

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

TH13a

Filed: 3/28/96
49th Day: 5/16/96
180th Day: 9/24/96
Staff: MHC
Staff Report: 4/10896
Hearing Date: 5/7-10/96
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Santa Barbara

DECISION: Approve with Conditions

APPEAL NO.: A-4-SB-96-055

APPLICANT: James and Kari Ann Gerlach

PROJECT LOCATION: 3349 Cliff Drive, Santa Barbara

PROJECT DESCRIPTION: Grading, construction of beach access stairway, drainage improvements, lighting, and landscaping in connection with existing single family residence.

APPELLANT: James and Kari Ann Gerlach

SUBSTANTIVE FILE DOCUMENTS: Appeal A-4-SB-96-055; 91-CDP95-0037; Final Negative Declaration (ENV95-0081; City of Santa Barbara Council Agenda Reports (with attachments) December 8, 1995 and March 1, 1995

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons: The proposed project is in conformity with the applicable provisions of the City's Local Coastal Program.

The Commission received a Notice of Final Action from the City of Santa Barbara on March 8, 1996, and an appeal of the County's action on March 21, 1996; the appeal was therefore filed within 10 working days of receipt of the Notice of Final Action by the City as provided by the Commission's Administrative Regulations.

I. Appellants Contentions

The appellant alleges inconsistency with policy 8.2 (governing bluff development) of the City of Santa Barbara's Local Coastal Program; and failure to establish the City regulatory authority over the development.

The appeal raises a number of procedural issues including: failure to make findings in support of the City decision; failure to identify specific regulations or policies applicable to the project.

II. Local Government Action

The City of Santa Barbara approved a Coastal Development Permit (CDP95-0037 for landscaping, drainage improvements, grading and related retaining walls on a lot developed with existing single family residence. The project site is located on a bluff top parcel on Cliff Drive approximately one mile west of Arroyo Burro Beach. (See Exhibit 1.)

The City also conditioned the project to redesign landscaping and local drainage facilities to reduce bluff erosion; establish a geological monitoring program to monitor bluff stability; delete a private stairway (and related lighting) to the beach; and develop a plan to remediate the removal the private stairway. (See Exhibits 2 and 3.)

III. Appeal Procedures

The California Coastal Act provides for limited appeals after certification of Local Coastal Programs (LCPs) to the Coastal Commission of local government actions of 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, state tide-lands, or along natural water courses.

For development approved by the local government and subject to appeal to the Commission, grounds shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in Division 20 of the Public Resources Code.

The project is situated between the sea and the first public road paralleling the sea (Cliff Drive) and is therefore subject to appeal to the Commission, with the standard of review being the project's consistency with the applicable policies of the local jurisdiction's Local Coastal Program, and the public access policies of the California 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 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 merits 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.

The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that NO substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

Motion

I move that the Commission determine that Appeal NO. A-4-SB-96-055 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a YES vote on the motion.

A majority of the Commissioners present is required to pass the motion.

V. Findings and Declarations

A. Project Description

The project site is located on a bluff top parcel on Cliff Drive approximately a mile west of Arroyo Burro Beach, and is developed with a single family residence which is setback from the street about 150 feet. The proposed project consists of a number of developments in connection with the existing single family residence. These include drainage improvements, lighting, landscaping, grading and related retaining walls, and the construction of a private stairway from the top of the bluff down to the beach. (See Exhibits 5 through 11.)

B. Issues Raised by the Appellant

The appellant alleges inconsistency with policy 8.2 (governing bluff development) of the City of Santa Barbara's Local Coastal Program; and failure to establish the City's permitting authority with respect to the project. The appeal also raises several procedural issues including: failure to make findings in support of the City's decision, to identify applicable policy inconsistencies, and to provide timely public notice. (See Exhibit 4.)

1. Allowable Bluff Face Development

The principal objection raised by the appellant is imposition of Condition B.4 of Coastal Development Permit CDP95-0037 requiring the removal of the stairway from the bluff face and the development and implementation of a remediation plan. The stairway was constructed without benefit of a Coastal Development Permit to replace a pre-existing unimproved trail down a portion of the bluff

face. The new stairway runs approximately 310 feet from the top of the bluff down to the beach. The stairway is comprised of unengineered railroad ties which have been dug into the bluff face. (See Exhibits 5 through 11.)

City of Santa Barbara's Local Coastal Program Land Use Policy limits development on bluff faces. Policy 8.2 specifically provides that:

With the exception of drainage systems identified in Policy 8.1, no development shall be permitted on bluff faces except for engineered staircases or accessway to provide public beach access and pipelines for scientific research or coastal dependent industry. To the maximum extent feasible, these structures shall be designed to minimize alteration of the bluff and beach. (emphasis added)

Policy 8.1 provides that:

All new development of bluff top land shall be required to have drainage systems carrying run-off away from the bluff to the nearest public street. Or in areas where the landform makes landward conveyance of drainage impossible, and where additional fill or grading is inappropriate or cannot accomplish landward drainage, private bluff drainage systems are permitted if they area:

- (a) sized to accommodate run-off from all similarly drained parcels bordering the subject parcel's property lines;
- (b) the owner of the subject property allows for the permanent drainage of those parcels through his/her property;
- (c) the drainage system is designed to be minimally visible on the bluff face.

Policy 8.2 was approved by the City and certified by the Commission at part of the City of Santa Barbara's Local Coastal Coastal Program Land Use Plan. This policy was intended to serve a number of purposes, and not limited exclusively to the control of bluff face erosion. These include, in addition to erosion control, the preservation of natural landforms and associated scenic amenities; the reduction of natural hazards associated with the use or destabilization of the bluff face; and the orderly development of access to the adjoining beaches to ensure that adequate public access is provided consistent with the protection of coastal resources and the carrying capacity of the beach. Each of these purposes is tied to Coastal Act policies which form the basis of the City's decision to develop Policy 8.2 and the Commission's subsequent certification of this policy as part of the City's Local Coastal Program. (The relevant Coastal Act Policies include PRC Sections 30212, 30241, 30235, 30240, and 30253.)

The unengineered stairway was constructed and is intended to be used exclusively for private access to the adjacent beach. As such it is clearly inconsistent with the requirements of Policy 8.2 which permits only engineered staircases or accessways which provide public beach access. (The requirement to modify the drainage system to better control runoff is consistent with the requirements of Policy 8.1.)

The appellant also contends that the stairway "serves the purposes of the Policy 8.2 (to control erosion) and that the City-mandated removal of the stairway will itself violate Policy 8.2." However, to the extent that the

pre-existing unimproved trail to the beach has exacerbated erosion on the bluff face there are alternative means of remediating this situation without constructing a new stairway. The City has required a detailed geologic evaluation of the project site and the development of a remediation plan which will ensure that removal of the unpermitted stairway will be carried out in a manner that will not jeopardize the stability of the bluff, and will mitigate the exacerbated erosion associated with the installation of the unpermitted stairway.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions therefore raise no substantial issue.

2. Project Not Subject to Coastal Development Permit

The appellant alleges that the construction of the stairway and other developments are not subject to the City's Coastal Development Permit requirements because they constitute an addition to an existing single family residence, or constitute repair and maintenance of a pre-existing accessway. The developments which are the subject of the City's Coastal Development Permit CDP95-0037 and this appeal are all located on or within 50 feet of a coastal bluff and, as explained below, are therefore not exempt from the City's Coastal Development Permitting requirements

The City's certified Local Coastal Program requires Coastal Development Permits for all new development. The definition of development upon which the City relies is that found in PRC Section 30106 which provides that development includes "the placement or erection of any solid material or structures . . ." This definition is incorporated into the City's Local Coastal Program Implementation Ordinance at Section 1 (3)(i).

The City's certified Local Coastal Program also contains provisions for exclusions from the coastal permitting process (Categorical Exclusion Order No. E-86-3). This exclusion process provides for the exclusion of certain types of additions to existing single family residences and certain types of repair and maintenance activities from Coastal Development Permit requirements, providing that they do not involve risk of substantial environmental impact as set forth in Section 13250 and 13252 of the California Coastal Commission's Administrative Regulations.

Section 13250 specifically provides that additions to existing single family residences which would encroach within 50 feet of the edge of a coastal bluff, or entail significant alteration of landforms within 50 feet of the edge of a coastal bluff shall require a Coastal Development Permit. (A stairway down the bluff face is not a structure normally associated with a single-family residence as required by PRC Section 30250; the Commission has routinely required Coastal Development Permits for such developments, and the City decision in this instance is consistent with that practice.) Similarly, Section 13252 specifically does not exempt repair or maintenance on coastal bluffs, or work located within 50 feet of the edge of a coastal bluff.

All the elements of the project, including the private accessway stairway are located either within 50 of the bluff or on the face of the bluff itself. Furthermore, the installation of the private access stairway and associated retaining walls involve the removal of substantial amounts of native vegetation on the bluff face which has served to reduce erosion and stabilize

this landform. The development improvements therefore are not subject to exemption under the City's Categorical Exclusion Order E-96-3 and the related Coastal Commission Administrative Regulation Sections 13250 and 13252.

The construction of the stairway cannot be considered repair and maintenance since it consists of a new structure which had not previously existed. The previous trail consisted of a unimproved dirt path near the top of the bluff; the lower portion of the trail consisted of a variety of informally placed materials including stepping stones. The recently constructed stairway is located in part along a modified alignment and represents a significantly different and more substantial structure, consisting of sunken railroad ties and related retaining walls.

The stairway therefore constitutes new development subject to the City's Coastal Development Permit requirements. Even if the new stairway was construed as a repair and maintenance of a previously existing accessway, its construction would not be exempt from the City's Coastal Development Permit requirements under the City's Exemption Order E-86-3 because the project is located within 50 feet of or on a coastal bluff, and Section 13252 of the Commission's Administrative Regulations specifically does not exempt repair or maintenance on coastal bluffs, or work located within 50 feet of the edge of a coastal bluff. The City has therefore properly asserted its Coastal Development Permitting authority over the development project.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions therefore raise no substantial issue.

3. Procedural Irregularities

The appellant alleges that the City's approval with conditions of Coastal Development Permit CDP95-0037 is procedurally flawed. The alleged procedural flaws include: failure to make legally adequate findings, failure to identify specific regulations or policies regarding the inconsistency of elements of the project, failure to identify the factual basis for each finding in support of the City's action, and failure to inform the appellant of the City's permit jurisdiction in a timely manner.

A review of the extensive administrative record for the City's action on this project does not support the appellants' contentions. The City has followed all of the applicable procedural requirements of its certified Local Coastal Program with respect to this project. It has duly noticed all hearings, prepared detailed analysis of each of the issues raised by the appellants, and adopted findings in support of the City's action which are based on substantial factual information contained in the record. In making its determination regarding the projects consistency with the City's certified Local Coastal Program, the City has referenced the applicable Local Coastal Program Policies and related Coastal Commission Administrative Regulations. Furthermore, the appellant's have provided no factual information which undermines in any substantive way the procedural soundness of the City's supporting findings.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions, therefore, raises no substantial issue.

4. Consistency with Coastal Act Public Access Policies

The grounds of appeal of a locally issued Coastal Development Permit in areas which lie between the first public road paralleling the sea and the sea include, in addition to consistency with the applicable Local Coastal Program, consistency with the public access policies of the California Coastal Act.

Public Resources Code Section 30210 through 30214 provide that maximum public access shall be provided to and along the shore line consistent with public safety, military security needs, the protection of environmentally sensitive coastal resources and coastal agriculture, and consistent with the protection of the privacy of adjacent property owners.

The appellant alleges that by basing its decision on Policy 8.2 which allows only for public accessways on bluff faces within the City the City has indirectly required that the appellant provide public access through the subject property to the beach as a condition of the approval of the project.

In its action granting a Coastal Development Permit for the development the City has included a condition which only requires the removal and remediation of the unpermitted, and unengineered stairway and related lighting; it has not conditionally permitted the stairway predicated on the opening of the stairway to public use. In the staff analysis (December 8, 1995) supporting the removal of the stairway the City specifically noted that "Nowhere in the record for this project is there mention that the City has any interest in an easement for public access; in fact during the development of the LCP, the City determined that this area is inappropriate for an accessway." The City's decision to conditionally approve the project to remove and remediate the unpermitted private accessway therefore did not indirectly or by implication require public access to the adjacent public beach.

The California Coastal Commission in certifying the City's Local Coastal Program identified appropriate accessways within the City's Coastal Zone and concurred with the City's conclusion that accessways (whether public or private) were not appropriate at this location, largely because of the instability of the bluff geology, and the existing opportunities for public access nearby. The City's decision on the proposed project is therefore consistent with the access provisions of the California Coastal Act and the City's Local Coastal Program previously certified by the Commission.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the applicable access policies of the California Coastal Act as well as the City's certified Local Coastal Program. The appellant's contentions, therefore, raises no substantial issue.

MHC/
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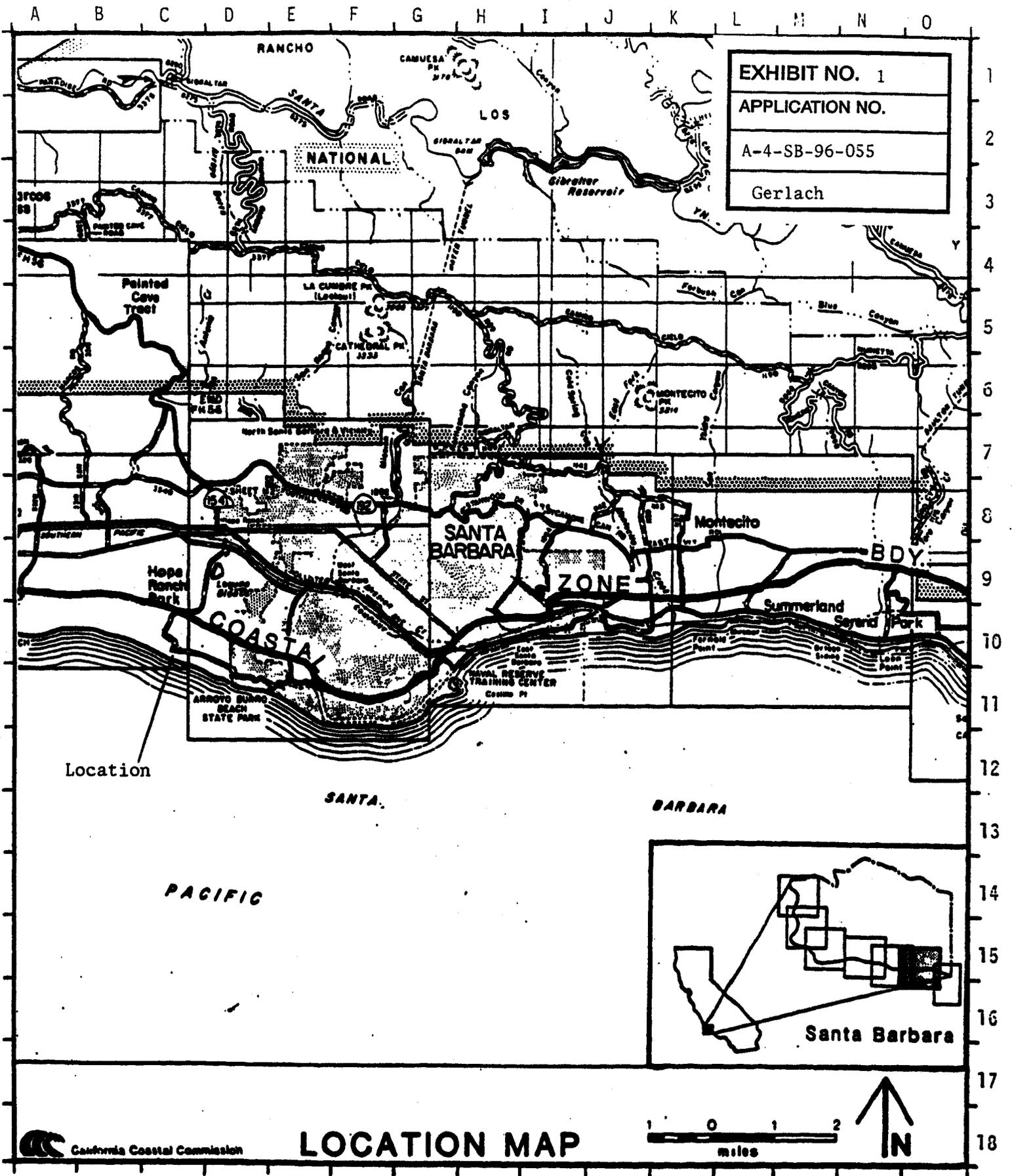
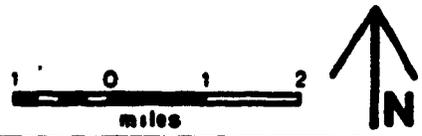
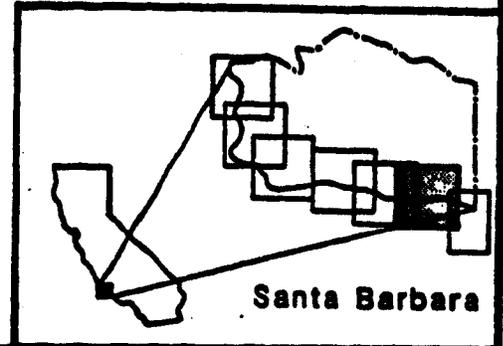


EXHIBIT NO. 1
 APPLICATION NO.
 A-4-SB-96-055
 Gerlach

Location

LOCATION MAP



California Coastal Commission

County of Santa Barbara



City of Santa Barbara
California

EXHIBIT NO. 2
APPLICATION NO.
A-4-SB-96-055
Gerlach

Page 1 of 4

NOTICE OF FINAL ACTION
CITY COASTAL DEVELOPMENT PERMIT

Date: March 7, 1996 Coastal Development Permit
Application Number: CDP95-0037

Name of Applicant: James D. and KariAnn Gerlach

Name of Owner: James D. and KariAnn Gerlach

Project Address: 3349 Cliff Drive

APN: 47-082-14

Project Description:

The parcel is developed with a single family residence at the top of the bluff. The project involves application for a Coastal Development Permit to allow existing construction of a stairway that runs approximately 310 feet from the top of the coastal bluff to the beach. Two sets of stairs are separated by a plateau area approximately halfway down the bluff. The bluff area was cleared of most vegetation and graded. A three and one-half foot (3 1/2') retaining wall (railroad tie material) was constructed on the south side of the plateau. Vegetation was also removed from the upper portion of the bluff. The proposal includes re-landscaping portions of the bluff, and bluff-top. Existing drainage improvements on the bluff top and a pipe down the bluff are also proposed to remain and are part of the project permit application. Three (3) floodlights and the associated electrical conduit were installed approximately thirty (30) feet up from the beach.

This is to inform you that on March 5, 1996, the City Council of the City of Santa Barbara denied the application for a Coastal Development Permit for the bluff stairway and lighting and approved the other portions of the project listed above.

The decision is based on the following findings:

Approval findings -

The remedial grading, lighting, landscaping, and drainage improvements are consistent with: the policies of the California Coastal Act and all applicable policies of the City's Coastal Plan; all applicable implementing guidelines; and all applicable provisions of the Code. As conditioned, the drainage improvements can be found to be consistent with LCP Policy 8.1. Replanting of the bluff face with drought tolerant deep rooted plants is consistent with the LCP.

Findings Continued:**Denial findings -**

The Council made the following findings for denial of the stairway and lighting:

The private bluff stairway is inconsistent with: the policies of the California Coastal Act and all applicable policies of the City's Coastal Plan; all applicable implementing guidelines; and all applicable provisions of the Municipal Code. The project involves the intensification through development of what was once a bluff trail and is proposed as a private stairway not properly engineered with major underpinnings into the fragile bluff; as such it is inconsistent with LCP Policy 8.2 which prohibits development on the bluff unless it is proper drainage facilities, public accessways, or public stairways that are properly engineered.

Further, Council directed staff to proceed with enforcement activities to require removal of the stairway improvements and require remediation of the slope to a stabilized condition.

The Coastal Development Permit is subject to the following conditions:

- A. Prior to the issuance of any building permit for the project on the Real Property, the following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be recorded by the Owner in a written instrument which shall be reviewed as to form and content by the City Attorney, Public Works Director, and Community Development Director:
1. Owner shall provide for the flow of water through the Real Property including, but not limited to, swales, natural water courses, conduits and any access road, as appropriate. Owner is responsible for the adequacy of any drainage facilities and for the continued maintenance thereof in a manner which will preclude any hazard to life, health, or damage to the Real Property or any adjoining property.
 2. The owner agrees to combine their bluff face drainage system with neighboring properties on Sea Ledge Lane, specifically at the drain pipe at the end of Sea Ledge Lane, and that such permanent drainage facilities may be on their property. The connection of the drainage system will be dependent upon agreement between the affected property owners, and a determination of the proper sizing of the pipe which is subject to the review and approval of the City Building Official.
 3. Owner shall comply with the Landscape Plan for the bluff as approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan and include drought-resistant plants between the house and the bluff, hand-watering them until established.

Conditions continued:

4. The Owner understands and acknowledges that the site may be subject to extraordinary hazards from waves during storms and from erosion, retreat, settlement, or subsidence and assumes responsibility for such hazards. The Owner unconditionally waives any present, future, and unforeseen claims against the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Owner agrees to indemnify and hold harmless the City and its employees from any and all acts or omissions (including any related cost of defense) in connection with the City's approval of this permit and arising out of the aforementioned or other natural hazards whether such claims should be stated by the Owner, the Owner's successor-in-interest or third parties.
 5. The Owner shall install slope inclinometers on the Real Property as recommended in the February 1, 1996, Geotechnical Peer Review Report prepared by Rogers/Pacific Geologic and Geotechnical Engineering (pages 11 and 12). The downhill inclinometer recommended in the Report may not be required if the recent cut/fill activity to broaden the plateau were to be reversed as part of the approved remediation plan. On an annual basis, beginning one-year following the issuance of final inspection and continuing for a fifteen (15) year period, the Owner shall retain a licensed geologic engineer to prepare a monitoring report of the slope inclinometers for review and approval by the City. The monitoring report shall include readings of the inclinometers, synthesis of the data, and recommendations for remedial measures. The Owners shall be required to comply, at their expense, with any recommendations of the monitoring report relative to remedial measures.
- B. The following requirements shall be incorporated into, or submitted with the construction plans, submitted to the Division of Land Use Controls with applications for building permits. All of these construction requirements must be completed prior to the issuance of a final inspection:
1. A drainage plan with recommendations on the appropriate size and installation of drainage facilities.
 2. The lower portion of the drain pipe from Sea Ledge Lane to the beach shall be painted to blend in with the natural colors of the bluff.
 3. The Owner shall retain a qualified professional to prepare and submit for approval by the Chief Building Official, engineering calculations for the existing retaining wall in the "cut-fill pad" which demonstrate the retaining wall's conformance with the Uniform Building Code.
 4. The Owner shall retain a qualified professional to prepare a geotechnical remediation/restoration plan which addresses the

removal of the existing wooden stairs, restoration of the stairway area to ensure future stability, and restoration of all other disturbed areas on Real Property (this may include the "cut-fill pad" retaining wall area should that structure fail to meet the Uniform Building Code requirements). The geotechnical remediation/restoration plan shall be approved by the Community Development Director, Chief Building Official, and the Architectural Board of Review. All remediation/restoration work shall be completed within 120 days of City Council approval of the subject project. A final report prepared by a qualified professional shall be submitted to the City at the completion of the remediation work and within 120 days of City Council approval of the subject project, stating that the remediation/restoration work has been completed in compliance with the approved geotechnical remediation/restoration plan. An additional 30 day extension may be granted by the Community Development Director upon the submission of appropriate evidence that additional time is necessary.

5. Relocate the main water shut-off from the edge of the cliff to near the house. There shall be no permanent water line connection on the bluff face.
6. Improve the placement of the 6 inch drain that conveys water from the depressed plateau area to increase the conveyance of water and to minimize the amount of run-off over the bluff.

Check here if applicable:

The project is appealable to the California Coastal Commission under Section 30603(a) of the California Public Resources Code and Section 28.45.009 of the Santa Barbara Municipal Code.

If you, as an aggrieved party or applicant, disagree with the decision of the City Council regarding the outcome of this application, you may appeal the decision to the California Coastal Commission. An appeal may be filed with the Coastal Commission by (1) an aggrieved party, (2) the applicant, or (3) two members of the Coastal Commission. Such appeals must be filed in the office of the Coastal Commission not later than 5:00 PM of the tenth working day following receipt of sufficient notice of the final local governmental action. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the City to be considered an aggrieved party.

If you have any questions or comments regarding this matter, contact Bettie Hennon, Senior Planner, at (805) 564-5470.

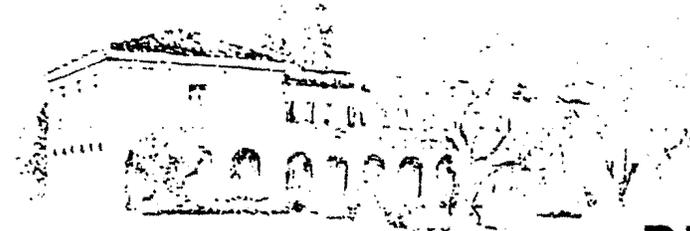
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CITY OF SANTA BARBARA

BL

OFFICE OF THE CITY CLERK

TELEPHONE (805) 564-5309
FAX (805) 564-5556



CITY HALL
DE LA GUERRA PLAZA
POST OFFICE BOX 1390
SANTA BARBARA, CA 93102-1390

RECEIVED

March 7, 1996

MAR 07 1996

James D. and Kari Ann Gerlach
3349 Cliff Drive
Santa Barbara, CA 93109

CITY OF SANTA BARBARA
PLANNING DIVISION

Re: Appeal of Planning Commission Denial of Coastal Development Permit

Dear Mr. and Mrs. Gerlach:

At its regular meeting of March 5, 1996, the Santa Barbara City Council held a public hearing on your appeal of the Planning Commission's decision to deny an application for a Coastal Development Permit to allow existing and proposed development including construction of a bluff stairway for beach access, landscaping, grading and drainage improvements at your home located at 3349 Cliff Drive.

As you know, the Council voted to grant your appeal and approve the Negative Declaration and the application for landscaping, drainage improvements, and grading/retaining walls, subject to conditions of approval outlined in the March 1, 1996 Council Agenda Report. Condition of Approval B4 has been revised to require that "the geotechnical remediation/restoration plan shall be approved by the Community Development Director, Chief Building Official and the Architectural Board of Review."

The Council also acted to deny the appeal with respect to the stairway and lighting, making the findings contained in the Council Agenda Report.

Sincerely,

Dorothy Jones
Deputy City Clerk

DJ:st

cc: Community Development Director
Planning Division
Steven A. Amerikaner
Douglas E. Fell
John DeLoreto

EXHIBIT NO.	3
APPLICATION NO.	
	A-4-SB-96-055
	Gerlach

RECEIVED

CALIFORNIA COASTAL COMMISSION

MAR 21 1996

SOUTH CENTRAL COAST AREA
69 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



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

SECTION I. Appellant(s)

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

James and Kari Ann Gerlach
3349 Cliff Drive
Santa Barbara, CA 93109 (805) 687-4453
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Santa Barbara City Council

2. Brief description of development being appealed: Backyard landscaping and repair and maintenance of existing bluff access way.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3349 Cliff Drive

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: Approval of the Coastal Development Permit with conditions.
- c. Denial: Of a portion of the Coastal Development Permit.

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: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

EXHIBIT NO. 4
APPLICATION NO.
A-4-SB-96-0055
Gerlach

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: March 5, 1996, Notice Filed
March 7, 1996

7. Local government's file number (if any): _____

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:
same as above

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) | <u>Dan and Mary Secord</u> | <u>Norman Bremer</u> |
| | <u>3339 Cliff Drive</u> | <u>3357 Cliff Drive</u> |
| | <u>Santa Barbara, CA 93109</u> | <u>Santa Barbara, CA 93109</u> |
| (2) | <u>Michael Weinstock</u> | <u>Jerry Bastian</u> |
| | <u>3325 Sea Ledge Lane</u> | <u>3407 Cliff Drive</u> |
| | <u>Santa Barbara, CA 93109</u> | <u>Santa Barbara, CA 93109</u> |
| (3) | <u>Leon Lunt</u> | |
| | <u>3427 Sea Ledge Lane</u> | |
| | <u>Santa Barbara, CA 93109</u> | |
| (4) | <u>Bill Kennett</u> | |
| | <u>737 Sea Ranch Road</u> | |
| | <u>Santa Barbara, CA 93109</u> | |

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.

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.)

See attached.

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.

Kari A. Gerlach
Signature of Appellant(s) or
Authorized Agent.

Date 3/15/96

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

Section VI. Agent Authorization

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

Kari A. Gerlach
Signature of Appellant(s)

Date 3/15/96

**REASONS FOR APPEAL
OF SANTA BARBARA CITY COUNCIL DECISION**

Scope of Appeal:

The Gerlachs appeal the City's decision on the Coastal Development Permit for removal of vegetation, relandscaping of portions of the blufftop and bluff, construction of a retaining wall on the south side of the plateau, installation of drainage improvements on the blufftop and pipe down the bluff insofar as conditions of this action (Condition Number 4 and an unnumbered condition) require the removal of the accessway. (The term "City's decision" includes approval of a portion of a CDP with conditions and denial of a portion of a CDP.)

The Gerlachs also appeal the City's decision on a Coastal Development Permit for repair and maintenance of an existing bluff accessway and the provision of lighting (3 floodlights and associated electrical conduit).

Grounds for Appeal:

1. The City's CDP decision is legally flawed on a number of grounds, including but not limited to: (i) its failure to make legally adequate findings of inconsistency with applicable regulations or policies, (ii) its failure to identify the specific regulations or policies as to which inconsistency was found; (iii) its failure to state the factual basis for each such finding, thus failing to bridge the gap between the evidence presented to the City and the City's decision.
2. Repair and maintenance of the accessway and the addition of lighting are consistent with the California Coastal Act and the City of Santa Barbara Local Coastal Program.
3. The specific City finding that the accessway work and lighting are inconsistent with City LCP Policy 8.2 is without substantial factual basis. The uncontroverted evidence shows that the repair and maintenance of the stairway serves the purposes of Policy 8.2 (to control erosion), and that City-mandated removal of the stairway will itself violate Policy 8.2. The work on the accessway does not represent an intensification of use. Prior to the work, there was an existing accessway used by the property owner and the Sea Ledge Lane neighbors. After the work was completed, the accessway will be used only by the property owners and the Sea Ledge neighbors.
4. The City erred in requiring a Coastal Permit for the accessway work and lighting in that those improvements, or portions of them, are (i) exempt from the CDP permit requirement because they are repair and maintenance, or are exempt as improvements to a single family house.
5. The City's decision on the CDP as to the accessway improvement work, to the extent it is based on the fact that the accessway is for private use, and is not a "public" accessway or

stairway, is unconstitutional. The accessway will create no burden on the public, and no adverse impact on existing public use of coastal resources, and therefore approval cannot lawfully be withheld on the basis that it is not open to the public. (*Nollan v. California Coastal Commission*).

6. The City's decision on the CDP as to the accessway improvements and lighting was without rational basis, to the extent that the pre-existing accessway was improved so as to be more durable and safer for the use of the applicants and their neighbors, to provide emergency ingress and egress to an entire neighborhood, and to reduce erosion along an existing accessway.

7. The City's decision on the CDP violated the applicants' rights to procedural and substantive due process in that:

- a. The accessway improvements and lighting were completed by the applicants who did not realize that the City would later take the position that a CDP was needed.
- b. Work on the accessway improvements and lighting was commenced a few days after the applicants received a building permit (and a Coastal Exclusion) for reconstruction of their fire damaged home, and accessway work was underway during the many months that the home reconstruction was occurring.
- c. During the many months of accessway improvement work, numerous City inspectors visited the applicants' property to inspect the home reconstruction, and one visited for the specific purpose of inspecting the accessway. At no time during that construction, and at no time during any of those inspections, did any City inspector inform the applicants that the City would later assert that a CDP was required.
- d. After the accessway improvement work was completed, the City for the first time informed the applicants that it believed a CDP was required.

9. The City is estopped, under equitable principles, from requiring that the applicants secure a CDP for the accessway improvement and lighting work based on its conduct as set forth in section 8 above.

10. The City's approval of a Coastal Development Permit for the landscaping work, insofar as Condition Number 4 and an un-numbered condition require removal of the accessway, may result in the alteration of existing natural landforms and the conditions are inconsistent with Policy 8.2 of the City's LCP:

"With the exception of drainage systems identified in Policy 8.1, no development shall be permitted on the bluff face except for engineered staircases or accessways to provide public beach access and pipelines for scientific research or coastal dependent industry. To the maximum extent feasible, these structures shall be designed to minimize alteration of the bluff and beach."

The intent of this Policy is explained in the introductory language:

"In an attempt to impede the cliff retreat process, programs to control or prohibit the following activities that can significantly alter the rates of seacliff erosion and retreat shall be implemented..."

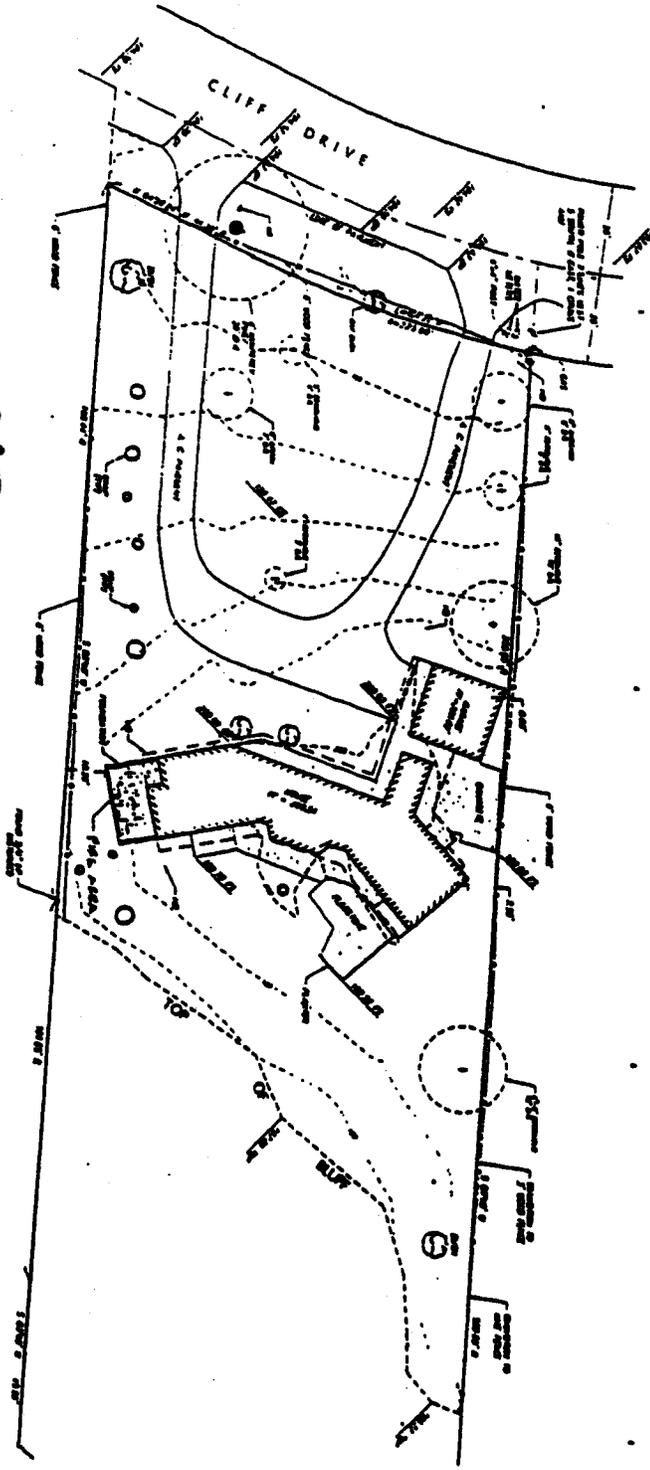
Reports and testimony by several geologists, including the City's independent consulting geologist indicate that removal of the accessway improvements is not advisable as it would create more of an erosion hazard than leaving the improvements in place.

The bluff on the Gerlach's property is gently sloping and would allow foot traffic, even if an improved accessway was not present. Geologists have stated that the improved accessway is less likely to erode than a dirt footpath.

11. The Coastal Development Permit conditions requiring removal of the accessway improvements are improper and are legally and factually unfounded. The accessway work is not subject to the City's LCP Policy 8.2 because it is repair and maintenance of a facility that existed prior to the adoption of the City's LCP. The work on the accessway does not represent an intensification of use. Prior to the work, there was an existing accessway used by the property owner and the Sea Ledge Lane neighbors. After the work was completed, the accessway will be used only by the property owners and the Sea Ledge neighbors.

12. The Coastal Development Permit conditions requiring removal of the accessway are improper and legally and factually unfounded as they restrict physical access to and from the beach. This accessway not only provides the Gerlachs a route to the beach, it also serves as a public emergency exit from Sea Ledge Lane which is important to the residents in that neighborhood.

EXHIBIT NO. 5
APPLICATION NO.
A-4-SB-96-055
Gerlach



VICINITY MAP



GRAPHIC SCALE

DESCRIPTION	
Public	471 sq. ft.
Private	1,700 sq. ft.
Field	1,700 sq. ft.
Driveway	1,700 sq. ft.
Construction	1,700 sq. ft.
Construction	1,700 sq. ft.
Construction	1,700 sq. ft.

THE SURVEYOR
 ASSOCIATED ENGINEERS - INCORPORATED
 1000 ...
 ...



TORONTO SURVEY
 OF A PORTION OF ...
 AT 1149 CLIFF DRIVE, SANTA BARBARA, CA
 ...
 ...

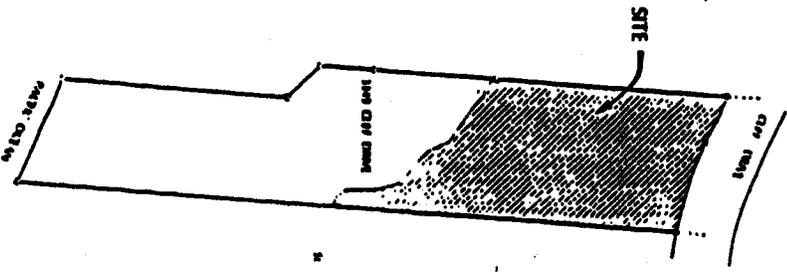




EXHIBIT NO.	7
APPLICATION NO.	
	A-4-SB-96-055
	Gerlach

New stairway to beach at 3349 Cliff Drive (note cut and denudation)



New stairway to beach at 3349 Cliff Drive (not cut and denudation)

EXHIBIT NO. 8
APPLICATION NO.
A-4-SB-96-055
Gerlach



EXHIBIT NO. 9

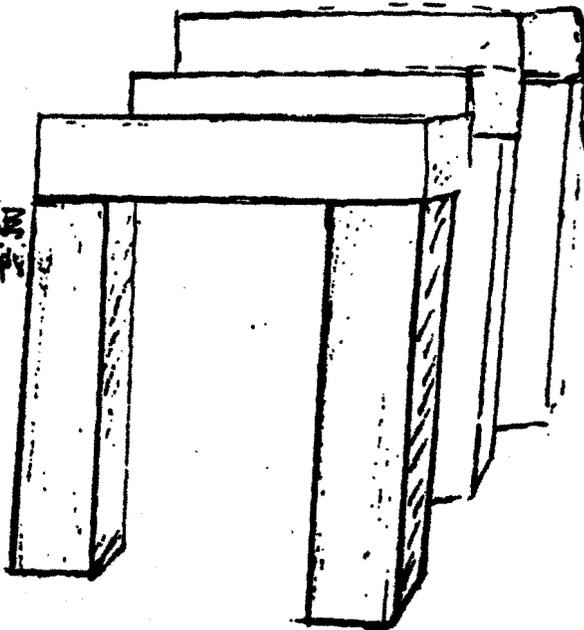
APPLICATION NO.

A-4-SB-96-055

Gerlach

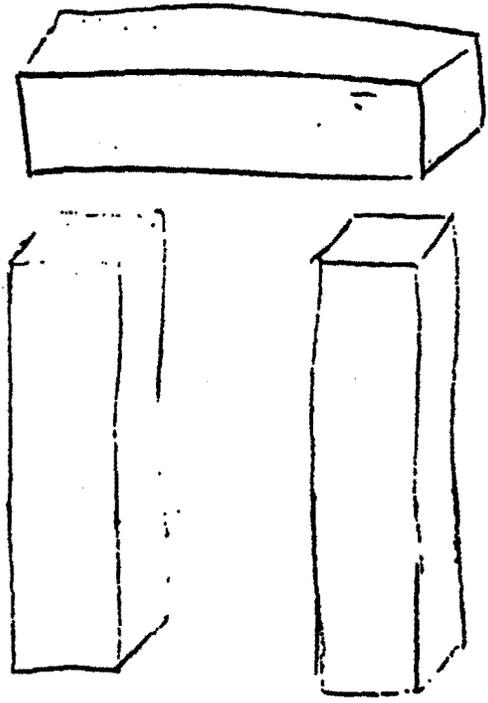
New stairway to beach at 3349 Cliff Drive

CREOSOTE CURED / AGED RAILROAD TIES
 8' AND 10' Lengths cut in halves and thirds

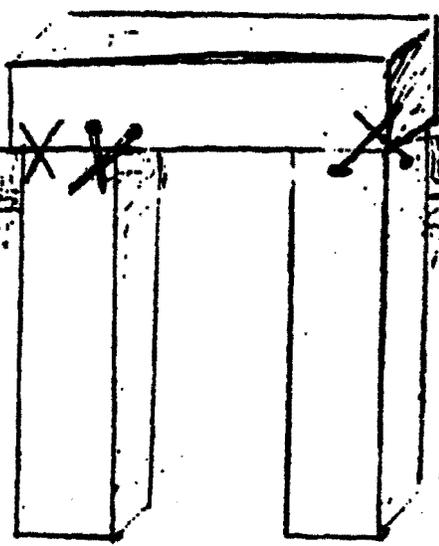


STAIR / STEP
 7" x 9" x 3"
 7" x 9" x 4'

7" x 9" x 3"
 Stair / step 7" x 9" x 4'



supports 7" x 9" x 4'
 7" x 9" x 5'
 7" x 9" x 6'



10" GALVANIZED SPIKES
 4 IN EACH SUPPORT
 CROSSED THROUGH CORNER
 TOP OF STEP DOWN
 AND SUPPORT UP TO STEP

EXHIBIT NO. 10
APPLICATION NO.
A-4-SB-96-055
Gerlach

RETAINING WALL CONSTRUCTION

RAILROAD TIES

9" x 7" CRESSOTE

8' AND 12' Length

CUT IN HALVES AND THRODS

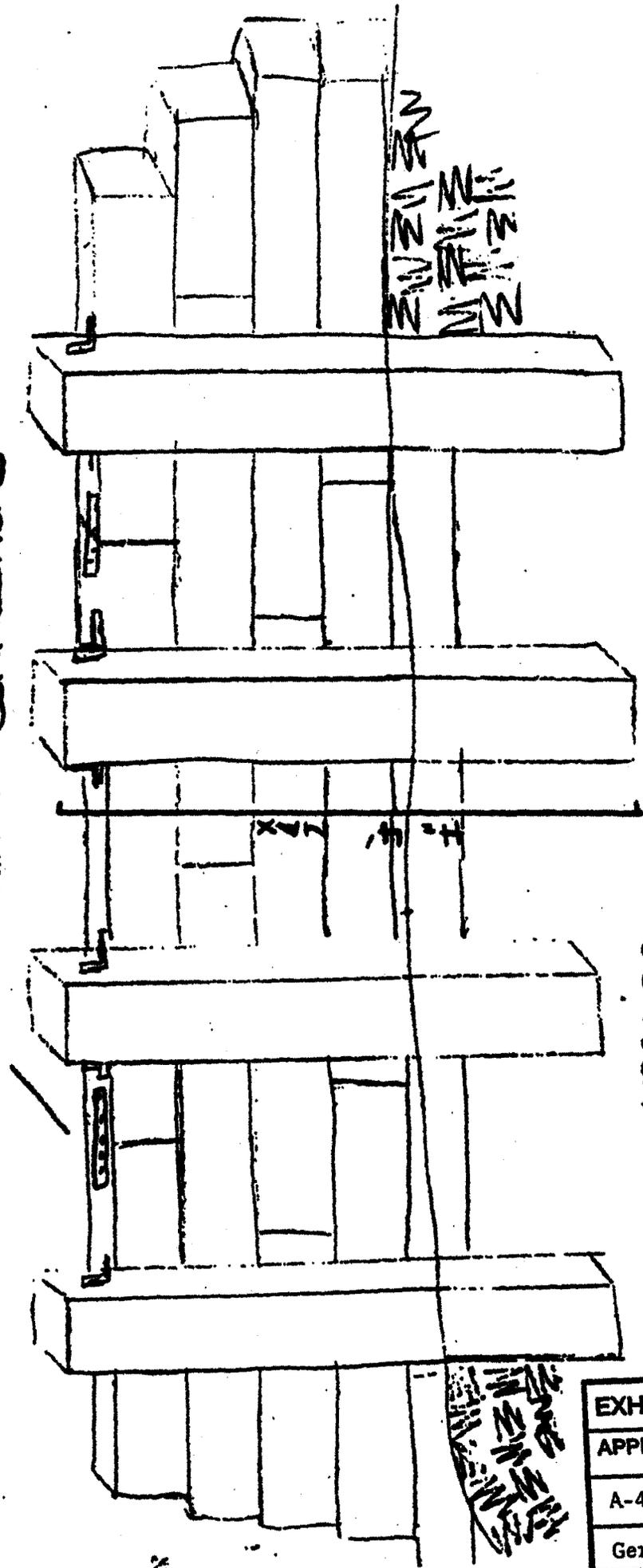
10" GALVANIZED SPIKES TO

SECURE HORIZONTAL TIES

1/3 SECTION



GALVANIZED METAL STRAPS ON SEAMS AND SUPPORT CONNECTIONS

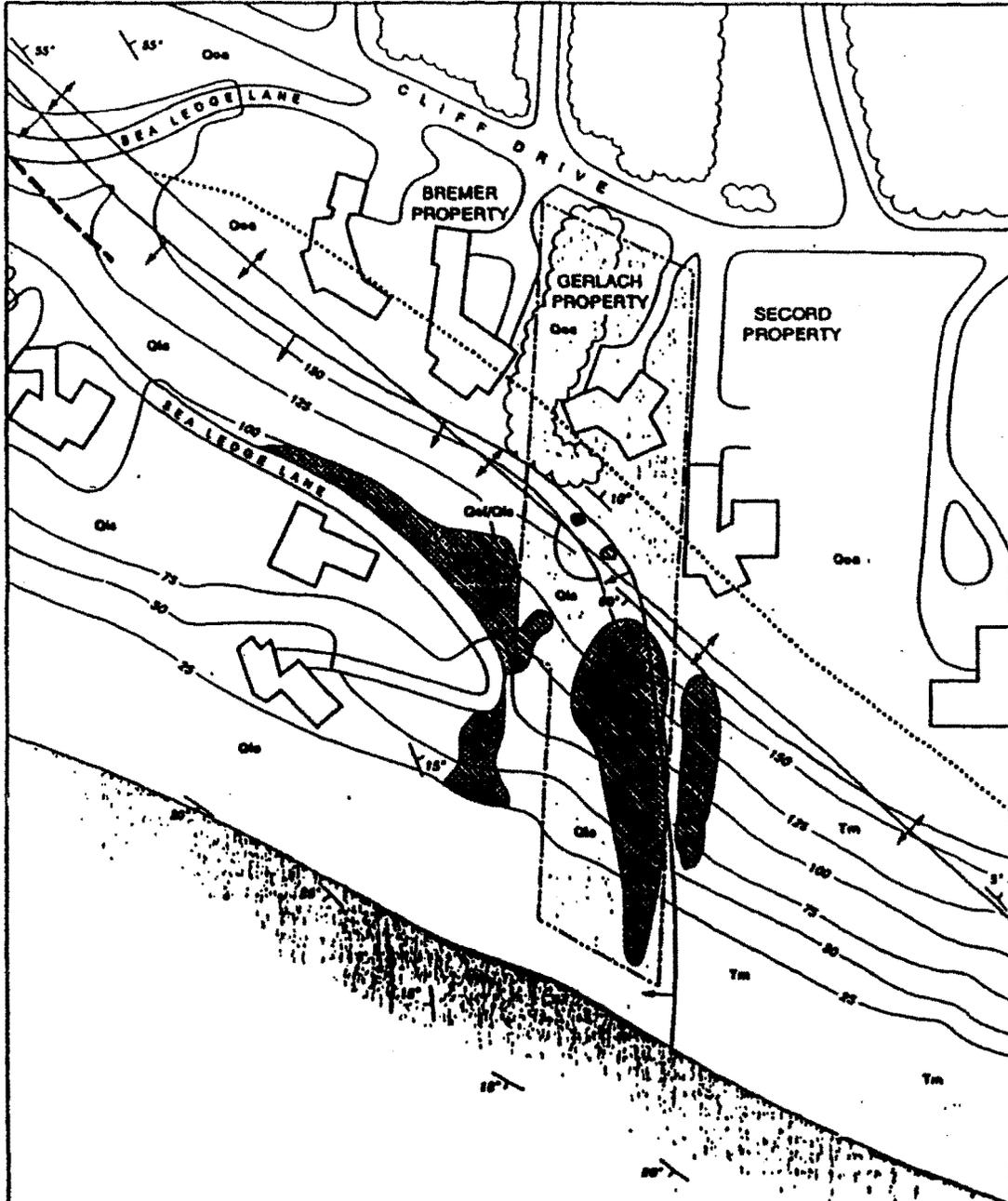


36" spacing

LENGTH OF WALL: 51'

NOT TO SCALE

EXHIBIT NO.	11
APPLICATION NO.	
	A-4-SB-96-055
Gerlach	



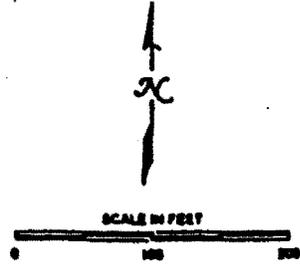
ROGERS/PACIFIC
 PROFESSIONAL ENGINEERING CONSULTANTS

SITE PLAN
 3349 CLIFF DRIVE, SANTA BARBARA, CALIFORNIA

EXPLANATION

AGE	Oof	Surficial Sediments
Quaternary	Olo	Landslide Debris
	Ooe	Older Surficial Sediments
Tertiary	Tm	Santa Barbara Formation

GEOLOGIC MAP
3349 CLIFF DRIVE
SANTA BARBARA, CALIFORNIA



SYMBOLS

	Formation Contact
	Spotting Strike and Dip
	Fault
	Arbitrarily Axis
	Landslide
	Boundary of Seaback based on Hoover, 1976
	Property Boundary
	Area of Recent Erosion

EXHIBIT NO. 12

APPLICATION NO.

A-4-SB-96-055

HOOPER & ASSOCIATES, INC
 Geologists • Hydrogeologists

