planning Commission approved the construction of shoreline protection system to protect the bluff area of the Cliff's Hotel on May 28, 1996. The City, acting as the coastal permitting agency, received an appeal from the Surfrider Foundation shown as Exhibit 2.

The property has experienced bluff erosion on the southern end since the construction of the restaurant and in the mid-80's at a rate three times greater than the retreat rate from 1955 to 1978. The Geologic Report (Earth Systems Consultants No. Calif., Jan. 30, 1996) states the following:

The accelerated retreat rate may be due to an increase or an above normal amount of intense winter storms that occurred since 1982. Another factor that appears to have significantly contributed to this retreat rate is the landscape irrigation. In the last 5 years there has been an increase in the number of shallow landslides in the terrace

Prepared by: Helen Elder, Contract Planner *JME* **Meeting Date:** Aug. 6, 1996

Approved by: Peggy Mandeville, Contract Planner

Attachments: No. 1-Resolution of Findings for Approval of CDP; No. 2-Letter of appeal; No. 3 PC Staff report; No. 4-Min. of PC meeting of May 28, 1996; No. 5: LCP/GP policies for seawalls; No. 6- Zoning, development standards and overlay zones; No. 7-project plans.

EX3, p6
A-3-PSB-96-100

City Administrator Approval

AGENDA ITEM NO. *7B*

deposit soil unit of the bluff, particularly on the southern side of the property. The 5-foot bench at the bedrock/soil contact on the bluff face is indicative of the terrace deposit soil unit retreating at a faster rate than the underlying bedrock.

The bluff retreat on the southern side of the property, where the shale bedrock of the Monterey formation is present, is retreating at a much faster rate compared to the middle and northern part of the site where bedrock of the Pismo formation is present. This is due to the weak rock characteristics and unfavorable bedding orientations present in the shale.

Since the hotel and restaurant are over 100 feet back from the top of the bluff, accelerated bluff retreat will not have impact on these structures for at least 25 years. However, the existing sewage holding tank for the hotel and restaurant, near the southern property boundary, is located only approximately 15 feet from the top of the bluff and that structure could be threatened by bluff retreat within the next 5 years.

2) Project:

The project is to construct a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to protect sewage holding tanks and rock rip rap at the base of the bluff adjacent to the Cliffs hotel to reduce the rate of erosion. The project would include modification to the existing surface and underground drainage system to minimize further erosion at the top of the bluff.

3) Environmental review:

Environmental review was required and a Negative Declaration was determined consistent with CEQA. An Initial Study was prepared. Mitigation measures were added to address the bluff erosion. The Planning Commission approved the Mitigated Negative Declaration.

4) General Plan/Local Coastal Plan Consistency:

The project is located in the North Spyglass Planning area. The area is designated for resort commercial development. GP/LCP policies related to seawalls are found on Exhibit 5. The project meets the intent of the GP/LCP policies for the area and the Planning Commission made the necessary findings.

Ex 3, r 7

A-3-PSB-96-100

5) Zoning, development standards and overlay zones:

The project is located in the R-4 zone, Archeology Overlay zone (Chapter 17.063), Architectural Review Overlay zone (Chapter 17.069), Coastal Access Overlay Zone (Chapter 17.065), Hazards and Protection Overlay Zone (Chapter 17.078), Coastal Appeal Overlay Zone (Chapter 17.072), Public or Visitor Services Parking Overlay Zone (Chapter 17.090). Exhibit 6 provides a brief overview of the requirements of these overlay zones. As proposed and conditioned, the project is consistent with the Zoning Code.

6) Planning Commission action:

The Coastal Development Permit and Architectural Review Permit were approved by the Planning Commission on May 28, 1996. The conditions of approval shown in Exhibit 3 of the Planning Commission report contain specific items addressing each concern of the appellants. These items are discussed in detail below in the discussion of the appeal. In addition, these conditions are consistent with the requirements of the General Plan and Local Coastal Plan and zoning ordinance for this area.

7) Discussion of appeal:

The appeal of this project has been filed by the Surfrider Foundation, San Luis Bay Chapter, a copy of which is attached in Exhibit 2.

The items raised by the appeal are outlined below. Each is addressed by staff comments.

Appeal Item No.1: Landscaping irrigation contributing significantly to the accelerated retreat rate (of bluff erosion).

Staff comments: Condition of Approval No. 7c states:

"An impermeable geomembrane barrier in the landscape areas at the back or west part of the hotel and restaurant shall be identified on the building plans.. Plans shall also show a collection pipe along the eastern margin of the barrier to direct the water away from the bluff face."

The requirements of this condition together with No. 7b will reduce the erosion rate at the top of the cliffs to the degree feasible.

Appeal Item No.2: That the project may cause a "Significant deterioration to existing fish and wildlife habitat."

Staff comment: The project consists of commonly used bluff stabilization techniques. The City of Pismo Beach has a long history of reviewing and approving similar bluff

protection systems without any negative impacts to existing fish and wildlife habitats. There is no evidence that this project will likely contribute to any deterioration of fish or wildlife habitat in the project vicinity.

Appeal item No.3: "A seawall may not control the erosion rate of the top of the cliffs..."

Staff comments: The requirements in Conditions of Approval No. 7b and 7c for drought resistant landscaping, installation of an impermeable geomembrane barrier in the landscaping and the use of a collection pipe to divert water away from the bluff face will reduce the erosion rate at the top of the cliffs to the degree feasible.

Appeal Item No.4: "Seawalls/Rip-rap will do further damage to sand supply (loss of sand)."

Staff comments: The Geologic Report, page 11 states:

"Impacts of the proposed revetment structure, Shoreline Sand Supply. The proposed revetment structure should not affect the southerly transportation of the shoreline sand. This is due to the fact that the toe of the proposed revetment structure will be above the mean high tide elevation, while the majority of the sand transportation occurs within the tidal zones."

Appeal Item No.5: The seawall/rip-rap will infringe on public beach access as well as to aesthetics.

Staff comments: The bluff stabilization system will not interfere with public access to the beach. The bluff stabilization is necessary for the protection of property and public safety. The seawall/rip-rap design is less visually intrusive than a concrete revetment.

Appeal Item No. 6: Existing landscaping should be replaced with drought resistant, native plants or zero landscaping.

Staff comments: Conditions of Approval No. 7b requires drought resistant or zero landscaping.

Ex 3, p 9
A-3-PSB-96-100

Surfrider Foundation, San Luis Bay Chapter
354 Main Ave., Suite C, Pismo Beach, CA 93449
INFO HOT LINE 773 1489 Fax-7739767

cc: Dennis Delcourt
Planning Secretary
City Attorney - FYI
City Council

EXHIBIT 2

**To: City Clerk, City of Pismo Beach
P.O. Box 3, Pismo Beach, CA 93448
From: Philip Teresi, Surfrider Foundation**

The Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enhancement of the world's waves and beaches through conservation, research, education, and local activism.

We are appealing the Project #96-080 and are asking you to consider less environmentally damaging alternatives. We appeal this project for the following reasons:

One significant contribution to the accelerated retreat rate is the landscaping irrigation. The approved plan does not address this issue.

We believe that there is a possibility of significant deterioration to existing fish and wildlife habitat and therefore a study should be made before final approval of the project.

Finally, a seawall may not control the erosion rate of the top of the cliffs and therefor may not really protect the existing structure that is threatened. We propose that the sewage holding be moved further away from the bluff and find a different means to handle the sewage other than by the means of gravity flow. We feel that this is a better solution because it would be assured to move the structure out of danger. A seawall does not guarantee that the cliff erosion will stop.

Seawalls/ Rip-rap will do further damage to sand supply, (the loss of sand). A geotechnical report and study on this matter for this project has not been addressed nor presented at this time. Once this Seawall/Rip-rap has been placed on the shore there is no way to undo the damage and any type of report as to the loss of sand will be skewed and non-valid

We believe that the Seawall/Rip-rap will infringe on the publics beach access as well as the ascetics.

The vegetation mainly the over watering of the grass area and the flower beds directly above the bluff area in contributing greatly to the accelerated erosion. We believe that it makes sense to replace existing landscaping with drought resistant and/or native plants or zero landscaping as the recommendations from the report so states and should be part of the permit.

CITY OF PISMO BEACH
RECEIVED

Sincerely,
Philip Teresi, Surfrider Foundation, San Luis Bay Chapter

JUN 11 1996

CITY CLERK

PHILIP TERESI

6/11/96

EX3, p10
A-3-PSB-96-100

Hand-delivered

Surfrider Foundation, San Luis Bay Chapter

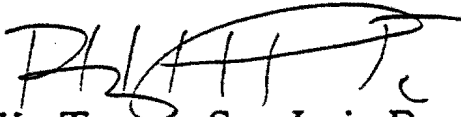
354 Main Ave., Suite C, Pismo Beach, CA 93449

INFO HOT LINE 773 1489 Fax-7739767

The Surfrider Foundation, San Luis Bay Chapter would like to share a very powerful and informative film on beach erosion with you titled The Beaches Are Moving. We would like to make these available to all of the members of the planing commission to assist them in making informed decisions on issues regarding sea walls and other projects affected by the ocean.

If you are interested in obtaining a copy to view please notify me by phone at our hot line # 773 1489 and we will be glad to drop it by for your viewing.

Sincerely,



Philip Teresi, San Luis Bay Chapter Surfrider Foundation

Ex 3, p11
A-3-PSB-96-100

CITY OF PISMO BEACH PLANNING COMMISSION

DATE: May 28, 1996

TO: Planning Commission

FROM: Carolyn Johnson, City Planner

SUBJECT: Public hearing to consider a Mitigated Negative Declaration, Coastal Development permit and Architectural review permit for bluff improvements at 2757 Shell Beach Road, owner/applicant Tokyo Masuiwaya California Corporation; Toshiaki Sasaki, President APN 010-041-044, Project 96-080

STAFF RECOMMENDATION: Staff recommends approval of the Mitigated Negative Declaration, the Coastal Development Permit and Architectural Review Permit with the findings in Exhibit 2 and the Conditions in Exhibit 3.

KEY ISSUES:

- o Bluff retreat and its potential impact on structures adjacent to the bluff if bluff stabilization is not achieved.
- o Proposal for bluff protection has been provided consistent with City standards and requirements.

RECOMMENDED PLANNING COMMISSION MOTION:

"I move to approve Resolution 96-080 which approved the Mitigated Negative Declaration, the Coastal Development Permit and Architectural Review Permit with the findings in Exhibit 2 and the Conditions in Exhibit 3 for project 96-080.

1) BACKGROUND:

The property in question has experienced bluff erosion on the south end of the property since the construction of the restaurant and in the mid-80's at a rate three times greater than the bluff retreat rate from 1955 to 1978. The Geology report notes that:

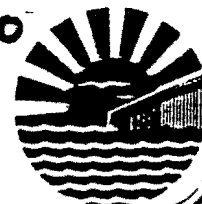
"The accelerated retreat rate may be due to an increase or an above normal amount of intense winter storms that occurred since 1982. Another factor that appears to have significantly contributed to this retreat rate is the landscape irrigation. In the last 5 years there has been an increase in the number of shallow landslides in the terrace deposit soil unit of the bluff, particularly on the southern side of the property. The 5-foot bench at the bedrock/soil contact on the bluff face is indicative of the terrace deposit soil unit retreating at a faster rate than the underlying bedrock.

The bluff retreat on the southern side of the property, where the shale bedrock of the Monterey formation is present, is retreating at a much faster rate compared to the middle and northern part of the site where bedrock of the Pismo formation is present. This is due to the weak rock characteristics and unfavorable bedding orientations present in the shale.

Ex 3, p12

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075



Since the hotel and restaurant are over 100 feet back from the top of the bluff, accelerated bluff retreat will not have impact on these structures for at least 25 years. However, the existing sewage holding tank for the hotel and restaurant, near the southern property boundary, is located only approximately 15 feet from the top of the bluff and that structure could be threatened by bluff retreat within the next 5 years."

2) PROJECT

This proposal is to construct a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to protect sewage holding tanks and rock rip rap at the base of the bluff adjacent to the Cliffs hotel to reduce the rate of erosion. The project would include modification to the existing surface and underground drainage system to minimize further erosion at the top of the bluff.

While not proposed as a part of the project, landscape irrigation control is highly recommended as a part of the project as the geology report identifies this issue as a contributor to erosion of the bluff.

3) ENVIRONMENTAL REVIEW:

This proposal is not exempt under CEQA and a Negative Declaration is required. The Initial study prepared for the Negative Declaration is attached as Exhibit 4. The Commission must take action on the Negative Declaration prior to any approval of the proposed project. Comments on the Initial Study and the Mitigated Negative Declaration include a letter from the Department of the Army advising that a permit from that agency may be required.

4) GENERAL PLAN/LOCAL COASTAL PLAN (GP/LCP) CONSISTENCY:

The proposed project is located in the North Spyglass Planning areas. This area is designated for resort commercial development. GP/LCP policies related to seawalls are found on Exhibit 5. As proposed, this project meets the intent of GP/LCP policies for the area. The project is consistent with the GP/LCP.

5) ZONING, DEVELOPMENT STANDARDS AND OVERLAY ZONES:

This proposal is located in the R-4 zone, Archeology Overlay Zone (Chapter 17.063) Architectural Review Overlay Zone, (Chapter 17.069) Coastal Access Overlay Zone (Chapter 17.065), Hazards and Protection Overlay Zone: (Chapter 17.078), Coastal Appeal Overlay Zone (Chapter 17.072), Public or Visitor Services Parking Overlay Zone (Chapter 17.090). Exhibit 6 provides a brief overview of the requirements of these overlay zones. As proposed and conditioned, the project is consistent with the Zoning Code.

6) ARCHITECTURAL REVIEW DESIGNEE COMMENTS:

Bell and Milosevic: No comments
Stocksdale: No problems with plans

Ex 3, p13
A-3 PSB-96-100

ATTACHMENTS: Exhibit 1 - Project plans
Exhibit 3 - Permit and Conditions of approval
Exhibit 5 - Applicable GP/LCP policies

Exhibit 2 - Resolution 96-080
Exhibit 4 - Initial Study and Negative Declaration
Exhibit 6 - Applicable Zoning Code requirements

EXHIBIT 2.

RESOLUTION NO. R-96-080

STATING THE FINDINGS AND DECISION OF THE PLANNING COMMISSION OF THE CITY OF PISMO BEACH APPROVING PROJECT NO. 96-080 LOCATED AT 2727 SHELL BEACH ROAD ADJACENT TO THE CLIFFS HOTEL

SECTION 1:

RECITALS

- A. Tokyo Masuiwaya California Corporation (the "Applicant") has submitted applications to the City of Pismo Beach for approval of a Mitigated Negative Declaration and the applications for a Coastal Development Permit, Architectural Review Permit and Landscape Permit to construct a reinforced concrete frame, grade beam and drilled pile bluff stabilization system to protect sewage holding tanks and rock rip rap at the base of the bluff adjacent to the Cliffs hotel to reduce the rate of erosion. The project would include modification to the existing surface and underground drainage system to minimize further erosion at the top of the bluff.
- B. The Planning Commission hereby grants approvals for these permits.
- C. On May 28, 1996, the Planning Commission held a noticed public hearings on the project. The Commission considered the written material included in their May 28, 1996 agenda packet; and considered testimony from City Staff, the Applicant, and members of the public.

SECTION 2:

FINDINGS AND DECISION

Conditions of Approval are incorporated herein by reference as **Exhibit B**. The Planning Commission of the City of Pismo Beach makes the following findings in support of its decision:

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

Based upon the information contained in the Initial Study and the Mitigation Monitoring Program, it is determined that the project is not categorically exempt. Although the project could potentially have an effect on the environment, the Planning Commission 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 use and improvements are consistent with the Land Use Element of the General Plan, and the development standards of the Zoning Code.
2. Earth: To ensure that all grading conforms to City standards, the final plans shall be consistent with the Hazards Protection Overlay Zone (Chapter 17.078) prior to the

Ex 3, p 14
A-3-PSB-96-100 075

issuance of building permits. There will be no significant adverse impacts on earth conditions due to the mitigation measures required of this project.

3. Water: A grading/drainage/erosion control plan shall be submitted with the application for building permits to be reviewed and approved by the Public Works Department prior to the issuance of building permits to ensure that all surface water runoff will be controlled pursuant to City requirements.
 4. Air Quality: No adverse impact on air quality is expected in the long term of the proposed project. Construction related impacts will be mitigated.
 5. Geology: The project will correct geologic impacts that have occurred on the site.
 6. Social Factors: No adverse impact on social factors will be created by this project.
 7. Traffic: There are no adverse impacts on traffic or circulation created by this project with the payment of traffic impact fees.
 8. Cultural Resources: No adverse impacts on potential archaeological resources will result from the project because a qualified archaeologist is required to be called in to evaluate any unforeseen find.
 9. Noise: No adverse impact on noise will be created by this project.
 10. Plant Life: There will be no significant adverse impacts on existing plant life.
 11. Risk of Upset: No risk of an explosion or the release of hazardous substances is expected.
 12. Other: No other significant adverse impacts are known.
 13. This 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.
- B. FINDINGS FOR APPROVAL OF THE COASTAL DEVELOPMENT PERMIT, ARCHITECTURAL REVIEW PERMIT, AND LANDSCAPE PERMIT:
1. This permit is granted for improvements to an existing bluff protection device above the mean high tide line.
 2. As conditioned, the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 311220) of the California Coastal Act of 1976.
 3. As proposed and conditioned, the project will discontinue further erosion of the bluff face and avoid further disruption of the site topography.

Ex 3, p 15
A-3-PSB-960-100

The Planning Commission of the City of Pismo Beach determines as follows:

1. The facts in the recitals are true.

UPON MOTION of the Commissioner _____, seconded by
Commissioner _____, the foregoing Resolution is hereby approved
and adopted the 28th day of May, 1996 by the following roll call vote, to wit:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Nick Leaverton, Chairman

ATTEST:

Planning staff

Ex 3, p16
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EXHIBIT 3

**CITY OF PISMO BEACH
PERMIT NO. 96-080 / CDP, ARP
CONDITIONS OF APPROVAL
PLANNING COMMISSION MEETING OF MAY 28, 1996**

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.

CASE NO: 96-080 - (CDP, ARP.) **PAGE 1/4**
APPLICANT/OWNER: Tokyo Masuiwaya California Corporation
LOCATION/APN: 2727 SHELL BEACH ROAD, APN 010-041-044

AUTHORIZATION: Subject to the conditions stated below, approval of Permit No. 96-080 grants the permittee permits to construct reinforced concrete frame, grade beam and drilled pile bluff stabilization system to protect sewage holding tanks and rock rip rap at the base of the bluff to reduce rate of erosion. and to modify the exiting surface and underground drainage system to minimize further erosion at the top of the bluff. Construction shall be consistent with plans approved by the Planning Commission on May 28, 1996.

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

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 May 28, 1998 unless inaugurated prior to that date.

**STANDARD CONDITIONS, POLICIES AND SELECTED CODE REQUIREMENTS
DEVELOPMENT PERMIT AND ARCHITECTURAL REVIEW PERMIT**

Conditions as indicated below have been deemed to be of a substantive nature on the basis of the Planning Commission's decision. These conditions cannot be altered without Planning Commission approval.

**A) CONDITIONS SUBJECT TO COMPLIANCE PRIOR TO ISSUANCE OF A
BUILDING PERMIT:**

Ex 3, p 17
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075

PUBLIC SERVICES DEPARTMENT/PLANNING DIVISION:

1. BUILDING PERMIT APPLICATION. To apply for building permits 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 PLANNING COMMISSION APPROVAL. Prior to the issuance of a building permit, the Project Planner shall confirm that the construction plot plan and building elevations are in compliance with the Planning Commission's approval and conditions of approval.
3. In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall cease in the immediate area, and the find left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
4. Building plans must clearly delineate the location of the mean high tide.
5. Building plans shall reflect the project drainage.
6. The geologic report for the project shall be reviewed and approved by the Engineering division prior to issuance of a building permit per Section 17.078.050 of the Zoning Ordinance.
- 7a. Building plans submitted shall be prepared and stamped by a registered civil engineer with expertise in soils.
- 7b. Landscape plans shall be submitted and show drought resistant landscape or zero landscape. These plans shall be reviewed and approved by the City prior to the issuance of a building permit.
- 7c. An Impermeable geomembrane barrier in the landscape areas at the back or west part of the hotel and restaurant shall be identified on the building plans. The barrier should extend from the existing beach access walkway near the north property boundary to the south property boundary. It should be placed below the existing topsoil zone, approximately 2 feet below the existing ground surface, and sloped with a 2 percent minimum toward the hotel and restaurant. Plans shall also show a collection pipe along the eastern margin of the barrier to direct the water away from the bluff face. Specific details of this system should be addressed on the building plans by the project engineer.
8. The building plans shall include a drainage plan, designed by a registered Civil Engineer

Ex 3, p 18
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and submitted to the Engineering division for review and approval prior to the issuance of a building permit.

PUBLIC SERVICES DEPARTMENT/BUILDING DIVISION:

9. Project shall comply with the most recent adopted City and State building codes.
10. Plans shall be submitted by a California Licensed architect and/or engineer.
11. A soils investigation may be required for this project.
12. Certification that the actual elevation of structures in relation to mean high sea level by a licensed surveyor/engineer.
13. Well-established engineering principles should consider the effect of hydrostatic and hydrodynamic forces.
14. Erosion control of the site shall be clearly identified and mitigated.
15. A separate grading plan complying with Chapter 70, UBC, and Title 15 PBMC, may be required.
16. Provide a statement on the plans that all property lines and easements are shown on the plot plan.
17. The permittee shall put into effect and maintain all precautionary measures necessary to protect adjacent water courses and public or private property from damage by erosion, flooding, deposition of mud or debris originating from the site.
18. The owner shall provide the City with adjacent owners written permission to construct the proposed project.
19. An Army Corp of Engineers permit may be required. If the permit is required, it must be secured prior to issuance of the building permit. If a permit is not required, the applicant shall provide evidence from the Army Corp of Engineers that such a permit is not required.

B) ONGOING CONDITIONS:

20. 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.
21. During construction, the site shall be maintained so as to not infringe on neighboring property. Soil maintenance shall be determined by the Building Official.

Ex 3, p 19
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22. All soil removed from the face of the bluff during reconstruction shall be removed from the site.
23. Any work below the mean high tide line will require a coastal development permit from the Coastal Commission.
24. The applicant shall comply with the General Plan/Local Coastal Plan Policy PR-22-Lateral beach/shoreline access; a lateral public access easement in perpetuity extending from the oceanside parcel boundary to the top of the bluff shall be required and granted to the California Department of Parks and Recreation, the City of Pismo Beach, or other appropriate public agency.

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 WILL COMPLY
WITH ALL ABOVE STATED CONDITIONS OF THIS PERMIT**

Approved by the Planning Commission on May 28, 1996

Applicant

Property Owner

Date

Date

END

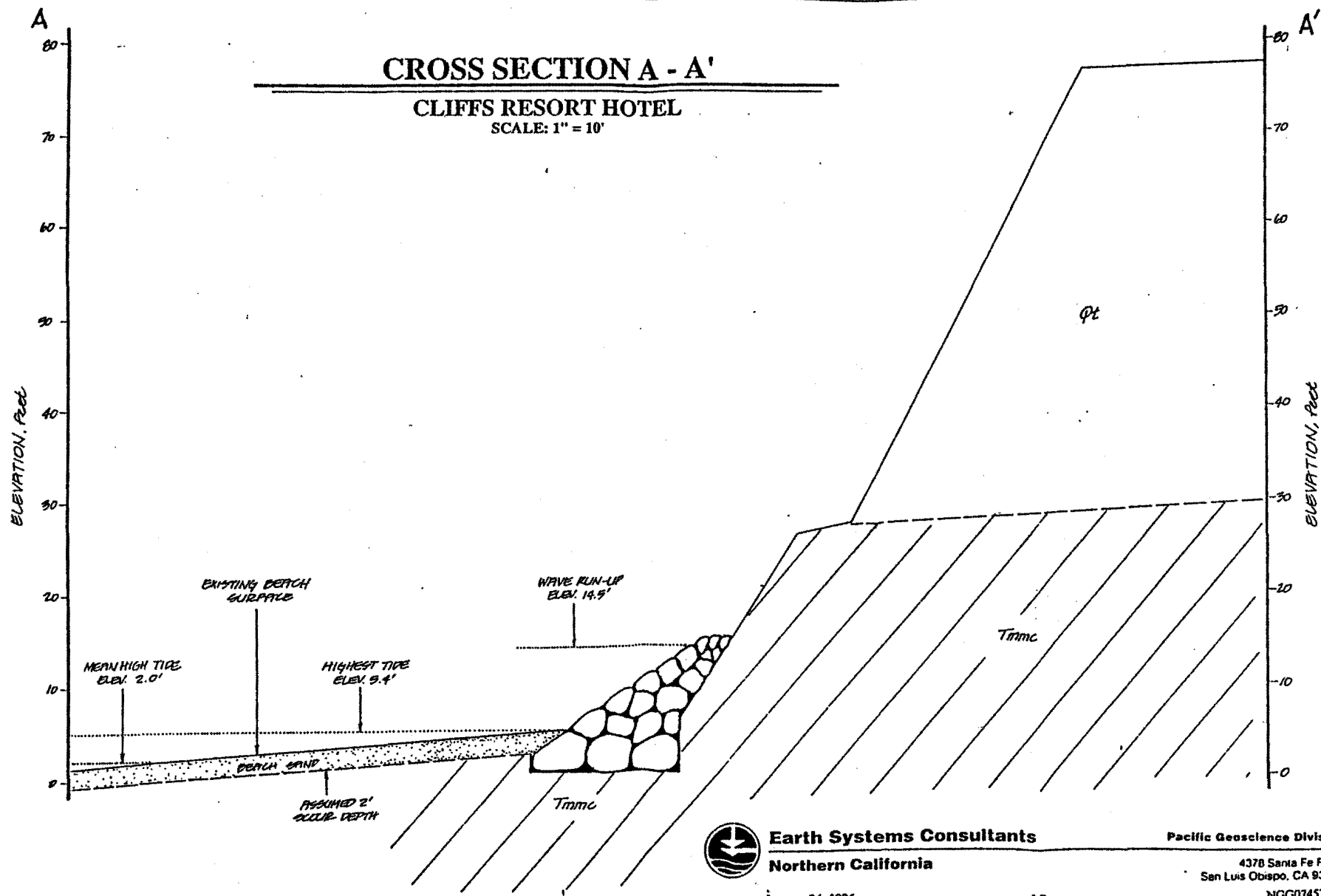
Ex 3, p 20
A-3-PSB-96-100

Ex 4
A-3-PSB-96-100

CROSS SECTION A - A'

CLIFFS RESORT HOTEL

SCALE: 1" = 10'



Earth Systems Consultants

Northern California

January 24, 1996

LR

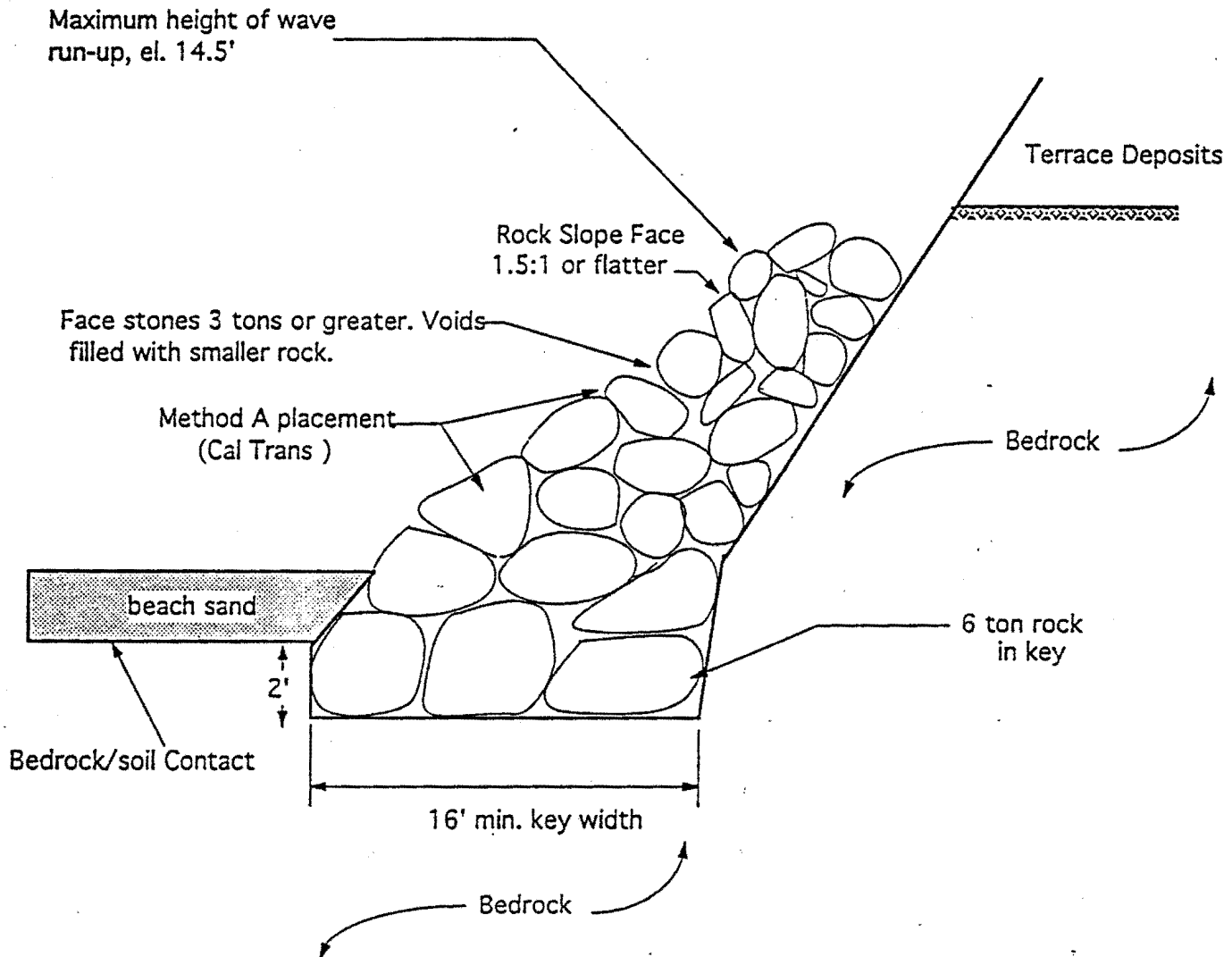
Pacific Geoscience Division

4378 Santa Fe Road
San Luis Obispo, CA 93401

NGG07457-05

REVETMENT STRUCTURE DETAIL

NOT TO SCALE



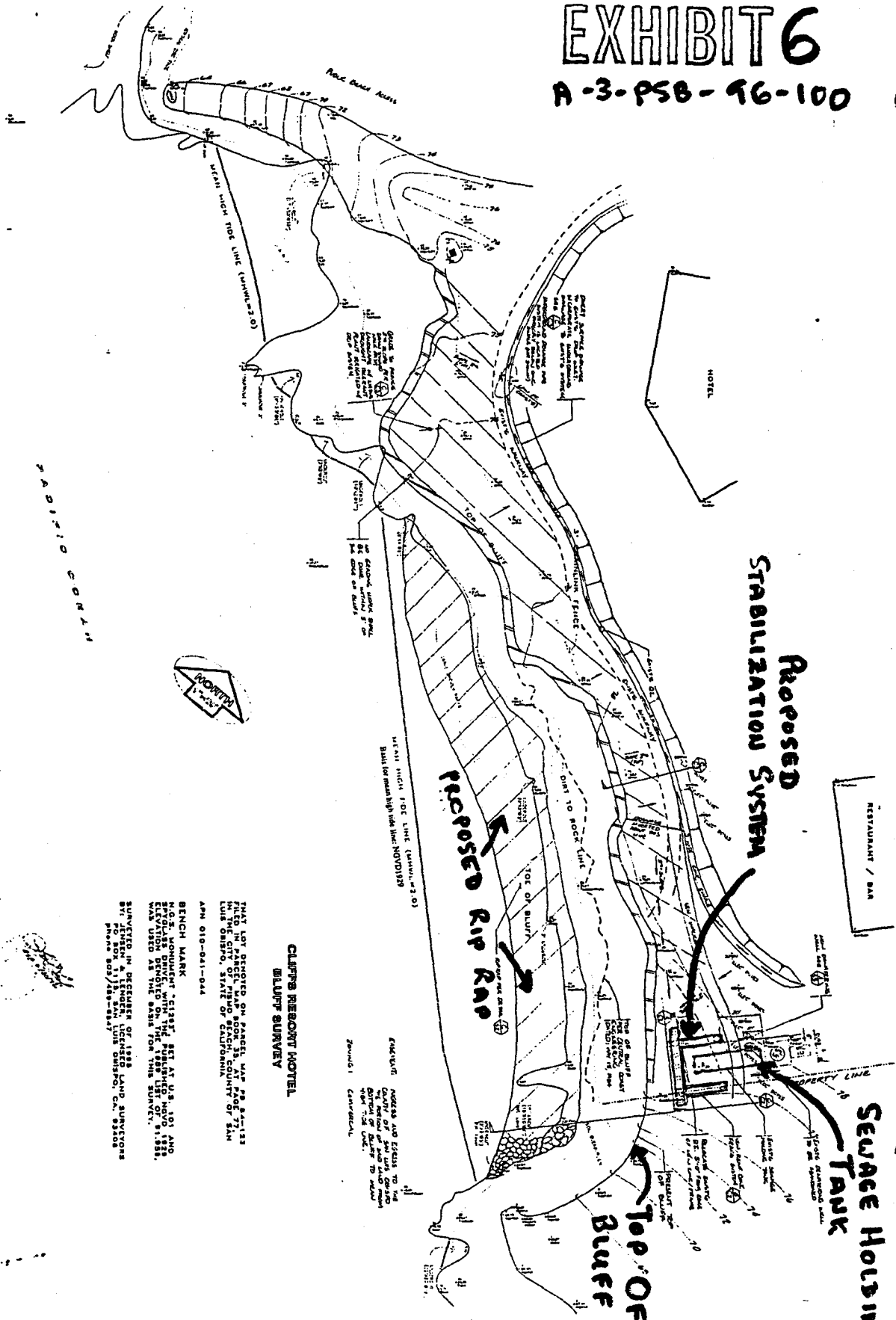
CLIFFS RESORT HOTEL
SHELL BEACH, CALIFORNIA

NGG07457-05
January 23, 1996

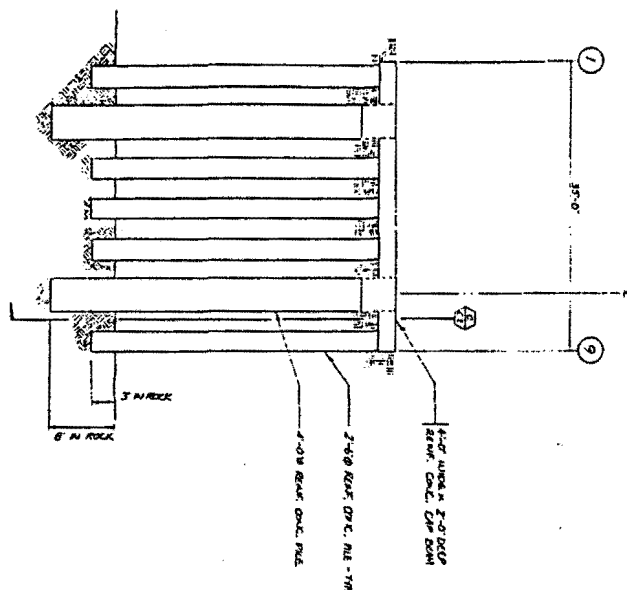
Ex4, p2
A-3-PSB-96-100

EXHIBIT 6

A-3-PSB-96-100



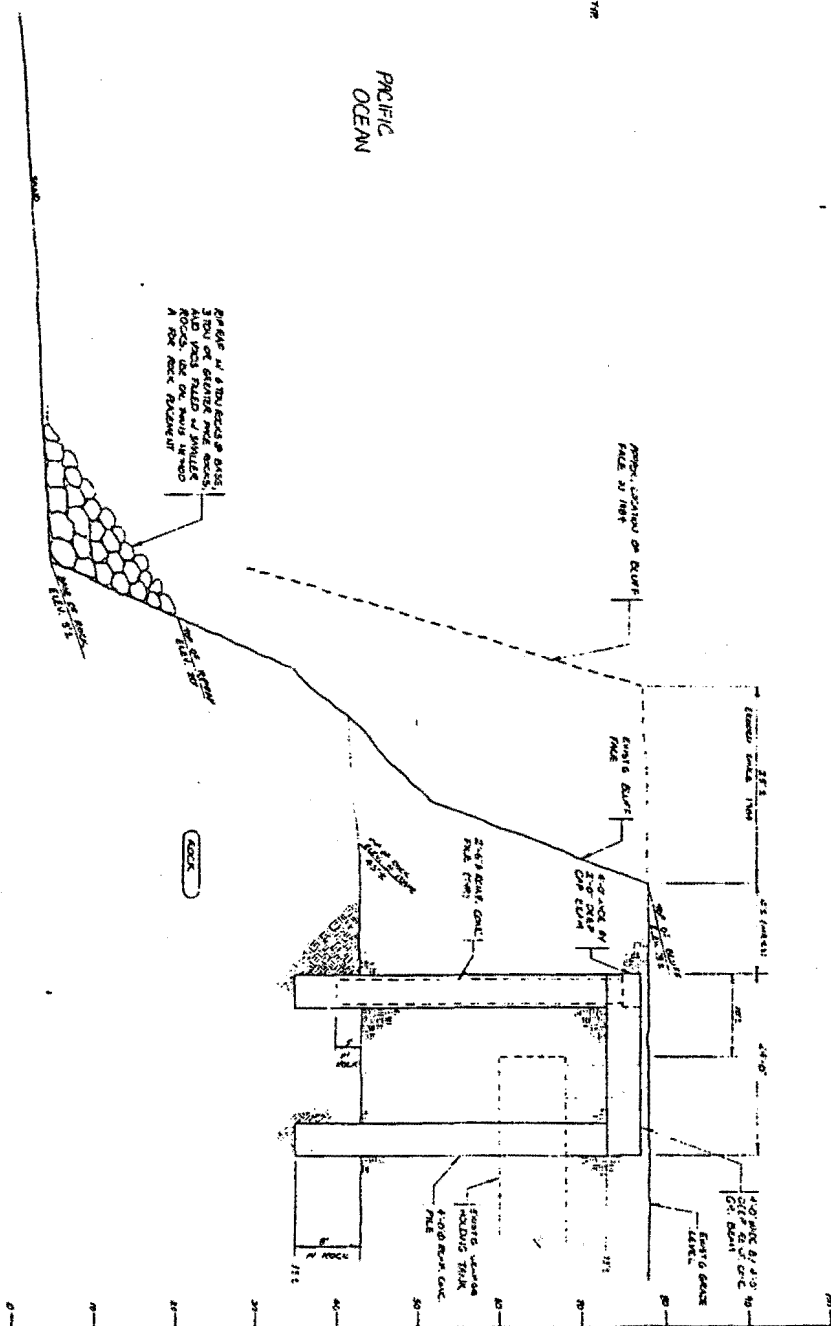
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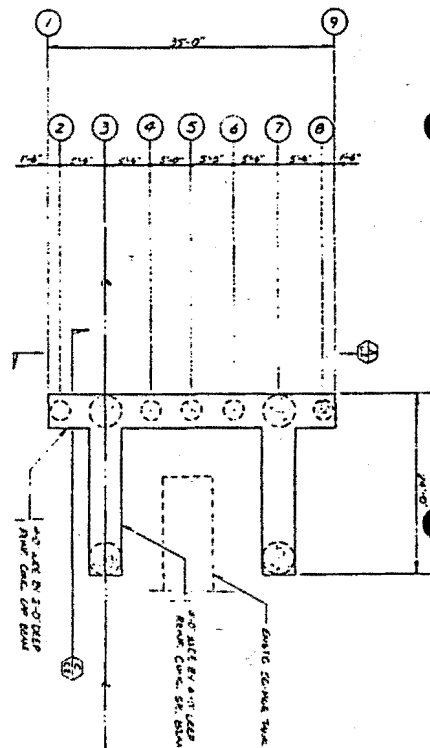
PACIFIC
OCEAN

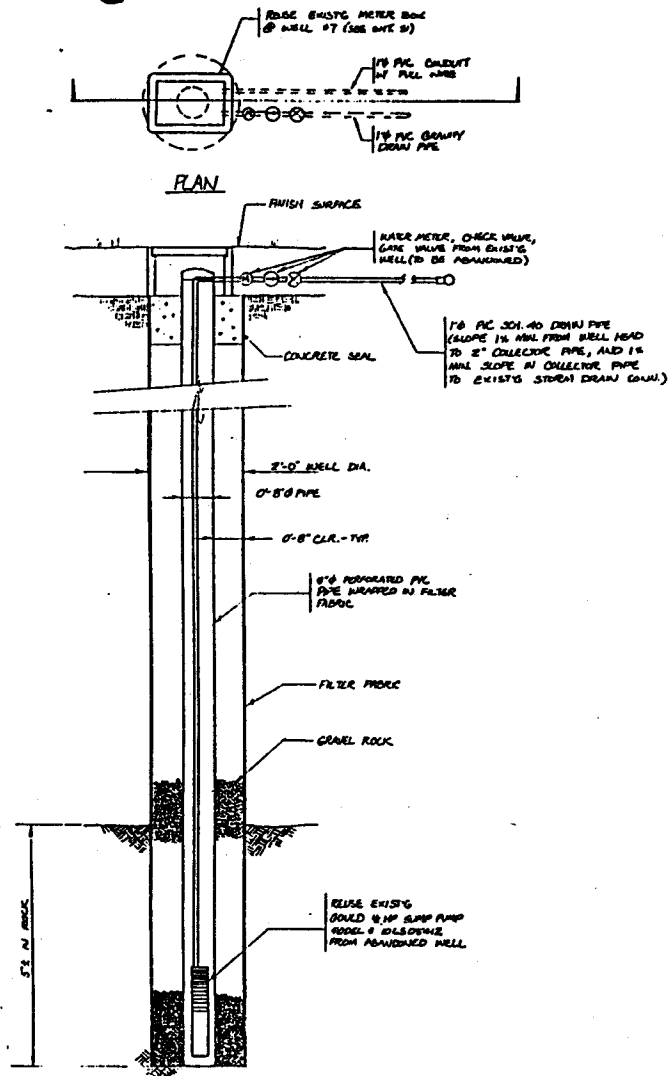
Ex 6, p3
A-3-PSB-96-100

BLUF SECTION W/ NEW RIPRAP @ BASE OF CLIFF & REIN. CONC. FILL/PYRAME STRUCTURE



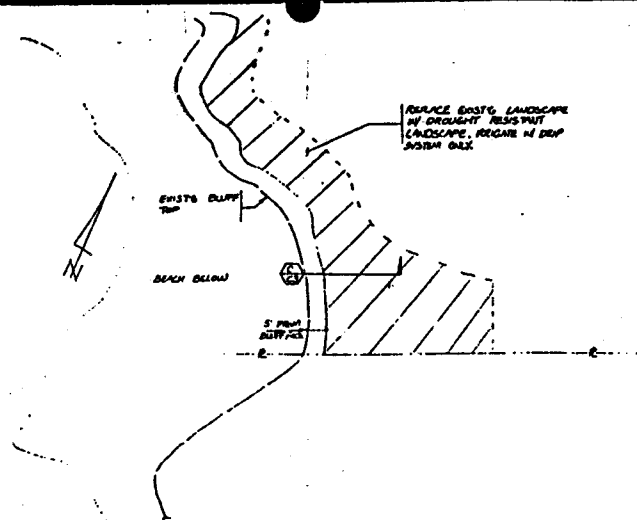
REF. CONC. FILE/FIRAME STRUCTURE - RJ44



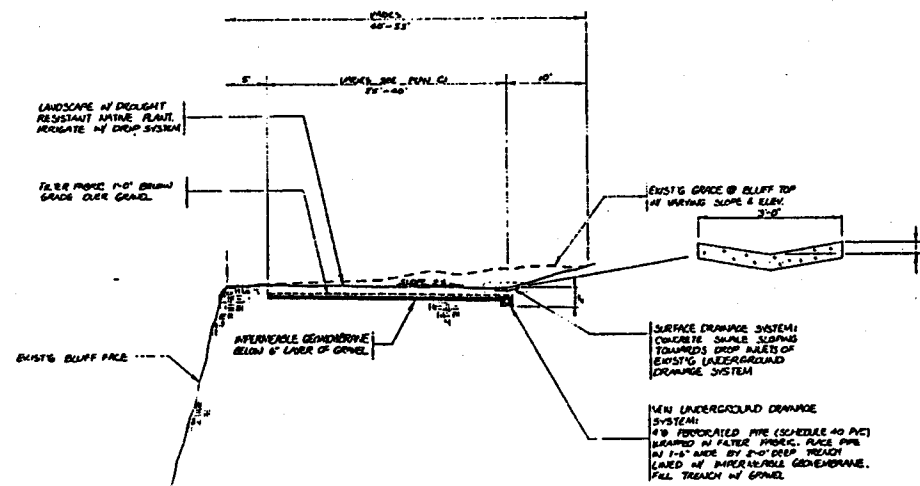


REPLACEMENT DEWATERING WELL - SECTION

PACIFIC OCEAN



NEW DRAINAGE/LANDSCAPE WORK LOCATION - PLAN



NEW SURFACE & UNDERGROUND DRAINAGE SYSTEM - SECTION

Ex 6, p 4

A-3-PSB-96-100

FRAN H. SCHOTT & ASSOCIATES

The Cliffs Resort Hotel

Dewatering Well Design

Recording Requested by and Return to
State of California
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105

DEED RESTRICTION

I. WHEREAS, Wade Construction Company, Inc., a California corporation and Windmark Corporation, a Texas corporation (hereinafter collectively referred to as the "Owners") are the record owners of real property located in 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, H. Joseph Wade, an individual who is President of Wade Construction Company, Inc., and Stephen D. Cox, an individual who is President of Windmark Corporation (hereinafter collectively referred to as the "Applicants"), applied to the California Coastal Commission for a Coastal Development Permit for development of the Subject Property; and

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

Ex 7

A-3-PSB-96-100

V. WHEREAS, on October 13, 1983, Coastal Development Permit No. 4-83-490 was granted by the California Coastal Commission based on the findings adopted by the California Coastal Commission and upon the following condition:

Geologic Hazard Setback and Waiver of Liability

A deed restriction for recording free of prior liens except tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that no development other than pathways and stairways shall occur within the 100 foot setback line shown in Exhibit 1; (b) that the applicants understand that the site is subject to extraordinary hazard from erosion and from bluff retreat and that applicants assume the liability from these hazards; (c) the applicants unconditionally waive any claim of liability on the part of the Commission and any other public agency for any damage from such hazards; and (d) the applicants understand that construction in the face of these unknown 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.

VI. WHEREAS, the California Coastal 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, Applicants have elected to comply with the above condition imposed by Permit No. 4-83-490 so as to enable Applicant to undertake the development authorized by the permit;

NOW, THEREFORE, in consideration of the granting of Permit No. 4-83-490 to the Applicants by the California Coastal Commission, the Applicants hereby irrevocably covenant with the California Coastal Commission 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 pathways and stairways shall occur within the 100 foot setback portion of 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 A 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 California Coastal Commission from its granting of Permit No. 4-83-490; (c) the Applicants unconditionally waive any claim of liability on the part of the California Coastal Commission for any damage 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. 4-83-490, or any modification or amendment thereof, remains effective, and during the period that the development authorized by Permit No. 4-83-490 or any modification of said development remains in existence in or upon any part of, and thereby confers benefit upon, the Subject Property, and to that extent said deed restriction is hereby deemed and agreed by the Applicants to be a covenant running with the land, and shall bind Applicants and all their assigns or successors in interest.

Applicants agree to cause the Owner of the Subject Property to record this Deed Restriction in the Recorder's Office for the County of San Luis Obispo as soon as possible after the date of execution.

DATED: February 15, 1984.

Windmark Corporation

SIGNED: By: _____

STEPHEN D. COX, President

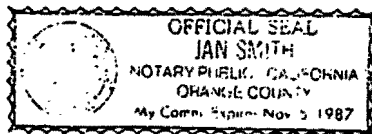
Wade Construction Company, Inc.

SIGNED: By: _____

H. JOSEPH WADE, President

STATE OF CALIFORNIA,)
) ss.
COUNTY OF ORANGE)

On this 15th day of February, in the year 1984, before me the undersigned, a Notary Public in and for said County and State, personally appeared Stephen D. Cox, an individual, personally known to me or proved to be on the basis of satisfactory evidence to be the President of Windmark Corporation, and H. Joseph Wade, an individual personally known to me or proved to me on the basis of satisfactory evidence to be the President of Wade Construction Company, Inc. and acknowledged that the respective corporations executed the attached instrument.



Jan Smith
(Notary Signature Line)

Marc Kent
211 Cuyama Dr., Shell Beach, CA 93449

California California Coastal Commission
Central Coast Area office
725 Front St., Suite 300
Santa Cruz, CA 95060

Sept. 19, 1996

Re: Coastal Commission appeal # A-3-PSB-96-100

To Whom It May Concern:

The City of Pismo Beach and The Cliffs at Shell Beach Hotel are, with Pismo Beach City Project 96-080, seeking a short term fix to a problem exacerbated by poor planning, questionable engineering, and detrimental landscaping techniques. Their project, if allowed, is likely to significantly alter and perhaps eliminate the primary recreational feature of a recognized and popular surfing, body-boarding and kayaking area commonly known as "Reef Rights."

It is commonly known that projects such as 96-080 alter the erosion rate and sand flow patterns in shoreline areas to which they are adjacent—slowing the erosion and sand flow rate in some areas while increasing it in others, as well as altering historic, natural water and sand flow and accumulation patterns.

I and others believe that the shoreline changes that would be created by this project will cause significant and detrimental changes to the historic wave shape and swell patterns that make "Reef Rights" such a unique and valuable recognized recreational area.

It is my understanding that, ironically, when plans were made to build the Cliffs' facilities, the city asked that the structures be built further back from the cliff, due to the erosion rate. Through bureaucratic and legal wrangling, the hotel developers argued that the erosion rate presented by the city was inaccurate and exaggerated. In the end the developers succeeded in their quest to build closer to the cliff than first advised. Now that it is proved that the developer's erosion estimates were false or inaccurate, the public is being asked to pay for the mistake by having its recreational area compromised because of commercial interests and poor planning.

In addition, much of the current erosion problem at The Cliffs is due to unnecessary, detrimental and extreme over-watering of the hotel landscaping at the top of the cliff which continues unabated despite the problem.

The best course of action to protect the Cliffs' property and the public recreation area is to move the sewer facilities back from the edge of the bluff and to improve hotel landscaping and watering to keep erosion to a minimum.

Please help us protect "Reef Rights." Reworking the plan would be best, but if the project is to be carried out, I ask that the applicant, the City of Pismo Beach and all parties involved be required to take responsibility and assume liability if the unique

EXHIBIT 8

A-3-PSB-96-100

and valuable recreational features of "Reef Rights" are in any way lessened or destroyed.

So far the engineer for the project has claimed that the project will not adversely effect "Reef Rights." I do not believe the applicant or the City of Pismo Beach has done the proper studies or presented adequate evidence to prove this assertion. However, if the Commission chooses to give the project the go-ahead based on the information presently provided, I request that conditions be placed on the applicant, stating that if the project does in fact end up adversely effecting the historic ocean swell patterns and flow and shape of the waves of the area, that the applicant be required to remove the project or otherwise restore "Reef Rights" to its natural state.

"Reef Rights" and the adjacent area is a pristine, valuable and beautiful public recreation area enjoyed by countless beach and ocean enthusiasts. This project threatens this unique public resource in more ways than I have addressed in this appeal. For the sake of the public trust, please protect the unique and irreplaceable features of this lovely area and require that those who threaten it take responsibility and be willing to correct any actions that, anticipated or unanticipated, may significantly alter or destroy the features that have brought so much joy and recreation to so many people for so many years.

Respectfully Submitted,

Marc Kent
211 Cuyama Dr.
Shell Beach, Ca 93449
805-773-3610

Ex 8, p2

A-3-PSB-96-100

California Coastal Commission
Central Coast Area Office
725 Front St., Suite 300
Santa Cruz, CA 95060

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CALIFORNIA
COASTAL COMMISSION

Sept. 26, 1996

Re: Coastal Commission Appeal # A3-PSB-96-100

Dear Steve Guinea, Coastal Commissioner:

The seawall project proposed by The Cliffs Hotel resort will damage or destroy valuable natural resources, access to public beach and tide-pool areas, and may damage or destroy other recognized recreational areas. The project is being promoted as a solution to an emergency situation, however the emergency nature of Cliffs' erosion problem, if not exaggerated, is in fact being exacerbated by unthoughtful hotel landscaping practices that can be curtailed reasonably and timely without damage or loss of precious public resources and natural beauty of the shoreline.

To allow this project to proceed as an emergency measure without adequate analysis of its effects is unnecessary and may lead to a host of unforeseen or unappreciated problems along our shoreline. We urge the Commission to fully understand and appreciate these potential problems before making a decision on whether to allow the project to proceed.

It is our belief that the current project is being promoted because it is the least costly to the applicant. We maintain, however, that the project will not only end up being costly to the public and neighboring property owners, it may in the long run cost the applicant—or future owners of The Cliffs Hotel—much more than the initial cost of building the structure due to unacknowledged design problems and a host of legal liabilities that the builder or property owner may face because of the effects of the structure.

There are reasonable alternatives to this project that will not have a devastating effect on local natural resources. If the erosion threat to the hotel's sewage system is immediate and of an emergency nature, we believe that a much safer and less devastating project alternative is to have the applicant relocate its sewage facility as soon as possible. This is a reasonable and viable alternative that would not need a full study of its effects on the shoreline and ocean.

It is common knowledge that while structures like the one proposed may temporarily slow erosion in one area, they can cause accelerated erosion in other areas. It is fair and prudent that the Commission, the public, and neighboring property owners understand in detail where, how and to what extent this accelerated erosion will manifest. We are not satisfied with the analysis provided so far by the applicant. We believe that a study, if done fairly and impartially, will prove our theory that the sea wall structure will cause the permanent erosion or disappearance of small, scenic pocket beaches south of the structure that are currently accessible and used by the public at low and medium tides.

New erosion and sand flow patterns created by the project are also expected to cause the siltation and likely the elimination of nearby tidepools and marine habitats and marine life they support.

We also believe that such a study may show that erosion will accelerate at the base of the bluffs south of the project, destroying public and private property at an accelerated rate. This factor has been ignored or discounted by the project applicant.

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We also find the project objectionable because it will make access to the beautiful shoreline south of the project difficult and dangerous to the point that it may be completely inaccessible even at low or medium tide, thus effectively eliminating public access to several hundred yards of pristine beaches, tidepools and otherwise beautiful and enjoyable shoreline and ocean.

Also, after studying the separate project appeal by Shell Beach resident Marc Kent, we find ourselves in full support of his observations and stand on the issue. We agree with Kent that the project may significantly alter and perhaps eliminate the popular, high-quality winter surf break commonly known as "Reef Rights" that sits directly below and slightly offshore from the project. We have seen no studies from the applicant or any other parties that we feel adequately addresses this issue and demonstrates through acceptable engineering and oceanographic studies to what extent the structure will affect the shape and character of local waves and swell patterns.

If studies show that waves and swells will be altered by the project, we ask that the public be fully informed of this and that alternatives be seriously considered. If it is decided that the project will not adversely change "Reef Rights" or other surfing areas, we ask that the applicant guarantee this and be required to restore the breaks to their natural state if the structure, despite studies to the contrary, ends up adversely affecting the waves or swell patterns.

Finally we object to the project because it will destroy the awesome natural beauty of this stretch of rugged and scenic coastline, eliminating features that bring joy and peace of mind to countless numbers of local residents and tourists. The project if approved, will set a precedent, and because it may accelerate erosion elsewhere, may create the perceived need for other seawalls in the area which may lead to the complete "walling" of this great, majestic natural resource, totally changing the character of the area, and leading to unanticipated and unwelcome changes in the shoreline and wave quality for miles in each direction.

Commissioners should realize that much of the unanticipated erosion problem is likely attributed to what appears to be over-watering of landscaping at the top of the bluffs. Even with the applicant's current erosion problem being well known, there is hardly a day that goes by that the land directly above the problem area of the bluff is not saturated and soggy underfoot. It is as if someone were attempting to accelerate the erosion problem in order to have a dramatic reason to build this seawall project. Even as this letter is being written, this seemingly illogical, avoidable and negligent watering practice continues.

Please also be aware that it is our understanding that before The Cliffs Hotel was built, the developers were initially advised and required to build their structures at a certain prudent distance from the bluffs due to the historic rate of natural erosion. However, it is our understanding that through bureaucratic and legal maneuvering, The Cliffs developers challenged the established erosion rate figures provided by the city, and concluded that the figures were exaggerated and inaccurate. Eventually the developers won out and were given the opportunity to build closer to the bluffs, which they did. Now that the developer's erosion rate estimates have proved grossly inaccurate or false, the applicant is, in essence, asking the public to pay for the developer's avoidable error.

We believe that it is because the developer chose to build closer to the bluff than first advised that erosion has accelerated and the hotel is facing a threat to their sewage equipment. It is now painfully obvious that the sewage equipment should not have been located there in the first place. It is time that it be moved.

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We believe that it is bad enough that the public must suffer the accelerated erosion problems along the shoreline due to the Cliffs development and landscaping practices. It is insult upon injury and a great injustice that now the applicant is trying to take the least costly way to solve its sewage facility location problem and asking the public to pay for its mistakes by forcing the loss of vital, precious and irreplaceable natural resources and recognized recreational areas. The Commission in its collective wisdom should be able to recognize that this sad and unjust compromise is not necessary and that the applicant does have other reasonable alternatives that do not place a devastating burden on the public.

Under these circumstances we believe that it is not too much for the Commission to ask that the Cliffs be willing to bear the full financial responsibility to take care of their problem in a way that does not cost other property owners or the public money or a loss of resources, recreational areas or natural beauty.

We ask that the Commission reject the project.

Respectfully submitted,

Phil Teresi

Phil Teresi, President,
Surfrider Foundation, San Luis Bay Chapter

W 805 773 5510
H 805 773 9186
Email *philter@uol.com*

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FRED H. SCHOTT & ASSOCIATES

CIVIL AND STRUCTURAL ENGINEERING · LAND PLANNING AND BUILDING DESIGN

November 19, 1996

Mr. Steve Guiney
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz CA 95060

Subject: Cliffs Hotel, A-3-PSB-96-100, Tokyo Masuiwaya California Corp.

Dear Mr. Guiney:

We are enclosing 20 copies of two photos which relate to the subject project and should be of interest to you. First is a photograph of a portion of the bluff top which suffered a significant amount of additional erosion after the minor storm on October 29, 1996. This is merely to illustrate the precarious and dangerous conditions which now exist at this section of the bluff.

The second is a photo from the bluff projection southeasterly of the hotel property looking northwesterly along the bluffs. This photo clearly shows that access to the section of the beach where the rock rip-rap bluff protection is proposed is controlled by the existing rock projection at the northwesterly terminus of the proposed rock rip-rap. This projection extends outward to a point where the elevation is one ft. below the mean high tide line. None of the proposed rock rip-rap extends out beyond the mean high tide line. Consequently the appellants' allegation that the proposed rip-rap "will make access to the beautiful shoreline south of the project difficult and dangerous to the point that it may be completely inaccessible even at low or medium tide, thus effectively eliminating public access to several hundred yards of pristine beaches, tidepools and otherwise beautiful and enjoyable shoreline and ocean" is patently false. See also the 8 1/2 x 11" photos previously submitted taken from nearly the same location showing the proposed location of the rock rip-rap.

We hope that this "access issue" has been adequately addressed. If you have any questions in this matter or in any of the other issues raised by the appellants which you feel might not have been addressed in our previous letters to you or the Commission, please do not hesitate to contact us.

Sincerely yours,

Fred H. Schott
Fred H. Schott

Enclosures: Photos

FHS:nsb

cc: Brian Proctor & Toshiaki Sasaki
(9554SGLT.N96)

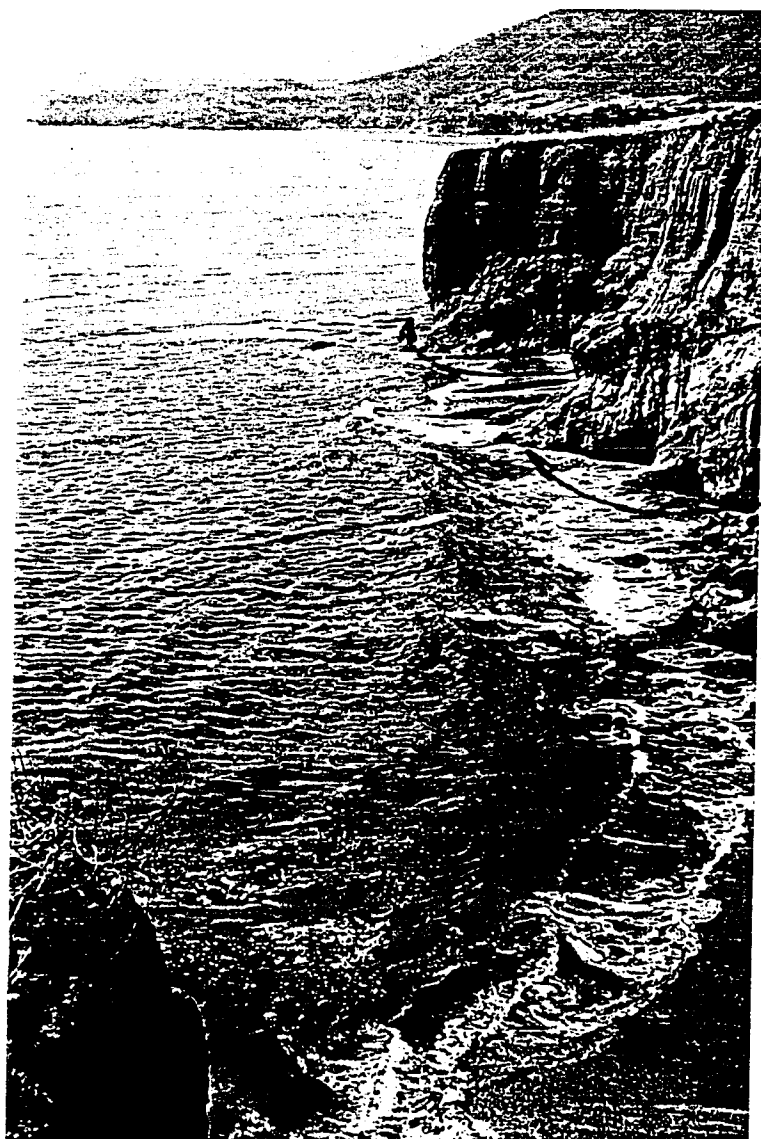
Ex 8, p 6

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXAMPLES OF BLUFF EROSION WHICH
OCCURRED AS RESULT OF RAINFALL 10/29/96



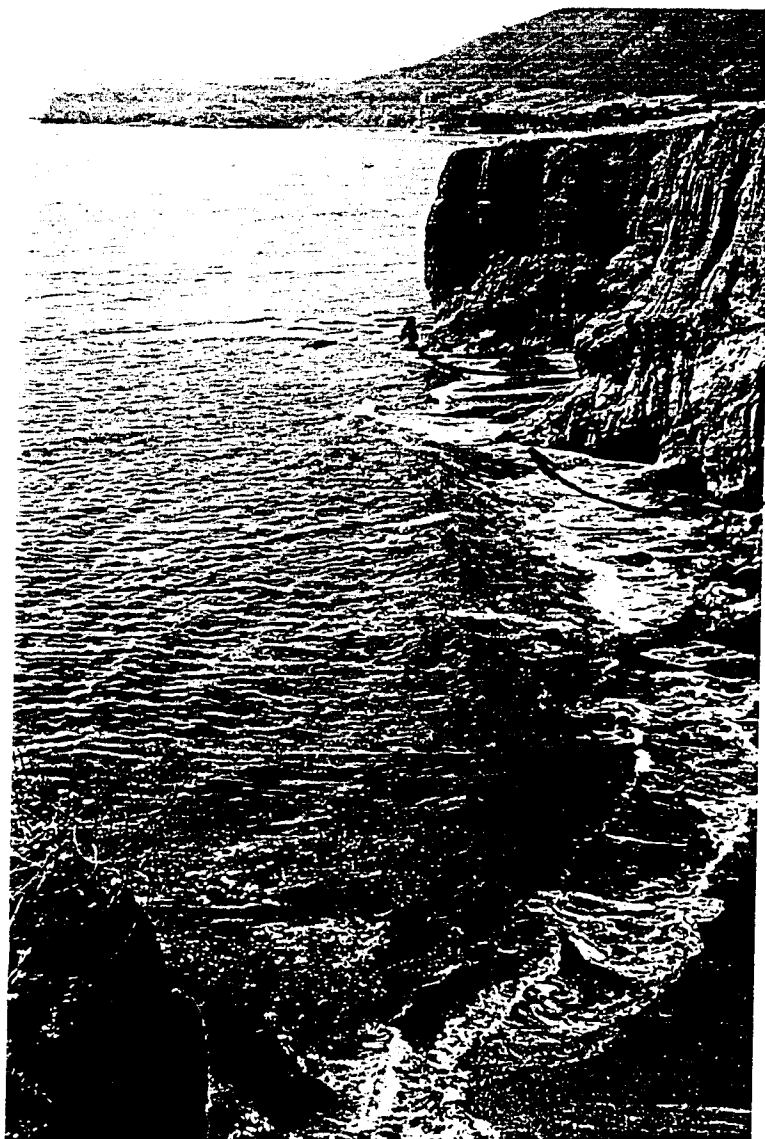
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ROCK PROJECTION WHICH
CONTROLS BEACH ACCESS
SOUTHEASTERLY

Ex 8, p7

A-3-PSB-96-100

EXAMPLES OF BLUFF EROSION WHICH
OCCURRED AS RESULT OF RAINFALL 10/29/96



STAIRWAY ACCESS
IS BEYOND THIS POINT

ROCK PROJECTION WHICH
CONTROLS BEACH ACCESS
SOUTHEASTERLY

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