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CALIFORNIA COASTAL COMMISSION

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Commission Action:

**STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Laguna Beach

LOCAL DECISION: Permit granted by the Laguna Beach City Council

APPEAL NUMBER: A-5-LGB-95-162

APPLICANT: John McNaughton

PROJECT LOCATION: 287 Crescent Bay Dr., Laguna Beach, Orange County

PROJECT DESCRIPTION: Clearing of vegetation and construction of a staircase on a coastal bluff face.

APPELLANT: June Sloan **AGENT:** Richard Nunis

SUMMARY OF STAFF RECOMMENDATION:

First, staff recommends that the Commission determine that the appeal raises a substantial issue regarding project conformity with a certified Local Coastal Program policy for coastal bluff setback of all blufftop development either 25 feet or in conformance with a stringline. In addition, the City's approval was based, in part, on a mistaken belief that the proposed development was a continuation of an existing stairway which had been legally constructed on the blufftop and extending 30 feet down the bluff face.

Second, staff recommends that in the De Novo staff report the Commission deny the bluff staircase because the development proposed is to be located on the face of a coastal bluff is inconsistent with the City's LCP policies that restrict development on a bluff face in order to protect the geologic stability of bluff-top development and to prevent the need for armoring of the bluff face and base of the bluff. Further, given the documented history of geologic instability of the bluff face due to landslides and erosion from wave attack, if the proposed stairway is constructed, future shoreline protection would most likely be necessary. Any future shoreline protective device would be located within a recorded lateral public access

easement located at the base of the coastal bluff. No geologic report was submitted by the applicant in support of the staircase.

The recommended motions for Substantial Issue and De Novo are found on page 5 of this staff report. The substantial issue portion of the staff report is found beginning on page 7. The De Novo portion of this staff report is found beginning on page 18.

The applicant opposes staff's recommendation. The applicant maintains that because other property owners in the area have staircases on their coastal bluff, on equity grounds he is also entitled to a staircase. The arguments of the applicant regarding the appeal of the denial of his variance before the City of Laguna Beach Planning Commission are included as Exhibit 9. Exhibit 8 is a memorandum from Laguna Beach planning staff to the City of Laguna Beach Board of Adjustment/Design Review Board recommending approval of the staircase. Exhibit 6 is the City Council Resolution approving the variance for the proposed staircase. A detailed analysis of the applicant's arguments and the City's action are found on page 10.

SUBSTANTIVE FILE DOCUMENTS:

City of Laguna Beach certified Local Coastal Program; Coastal Development Permits 5-84-825 (McNaughton), 5-84-825A (McNaughton), P-76-8048 (Frank), P-78-4260 (Nelson), P-7-27-78-3782 (Barrett), A438-78 (Barrett), 5-84-252 (McDonald), 5-85-690 (Squire), 5-84-423 (Parry), 5-84-588 (Nunis), 5-84-205 (Montapert), 5-83-892 (City of Laguna Beach), 5-84-241 (Tarnutzer), 5-83-252 (1367 Circle Way), 5-85-241 (1379 Circle Way), 5-83-900 (1137 Marine Way)

Geologic Reports: 287 Crescent Bay Dr. -- Moore & Taber June 1, 1979, Moore & Taber January 25, 1979, Nevin April 8, 1976, Peter & Associates 1984 (5-84-825), Geofirm January 14, 1986 (5-84-825A); Munson Associates 1985 (5-85-690), Munson Associates 1984 (5-84-252); 297 Crescent Bay Dr. --Dames & Moore Oct. 1943, Dames & Moore 4-18-72, Dames & Moore 2-9-83, Dames & Moore 7-11-72.

LIST OF EXHIBITS:

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|----|-----------------------------------|-----|-----------------------------------|
| 1. | Vicinity Map | 9. | Letter from Mr. McNaughton |
| 2. | Assessor's Parcel Map | 10. | Permit 5-84-825 (McNaughton) |
| 3. | City's Notice of Final Action | 11. | Permit 5-84-825A (McNaughton) |
| 4. | Appeal of June Sloan | 12. | Crescent Bay Map |
| 5. | Site Plan | 13. | 5-84-825 Lateral Easement |
| 6. | Approval of Variance | 14. | Landslide on 287 Crescent Bay Dr. |
| 7. | Board of Adjustment Minutes | 15. | Detailed Project Site Plan |
| 8. | Laguna Beach Staff Recommendation | 16. | 5-84-588 Site Plan |
| | | 17. | City of Laguna beach BP# 94-450 |
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STAFF NOTE:**Issues of Controversy**

For the purposes of this staff report there are two staircases: 1) the 30 foot section leading to the beach which is the subject of this appeal, and 2) the 30+ foot unpermitted stairs leading from the patio down the bluff to a landing which staff refers to as "existing". The City and the applicant have characterized the staircase on appeal as a "continuation" of the "existing" stairs for which a coastal development permit was never issued. Furthermore, in 1994 the City issued a building permit to remove concrete steps and replace them with the present "existing" steps. However, a coastal development permit was never issued for these original concrete steps (which have been replaced by the current "existing" steps).

A coastal development permit for the proposed development was denied by the City of Laguna Beach Board of Adjustment/Design Review and appealed to the City Council which overturned the Board of Adjustment decision and approved the staircase. The City Council approval of the coastal development permit for the proposed development was then appealed to the Coastal Commission. A history of the City Council's action is included on page 10.

This staff report is complex because the project involves procedural issues, prior Commission permits with special conditions, as well as two cases of unpermitted development. The core of the procedural issue is that the future improvement special condition of coastal development permit 5-84-825 (McNaughton) states that the applicant must apply to the "Commission or its successor agency" for a coastal development permit for future development on the coastal bluff. However, the applicant applied to the City for approval of the proposed staircase on the bluff, the City issued a CDP and the CDP was subsequently appealed to the Commission. Staff is proposing that the Commission find Substantial Issue because the staircase does not conform with LCP policies. If the Commission finds that there is a substantial issue of conformity with the LCP, the Commission must handle the application De Novo as a new permit, in which case the requirement for the future improvement condition will be satisfied.

The issues in this staff report are also complicated by the fact that many of the existing residences along Crescent Bay Drive and the vicinity have staircases, seawalls or both, constructed prior to passage of the Coastal Act. In addition, there were a number of cases of unpermitted and after-the-fact permitted development on the beach in the mid-1980's in the Crescent Bay area, following the winter storms of 1983.

The Commission, on permits it has issued, has not approved a staircase on the coastal bluff in this area and has consistently applied a 25 foot bluff-top setback. In addition, prior Commission-issued permits for 287 Crescent Bay Drive have consistently applied the 25 foot or bluff stringline setback. The only deviations from this policy have been for repair of bluff face development which existed prior to passage of the Coastal Act.

Unpermitted Development

In the materials submitted at the request of staff, the City provided a copy of a May 10, 1994 building permit for the "replacement" of approximately 30 feet of stairs on the coastal bluff face at 287 Crescent Bay Dr. If the initial development of the stairs occurred prior to the certification of the LCP, under the terms of coastal development permit 5-84-825 (McNaughton) the applicant should have applied to the Commission for a CDP. If the initial development had occurred after certification of the LCP, then the City was required to issue a CDP which could be appealed to the Commission.

The City did not issue a CDP for the original stairs or replacement stairs nor was there a Coastal Development permit applied for or issued by the Commission for any a staircase at 287 Crescent Bay Dr. following issuance of CDP 5-84-825A (McNaughton) which was approved in 1987. In addition, the applicant cleared vegetation on the bluff face in advance of approval to build the staircase. This is also unpermitted development. Therefore, the existing 30 feet of stairway and vegetation clearance on the coastal bluff are unpermitted development.

This unpermitted development (initial steps and vegetation clearance) was not approved by the City in the proposed development appealed by June Sloan. The unpermitted steps extend 33 feet from the patio down the bluff to a landing (see exhibit 15). The unpermitted stairs and landing are not before the California Coastal Commission in this appeal because they were not included in the City's action approving the CDP. Further, a coastal development permit has not been applied for, approved or issued for the existing stairs and landing. If the Commission finds no substantial issue, then the lower section of staircase would be deemed approved, but the upper 30 feet of staircase would still be unpermitted development because no CDP was ever issued for it. The project on appeal before the Commission is for the continuation of these steps another 30+ feet down the coastal bluff to the beach (see exhibit 15).

The applicant states that the existing stairs were constructed with the residence. However, photographs and site plans submitted by the applicant at the time of previous applications show this is not the case. In addition to being unpermitted development, there was no historical staircase on the bluff prior to the development by Mr. McNaughton. This unpermitted development did require a coastal development permit and according to the City's own regulations any development on the coastal bluff at this site was under the jurisdiction of the Coastal Commission. For a more detailed analysis of this issue see the section "City of Laguna Beach Coastal Development Permit" on page 10.

Finally, the plans submitted by the applicant for the 30 feet of staircase which extends to the beach show that there is unpermitted development on the beach at the base of the bluff. In 1984 the residents of 297 Crescent Bay Drive (the appellants) applied for an after-the-fact permit for placement of rip-rap and concrete to support an existing retaining wall at the beach (see exhibit 16). This permit application 5-84-588 (Nunis) was denied by the Commission, however the development was never removed.

I. **RECOMMENDED MOTIONS**

A. **MOTION ON SUBSTANTIAL ISSUE**

The staff recommends that the Commission find that Appeal No. A-5-LGB-95-162 of the City of Laguna Beach's action of approval of Coastal Development Permit 95-33, raises substantial issue with the grounds listed in Section 30603(b) of the Coastal Act.

The MOTION is:

I move that the Commission determine that Appeal No. A-5-LGB-95-162 raises NO substantial issue as to conformity with the certified Local Coastal Program for the City of Laguna Beach.

A majority of Commissioners present is required to pass the motion. Approval of the motion means that the City's permit is valid.

Staff recommends a NO vote which would result in the finding of substantial issue and the adoption of the following findings and declarations:

B. **DE NOVO PERMIT 5-95-162**

RESOLUTION

Staff recommends that the Commission adopt the following resolution:

The Commission hereby denies a permit for the proposed development on the grounds that the proposed development is not consistent with the policies of the certified Local Coastal Program of the City of Laguna Beach regarding the setback of all coastal bluff development and development in geologically hazardous areas. The proposed development also does not conform to the recreation and access policies of the Coastal Act.

II. **APPELLANT'S CONTENTION REGARDING SUBSTANTIAL ISSUE DETERMINATION**

The appellant contends that the proposed project, consisting of a staircase down the coastal bluff, is inconsistent with the City's certified Local Coastal Program policy regarding setback of all blufftop development.

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 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 a 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 the city or county (Coastal Act Section 30603(a)).

The City of Laguna Beach Local Coastal Program was certified in July 1992. This project is appealable under Section 30603(a)(1) of the Coastal Act because it is located between the sea and the first public road paralleling the sea. The grounds for appeal as stated in Section 30603(b) are:

- (1) The grounds for an appeal pursuant to subdivision (a) 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 this division. (emphasis added)

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 and recreation questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

Section 30625(b) requires a De Novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal (Section 30603).

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 three 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 the staff recommends "substantial issue", and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to a De Novo hearing on the permit project. If the Commission conducts a De Novo hearing on the permit application, the applicable test for the Commission to consider under Section 30604(b) of the Coastal Act is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission at any stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the appellant and agent both opposed the application before the local government. Testimony from other persons must be submitted in writing. The Commission's administrative regulations, Sections 13110-13120, further explain the appeal hearing process.

IV. LOCAL GOVERNMENT ACTION

Appeal History

This appeal was received at the South Coast office on June 23, 1995, appealed by June Sloan (297 Crescent Bay Drive) and initially scheduled for hearing on August 11, 1995. The applicant submitted a 49 day waiver in writing on August 8, 1995 requesting that the item be heard at the next possible Southern California hearing. On September 14, 1995 the applicant requested that the application be agendized at our earliest convenience. On October 19, 1995 the applicant submitted a letter requesting that the application not be agendized until after March of 1996. On May 3, 1996 the applicant's new agent, David Neish, requested, in writing, that the application be agendized for June. This final request to be re-agendized was made too late to revise the staff report in time for the June hearing.

Local Government Action

May 5, 1995	Board of Adjustment Denial of Variance and CDP 95-33
June 19, 1995	Laguna Beach City Council Approval of Development Permit 95-33 Variance Application 6207 Design Review 95-068

V. SUBSTANTIAL ISSUE ANALYSIS

A. PROJECT DESCRIPTION

The applicants are proposing to construct a staircase to extend from an existing unpermitted staircase down a coastal bluff to the beach at 287 Crescent Bay Drive (see exhibit 15). For the purposes of this staff report there are two staircases: 1) the 30 foot section leading to the beach which is the subject of this appeal, and 2) the 30+ foot unpermitted stairs which extend from the patio down the bluff to a landing which staff refers to as "existing" (see exhibit 5). The City and the applicant have characterized the staircase on appeal as a "continuation" of the "existing" stairs which were constructed in 1994 and for which a CDP was never issued. The 1994 building permit was for the

replacement of concrete steps with the "existing" steps. However, a CDP was never issued for these original concrete steps.

Documents included with the submittal indicate that the proposed steps will be at grade and constructed with railroad ties. Staff has determined from site plans that the proposed stairway would connect with the existing stairs and landing and extend approximately 30 feet down the bluff to rip-rap at the beach level. As detailed in Section V.E.2 of this report, a landslide exists on the bluff face. The proposed stairway would be located entirely within the landslide area. Despite this fact, there is no evidence that the local government required the submittal of or reviewed any geotechnical reports in its approval of the proposed development.

As discussed in the Staff Note, the rip-rap at the beach is also unpermitted, but was placed on the project site by the adjacent residents of 297 Crescent Bay Drive, not by the applicant. No coastal development permit was issued for the existing stairs and vegetation clearance and the existing stairs and vegetation clearance were not approved in the City Council's final action and, therefore, are not before the Commission in this appeal.

B. DESCRIPTION OF THE PROJECT VICINITY

The residence at 287 Crescent Bay Dr. is one of ten lots and eight residences located along the blufftop between Crescent Bay Point Park and the public access at Circle Way (see exhibits 1 and 2). The bluffs along Crescent Bay Dr., however, are up to 80+ feet high and most of the lots include an ancient landslide on the bluff face. Several of the residences have been in existence for 30+ years. Two of the lots 271 and 297 Crescent Bay Dr. have seawalls. 299 Crescent Bay Dr. has a hidden concrete and rock revetment approved by the Commission. The seawalls at 279, 297, and 271 predate the Coastal Act, as do the staircases on these lots. There is a staircase at 263 Crescent Bay Dr. for which an after-the-fact permit was denied and appealed. The appeal was denied as well. However the stairway still stands.

The bluff decreases in height along Crescent Bay Dr. from the west to the east towards the public access. The lots along Circle Way adjacent to the public access increase in bluff height from west to east to Cliff Dr. Most of the residences along Circle Way and Cliff Dr. have seawalls or rock revetments, fences, and stairways to the beach constructed prior to passage of the Coastal Act. In addition, the low bluffs along this stretch of beach have been graded and landscaped. Much of this development predates passage of the Coastal Act.

The bluffs along Crescent Bay Dr. are unstable and subject to landsliding. This is why new development along this bluff top, including the McNaughton's residence, was conditioned in prior Commission coastal development permits to set the development back, to ensure the stability of development and to ensure that seawalls on the beach are not necessary to protect the proposed residences.

C. PRIOR COASTAL COMMISSION PERMIT ACTIONS

There is an extensive permit history for the subject site, 287 Crescent Bay Drive, dating back to 1976. All of the Commission approved permits issued for 287 Crescent Bay Drive include special conditions for set-back of blufftop development. In 1976 coastal development permit P-8048 (Frank) was issued to demolish an existing garden house, wall and fence and construct a three story, 6,000 square foot single-family residence. The permit included a special condition requesting revised plans conforming with a 25 foot setback from the top of bluff. The permit expired and the house was never built.

In March 1980 coastal development permit P-78-4260 (Nelson) was issued by the Commission for construction of a 3,895 square foot single-family residence. There were four special conditions, including: submittal of revised plans conforming with a 25 foot bluff edge setback; a deed restriction prohibiting the construction of private stairways, structures or alterations on the bluff face; drainage plans; and conformance with geologic recommendations. The applicants submitted an amendment (P-79-5789, Nelson) to delete the bluff setback and prohibition of stairways conditions. The amendment request was denied. Permit P-78-4260 was never issued.

On January 28, 1985 a coastal development permit was issued to Mr. & Mrs. Jack McNaughton for construction of a single family residence. There were five special conditions, among them a bluff setback and protection condition, a future improvement condition and a lateral public access easement condition. The bluff setback condition required that all permitted development will be setback at least 25 feet from the edge of the coastal bluff. The future improvement condition states that any improvements on the bluff top or bluff face, including grading or disturbance of vegetation, requires a coastal development permit. A copy of this permit is included as Exhibit 10.

On September 21, 1987 an after-the-fact permit amendment was issued for construction of a swimming pool, with a special condition regarding assumption of risk (see exhibit 11). The findings for the approval indicate that the swimming pool, although not conforming with the 25 foot setback, was in conformance with a stringline drawn between the corners of the adjacent structures. Construction plans and the precise grading plans submitted by the applicant for Commission approval for 5-84-825A (McNaughton) did not include a staircase or any other bluff face development.

Of the permits approved by the Commission, the only permit to be activated was 5-84-825 and its amendment 5-84-825A (McNaughton) (see Exhibits 10 and 11). Of the five special conditions the most pertinent to this permit are the bluff setback condition, the future improvement condition and the lateral access easement. The bluff setback and protection condition required the submittal of revised plans setting development back 25 feet from the bluff top edge. This condition was fulfilled and indicates that the Coastal Commission was limiting development in the bluff setback.

The major question raised by 5-84-825 in this Substantial Issues analysis is that the future improvement condition required that the applicant return to the Coastal Commission for a coastal development permit for further development on the bluff top. This future improvement special condition states:

Any future additions or improvements to the property including private stairways, guest houses, shoreline protection devices, alterations on or down the bluff, grading or disturbance of native vegetation on the bluff top or face shall require a Coastal Development Permit from the Commission or its successor agency. (emphasis added)

With a finding of Substantial Issue the coastal development permit issued by the local government becomes void. As a consequence the Commission would act on the proposed development at the De Novo stage. This would satisfy the future improvements special condition as this permit application would then be before the Coastal Commission for action.

A point of clarification regarding the specific mention of a private stairway in the future improvement special condition is necessary. It is common for staff to provide a list of a range of development to inform the applicant that a permit is required for "improvements" on the property. The provision of a list does not mean that staff would recommend or that the Coastal Commission would approve such development.

D. CITY OF LAGUNA BEACH COASTAL DEVELOPMENT PERMIT

Mr. McNaughton applied for CDP 95-33 from the Board of Adjustment/Design Review to build his staircase. The CDP was denied, appealed to the City Council, and approved by the City Council. The City Council's approval of a City issued coastal development permit was then appealed to the Coastal Commission.

Included with the appeal submittal was a May 1, 1995 letter from Mr. McNaughton to the Board of Adjustment/Design Review Board (see exhibit 9), the May 3, 1995 staff recommendation to the Board of Adjustment/Design Review from the Department of Community Development (exhibit 8), the May 4, 1995 minutes of the City of Laguna Beach Board of Adjustment/Design Review Board denying a permit application (exhibit 7), and the Resolution from the City Council overturning the denial and approving the proposed development (exhibit 6).

The City treated the permit application as a request for a variance from the policies and ordinances that prohibit construction of a staircase on a coastal bluff. Thus the City acknowledged that the staircase was not approvable because it encroached below elevation 12 MSL, encroached into the ocean bluff top setback and was located in an environmentally sensitive habitat area. There are no policies in the certified LCP prohibiting the use of variances for development on coastal bluffs. The Board of Adjustment/Design Review Board denied a variance from these policies due to a "lack of justification" and the

applicant appealed to the City Council. The City Council overturned the denial of the Board of Adjustment/Design Review and issued Resolution No. 95.044 (see exhibit 6).

In his letter dated May 1, 1995 (exhibit 9) appealing the denial to the City Council Mr. McNaughton states the City of Laguna Beach led him to believe that he could construct both a staircase and a seawall. He further stated: "When constructing my new home, I decided to build the stairs only halfway down the bluff, as I didn't know how it would tie into my planned sea wall." Mr. McNaughton also stated that he applied to the City in 1983, 1988 and 1991 for a permit to build a sea wall. When his efforts to obtain permission to build a sea wall were denied, he states he then decided to complete building his stairway to the beach. However, this line of reasoning completely omits the Coastal Commission permit history. The Commission never approved a staircase on Mr. McNaughton's property. In addition, the applicant never sought approval of a seawall or staircase from the Commission.

In its May 3, 1995 recommendation to the Board of Adjustment (see exhibit 8), the Department of Community Development advocated approval of the proposed beach staircase on the grounds that: 1) when the residence was built no regulations prohibited a beach staircase, 2) completion of the beach staircase was impeded by uncertainty over a proposed seawall, 3) the beach staircase is not new development but continuation of the existing stairs, 4) adjacent properties have beach staircases, and 5) the proposed staircase minimized visual and environmental impacts.

The City Council's decision overturning the Board of Adjustment (see exhibit 6) was not based on the policies of the City's Local Coastal Program. Instead, the Council's resolution addresses issues relating to equity and asserts that the project would have only minimal impacts to the environment. There are several inaccuracies and misconceptions in the City's analysis. One argument of the City for approval of this project is that because other property owners have staircases, the McNaughton's are entitled to a staircase. First, this line of reasoning in consideration of whether to issue a coastal development permit ignores the fact that the existing staircases are predominantly pre-coastal in origin. The residence at 297 Crescent Bay, which is adjacent to the project site, has a stairway and a landslide retaining wall at the toe of the bluff, both constructed in the 1940's prior to the Coastal Act. In addition there are stairways located at 271, 279 and 263 Crescent Bay Drive. The stairways at 271 and 279 Crescent Bay Drive were constructed prior to passage of the Coastal Act. The stairs at 263 Crescent Bay Dr. were built in 1977 without benefit of a coastal development permit. The after-the-fact permit application was denied by the Regional Commission (P-78-2782). The applicant appealed the permit to the State Commission and the appeal was also denied. The stairs at 263 Crescent Bay Dr. have never been removed.

Second, equity issues on bluff top lots should be resolved through application of the LCP's stringline or 25 foot bluff setback policy. The purpose of the stringline policy is to assure that all blufftop development is treated equitably by limiting new development to extend past the line of existing development. This is equitable since all blufftop development will

be setback the same distance from the bluff edge. The purpose of the stringline and bluff setback policies is to keep development off the bluff face.

Another invalid argument of the City is that the proposed stairs merely extend the existing legal stairs. The City incorrectly asserts that when the residence was built there were no regulations prohibiting staircases to the beach. The residence was constructed under a permit issued in 1985 by the Coastal Commission. A beach staircase was not applied for or approved in that permit or the subsequent permit amendment.

Neither the Coastal Commission nor the City ever approved the original construction of the stairs. The conditions of the Commission-issued coastal development permit required a permit from the Coastal Commission for any future development. Without benefit of coastal development permit the applicant, some time between 1987 and 1994 began building a staircase to the beach by placing concrete steps on the bluff face. In 1994 the City issued a replacement building permit for the staircase. The application for a building permit (BP 94-450) issued on May 10, 1994 states that the proposed work is to replace the existing concrete steps. The accompanying site plan shows a staircase going partially down the bluff (approximately 30 feet) with the notation "stairs replaced by stairs authorized by BP# 94-450" (see exhibit 17).

Additionally, there was no stairway on the bluff prior to the development approved by the Commission in permit 5-84-825 or previous permits. The project on appeal before the Commission is for the extension of the unpermitted stairs for another 30+ feet down the coastal bluff and across existing rip-rap to the beach. The stairs which Commission staff refers to as unpermitted development are not included in this appeal because they are not included in the project description of the development approved by the City. The stairs before the Commission are only the bottom half of the stairway. Regardless of the Commission's action on this appeal one-half of the stairway remains unpermitted development.

E. LCP POLICIES

1. Bluff Setback Policy/Stringline

Section 30603(b) of the Coastal Act provides specific grounds for appeal of a local government decision after a Local Coastal Program has been certified for the area. Non-conformance with the standards set forth in the certified Local Coastal Program is one of the grounds for appeal. The appellants contend that the proposed project allows development on a blufftop and bluff face, and thus is not consistent with an LCP policy prohibiting all development within 25 feet from coastal bluff edges or in accordance with a stringline.

The City's certified Land Use Plan contains policies regarding blufftop development. The Open Space Conservation Element of the land use plan includes a section on Coastal Land Features, which states on page 12:

Several portions of Laguna's coastline are composed of relatively weak bedrock materials that are susceptible to accelerated erosional processes. Because of their weak properties, these areas have already been eroded and now take the form of low, cascading bluffs and cliffs. Not only are these areas particularly susceptible to deterioration from nature, but man-made improvements can also jeopardize their stability. (emphasis added)

Policy 1-I on page 14 of the Open Space Conservation Element states:

The City shall impose a 25-foot minimum setback or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback. (emphasis added)

Section 25.50 of the Laguna Beach Implementation Plan discusses setbacks under the heading of General Yard, Open Space Provisions. The stringline policies indicate that if given a choice between the 25 foot setback and the stringline, the more restrictive policy applies. The policy also dictates that improvements such as staircases are not utilized in plotting the stringline. Section 25.50.004(B)(4) states:

In addition to (1), (2) and (3) above, no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Greater setback may be required by the City Engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of the bluff. (emphasis added)

The stringline is defined in 25.50.004(B)(4)(b) as follows:

The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main building on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways, and other types of similar features shall not be used to define the building stringline criteria.

- (i) In the event that there is no applicable stringline on adjacent oceanfront lots, the setback shall be at least twenty-five feet from the top of an oceanfront bluff.*
- (ii) Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or excessive*

building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.

- (iii) *A deck stringline may be used to establish a setback for decks. The deck stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the decks on main buildings on adjacent lots.*

2. Site Specific Geology and Area Geology Hazards

The Technical Appendix of the City of Laguna Beach certified LCP incorporates Section 30253 of the Coastal Act. Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

On page 52 of the Technical Appendix of the City's Local Coastal Program is the following analysis:

In addition to natural causes, cliff erosion can be accelerated by saturation from irrigation or other increased water runoff at bluff tops. Runoff over the bluff edge and down the cliff face or percolation of ground water through permeable zones at the face of the cliff may result in the failure of loosely consolidated slope material. This circumstance is sometimes accentuated when drainage outlets, fences and stairways are constructed on the bluff edge. Other factors contributing to bluff erosion include: introduction of non-native vegetation; burrowing activities of animals; pedestrian movement on the bluff face; and grading of the bluff top, poor site planning and the lack of understanding of bluff dynamics. (emphasis added)

There is extensive evidence regarding the existence of a landslide on the applicant's property and a history of geologic stability problems in the surrounding area. Geologic reports for development along Crescent Bay Dr. dating from 1943 documenting the existence of an ancient landslide on Crescent Bay Dr. from 297 Crescent Bay Drive to 267 Crescent Bay Dr.

There is an active landslide at the adjacent coastal bluff at 297 Crescent Bay Drive which was activated in 1940 and again in 1943. Documents from files for 271 Crescent Bay Dr. which is two lots to the west of the subject site indicate that there were landslides at that site in 1956 and 1983. The storms of 1983 threatened to activate still more landslides at 271 and 297 Crescent Bay Dr. as well as at other locations along Crescent Bay. As

documented by geotechnical documents, the ancient landslide extends across six lots along Crescent Bay Dr. The landslide along the coastal bluffs at Crescent Bay Dr. extends 16 feet onto the applicant's property at the bluff top and 32 feet at the toe of the bluff. The proposed stairway would be located entirely within the landslide area.

There are three streets adjoining Crescent Bay, namely Crescent Bay Dr., Cliff Dr. and Marine Way. The coastal bluffs along Crescent Bay Dr. are higher in elevation going east to west. Along Cliff Dr. the bluffs are low-lying, 25-40 feet. The bluffs again increase in height going from Cliff Dr. to Marine Way. There is a pocket beach fronting the coastal bluffs along Crescent Bay Dr. and Cliff Dr. Most of the residences along Cliff Dr. and Marine Way have staircases to the beach constructed prior to passage of the Coastal Act.

Geologic investigations were conducted at the project site, 287 Crescent Bay Dr. by Moore & Taber (June 1, 1979 and January 25, 1979), Nevin (April 8, 1976), Peter & Associates (1984), and Geofirm (January 14, 1986). An exhibit from a Moore & Taber geologic report dated June 1, 1979 is included as exhibit 14. This shows the slide scarp and landslide area on the applicant's property. The January 1979 geologic report by Moore & Taber documents the necessity for setbacks and caissons. This report includes the following recommendations:

Irregardless [sic] of the calculated setback lines, caisson support is recommended near the bluff because of potential sloughing and/or failure of the slide scarp. The caissons should be located a minimum of 2 feet from the top of the bluff above the stable slope (westerly side) and should be at least 20 feet deep. The caissons above the slide area (easterly portion) should be located a minimum of 14 feet from the top of the bluff (top of the slide scarp) and should also be at least 20 feet deep. The caissons should be tied together with grade beams across the south end of the proposed structure, and extending northward to the footing setback line. No footings of caissons should be placed on the slope itself.

Caisson support will ensure that the proposed structure will maintain its integrity, if additional slide movement or local bluff erosion should occur on the subject or adjoining lot.

A geologic report was prepared by Peter and Associates for construction of the McNaughton residence 5-84-825 (McNaughton) in 1984. The 1984 geology report notes that an ancient landslide exists on the site. This geological report also included recommendations for a seawall, however, a seawall was not applied for or approved as part of this project. A geologic review was prepared by Geofirm in January 1986 concerning the installation of caissons and a swimming pool (5-84-825A, McNaughton). The 1986 geology report states that the southeasterly portion of the slope is mantled by a bedrock landslide estimated to be 15 to 20 feet thick.

The purpose of the 1986 geology report was to determine if slope stabilization via caissons was necessary. The report concludes that the toe of the landslide will continue to be subject to landslide action, caissons could help support the slope but are not necessary to

support the residence because of the existing deep foundation system, and a grade beam system may be required to provide additional support to the proposed caissons.

The findings in the 1986 geological report state:

The project geologist proposed (reference 4) that an armor stone revetment be placed at the toe of the landslide to both buttress the landslide and prevent its erosion from storm wave action. It is our understanding that placement of the revetment is not a part of the current construction plans. Therefore, it must be assumed that well documented erosion of the toe of the landslide will continue with the associated potential of triggering reactivation.

In the conclusions portion of the geologic report it states:

The existing unprotected landslide will be subjected to erosion from wave action at the toe of the slope which could lead to reactivation of the landslide.

Reactivation of the landslide could remove its buttressing support of the natural slope above the landslide. This slope is underlain by strata dipping out of slope and it has a calculated factor-of-safety against failure possibly considerably less than 1.5. If buttressing support of the upper slope is removed, it could fail.

Finally, the 1986 report addresses the stability of the residence:

Appropriately designed and installed caissons could provide significant additional support to the upper slope in the event the landslide reactivated. The proposed caissons are probably not required to protect the residence as it is supported on a deep foundation system near the slope, but they could help keep the slope intact and possibly prevent its failure across property boundaries. (emphasis added)

In addition, the files for 5-84-825 (McNaughton) contain several geotechnical reports prepared for the residence to the east at 297 Crescent Bay Dr. There are geological investigations from 1943, 1972 and 1983, which document the instability of the coastal bluff slope and of development located at the toe of coastal bluffs at the site and the slope at the project site. The 1943 report states that there were landslides at 297 Crescent Bay Dr. in 1940 and 1943, causing damage to a porch and bathhouse. The 1972 report notes that the seawall recommended in the 1943 report had been constructed.

In 1983 winter storm waves were breaking up and over the seawall at 297 Crescent Bay Dr. causing erosion behind the wall, destruction of an uncemented rip-rap rock retaining wall at the west end of the main wall, and the undermining of a wooden stairway. The 1983 report states:

According to our previous investigations, it appears that the old slide located on the Nunis property partially extends on the property to the west. Further eroding [sic]

of the toe of this adjacent property could have an influence on the stability of a portion of this existing slide, or could possibly trigger a new slide.

Coastal Development Permit 5-85-690 (Kunin) was for replacement of a failed retaining wall at the top of the coastal bluff at 267 Crescent Bay Drive which is the second lot west of the project site. This residence has a wooden stairway to the beach as well as a concrete seawall. The geology report prepared by Munson Associates in 1985 documents the history of the bluff at the Kunin residence site. The report states that in 1956 there was a landslide and fill was brought in to replace the lost materials. The slope remained stable until the winter storms of 1983 when a bulldozer operator attempting to bolster the west side of the seawall cut into the toe of the slope and triggered another slide, substantially damaging the wooden stairway.

The Munson Associates geology report prepared for 267 Crescent Bay Dr. states that there is an active ancient landslide which extends onto the property. In addition, the report states that comparisons of aerial photographs revealed that the coastal bluff at 267 Crescent Bay Dr. has regressed landward 20-25 feet in the past 50 years (see 5-85-690 Kunin).

F. CONCLUSIONS AND RECOMMENDATION

Land Use Plan Policy 1-1 mandates a minimum 25 foot bluff edge setback or conformance with a stringline for all development. The purpose of the bluff edge setback is to minimize man-made erosion and geologic instability of coastal bluff which are already susceptible to deterioration from natural forces of wind and wave action. The rationale for this setback is supported in this case by numerous geologic reports and recommendations documenting the presence of a landslide and by the discussion in the LUP and technical appendices concerning bluff stability and the impact of development on bluff stability.

Section 30253 of the Coastal Act, which is incorporated into the LCP policies, states that new development shall minimize risks to life and property, assure stability and structural integrity and neither create or contribute to erosion or geologic instability or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. There are no existing permitted structures on the coastal bluff face at Mr. McNaughton's property. Despite the overwhelming evidence of geologic problems at the project site, including a landslide scarp on the bluff face, no geologic report was submitted or reviewed in support of the staircase. Additionally questions of a need for protective structures to protect the proposed staircase were not addressed. The appellant asserts that construction of the existing staircase has already had adverse impacts to the structures on her property. In fact, all the evidence at hand and in the LCP indicates that structures on bluff faces are by their nature destabilizing.

The geologic history of this stretch of bluff and the project site in particular show that the bluff face is unstable, has failed in the past and is not an appropriate site for development. As detailed in Section V.E above, the project site and vicinity suffers from geologic

instability. Construction of a staircase down the coastal bluff is not consistent with the bluff setback policy and with the geologic stability policies of the City of Laguna Beach's Local Coastal Program. Therefore, the Commission finds that the appeal raises Substantial Issue with respect to non-conformance with the certified LCP.

Additionally, the Commission's action on coastal development permit 5-84-825 imposed a special condition which mandated that the applicant apply to the Coastal Commission for any future improvements on their property. The applicants did not apply to the Coastal Commission for a coastal development permit for their proposed development. The Commission found Substantial Issue with the proposed development on the grounds of non-conformance with the LCP. This action will also comply with the requirement that the proposed development will be reviewed by the Commission for a coastal development permit through the De Novo process.

VI. DE NOVO STAFF REPORT AND RECOMMENDATION

Findings and Declarations on Coastal Development Permit 5-96-162.

The staff recommendation for the de Novo Portion of this staff report is found on page 5. The findings of the Substantial Issue section of this staff report are hereby incorporated by reference. The Commission hereby finds and declares:

A. Standard of Review

The City of Laguna Beach has a certified local coastal program. Section 30604(b) of the Coastal Act states that "After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program." Evaluation of the proposed project will therefore be based on the certified local coastal program for the City of Laguna Beach.

B. PROJECT DESCRIPTION AND HISTORY

1. Project Description

The applicants are proposing to construct a 30 foot stretch of staircase down a coastal bluff to the beach at 287 Crescent Bay Drive. Documents included with the submittal indicate that the steps will be at grade and constructed with railroad ties terminating at the base of the coastal bluff where unpermitted rip-rap currently exists. The proposed stairway will be located on a landslide scarp. The project description is explained in greater detail in the Substantial Issue Analysis Section on page 7. Additionally the Substantial Issue Analysis Section also contains a description of the area surrounding the project site.

2. Project Site Permit History

The permit history for 287 Crescent Bay Drive extends back to 1976. There have been three separate coastal development permits issued by the Coastal Commission for construction of a residence at 287 Crescent Bay Drive, all of which included a 25 foot bluff edge setback and two of which included future improvement deed restrictions. The discussion of the prior permit actions contained in the "Substantial Issues Section" of this staff report on page 9.

Additionally the applicant received a coastal development permit from the City of Laguna Beach, which is the subject of this appeal. The discussion of City's coastal development permit is contained in the "Substantial Issue Section" of this staff report on page 5.

C. CONFORMANCE WITH THE LOCAL COASTAL PROGRAM FOR THE CITY OF LAGUNA BEACH

1. Bluff Setback Policy/Stringline

The Substantial Issue Section of this staff report discussed how the proposed development is not consistent with the City's certified Local Coastal Program. Specifically, the proposed construction of a staircase down the bluff does not conform to Policy 1-1 which requires that all development be setback a minimum 25 feet from the bluff edge or a distance ascertained by stringline measurements. Further, the City's certified Land Use Plan discourages bluff face development since bluff faces are ecologically fragile and man-made improvements can jeopardize the bluff's stability. Therefore the proposed development does not conform to the City of Laguna Beach's Local Coastal Program.

2. Area and Site Specific Geology

Substantial Issue Section V.E.2 of this staff report details the many geology reports prepared for the Crescent Bay area. These reports document that the bluff in the area is unstable with a history of landslides. Additionally, the toe of the bluff is susceptible to wave action. The subsequent erosion has led to structural damage and the erection of permitted and unpermitted development for the protection of existing stairways. Bluff instability and erosion caused by wave action may lead to structural damage of the proposed stairway if it were built. Further, as previously noted, the stairway itself promotes bluff instability.

The Substantial Issue Section of this staff report discussed how the proposed development is not consistent with the City's Local Coastal Program policy concerning development in geologically hazardous areas. The City's Local Coastal Program incorporates Section 30253 of the Coastal Act which requires that proposed development assure bluff stability, that it not contribute to erosion, and that it would require the construction of protective devices that will require significant bluff alteration. As discussed in the Substantial Issue Section V.E.2 there is extensive evidence regarding geologic instability of the project site.

In fact, the proposed stairway is located entirely within a landslide scarp. The stairway will increase the potential for bluff failure. Further, the project applicant has not submitted any site specific geologic studies. Therefore there is no demonstration that the stairs will assure stability and structural integrity, will not contribute significantly to erosion, and would not require the construction of a protective device that will require significant bluff alteration. Since the proposed development will not assure the stability and structural integrity of the bluff face the proposed development is not consistent with the City's Local Coastal Program.

3. Conclusions

The Commission finds for the reasons discussed above that the proposed development of a staircase to the beach does not conform with the City's certified Local Coastal program. First, the proposed development does not conform to the minimum 25 foot bluff edge setback. Second, the proposed development is not consistent with the LCP policies concerning development in geologically hazardous areas which increases the potential for bluff instability and which may require a protective device. Therefore, the Commission denies a coastal development permit for the proposed development.

D. ACCESS AND RECREATION

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This provision remains applicable even after a local government has a certified local coastal program, which is the case in this event. The proposed project is not in conformity with the Public Access and Recreation policies of the Coastal Act. Among the applicable policies are Sections 30210 and 30211 of the Coastal Act.

Section 30210 of the Coastal Act mandates that maximum access be provided for all the people consistent with public safety, the need to protect rights, the rights of private property owners, and natural resource areas from overuse. Section 30211 of the Coastal Act mandates that proposed development not interfere with the public's right of access.

In this case the applicant has previously recorded a lateral public access easement from the toe of the bluff to the mean high tide line in conjunction with CDP 5-84-825 (see exhibit 13). The proposed development of stairs down the bluff face may subsequently adversely affect the public's ability to use the lateral access easement and is therefore not consistent with the Public Access and Recreation policies of the Coastal Act.

Prior sections of the staff report have documented that the bluff is unstable and that the proposed stairway will be located entirely within a landslide which has experienced periods of failure. Therefore, this bluff face structure could lead to additional bluff instability. The

beach is narrow in this area, and should the bluff fail, the lateral public access easement may become obstructed and unusable because of the resulting land slide.

Further, if constructed the staircase and landing may, in the future, require the construction of shoreline protective devices and bluff stabilization measures to protect the staircase from wave hazards and the documented bluff instability. This type of protection has already occurred as unpermitted development in the form of rip-rap placed at the toe of the bluff. Any future rip-rap to protect the proposed staircase will interfere with public access along the shoreline. This interference with public access can result from a combination of factors. One such factor is the placement of rip-rap that displaces beach area and physically obstructs public use and lateral movement. Another factor is that rip-rap and other types of protective devices can change shoreline processes which result in loss of beach sand. The loss of beach would adversely impact public access and recreation. The applicant has not submitted studies to address these concerns on public access and recreation. Therefore, for the reasons cited above, the Commission can not find that the proposed development is consistent with the public access and recreation policies of the Coastal Act.

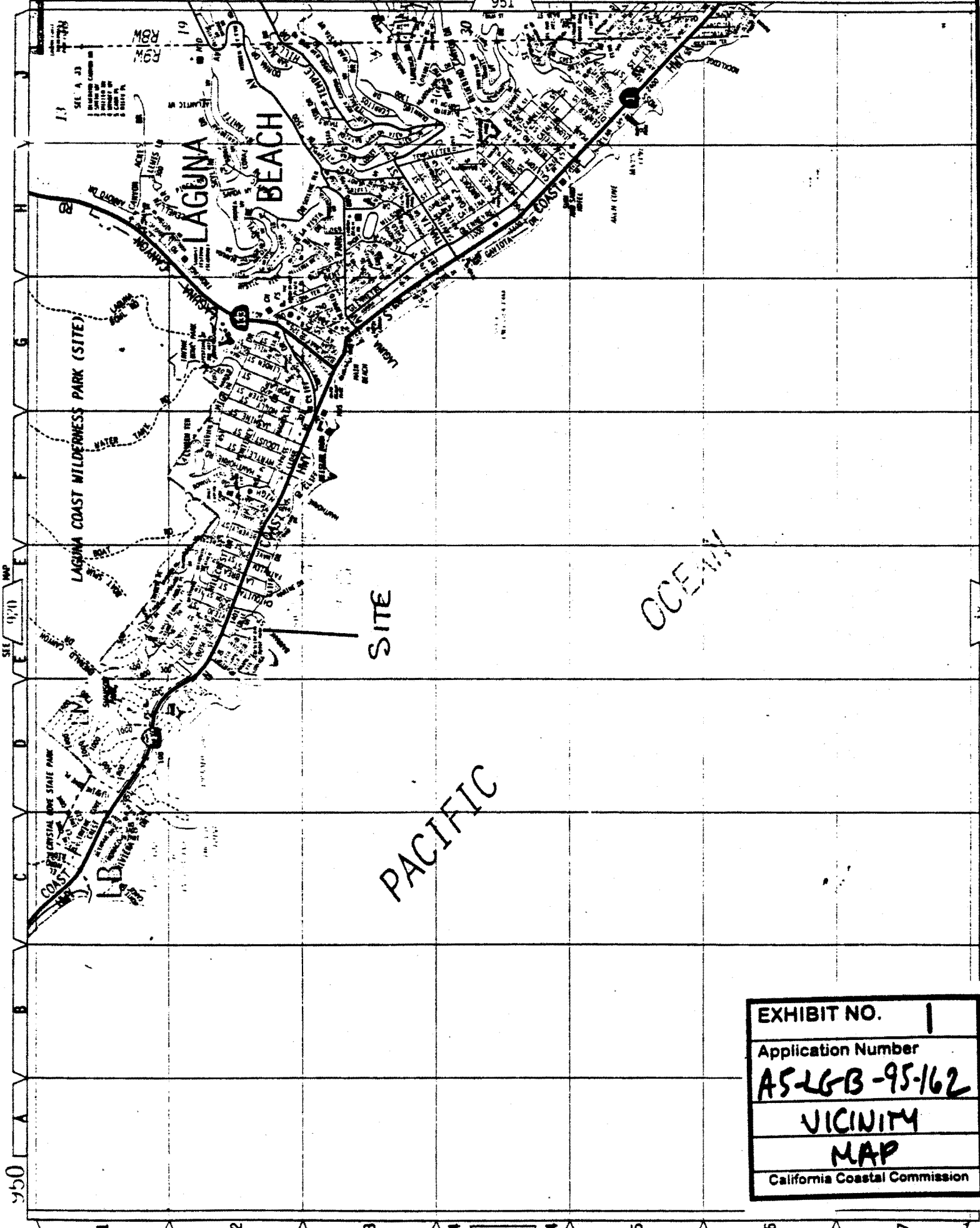
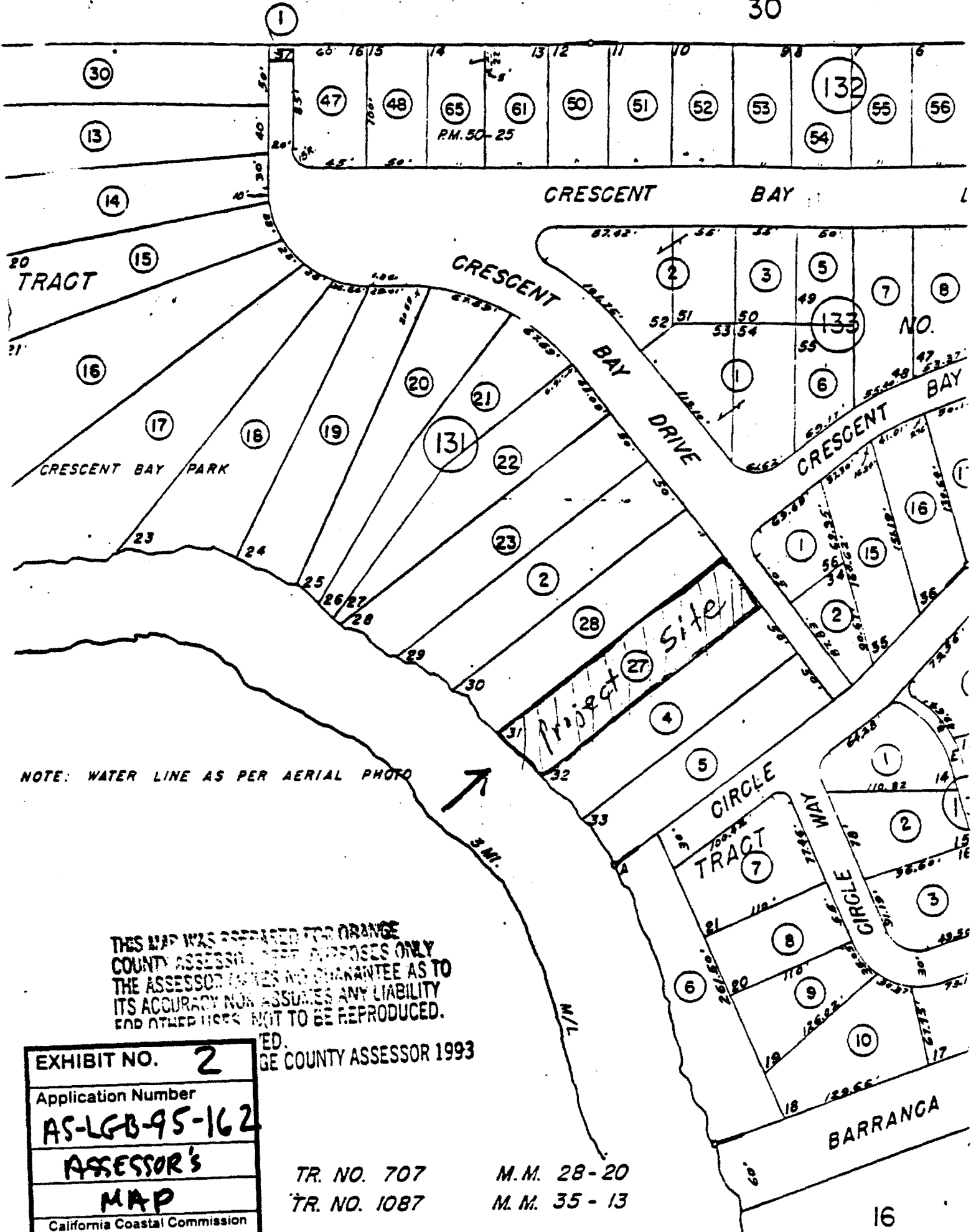


EXHIBIT NO.	1
Application Number	AS-LGB-95-162
VICINITY MAP	
California Coastal Commission	



NOTE: WATER LINE AS PER AERIAL PHOTO

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR'S OFFICE PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED.

EXHIBIT NO.	2
Application Number	AS-LGB-95-162
ASSESSOR'S	
MAP	
California Coastal Commission	

ED. GE COUNTY ASSESSOR 1993

TR. NO. 707 M.M. 28-20
 TR. NO. 1087 M.M. 35-13

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-3071

Date 6-23-95Commission Reference # 5-LGB-95-026

NOTIFICATION OF APPEAL PERIOD

TO: City of Laguna Beach

FROM: California Coastal Commission

Please be advised that on June 22, 1995 our office received a notice of local action on the coastal development permit described below:

Local Permit # CD# 95-33Name of Applicant: Jack McNaughton

Project
 Description:

Construct on-grade, access stairs to the beach.Location 287 Crescent Bay Drive, Laguna Beach, CA. 92651

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on July 7, 1995. Our office will notify you if an appeal is filed.

 Note: The notice of local action did not include written findings supporting the decision. So that we may complete our record of this decision, please forward a copy of the adopted findings to our office within 30 days. (This note is applicable only if a check mark has been entered.)

If you have any questions, please contact us.

H2: 4/88
 4713F
 MV/lm

cc: Jack McNaughton

EXHIBIT NO. 3
Application Number AS-LGB-95-162
NOTICE of
FINAL ACTION
California Coastal Commission



RECEIVED

JUN 22 1995

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT
NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS

The following project is located within the City of Laguna Beach Coastal Zone:

Applicant: Jack McNaughton Date: June 19, 1995
Mailing Address: 287 Crescent Bay Drive, Laguna Beach, CA 92651
CD No: 95-33 Project Description: construct on-grade, access stairs to the beach.
Location: 287 Crescent Bay Drive, Laguna Beach, CA 92651
On June 6, 1995, a coastal permit application for the project

was: (x) approved.
() approved with conditions.
() denied.

This action was taken by the: (x) City Council.
() Design Review Board.
() Planning Commission.
() Administrative Approval.

The action did involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is:

- () not appealable to the Coastal Commission.
- (x) appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111.

cc: Coastal Commission
Property owner/agent
All known interested persons

Attachment

49th Day
8.11.95
180th
12/20/95
off 7/7/95
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RESOLUTION NO. 95.044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH OVERTURNING THE DENIAL OF THE BOARD OF ADJUSTMENT/DESIGN REVIEW BOARD AND APPROVING VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33 AT 287 CRESCENT BAY DRIVE

WHEREAS, on June 6, 1995, the City Council at a regular meeting held a hearing on an appeal of the decision of the Board of Adjustment/Design Review Board denying Variance Application 6207, Design Review 95-068 and Coastal Development Permit 95-33; and

WHEREAS, the design of the stairs in an environmentally sensitive area was subject to review by the Design Review Board; and

WHEREAS, the application to encroach into the bluff top setback and below elevation 12 was subject to review by the Board of Adjustment; and

WHEREAS, the construction on an environmentally sensitive ocean front slope was subject to a Coastal Development Permit; and

WHEREAS, after considering the findings of the Board of Adjustment and other evidence presented at the hearing, the City Council has determined that the decision of the Board of Adjustment should be overturned and Variance 6207 approved.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Laguna Beach does resolve as follows:

Section 1: The City Council hereby determines that the findings of the Board were in error, and that there are legal justifications to approve the variance.

1 A. There are special circumstances applicable to the
2 property involved which cause the strict application of the zoning
3 ordinance to deprive the subject property of privileges enjoyed by
4 other property in the same vicinity and zone, in that: the adverse
5 topography creates a hardship depriving this property of privileges
6 enjoyed by other property in the neighborhood.

7 B. The requested variance is necessary for the preser-
8 vation of a substantial property right of the applicant, which
9 right is possessed by other property owners under like conditions
10 in the same vicinity and zone, in that: numerous adjacent property
11 owners have stairs to the beach. This request is consistent with
12 that and necessary for the preservation of a property right
13 possessed by other property owners in the neighborhood.

14 C. The granting of the variance will not be detrimental
15 to the public health, safety, convenience and welfare or injurious
16 to property or improvements in the vicinity in which the property
17 is located, in that: the on grade stairs are less erosive or
18 damaging to the slope than notching stairs into the hillside would
19 be and is therefore not detrimental to the health and welfare of
20 adjacent properties.

21 D. The granting of the variances will not be contrary
22 to the objectives of the zoning regulations and the General Plan,
23 in that: the zoning regulations and the General Plan encourage
24 improvement to ones property.

25 Section 2: The decision of the Design Review Board
26 denying Design Review 95-068 is hereby overturned and the design
27 approved.

1 SECTION 3: The City Council hereby determines that
2 the findings of the Board were in error.

3 A. The project does exemplify a small scale "village"
4 atmosphere quality expressing individuality of purpose while
5 maintaining compatibility with other developments in the immediate
6 vicinity, in that: the addition is minor and in keeping with other
7 beach access stairs, thereby maintaining compatibility with
8 adjacent neighbors.

9 B. The project does not appear garish and conflicting
10 with adjacent structures, in that: the addition is recessed into
11 the ground using the same material as exists, and is not in
12 conflict with adjacent structures.

13 C. The project does minimize or eliminate adverse or
14 visual effects in the structure design relating to scale, mass and
15 height, in that: constructing an on-grade stairway, minimizes any
16 adverse or visual effects relating to mass and size.

17 SECTION 4: The decision of the Board of Adjustment
18 denying Coastal Development Permit 95-33 is hereby overturned and
19 the coastal permit approved.

20 SECTION 5: The City Council hereby determines that the
21 findings of the Board were in error and that there are legal
22 justifications to approve the Coastal Development Permit.

23 A. The project is in conformity with all the applicable
24 provisions of the General Plan, including the Certified Local
25 Coastal Program and any applicable specific plans in that: the
26 environmentally sensitive areas have been protected because the
27 development is limited to previously altered areas thereby

1 preserving the majority of the existing natural vegetation.

2 B. Any development located between the sea and the
3 first public road paralleling the sea is in conformity with the
4 Certified Local Coastal Program and with the public access and
5 public recreation policies of Chapter 3 of the Coastal Act in that:
6 vertical and lateral public access exists to and along this portion
7 of the coast and the proposed development will not create any
8 adverse impacts to this access; therefore no clear nexus can be
9 demonstrated in this case for a public access dedication.

10 C. The proposed development will not have any
11 significant adverse impact on the environment within the meaning of
12 the California Environmental Quality Act in that the proposed
13 project as redesigned to minimize impacts on visual and scenic
14 quality of coastal resources, does not present any adverse impacts
15 on the environment.

16 ADOPTED this 6th day of June, 1995.

17 Walter Blackburn
Mayor

18 ATTEST:

19 Verna L. Rollinger
City Clerk

20 I, Verna L. Rollinger, City Clerk of the City of Laguna
21 Beach, certify that the foregoing Resolution was duly adopted at a
22 regular meeting of the City Council of said City held on June 6,
1995.

23 AYES: COUNCILMEMBERS: Freeman, Dicterow, Baglin,
Blackburn

24 NOES: COUNCILMEMBERS: None

25 ABSENT: COUNCILMEMBERS: Peterson

26 Verna L. Rollinger
27 City Clerk of the City of
Laguna Beach, California

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-3071

Date: 6-23-95Commission Appeal # A5-LGB-95-162**COMMISSION NOTIFICATION OF APPEAL**TO: **City of Laguna Beach**FROM: **California Coastal Commission**

Please be advised that the local coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal. P.R.C. Section 30623.

Local Permit # CD 95-33Name of Applicant : Jack McNaughton

Project Description

Construct on-grade, access stairs to the beach.Location : 287 Crescent Bay Drive, Laguna BeachLocal Decision ApprovedName of Appellant : June SloanDate Appeal Filed : June 23, 1995

The Commission Appeal # assigned to this appeal is A5-LGB-95-162.
 The Commission hearing date--substantial issue determination and possible vote--for this appealed item is tentatively set for August 8-11, 1995.

Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the local jurisdiction consideration of this coastal development permit must be delivered to the Long Beach/South Coast Area Office of the Commission (California Administrative Code Section 13112). Please include copies of the following: plans; relevant photographs; staff reports and related documents; findings, if not already forwarded; all correspondence; and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact the Area Office noted above.

H7: 4/88
 4714F
 MV/lm

cc: **Jack McNaughton**

EXHIBIT NO. <u>4</u>
Application Number <u>A5-LGB-95-162</u>
<u>APPEAL</u>
California Coastal Commission

RECEIVED

APPEAL INFORMATION SHEET

JUN 14 1995

LOCAL COASTAL PROGRAM DEVELOPMENT PERMITS

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Please read these instructions before completing the appeal application.

Commission Form D - Appeal from Coastal Permit Decision of Local Government.

Appeals to the Coastal Commission from local government decisions on coastal permit applications are limited to certain types of decisions. The information below outlines the limitations and also describes the requirements for filing appeals.

Time Frame for Filing an Appeal. An appeal must be filed by 5:00 P.M. of the 10th working day after a sufficient local government notice of final action on the permit application was received by the Commission. 14 Cal. Admin. Code Section 13110. (The local government is required to send a notice of final local action to the Commission within 7 calendar days of a final local action.) The appeal must be filed in the Commission district office having jurisdiction over the affected local government. The final date for filing an appeal is available from the local permit decision notices posted in the Commission's offices and may also be obtained by calling the local Commission district office.

Persons Eligible to Appeal. The applicant, any aggrieved person or any two members of the Commission may appeal. P.R.C. Section 30625. An "aggrieved person" is any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision being appealed, or who, by other appropriate means prior to a hearing, informed the local government of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit. P.R.C. Section 30801.

Decisions Which May Be Appealed. (P.R.C. Section 30603)

- A. Within the appeals area, as shown on the Commission-adopted Post-LCP Certification Permit and Appeal Jurisdiction Map, any approval decision is appealable.
- B. In coastal counties only, an approval decision on a development that is not designated as the principal permitted use under the certified zoning ordinance, or zoning district map, is appealable.
- C. Any decision on a major works project or major energy facility is appealable.

Proper Grounds for an Appeal. (P.R.C. Section 30603)

A. For a development located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance, the grounds for an appeal are limited to one or more of the following allegations:

- 1. The development fails to provide adequate physical access to or along the shoreline or public or private commercial use or interferes with such uses.

(OVER)

2. The development fails to protect public views from any public road or from a recreational area to, and along, the coast.

3. The development is not compatible with the established physical scale of the area.

4. The development may significantly alter existing natural landforms.

5. The development does not comply with shoreline erosion and geologic setback requirements.

B. The grounds for appealing the decision on a project in any other location are limited to allegations that the development does not conform to the certified local coastal program.

Exhaustion of Local Appeals. Pursuant to 14 Cal. Admin. Code Section 13111 and 13573, the process of appealing a local decision to the Commission cannot begin until all possible appeals to local appellate bodies first have been made and have been exhausted; except that exhaustion of local appeals is not required if any of the following occur:

A. The local government requires an appellant to appeal to more local appellate bodies than have been certified in the implementation section of the local coastal program, or designated in the LUP implementing procedures, as appellate bodies for permits in the coastal zone.

B. An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.

C. An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of Article 17 (LCP Implementation Regulations) of the California Administrative Code.

D. The local government charges a fee for the filing or processing of appeals.

Appellant Notification of Appeals. Section III of the appeal application form is for the identification of persons interested in the project being appealed. An additional important step is that the appellant notify these persons and the local government of the appeal filing, within one week of the filing. Notification must be by mailing or delivering a copy of the completed appeal application form, including any attachments, to all interested parties, at the addresses provided to the local government. Failure to provide the required notification may be grounds for Commission dismissal of the appeal. 14 Cal. Admin. Code Section 13111(c).

Commission Review of an Appeal. If the Commission hears a coastal development permit or appeal, the Commission shall approve the permit if it finds that the proposed development is in conformity with the certified local coastal program (P.R.C. Section 30604(b)). Furthermore, every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). In determining whether a proposed development is in conformity with the certified LCP, the Commission may consider aspects of the project other than those identified by the appellant in the appeal itself, and may ultimately change conditions of approval or deny a permit altogether.

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: JUNE 6, 1995

7. Local government's file number (if any): VARIANCE APPLICATION 6207
COASTAL PERMIT 95-33
DESIGN REVIEW 95-068

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:
JACK McNAUGHTON
287 CRESCENT BAY DR
LAGUNA BEACH CA 92651

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) JUNE SLAN
297 CRESCENT BAY DR
LAGUNA BEACH CA 92651

(2) RICHARD D. NUNIS, ESQ
P.O. BOX 5016
LAGUNA BEACH CA 92652

(3) DAVIDAS DUARAK

(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.

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.)

PHOTOS ATTACHED

THE LOCAL COASTAL PROGRAM HAS STRICT PROHIBITIONS PREVENTING THE BUILDING OF STAIRS OR OTHER STRUCTURES ON THE BLUFF TOP AND BELOW REQUIRED SETBACKS. THE PRESENT APPROVAL ALLOWS BUILDINGS ON THE BLUFF TOP BY CLEARING EXISTING FOLIAGE AND OTHER NATURAL LANDSCAPE. FURTHER, THERE ARE RAILROAD TIES AND STAIRS TO THE BEACH NOT TO MENTION A "LANDING" JUST ABOVE THE BEACH WHICH WERE APPROVED. THIS APPROVAL BY THE LAGUNA BEACH CITY COUNCIL IS CONTRARY TO THE CLEAR AND SPECIFIC RULES SET FORTH IN THE LOCAL COASTAL PROGRAM.

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. SEE ADDITIONAL SHEET!

SECTION V. Certification

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

[Signature]
Signature of Appellant(s) or Authorized Agent

Date 6/12/95

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

Section VI. Agent Authorization

I/We hereby authorize Richard D. Nowls, ESQ to act as my/our representative and to bind me/us in all matters concerning this appeal.

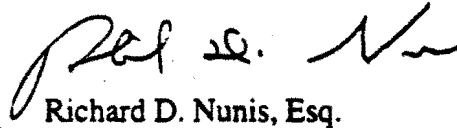
[Signature]
Signature of Appellant(s)

Date 6/12/95

The property at 287 Crescent Bay Drive was instructed in 1985 by the local Coastal Commission that stairs to the beach were not permitted and would require a separate hearing. Contrary to that order, the owner at 287 Crescent Bay Drive built concrete steps and then wooden steps (see photos) without hearings or approval. He then argued successfully that he was only continuing the existing steps to the beach. This type of behavior should not be rewarded as the decision would set a precedent in the City of Laguna Beach for any house on the beach to build stairs to the coastline below.

I appreciate your time and consideration in this very sensitive and important situation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard D. Nunis".

Richard D. Nunis, Esq.

OVER

PUBLIC HEARINGS

6/6/95

7. PUBLIC HEARING FOR THE PROPOSED UNDERGROUNDING UTILITY ASSESSMENT DISTRICT 93-1

Consideration of the revised assessments

Recommendation: Proceed with the project by adopting three Resolutions and authorizing the City Manager to enter into a construction contract in the amount of \$398,411 with Lambco Engineering.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

8. TENTATIVE PARCEL MAP 90-250, VARIANCE 6184 AND COASTAL DEVELOPMENT PERMIT 95-17, BINION SUBDIVISION

Proposal to subdivide 29.6 acres into two, 1 acre single-family building sites, a .54 acre private common access driveway parcel and 27.5 acres of permanent open space to be dedicated to the City with a variance from the access standards, a Coastal Development Permit and associated Negative Declaration

Recommendation: Adopt the Resolution approving Tentative Parcel Map 90-250, Variance 6184, Coastal Development Permit 95-17 and the associated Negative Declaration.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

9. APPEAL OF DENIAL OF CONDITIONAL USE PERMIT 94-22 AND COASTAL DEVELOPMENT PERMIT 94-51 AT 509-513 SOUTH COAST HIGHWAY (WYLAND)

Revised proposal to construct a mixed commercial/residential project

Recommendation: Adopt the Resolution overturning the denial and approving Conditional Use Permit 94-22 and Coastal Development Permit 94-51 at 509-513 South Coast Highway.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

10. APPEAL OF DENIAL OF CONDITIONAL USE PERMIT 95-17 TO ESTABLISH A RETAIL STORE SPECIALIZING IN EUROPEAN DESIGNER CLOTHING, ACCESSORIES AND SHOES FOR WOMEN AT 424 FOREST AVENUE

Proposal to establish a 900 sq. ft. retail store specializing in European designer clothing, accessories and shoes for women

Recommendation: Adopt the Resolution overturning the denial and approving Conditional Use Permit 95-17 at 424 Forest Avenue.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

11. APPEAL OF DENIAL OF VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33 AT 287 CRESCENT BAY DRIVE

Proposal to construct stairs and landings on the slope above the beach at Crescent Bay

Recommendation: Deny the appeal and sustain the denial of Variance Application 6207, Design Review 95-068 and Coastal Development Permit 95-33 at 287 Crescent Bay Drive.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

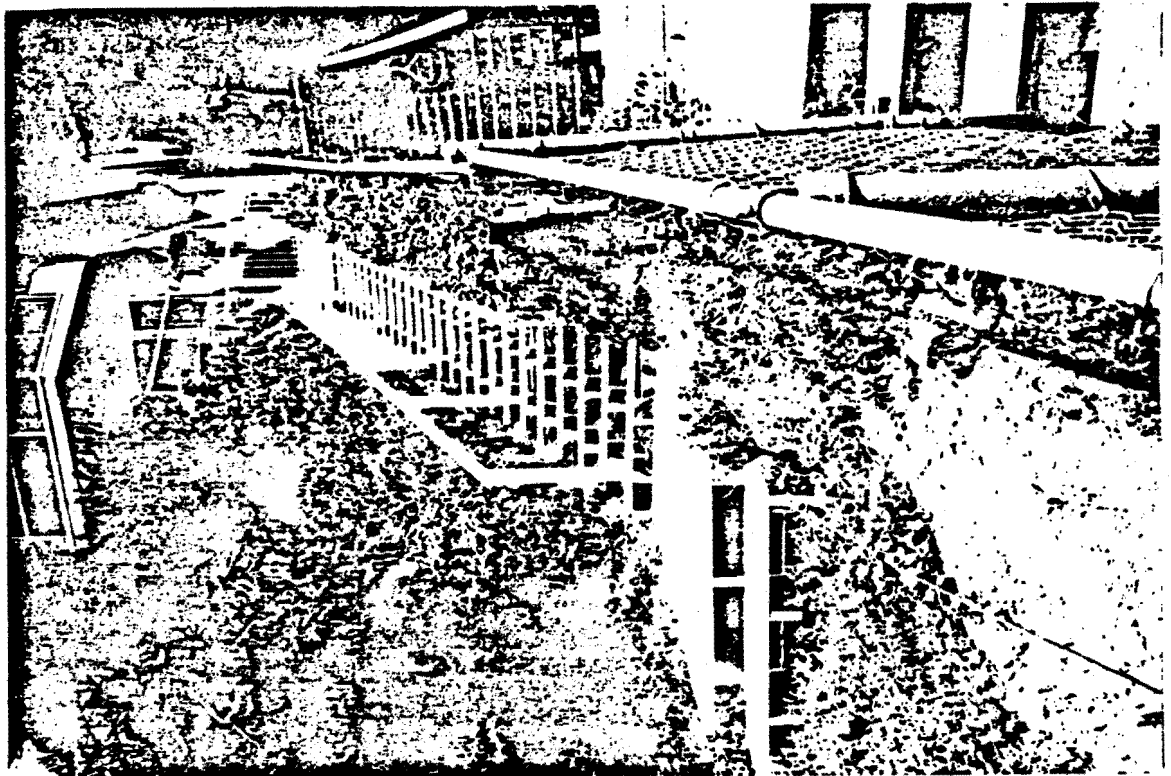
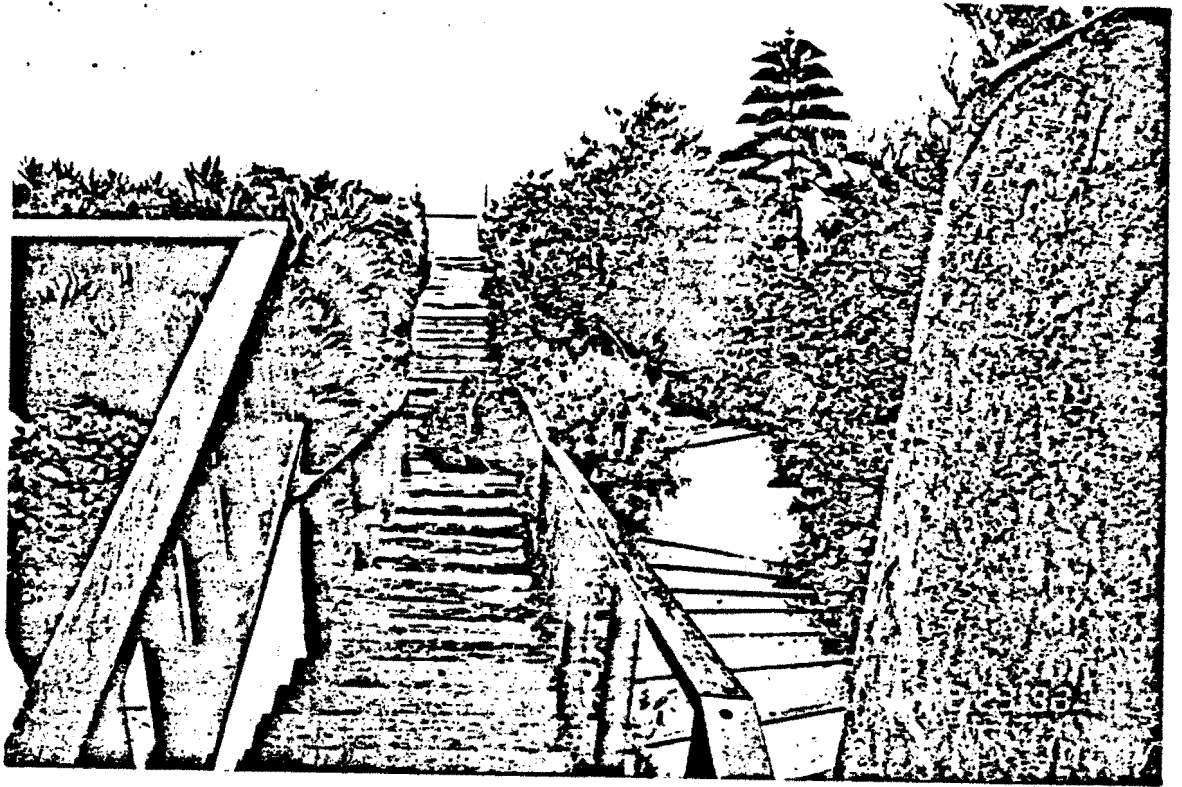
CONSENT CALENDAR

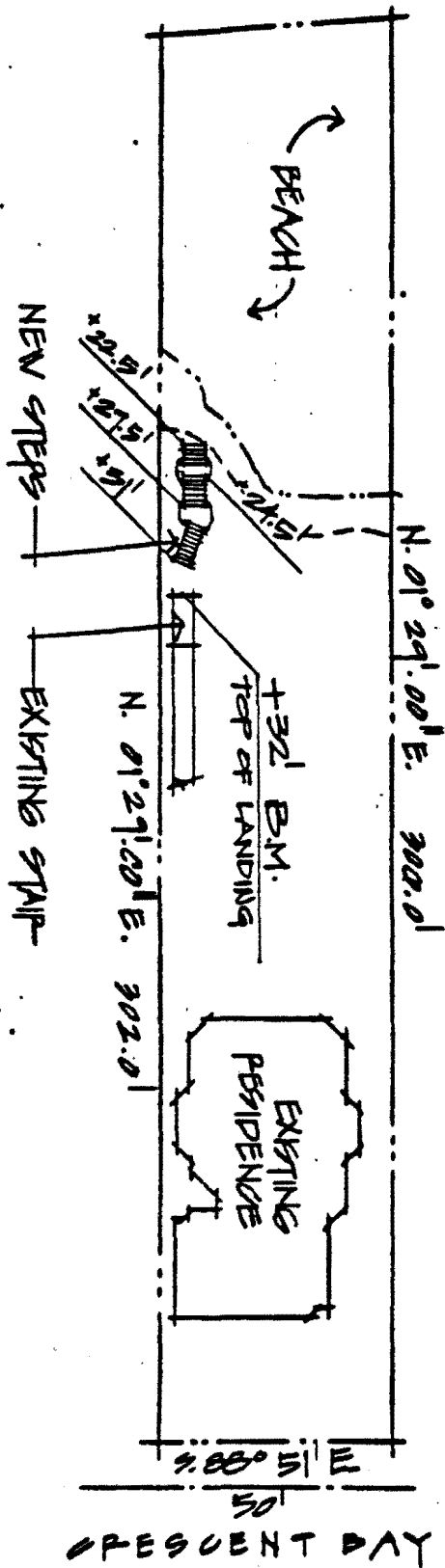
12. Adopt the Minutes of the Adjourned Regular Meeting of May 6, 1995, the Adjourned Regular Meeting of May 9, 1995, the Regular Meeting of May 16, 1995 and the Adjourned Regular Meeting of May 23, 1995.

13. Deny the claims of Richard T. Roach, J. for damages in the amount of \$1,000,000 and Ellan Seluta for damagers in the amount of \$1,000,000 and refer the claims to the Claims Adjuster.

14. Approve General Warrants	\$ 466,787.99	5-19-95
Approve Payroll #23	\$ 431,594.98	5-11-95
Approve Payroll #24	\$ 424,804.67	5-25-95







APR 20 1995
 DEPARTMENT OF PUBLIC WORKS

STAKING PLAN

STAIR EXTENSION DRAWINGS FOR
 MR. JACK McNAUGHTON
 289 OPESCENT BAY DRIVE
 LAGUNA BEACH, CA. 92651

job # 9407
 date 4.19.95

2092 a coast hwy
 laguna beach
 california 92651
 (714) 497-1254

EXHIBIT NO. 5

Application Number
 AS-LGB-95-162

SITE
 PLAN

California Coastal Commission

JUL 20 1995

11. RESOLUTION NO. 95-044 APPROVING DESIGN REVIEW 95-068, VARIANCE APPLICATION 6207, AND COASTAL DEVELOPMENT PERMIT 95-33 AT CRESCENT BAY DRIVE - PUBLIC HEARING (67) CALIFORNIA COASTAL COMMISSION SOUTH COAST DISTRICT

The applicant proposed to construct stairs and landings on the slope above the beach at Crescent Bay. The project required a variance to perform construction oceanward of the bluff top setback. The project designer presented the project, and explained how the construction was to occur. Some neighbors wrote in support of the project. The owner provided a history of his ownership of the property. The adjacent neighbor spoke in opposition of the project.

Due to the bluff top location of the proposed stairway, staff prepared a memorandum to the Board which described the unique history and circumstances of the proposal. The memorandum recommended approval of the request.

Some of the Boardmembers initially found favor with the project, due to the modest nature of the improvements and the fact that so many others in the neighborhood have stairway access to the beach. Other Boardmembers expressed reservations about the setback encroachment and lack of justification to grant the variance.

Mayor Blackburn opened the Public Hearing.

Lance Polster, architect, said the purpose of the proposal is to connect to some of the boulders below, that the applicant has a right to achieve what everyone else has, and the privilege should be granted for safety reasons. Jack McNaughton, applicant, said he has been trying to get some protection since 1983, and he feels he is not asking for anything more than what others have. Richard Nunez, representing adjacent property owner Mrs. Stoen, opposed the access because it will be prescient setting. Polster said they are dealing with prior approvals that are existing, and the reasons why this is a unique situation is they are trying to connect up with the rest of the steps.

Mayor Blackburn closed the Public Hearing.

Councilmember Freeman spoke in support of the project, adding this was not prescient setting. Councilmember Baglin said it is a right enjoyed by others in the immediate area, that there is no adversity caused by this, and when he visited the property he felt the wall next door was far more obtrusive. Councilmember Dicterow concurred, adding this area was close to the fire, and many got trapped in

EXHIBIT NO.	6
Application Number	145-LGB-95-162
VARIANCE	
APPROVAL	
California Coastal Commission	

neighborhoods, and this would offer another escape route. Mayor Blackburn said she is very familiar with the area, and clearly the applicant is not getting a privilege not afforded to others, so findings can be made.

Moved by Mayor Blackburn, seconded by Councilmember Freeman and carried unanimously 4/0/1 to adopt Resolution No. 95.044 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH OVERTURNING THE DENIAL OF THE BOARD OF ADJUSTMENT/DESIGN REVIEW BOARD AND APPROVING VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33 AT 287 CRESCENT BAY DRIVE".

CONSENT CALENDAR

Moved by Mayor Blackburn, seconded by Councilmember Freeman and carried unanimously 4/0 to adopt Consent Calendar items 13-23.

12. MINUTES OF THE CITY COUNCIL

Note: This item was removed for discussion.

Moved by Mayor Blackburn, seconded by Councilmember Baglin and carried unanimously adopted the Minutes of the Adjourned Regular Meeting of May 6, 1995, the Adjourned Regular Meeting of May 2, 1995, the Regular Meeting of May 16, 1995 and the Adjourned Regular Meeting of May 23, 1995 as amended.

13. CLAIMS AGAINST THE CITY

Denied the following claims and referred them to the Claims Adjuster:

Richard T. Roach Jr. for damages in the amount of \$1,000,000, and

Ellan Seluta for damages in the amount of \$1,000,000.

14. WARRANTS

General Warrants:	\$ 466,787.99	5/19/95	Approved
Payroll #23:	\$ 431,594.98	5/11/95	Approved
Payroll #24:	\$ 424,804.67	5/25/95	Approved

unless it would be associated with a focused sign program including enforcement that all present tenants have to remove their not approved signs. The signs on the building are an absolute eyesore for the community. He was glad the owner has decided to apply for the variance to correct this situation. He would condition any variance on the owner of the building bringing in a focused sign program plan that would establish parameters for all of the signs under one program and would be binding upon every tenant in this building.

Mr. Oligino thought the arguments are persuasive for a variance. He agreed that the justification could be made for the variance based on a comprehensive program that will tell the Board what the signs will look like for the building. This should be reviewed when a sign application is submitted to make sure that the sign is designed with the sign program for the building in mind. They would have his vote with those conditions.

Mr. Sabaroff said he would support that.

Mr. Vail agreed with what had been said. He said the justification would be special circumstances. It would also be considered a hardship, because the building definitely needs better signage. It is very important that it be a comprehensive sign program. They will start with a fresh slate and only keep what is appropriate. He suggested they give it a two-year period to see how it looks.

Mr. Chapman thought the variance could be justified based on this being a penalty for single ownership. He also felt this is a hardship situation and that the building definitely needs better signage. This is an opportunity to develop a sign program for the entire building. He referred to a similar program being carried out in Santa Barbara. This could be done in an artistic manner and have a continuous design theme across this huge, stucco building. He suggested that the signs do not have to be sand blasted redwood, but some creativity in materials and colors could be used to dress up this building. The building owner would be allowed to submit a sign program during the next six months. He suggested they grant the variance for one year for the new tenants to comply with the variance or it will be revoked. Then allow two years for the existing tenants to set aside the funds to covert their signs to coincide with the sign program for the building.

Mr. Chapman made a motion, seconded by Mr. Vail, to adopt 033 approving VA 6205, based on a hardship and the penalty and that the owner of the building submit an application for a sign program for the entire building within the next six months. The variance be granted for one year for the new tenants to comply with the sign program for the building and that two years be allowed for the existing tenants to set aside the funds to covert their signs to coincide with the sign program for the building, or it will be revoked. 7 unanimously.

EXHIBIT NO. 7
Application Number AS-66-B-95-162
BOARD
MINUTES
California Coastal Commission

VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33: JACK MCNAUGHTON, 287 CRESCENT BAY DRIVE, LOT 31, TRACT 707. DENIED.

The applicant requests permission in the R-1 Zone to construct a stairway to the beach that: 1) encroaches below elevation 12 MSL, and 2) encroaches into the ocean bluff top setback; including design for construction in an environmentally sensitive area; as well as a Coastal Development Permit.

Letters of support were received from Ann & Bill McDonald, 267 Crescent Bay Drive, and James L. Lund, 299 Crescent Bay Drive.

more

A letter was read to the Board from staff saying that there were extenuating circumstances and that due to the things outlined in staff's letter, it recommended approval of the project.

Lance Polster, architect, introduced Jack McNaughton, the owner of the property. The intention is to repair and extend the stairway to the beach. The stairs would be secured to the slope, they will consist of railroad ties and the landings will be decomposed granite, with infill of the rocks enough to provide a path to the beach.

Mr. McNaughton gave a background of his ownership of the home and covered the many attempts to be allowed to build a seawall to protect the bluff and the slope from scouring and erosion. These were all rejected by the City. He said everyone in the area has access to the beach. He was told at the time he bought the property that he could have beach access. He explained that his next door neighbor and he are located between two existing seawalls. He has approval to have access to the beach. Stairs were built at the time the house was built to a point where they would meet the seawall if it was constructed.

Richard Nunis, speaking for his mother, June Sloan, had concerns about the variance being granted for beach access, and feared slide conditions in the slope.

Bill Beeler opposed the project because of possible slides on the bluff.

Mr. Polster, in rebuttal, said his client has the right to the same privileges enjoyed by others in having access the beach from his property. He pointed out that the stairs are not concrete, but railroad ties that are built to conform to the natural slope with decomposed granite landings. There are special circumstances applicable to the property. He has not been allowed to stabilize the slope with a the sea wall. He should at least have access to the beach like all of his neighbors.

Mr. McNaughton described the stairs and said that four steps were never proposed. The original design was for 14 steps to match those of Mrs. Sloan. Then someone came up with four, even though the city wanted 14 steps. They would like access to the beach in the same way that everyone else in the neighborhood enjoys.

Mr. Vail was ready to support the variance and design review based on like conditions enjoyed by others in the same vicinity and zone. If they have a right to go down to the beach, then the bluff top setback has to be crossed. Testimony taken without any evidence would support the variance based on topography and the fact that this is a very modest request and does not add significant weight to the bluff. He thought it was a reasonable request.

Mr. Goldstein agreed with Mr. Vail and did not feel it was fair to deprive this person of the rights enjoyed by others in the neighborhood. The applicant would have his vote.

Mr. Sabaroff said he would agree with what has been said by Messrs. Vail and Goldstein.

Mr. Chapman said he still had problems with this. The project was not to have new stairs to the beach, but to repair the existing stairs. Discussion among Boardmembers and clarification of the projet, and the findings with staff, some reevaluation occurred

Mr. Vail made a motion, seconded by Mr. Sabaroff to deny VA 6207 due to lack of justification, DR 95-068 and CD 95-33. The motion carried 3-2. Messrs. Goldstein and Oligino voted no.

MEMORANDUM

DATE: May 3, 1995
TO: Board of Adjustment/Design Review
FROM: Department of Community Development ^B
SUBJECT: Proposed Beach Access Stairway - 287 Crescent Bay Drive

EXHIBIT NO. 8
Application Number AS-LGB-95-162
LGB STAFF
REC.
California Coastal Commission

Chapter 25.50.004 of the Municipal Code provides, in part, that "no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply". The applicant requests a variance from this regulation in order to extend an existing stairway to the beach in Crescent Bay.

Although staff policy would normally not provide a recommendation for a request of this kind, certain extenuating circumstances that are unique to this application should be considered by the Board during their deliberations. These circumstance are:

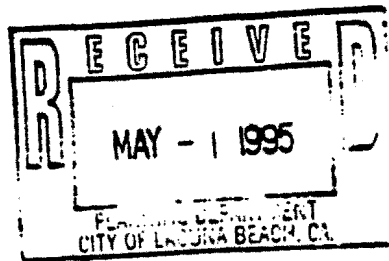
1. As stated in the applicant's letter to the Board, there were no regulations in effect at the time the original residence and top portion of the stairway were constructed that would have prohibited its construction.
2. Staff can verify that prior applications for the construction of a seawall in Crescent Bay made the downslope stairway transition to the beach an uncertainty and at least a proximate cause for delay of its completion.
3. The proposal is not necessarily "new" construction, but a continuation of a project initiated and originally conceived at a time when such activity did not require a variance.
4. The adjacent properties on either side have enjoyed long-standing similar private access stairs to the beach.
5. The proposed construction consists of railroad tie stairs fitted to the natural terrain, thereby minimizing visual and environmental effects.
6. An existing seawall located on the property to the south encroaches an additional 17 feet oceanward beyond the proposed stairway end.

It should also be noted that the proposed stairway as shown on the plans does not encroach below elevation +12, thereby avoiding one of the two points of variance described on the public hearing notice for the project.

Based on the foregoing considerations, staff recommends that the request be approved.

John J. McNaughton
287 Crescent Bay
Laguna Beach, CA 92651

EXHIBIT NO. 9
Application Number AS-LGB-95-162
McNaughton Letter
California Coastal Commission



May 1, 1995

RE: Laguna Beach Board of Adjustment/Design Review Board
Meeting May 4, 1995
Subject: Permission to complete steps to beach by John McNaughton

Dear Design Review Board Members:

While living in Newport Beach, my wife and I visited Laguna Beach on numerous occasions and fell in love with the city, its beautiful beaches and its people.

We decided to move there and build on a beautiful lot located at 287 Crescent Bay Drive. Before deciding to purchase the vacant lot, I visited City Hall and asked if there was anything wrong with the lot; can I build stairs to the beach?; and could I build a sea wall to protect the property from storms?

I was told:

The files show no major problems and it was buildable; in all likelihood, I could build stairs to the beach as nearly all waterfront homes do; neighbors in Crescent Bay have sea walls and you may apply for this protection.

When constructing my new home, I decided to build the stairs only halfway down the bluff, as I didn't know how it would tie into my planned sea wall.

In 1983 I hired an engineering firm "Peter & Peter" to complete plans for a sea wall. This was presented to the Design Review Board and was rejected.

Design Review Board Members

May 1, 1995

Page 2

In 1988, I joined with five other Crescent Bay owners to form the "Crescent Bay Shore Defense System." Our purpose was to construct a protection device for the six waterfront homes. Our engineers were "Tetrotec", and plans were submitted to the Design Review Board in 1990 and were approved, but later overturned by the City Council.

In 1991, my next-door-neighbor and I hired "Noble Consultants" to design and submit plans for a shore protection device for our two properties which are located between two existing sea walls. This was presented to the Design Review Board and was rejected.

After these three unsuccessful attempts to protect my property from sea erosion, I have decided to extend my stairs to the beach without tying into a shore protection device and ask your permission to do so.

I have enjoyed living in Laguna Beach and have attempted to help the community in many ways. I am active in our Neighborhood Watch Program in the Crescent Bay Area; am a member of the North Laguna Community Association; was a member of the board of the Art Institute of Southern California; and am presently an active board of directors member of the Laguna Playhouse.

Sincerely,



John J. McNaughton

JJM:ss

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

Filed: December 12, 1984
49th Day: January 30, 1985
180th Day: June 10, 1985
Staff Report: January 9, 1985
Meeting of: January 24, 1985
Staff: Gary Timm

STAFF REPORT: CONSENT CALENDAR

APPLICANT: Mr. & Mrs. Jack McNaughton

PERMIT NO.: 5-84-825

PROJECT LOCATION: 287 Crescent Bay Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: Construction of a single family dwelling with attached two car garage on a coastal bluff in Crescent Bay.

LOT AREA 15145 sq. ft.

ZONING R-1

BLDG. COVERAGE 2312 sq. ft.

PLAN DESIGNATION single family residential G.P., LUP draft, LUP adopt, LUP cert., LCP

PAVEMENT COVERAGE 2620 sq. ft.

PROJECT DENSITY 2.9 du/acre

LANDSCAPE COVERAGE 1316 sq. ft.

HEIGHT ABV. FIN. GRADE 20' 5"

LOCAL APPROVALS RECEIVED: Approval in Concept - City of Laguna Beach

COASTAL ISSUES: Access, geologic hazards, development

SUBSTANTIVE FILE DOCUMENTS: P-78-4260 (Nelson), 5-84-63 (Vanoff), 5-84-205 (Montapert), 5-84-588 (Nunes), Statewide Interpretive Guidelines.

SUMMARY Staff recommendation is approval with standard condition and special conditions regarding lateral access and geologic hazards.

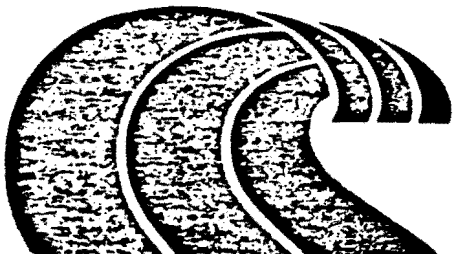


EXHIBIT NO.	10
Application Number	AS-LGB-95-162
	CDP
	5-84-825
California Coastal Commission	

STAFF RECOMMENDATION

Staff recommends the Commission adopt the following resolution:

Approval with Conditions

(c) The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

I. Standard Conditions: See Attachment X.

II. Special Conditions:

1. LATERAL ACCESS CONDITION - prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer.

Such easement shall include all lands seaward of the toe of the bluff (as determined by the Executive Director) to the mean high tide line. The form and content of the approved document shall include a topographical map prepared by a licensed civil engineer showing the location and elevation contours of the bluff with respect to the landward property line. The map shall be suitable for recording with other necessary documents.

Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Applicant's Assumption of Risk.

Prior to the issuance of a coastal permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for 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 the applicants understand that site is subject to extraordinary hazard from landslides, wave damage, and/or erosion and
- (b) The applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and
- (c) 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 landslides, wave damage and/or erosion.

3. Plans Conforming to Geologic Recommendation

Prior to issuance of coastal permit applicant shall submit a statement from the geologist/consultant responsible for preparation of the Soils and Geologic Investigation Report dated June 18, 1984 verifying that all recommendations proposed in the report have been incorporated into the final design of the proposed development and upon completion of construction the applicant shall submit the geologists verification stating that the recommendations have been carried out in the construction of the project.

4. Bluff Setback and Protection

Prior to issuance of permit applicant shall submit revised plans for the approval of the Executive Director which indicate that;

- (a) no development shall be located within 25 feet of the edge of the coastal bluff. A topographical map prepared by a licensed civil engineer or registered geologist shall define the bluff edge.

4. Bluff Setback and Protection (continued)

- (b) all landscaping shall consist primarily of native, drought resistant plants to minimize the need for irrigation and to protect the bluff face.
- (c) a drainage system will be provided which directs water away from the bluff to the street or through a pipe to the face of the bluff (provided that no alteration of bluff face is necessary).

5. Future Improvements

Any future additions or improvements to the property including private stairways, guest houses, shoreline protection devices, alterations on or down the bluff, grading or disturbance of native vegetation on the bluff top or face shall require a Coastal Development Permit from the Commission or its successor agency.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Project Description

The applicant proposes to construct a three-story single family dwelling on a vacant 15,000 sq. ft. coastal bluff lot in Crescent Bay. The lot is located in a developed residential area with both adjacent lots containing single family homes. The proposed project does not violate a string line drawn between the nearest adjacent corners of the adjacent structures. Two development permits for a single family dwelling have been approved by the Commission in the past (P-76-8048 & P-78-4260).

- B. Public Access. The Coastal Act contains strong policy provisions in Sections 30210, 30211 and 30212, requiring public access to and along the shore in new development projects. However, the requirement for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes .:. and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted, shall be provided subject to certain conditions.

Section 30210.

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

Section 30211.

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

Section 30212 of the Coastal Act contains policy provisions regarding the location and type of public access to be provided.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

In addition to the above provisions of the Coastal Act Section 30214(a) addresses the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and re-pass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Vertical access to the beach currently exists in Crescent Bay by means of two dedicated accessways with walkways and stairways leading down to the beach. Lateral access also exists along the beach as a result of past permit approval conditions established by the Commission or as a result of deed restrictions placed on the approval of the original tract map by the city.

In 1979, the Commission began work on the Interpretive Guidelines for public access in order to provide a comprehensive review of the policies developed in permits in the previous 24 years. These Guidelines were and are intended to provide the public, including permit applicants, with a general description of how the Coastal Act has been applied in previous cases and indicate the general approach the Commission would use in future actions. They are not regulations, do not supercede the statute and need not be followed in any particular case.

The major question presented in this case is how much access is appropriate given the circumstances. The question of the appropriate width and description of lateral accessways was one of the more important issues addressed in the Guidelines.

The Coastal Act's basic policy is that maximum access must be provided in new development projects, in a time, place and manner responsive to the facts and circumstances outlined in Section 30214. The Commission, through a long line of permit decisions and in the Guidelines, has developed a policy approach which implements these requirements. Although each permit is reviewed on its own merits, many cases contain similar factual circumstances. The Commission has attempted to provide a uniform and consistent policy approach which protects both private and public interests.

In cases where single family residential development is proposed, the Commission noted two basic circumstances: (1) development on property topographically indistinct from the sandy beach, and, (2) development above the beach on a bluff, or behind another significant natural boundary (e.g. major terrestrial vegetation). Most of the applications to build on ocean front property fall into the first category. Those on the bluff, or behind a natural feature were required to provide access to the toe of the bluff, or to the natural feature, or to an existing seawall.

In developing the Guidelines, the Commission was faced with the mandate to ensure maximum access, but also with the serious concern of landowners that public use of beaches could seriously interfere with enjoyment of an adjacent residence. The Commission recognized the tendency of the vast majority of beach visitors to stay near the shoreline where residences exist on the beach, but to use the entire beach to the toe of the bluff or other physical feature where residential structures are not present. This frequently observed behavior is common to beaches up and down the state, and represents a pattern of historic use which may have ripened into public prescriptive rights in many areas.

The requirement of public access from the mean high tideline to the toe of the coastal bluff has been applied to coastal permits statewide. Early regional permit decisions, appeals to the state commission and recent Coastal Commission decisions have been conditioned on the developers offer to dedicate an easement for public access and public recreation.

The Guidelines also state:

Describing an Accessway From a Fixed Inland Point. The most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tideline extending seaward to the property line (mean high tideline). When this description is used, the area of dry sand beach may vary from wide areas of sandy beach available for public uses during the low tide conditions, to very narrow stretches of sandy beach - resulting in little area for public use during high tide or storms. In using a fixed inland point the Commission must determine that the public retains the benefit of maximum public access to the shoreline throughout the majority of the year. In Crescent Bay the daily mean high tideland may extend landward to the base of the bluff at various times of the year.

In prior actions the Commission has used the fixed inland point to describe accessways in most instances involving bluff top development. In 5-84-63 (Vanoff) the Commission approved a bluff top residence in Malibu with a condition to provide lateral access from the toe of the bluff to the mean high tideline.

Generally, where development has occurred on bluffs, the Commission has overwhelmingly determined that the maximum public access that would be compatible with the privacy needs of property owners is access to the toe of the coastal bluff.

The proposed development contributes to a continuing cumulative burden on public access through the incremental intensification of uses along the shoreline in Laguna Beach. As previously mentioned, vertical access is provided to Crescent Bay and several properties provide lateral access. Further, the beach has historically been used by the public to the toe of the bluff. Therefore, the Commission finds that the proposed project does create a burden on public access. Only as conditioned, to provide maximum public access, is the proposed project consistent with Chapter 3 of the Coastal Act.

C. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Many oceanfront parcels such as the subject property are susceptible to flooding and wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars.

Section 30001.5 of the Coastal Act States, in part, that one of the basic goals of the state is to:

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

The proposed development is located on a coastal bluff which is subject to wave action and erosion. In addition past geology reports prepared for the subject site and for the property immediately east of the site indicate that the proposed project site is part of an ancient landslide. Erosion along the toe of the bluff could adversely impact the stability of the bluff in the future according to the geology report for the adjacent property (5-84-588 Nunes).

The Coastal Act recognizes that new development may involve the taking of some risk. These policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development, and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

Because the risk of harm cannot be completely eliminated, the Commission is requiring the applicants to waive any claim of liability on the part of the Commission or of any public agency for damage to life or property which may occur as a result of the permitted development. The waiver, or applicant assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the sites, and which may adversely affect the stability or safety of the proposed development.

The applicants may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits the development should be held liable for the applicant's decision to develop. Therefore, the applicants are required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop.

The Commission finds that this condition is consistent with, and necessary to carry out, one of the State's basic goals for the coastal zone, i.e., consideration of the economic needs of the people of the state, and the Coastal Act policy which requires that new development minimize risks to life and property in areas of high flood and erosion hazard. Only as conditioned can the Commission find the projects consistent with Sections 30253 and 30001.5 of the Coastal Act.

D. Bluff top Development

Section 30253 of the 1976 Coastal Act provides that "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard; (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs". Section 30251 provides that: "Permitted development shall be sited and designed...to minimize the alteration of natural landforms..."

The Statewide Interpretive Guidelines in discussing geologic stability of bluff top development state:

To meet the requirements of the act, bluff and cliff developments must be sited and designed to assure stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms. Bluff and cliff developments (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, waste water disposal and other activities and facilities accompanying such development) must not be allowed to create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.

As previously mentioned, there is geologic evidence of an ancient landslide existing on a portion of the subject site. In addition, several retaining walls and other protective devices have been built on the beach to protect dwellings built out to the edge of the bluff. Most of these structures are potential violations of the Coastal Act and are under investigation. Further, there is evidence available which suggests that these protective devices are contributing to erosion along the toe of the bluff.

The Commission has routinely applied a 25 ft. bluff top setback to both protect the fragile bluff edge from destruction during construction of the proposed dwelling as well as protect the structure from the hazards created by erosion of the bluff edge. Setting this proposed structure 25 ft. back from the bluff edge should eliminate the potential for problems related to slumping and erosion of the bluff edge for the expected life of this proposed structure. In addition, a prohibition of structures within this 25 ft. bluff setback and down the bluff would serve to protect the integrity of the bluff and structures built on the lot.

Additional measures exist which tend to reduce the impact of wave damage, erosion, landslides and development on coastal bluffs in addition to building further back from the bluff edge. These measures include planting or protecting native, drought resistant plants on the bluff top and face and directing drainage away from the bluff face:

The Commission therefore finds that the condition requiring a 25 ft. setback and other bluff top protective measures are consistent with Section 30253 of the Coastal Act which requires that new development minimize risks due to geologic hazards and be sited to eliminate the need to construct protective devices that would alter bluffs or cliffs.

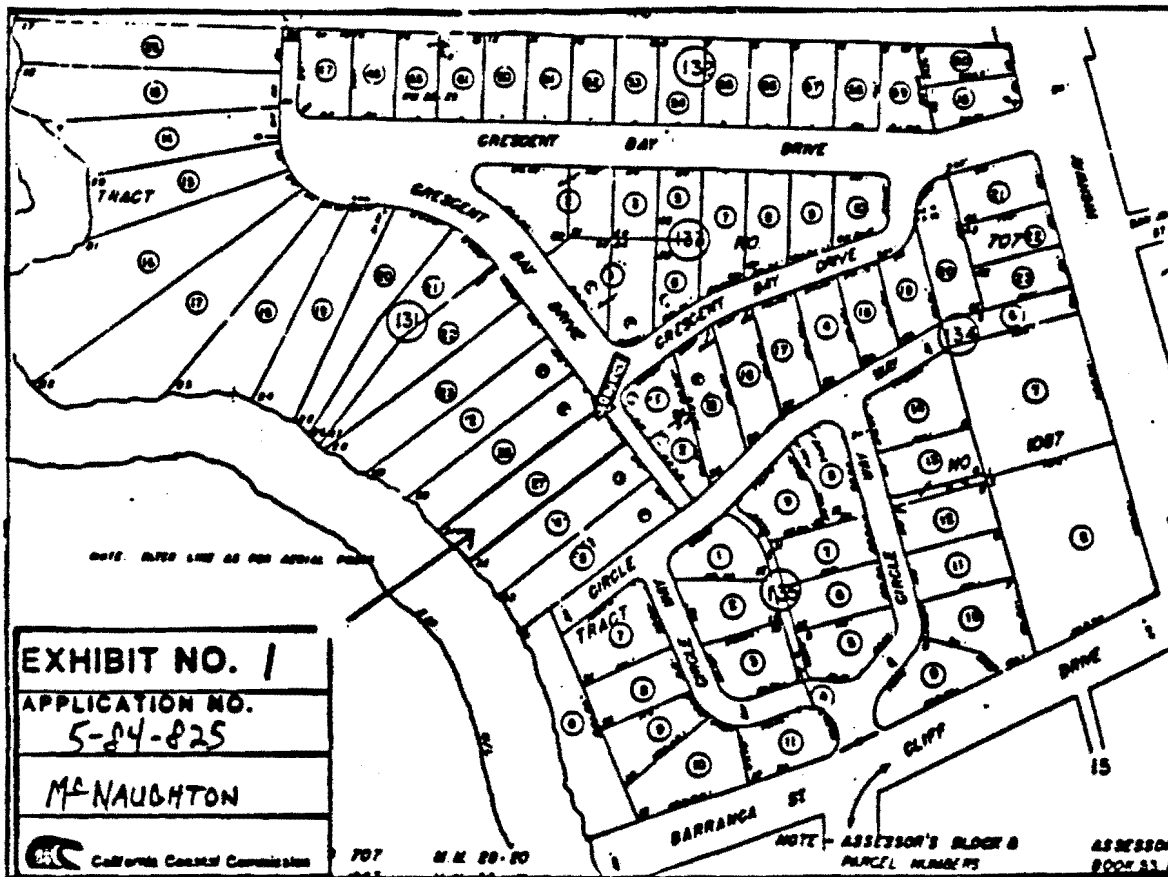
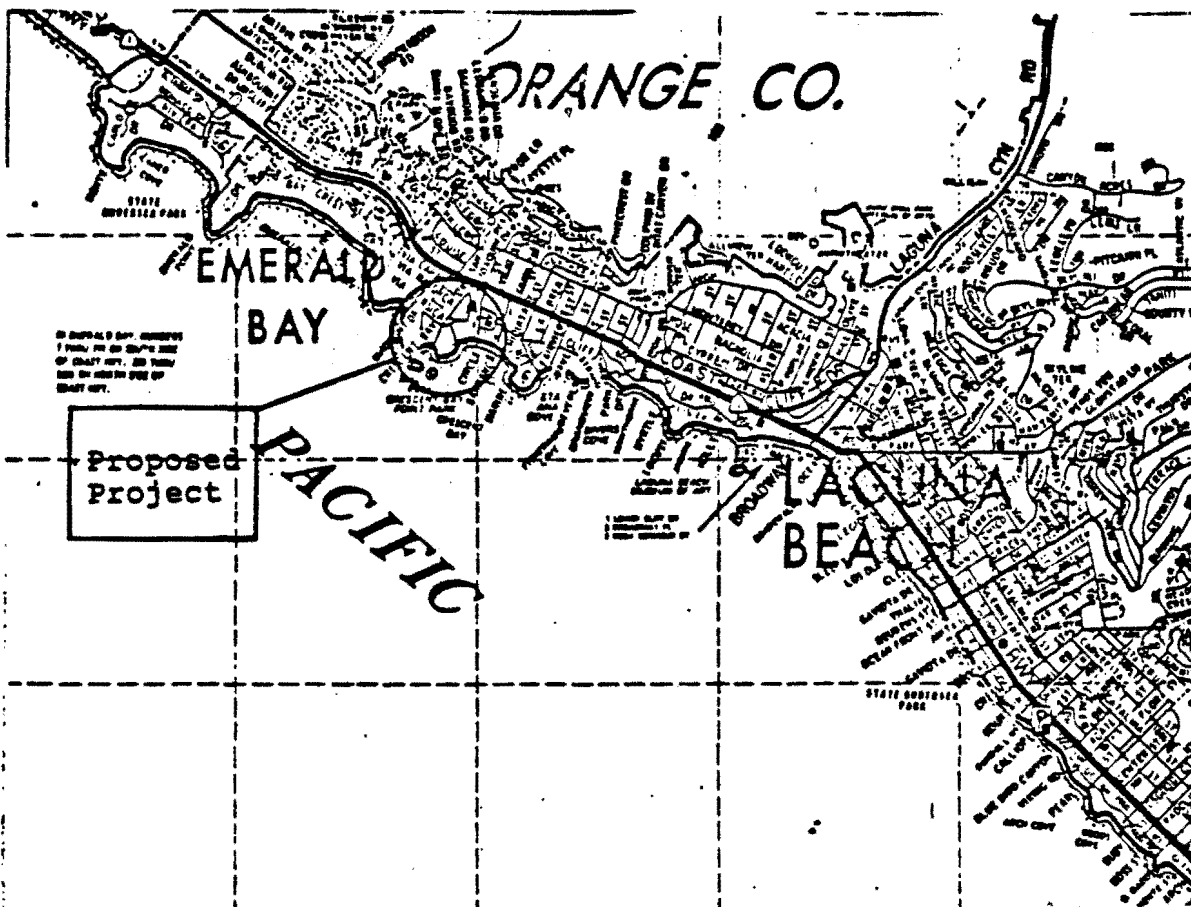
E. Local Coastal Program

Section 30604(a) of the Coastal Act states, in part:

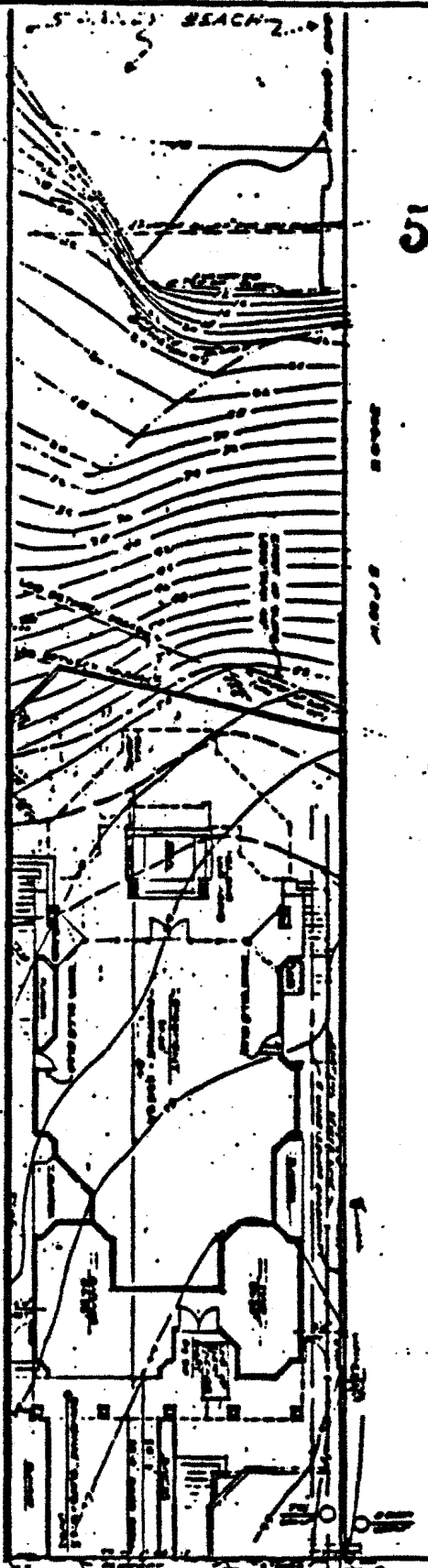
Section 30604

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach is resubmitting the Land Use Plan portion of its LCP to the Commission in early 1985. The proposed development as conditions is consistent with the policies of the submitted LUP and, therefore, will not prejudice the city's ability to prepare a Local Coastal Program consistent with Chapter 3 of the Coastal Act.



5-84-825



PLOT PLAN

FOR THE CITY OF JACKSONVILLE
 COUNTY OF DUVAL
 STATE OF FLORIDA

EXHIBIT NO. 2
APPLICATION NO.
5-84-825

ARC
 Custom Case Construction

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(713) 590-5071

TH-11.6



FILED: 5/ 6/87
49th DAY: 6/16/87
180th DAY: 10/25/87
STAFF: G. Timm:do
STAFF REPORT: 8/03/87
HEARING DATE: 8/25-28/87

AMENDMENT
STAFF REPORT AND RECOMMENDATION

Application: 5-84-825A

Applicant: Jack McNaughton
2700 Harbor View
Corona Del Mar, CA

Description: Amend permit to construct a single family dwelling on a coastal bluff in order to add a swimming pool to the seaward portion of the site.

Site: 287 Crescent Bay Dr., Laguna Beach, Orange County.

SUMMARY:

Staff recommends approval of the proposed amendment with a Special Condition which requires the applicant to assume liability from geologic hazards associated with the proposed development.

STAFF RECOMMENDATION

Staff recommends the Commission adopt the following resolution:

I. Approval with conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effect on the coastal environment within the meaning of the California Environmental Quality Act.

EXHIBIT NO. 11

Application Number

AS-LGB-95-162

CDP

5-84-825A

California Coastal Commission

211-117

II. STANDARD CONDITIONS: See Attachment X.

III. SPECIAL CONDITIONS:

This permit is subject to the following Special Condition:

1. Assumption of Risk.

Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landslides, wave damage and/or shoreline erosion, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and History.

The proposed amendment is to legalize the construction of a swimming pool as an accessory use to a single family dwelling located on a coastal blufftop lot in Crescent bay. The development does not violate a stringline drawn between the nearest adjacent corners of adjacent structures.

The Commission previously approved a permit to construct a single family dwelling on the site with several Special Conditions. The Special Conditions included a lateral access easement, the applicant's assumption of risk, a bluff setback and landscaping requirement and a future improvements permit requirement.

B. Shoreline Development.

As a means of controlling seaward encroachment of residential development on a beach or blufftop in order to prevent adverse impacts on public access or coastal views as required by the Coastal Act, the Commission has applied the "stringline" policy to minimize or limit the seaward extension of buildout in past permit actions (Sections 30210, 30211, 30212, and 30251 - adopted by reference). As applied to beach or blufftop development, the stringline limits construction or extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks (including pools) to a similar line drawn between the nearest corners of the adjacent decks. In

addition, the Commission has approved a policy to require either a 25-foot setback or a stringline measurement in the Certified Laguna Beach Land Use Plan. Since the development site is located in an existing developed area and the structure is infilling, the applicable means of determining the setback in this situation is the stringline method.

As mentioned, the development does not extend seaward of a stringline drawn between the nearest adjacent structures; therefore, the Commission finds that the development is consistent with the shoreline development policies of the Coastal Act and Certified Land Use Plan.

C. Hazards.

Section 30253 of the Coastal Act states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Many oceanfront parcels such as the subject property are susceptible to wave damage such as severe erosion from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low interest loans and other benefits) in the millions of dollars in Los Angeles and Orange Counties alone. Winter storms in 1982-83 severely damaged many existing residential structures, decks, bulkheads, and piers.

As indicated in the original permit staff report, the southeasterly portion of the bluff is underlain by landslide deposits which, when subjected to erosion from wave action at the toe of the slope, could lead to reactivation of the landslide.

The Coastal Act recognizes that new development may involve the taking of some risk. These policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development, and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

Because the risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The waiver, or

applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

The Commission finds that this condition is consistent with and necessary to carry out, one of the State's basic goals for the Coastal Zone; i.e., consideration of the economic needs of the People of the State, and the Coastal Act policy which requires that new development minimize risks to life and property in areas of high flood and erosion hazards. Only as conditioned can the Commission find the project consistent with Section 30253 of the Coastal Act.

D. Local Coastal Program.

The Commission certified the Land Use Plan to the Laguna Beach LCP in March, 1986. The Commission finds that the proposed development, as conditioned, is consistent with the policies of the Certified LUP and will not prejudice the ability of the City to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

E. Violation.

Although development has taken place prior to submission of this permit amendment, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

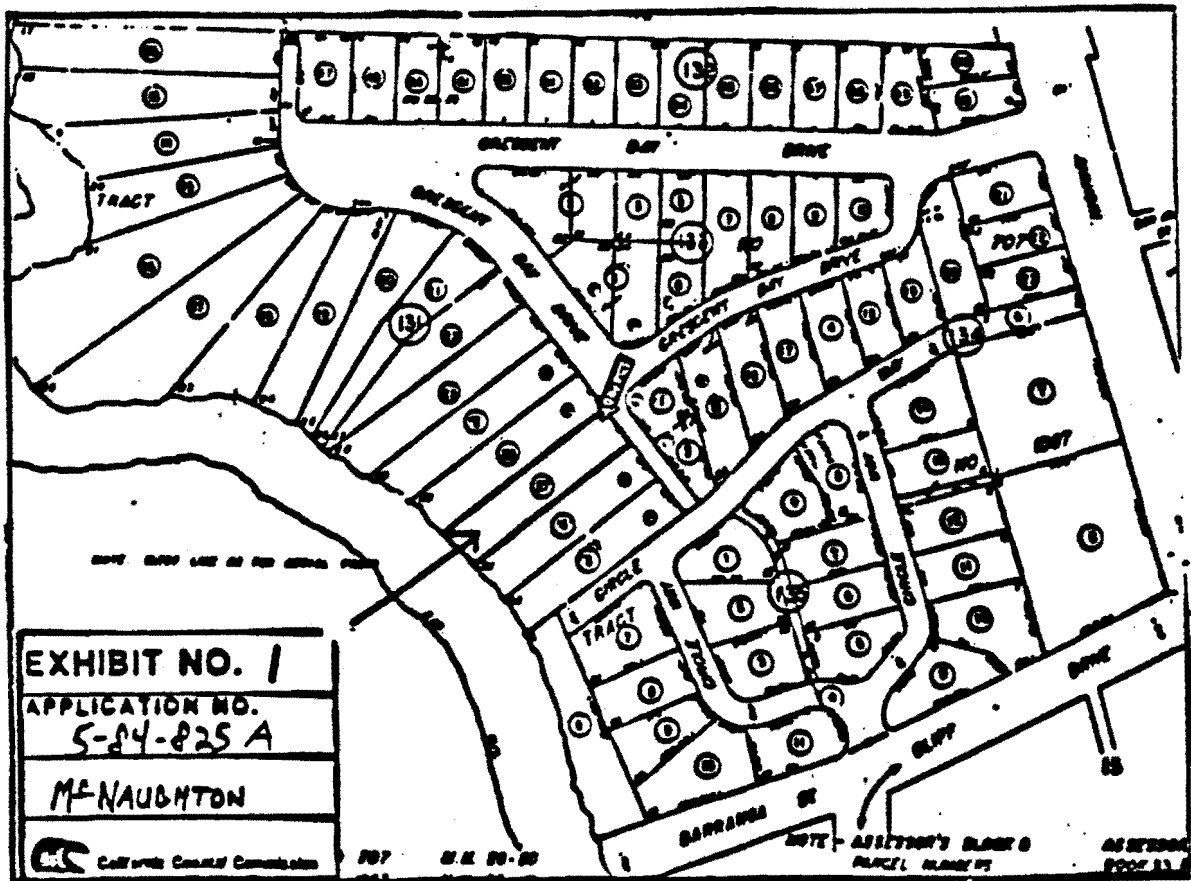
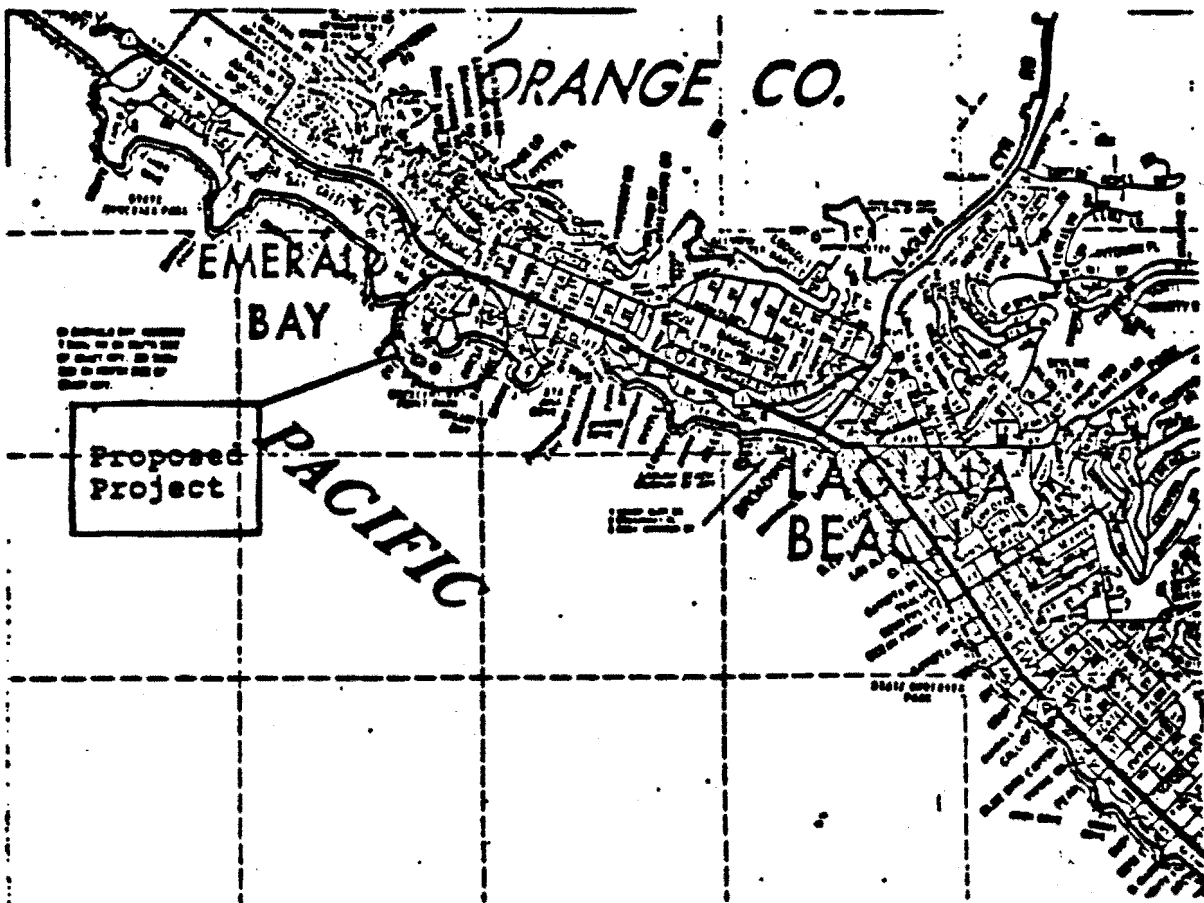
Attachment X

To: Permit Applicants
From: California Coastal Commission
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

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



274 CRENSHAW BAY DR.
MILPITAS, NEAR PARK
PARKING AREA OFFICE.

06.01
S 10 29 W

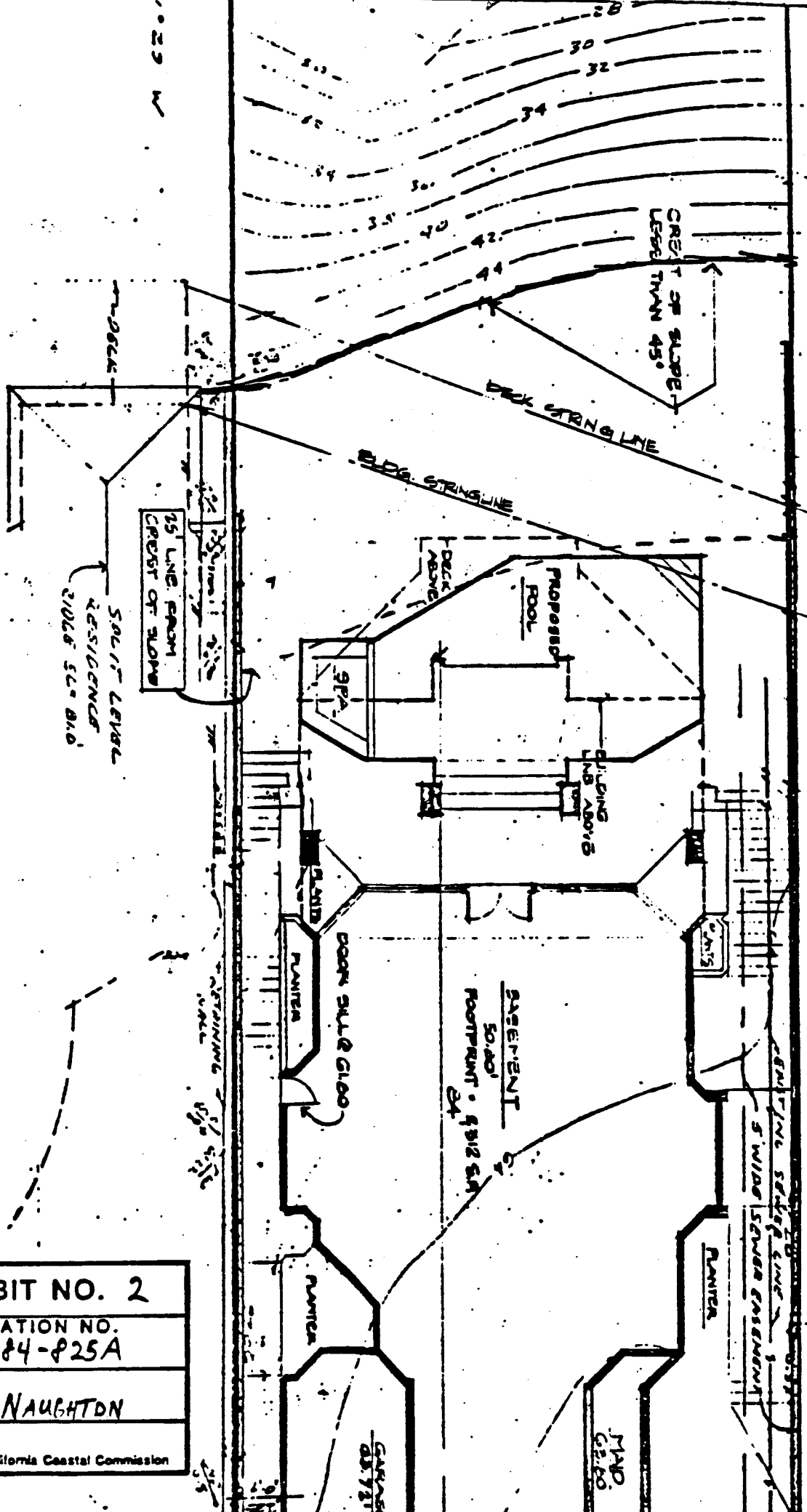


EXHIBIT NO. 2
APPLICATION NO. 5-84-825A
M. NAUGHTON
California Coastal Commission



EXHIBIT NO. 3

APPLICATION NO.

5-84-825A

MC NAUGHTON

PROPOSED POOL LOCATION

SITE
287 CRESCENT BAY

1367 CIRCLE WAY

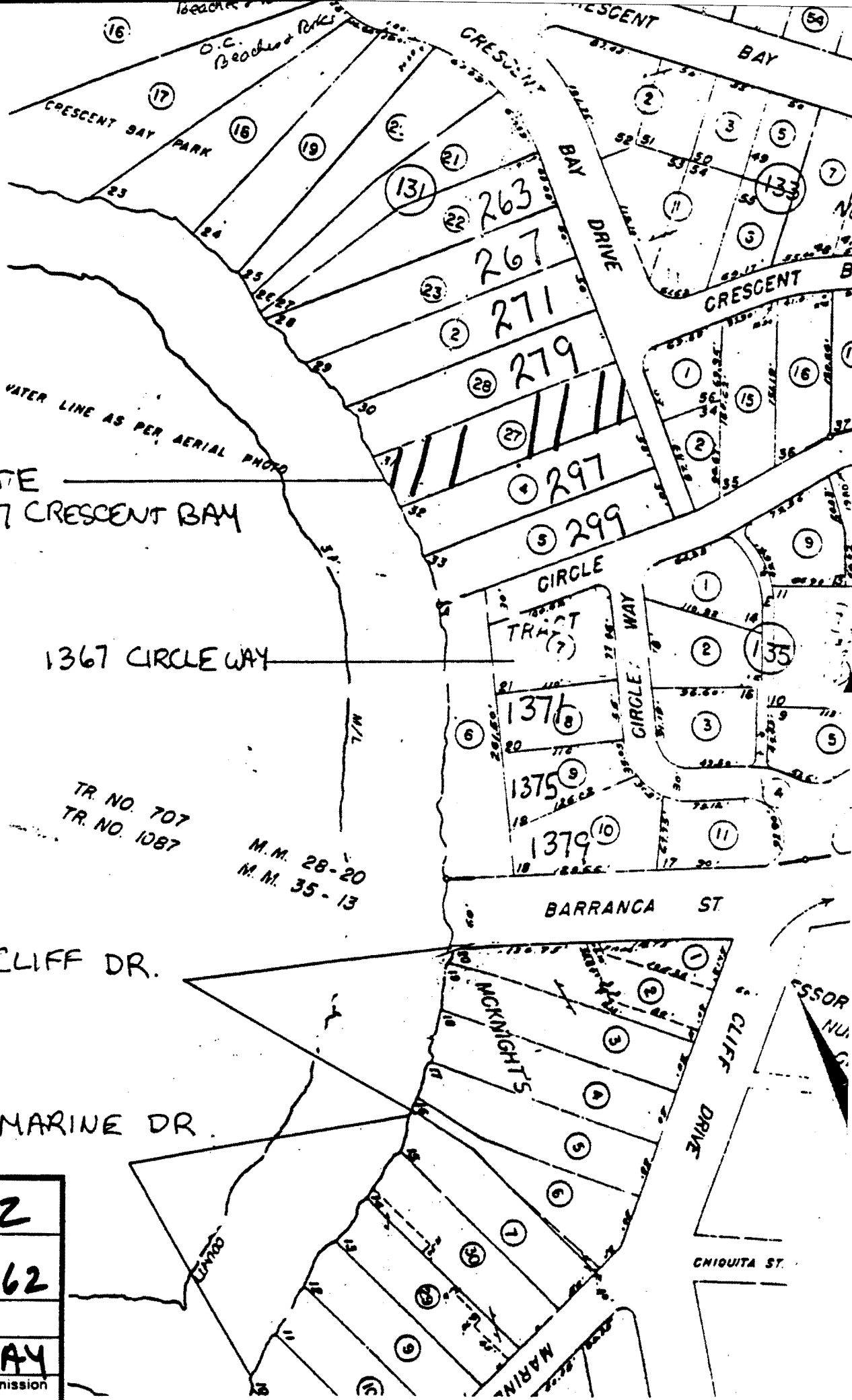
TR. NO. 707
TR. NO. 1087

M.M. 28-20
M.M. 35-13

CLIFF DR.

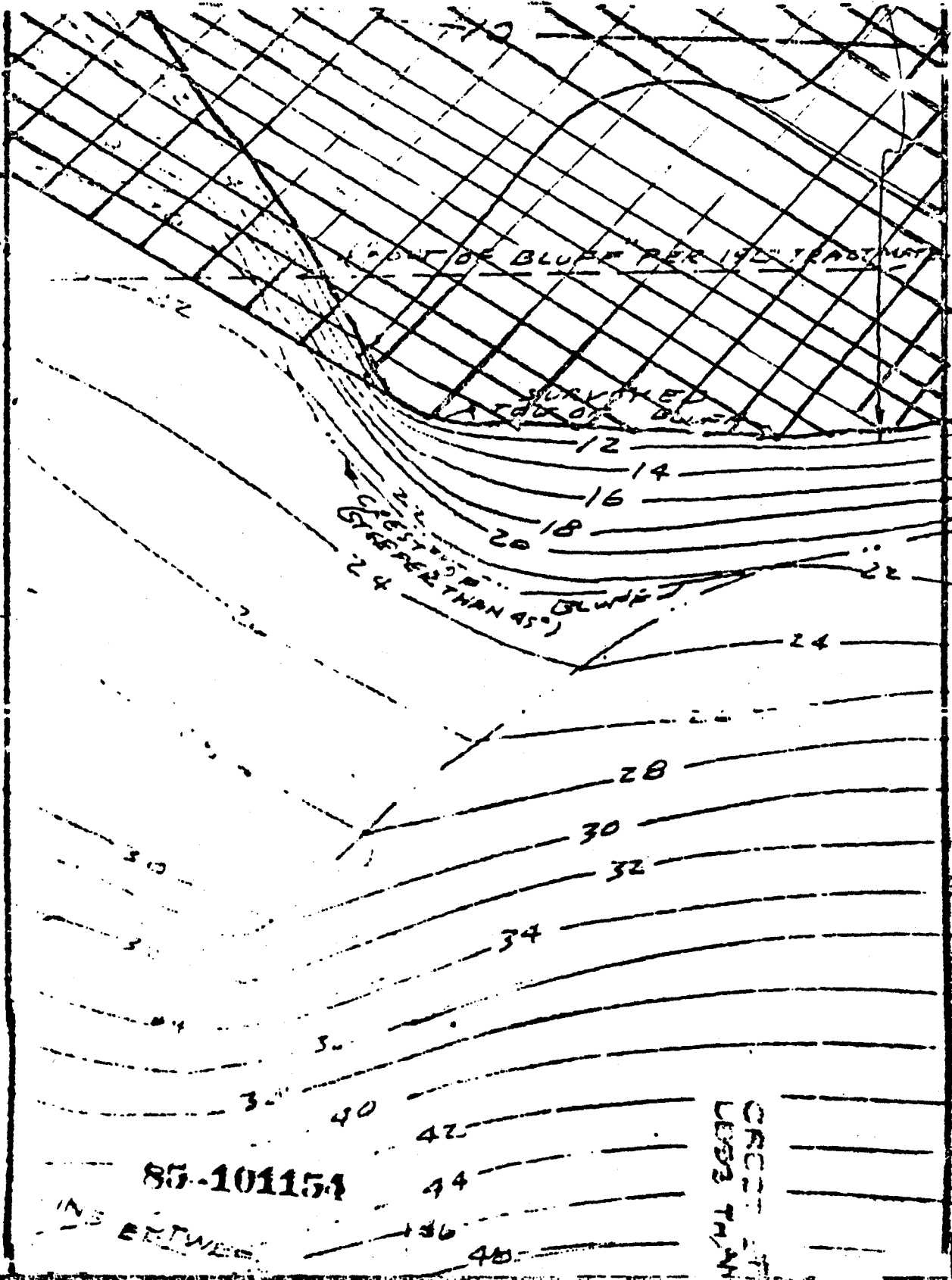
MARINE DR.

EXHIBIT NO.	12
Application Number	AS-LGB-95-162
MAP of	
CRESCENT BAY	
California Coastal Commission	



274' ←

3020 F 51029 W



262' ←

85-101154

LINE BETWEEN

CROSS SECTION
LESS THAN

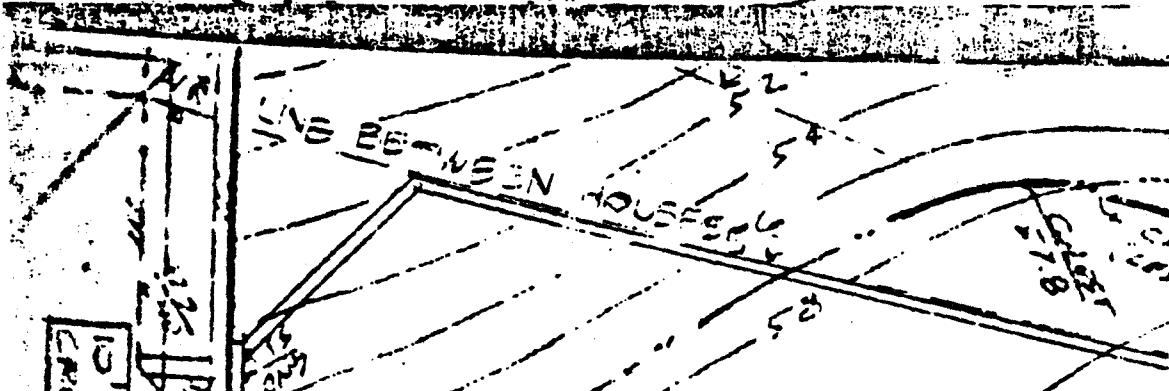


EXHIBIT NO.	13
Application Number	AS-LGO-95-162
LATERAL EASEMENT	
California Coastal Commission	

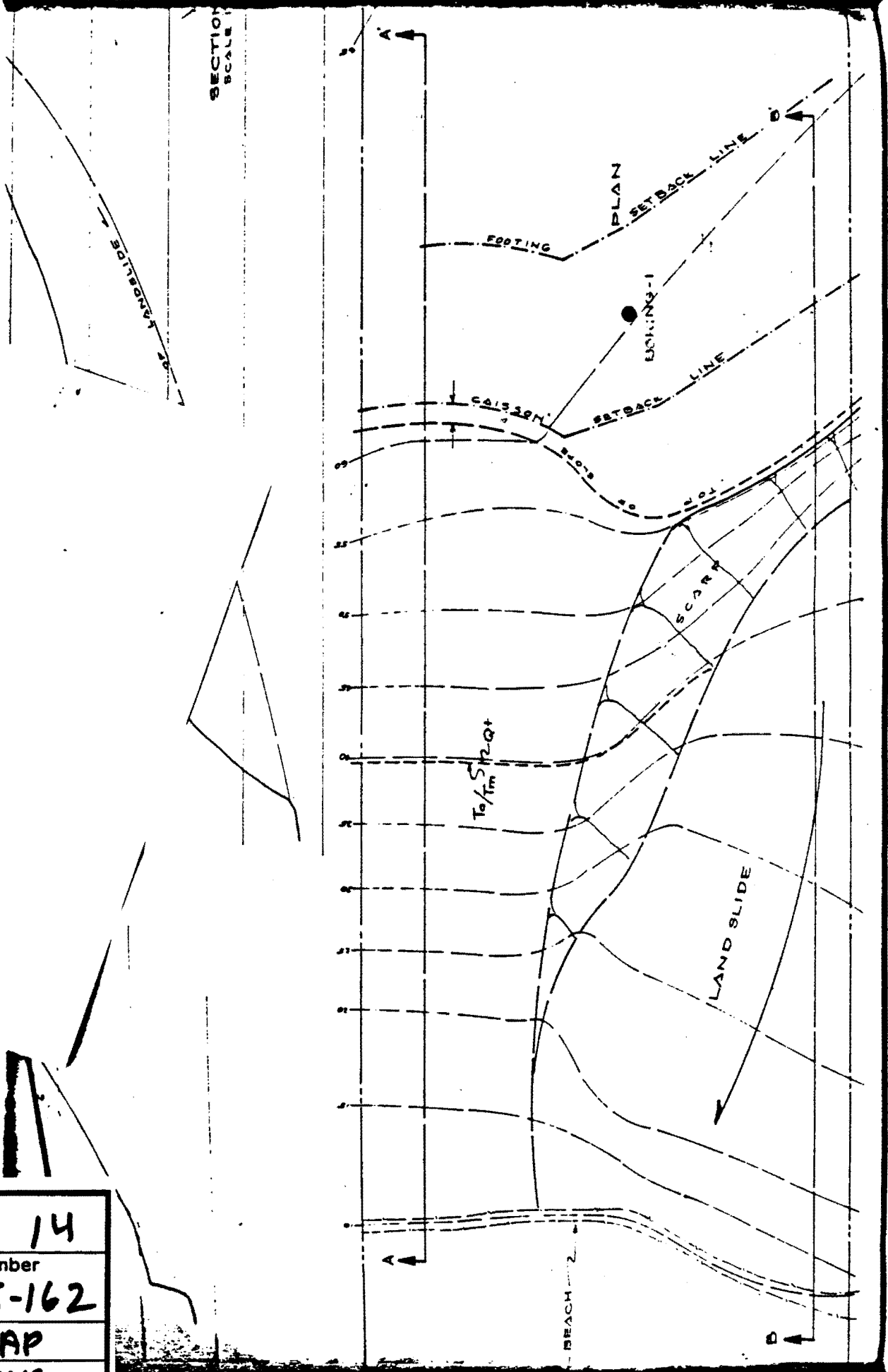


EXHIBIT NO.	14
Application Number	AS-LGB-95-162
GEO MAP	
287 CRESCENT	
California Coastal Commission	

N. 01° 29' 00" E.

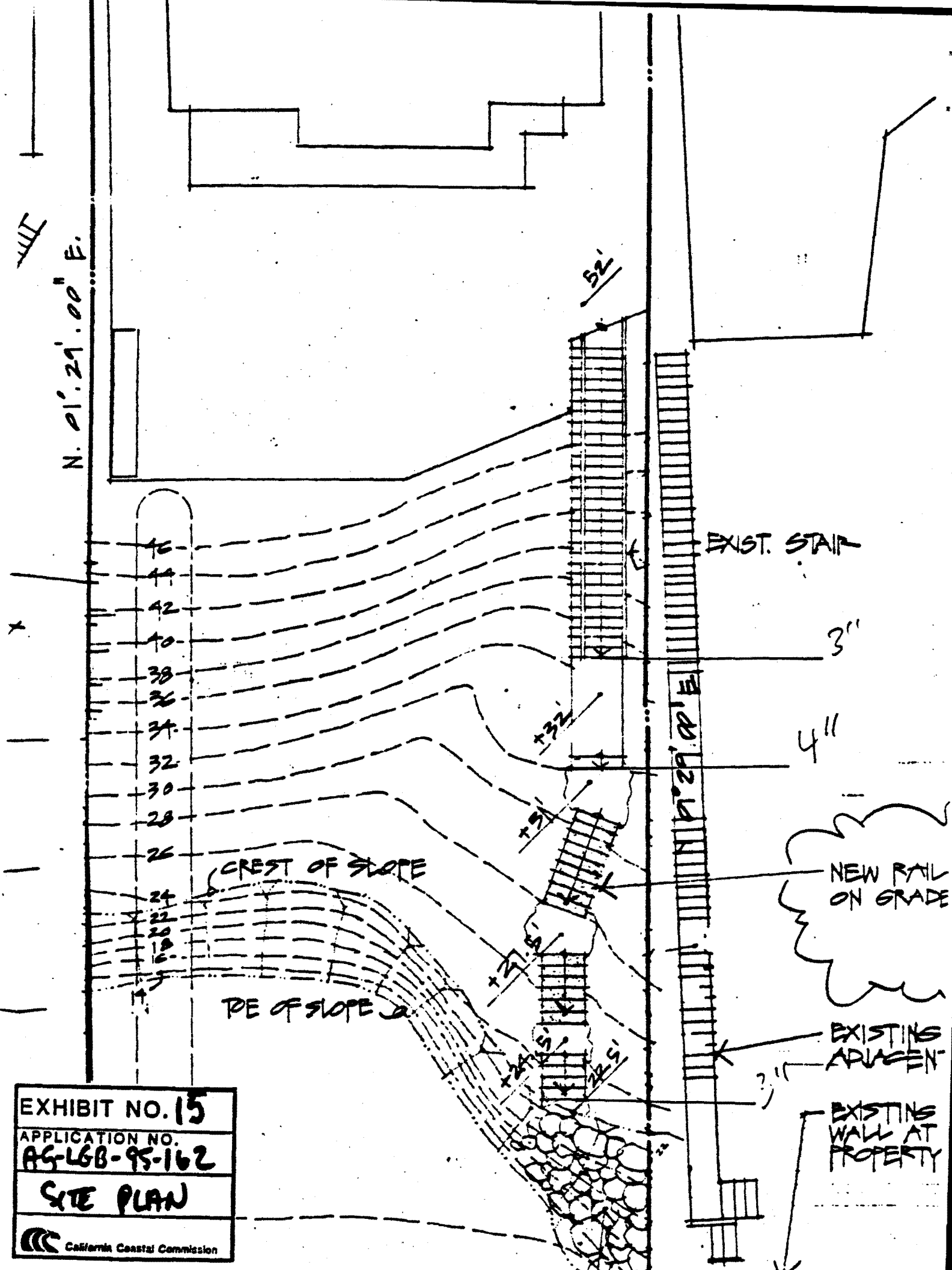
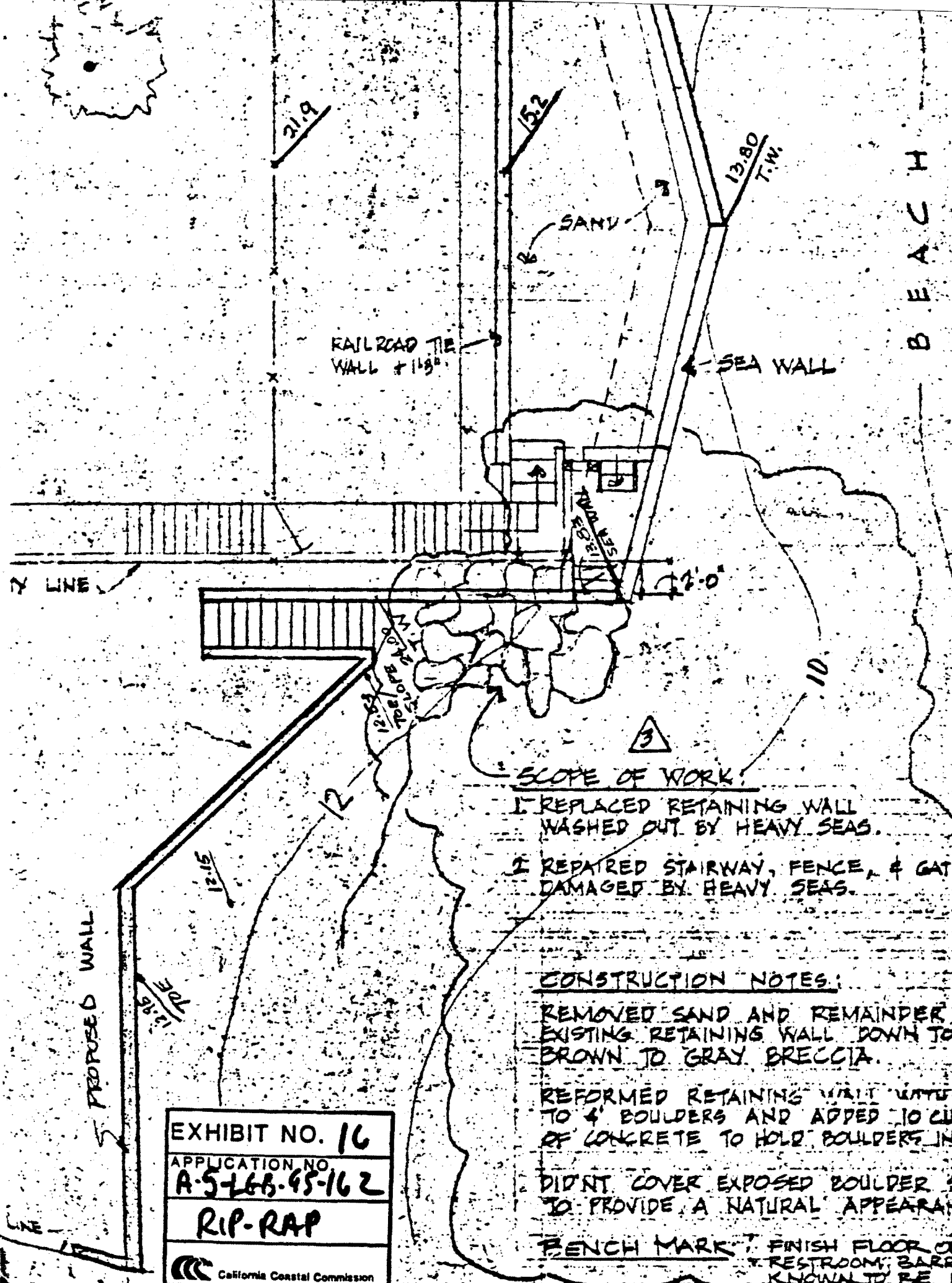


EXHIBIT NO. 15
APPLICATION NO.
AG-LGB-95-162
SITE PLAN

California Coastal Commission

B E A C H



SCOPE OF WORK:

- 1- REPLACED RETAINING WALL WASHED OUT BY HEAVY SEAS.
- 2- REPAIRED STAIRWAY, FENCE, & GATE DAMAGED BY HEAVY SEAS.

CONSTRUCTION NOTES:

REMOVED SAND AND REMAINDER EXISTING RETAINING WALL DOWN TO BROWN TO GRAY BRECCIA.

REFORMED RETAINING WALL WITH TO 4' BOULDERS AND ADDED 10 CU. OF CONCRETE TO HOLD BOULDERS IN.

DIDNT COVER EXPOSED BOULDER TO PROVIDE A NATURAL APPEARAN

BENCH MARK: FINISH FLOOR OF RESTROOM BARR KNOWN TO BE

EXHIBIT NO. 16
APPLICATION NO. A-5-L6B-95-162
RIP-RAP
California Coastal Commission



APPLICATION FOR BUILDING PERMIT
DEPARTMENT OF COMMUNITY DEVELOPMENT
CITY OF LAGUNA BEACH, CA. 92651

688 FOREST AVENUE
(714) 497-8716

APPLICANT TO FILL IN INFORMATION AND DECLARATIONS WITHIN RED LINES USE BALLPOINT PEN
PRINT A VATION

DESCRIPTION OF WORK
REMOVE EXISTING STAIRS (CONCRETE IN GRADE)

Francis
5/10/94

ASSESSOR PARCEL NO **053-131-27**
ADDRESS **287 CREST BAY DRIVE**
LOT **31** BLOCK **0000** SUBDIVISION **00000** UNIT NO

VALUATION **42,000.00**
PLAN CHECK NO
SPEC REQ REQ'D FOR
 CONCRETE
 STRUCT STEEL
 OTHER
DATE **5/10/94**

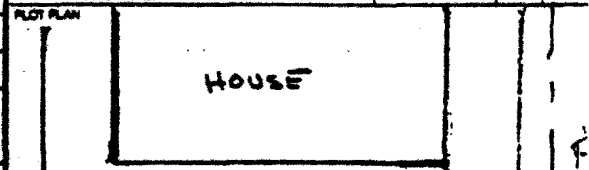
EXISTING USE **STAIRS** PROPOSED USE **STAIRS**
NAME **John J. McNaughton** TEL NO
ADDRESS **287 CREST BAY DRIVE LA 92651** ZIP CODE

CONDITION OF SOIL OF PROJECT
 UNDEVELOPED
 COMPACTED FILL
 LOOSE FILL
TYPE CONST
PERMIT NO. **94-450**

CONTRACTOR
NAME
ADDRESS
CITY
STATE
DATE
LIC NO
LC CLASS
CITY LIC NO

LAND AREA **80 FT** CARRPORT
EXIST BLDG **80 FT** /GARAGE
NEW CONSTRUCTION
GARAGE **80 FT**
MAXIMUM HEIGHT IN FEET
PARKING SPACES
REAR YARD
DECK **80 FT**

OWNER
NAME
ADDRESS
CITY
STATE
DATE
LIC NO
LC CLASS
CITY LIC NO



CONTRACTOR'S DECLARATION: I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
CONTRACTOR'S LICENSE AGENCY: I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec 3087, C.A.C.)
LENDER'S NAME
LENDER'S ADDRESS
OWNER-BUILDER DECLARATION: I hereby affirm that I am exempt from the Contractor's License Law for the following reason:
 I am owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale.
 I am owner of the property, am exclusively contracting with licensed contractors to construct the project.
 I am exempt under Sec. 3087 of the Business and Professions Code.
DATE **5/10/94**

SEE DETAIL 2 FOR TREADS AND STAIRS
Landing
4'-0"
2'-0"

WORKER'S COMPENSATION DECLARATION: I hereby affirm that I have a certificate of contract to participate in a certificate of Workers Compensation Insurance or a certified copy thereof filed with the Building Dept. (Sec. 3080, C.A.C.)
INSURANCE COMPANY
INSURANCE DATE
AGENT'S SIGNATURE
CERTIFICATE OF EXEMPTION FROM WORKER'S COMPENSATION INSURANCE: I certify that in the performance of the work for which this permit is issued I shall not employ any person in any manner as an owner or contractor as defined in the California Labor Code.
OWNER'S SIGNATURE

WILL THE APPLICANT OR FUTURE BUILDING DEPARTMENT HANDLE A HAZARDOUS MATERIAL, OR A MIXTURE CONTAINING A HAZARDOUS MATERIAL, SOIL, TO DEEPER THAN THE AMOUNTS SPECIFIED ON THE HAZARDOUS MATERIALS INFORMATION SHEET?
WILL THE INTENDED USE OF THE BUILDING BY THE APPLICANT OR FUTURE BUILDING DEPARTMENT BE IN THE DISTRICT OF A SCHOOL?
I HAVE READ THE HAZARDOUS MATERIAL INFORMATION SHEET AND THE SCABED REPORT AND I CERTIFY THAT I UNDERSTAND THE REQUIREMENTS UNDER THE STATE OF CALIFORNIA HEALTH & SAFETY CODE, SECTION 25260 AND 25261 AND I AM COORDINATING HAZARDOUS MATERIALS REPORTING.
OWNER OR AUTHORIZED AGENT

CONTRACTOR/OWNER & BUILDER
NAME **John J. McNaughton**
ADDRESS **287 Crest Bay Drive LA 92651**
DATE **5/10/94**
 CONTRACTOR OWNER AGENT FOR CONTRACTOR AGENT FOR OWNER

AN OSHA PERMIT IS REQUIRED FOR EXCAVATIONS OVER 4'-0" DEEP AND DEMOLITION OR CONSTRUCTION OF STRUCTURES OVER 3 STORIES IN HEIGHT (714) 888-0148

HAZARDOUS FIRE AREA	YES	NO
GEOTECHNICAL REPORT REQUIRED	YES	NO
UNDERGROUND - UTILITIES REQUIRED	YES	NO
HEALTH DEPARTMENT REQUIRED	YES	NO
PUBLIC WORKS PERMIT REQUIRED	YES	NO

QTY.	PLUMBING PERMIT	AMT.	QTY.	MECHANICAL PERMIT	AMT.
	EACH FUTURE			METAL FURN. DUCTS UP TO 100,000 BTU	
	EACH BUILDING SEWER			OVER 100,000 BTU	
	EACH WATER HEAT. AND/OR VENT			WATER/COMPRESSOR UP TO 3 HP	
	EACH GAS SYSTEM 1 TO 4 OUTLETS			WATER/COMPRESSOR 0-10 HP	
	EACH GAS SYSTEM 4 OR MORE			VENT PAN SHIELD DUCT	
	EACH METAL. ALTER REPAIR WATER PIPE			EXTEND DUCTWORK	
	WASH SPRINKLER SYSTEM/IRIGAN SPRINKER			MECH EXHAUST - HOOD/DUCTS	
	REBRACE			RELOCATION OF SA FURNACE HEATER	
	REBRACE			REBRACE	
TOTAL PLUMBING			TOTAL MECHANICAL		

No 5X FES FEE SUMMARY

PLAN CHECK	
BUILDING PERMIT	81.00
BMP FN	
TOTAL	

EXHIBIT NO. 17
Application Number
AS-LB-B-95-162
1 of 3
California Coastal Commission

QTY.	ELECTRICAL PERMIT	AMT.	DR/VA APPROVED	DATE
	FUTURE			
	OUTLETS		LD	5-10-94
	SURNAME			
	SERVICE METER			
	TEMPORARY POWER			
	HABITABLE AREA	80 FT		
	GARAGE AREA	80 FT		
	REBRACE			
TOTAL ELECTRICAL				

APPROVED FOR ISSUANCE
John Gustaf 5/10/94

TOTAL FEES PAYABLE TO CITY OF LAGUNA BEACH **81.50**
PRIOR TO FINAL INSPECTION A CASHIER'S CHECK CERTIFIED CHECK OR MONEY ORDER MUST BE DEPOSITED WITH THE CITY IN THE AMOUNT OF

INSPECTION RECORD CARD

COMMUNITY DEVELOPMENT, BUILDING DIVISION
City of Laguna Beach 497-3311

Job Address _____

BUILDING PERMIT NO. _____

ELECTRIC PERMIT NO. _____

PLUMBING PERMIT NO. _____

MECHANICAL PERMIT NO. _____

OTHER PERMIT NO. _____

Owner _____

Contractor _____

DATE 10/18/94

The following inspections must be called for by the permit contractor (24 hrs. in advance). No electrical wiring, plumbing heating, foundations, caissons, groud or structural members shall be covered until inspections are made by city inspection.

BUILDING	DATE	ELECTRICAL	DATE	MECHANICAL	DATE
EXTERIORS		TEMPORARY POWER		REFRIGERATION	
FOUNDATIONS-FORMS		UNDERGROUND		AIR-COND.	
FOOTINGS				HOOD	
		PARTIAL ROUGH		DUCTS/VENTS	
REINFORCING STEEL				HEATING	
CAISSONS-PILES					
MASONRY		ROUGH WIRING			
UNDER FLOORS/BILLS/JOISTS					
FLOOR SHEATHING		FIXTURES			
ROOF SHEATHING		FINAL ELECTRICAL		FINAL ELECTRICAL	
FRAMING		PLUMBING	DATE	PLUMBING	DATE
		UNDERGROUND		SEWER	
				OK COVER	
		ROUGH PLUMBING		FINAL SEWER	
INSULATION		TOP OUT			
EXTERIOR LATH					
INTERIOR LATH					
SCRATCH COAT		GAS			
FINAL BLDG		TEST		FINAL PLUMBING	

INSPECTOR'S NOTES

9/8/94. Stairs OK. Needs to pull loose fill off ocean Bluff prior to stair final
JG

NOTE: Do not occupy Building until Final Approval by all Departments!

EXHIBIT NO. 17
Application Number A5-LGB-95-162
2 of 3
California Coastal Commission

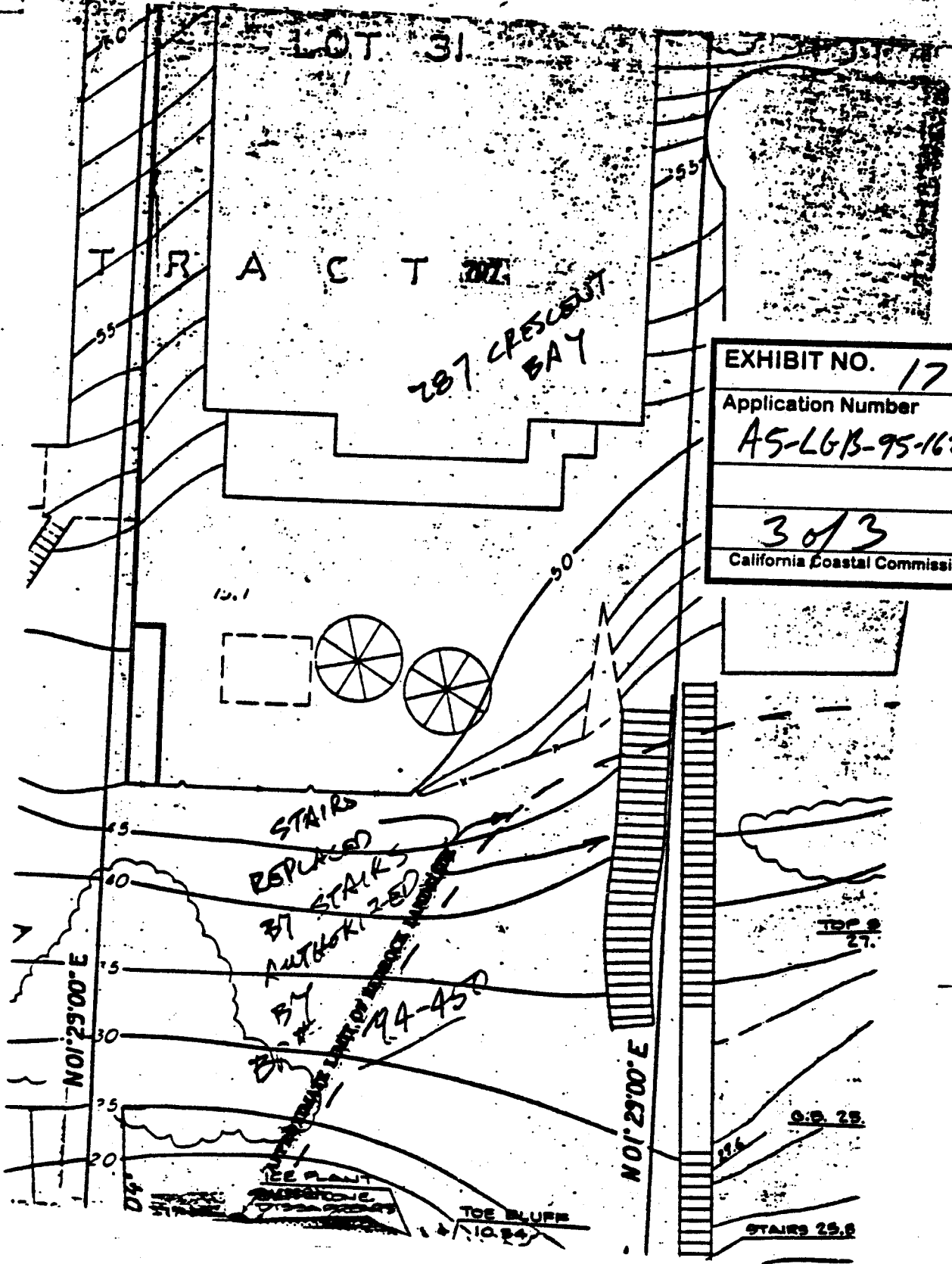


EXHIBIT NO. 17
Application Number A5-LGB-95-162
3013
California Coastal Commission

LOT 31

TRACT 202

287 CRESCENT BAY

STAIRS
REPLACED
BY STAIRS
25.0
AUTHORITY
94-450

N01°29'00"E

N01°29'00"E

TOP 27

O.D. 25

STAIRS 25.0

TOE BLUR

10.24

ICE PLANT

BASESTONE

STAIRS

10.1

30

25

20

15

10

5

0

-5

-10

-15

-20

-25

-30

-35

-40

-45

-50

-55

-60

-65

30

25

20

15

10

5

0

-5

-10

-15

-20

-25

-30

-35

-40

-45

-50

-55

-60

-65

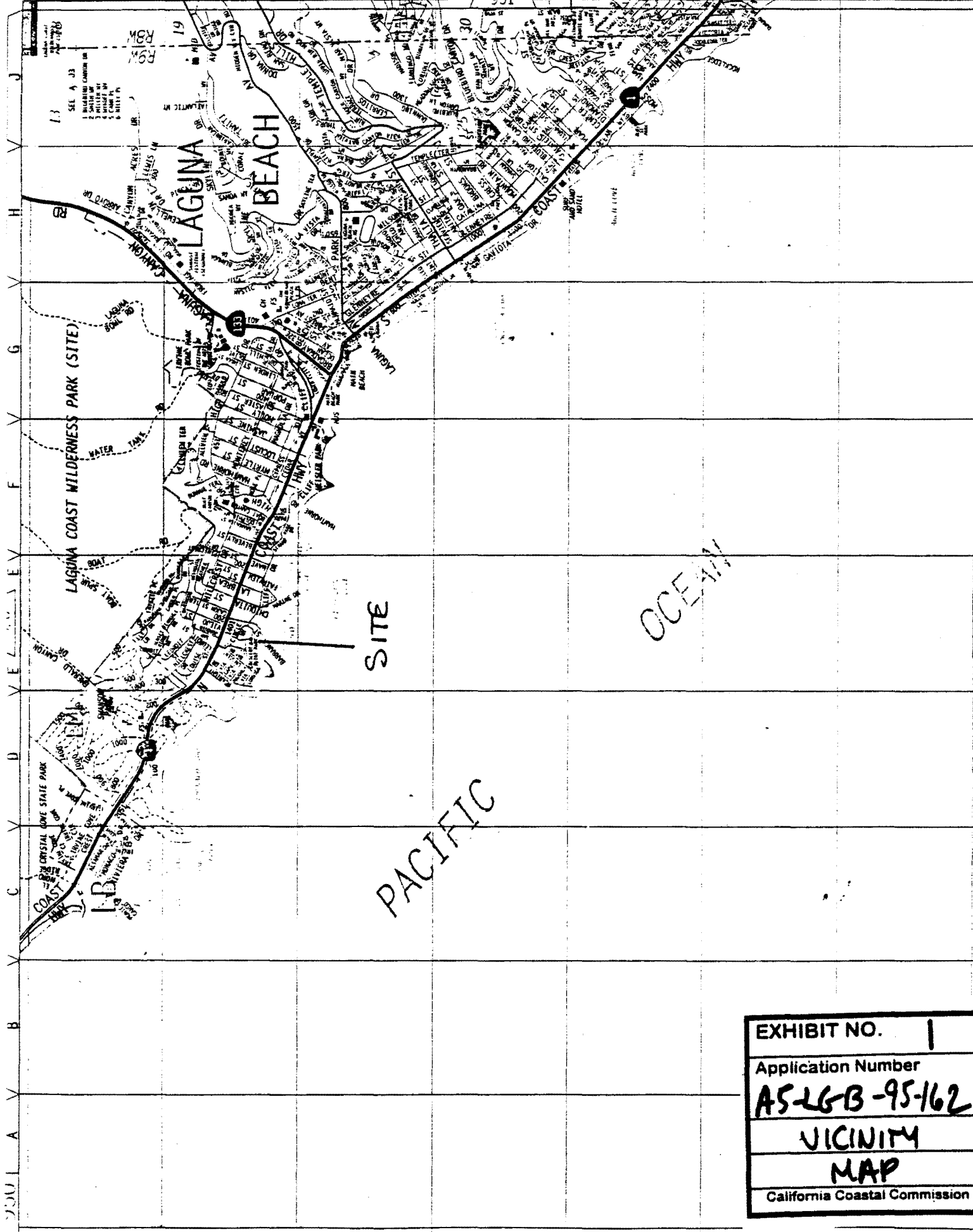
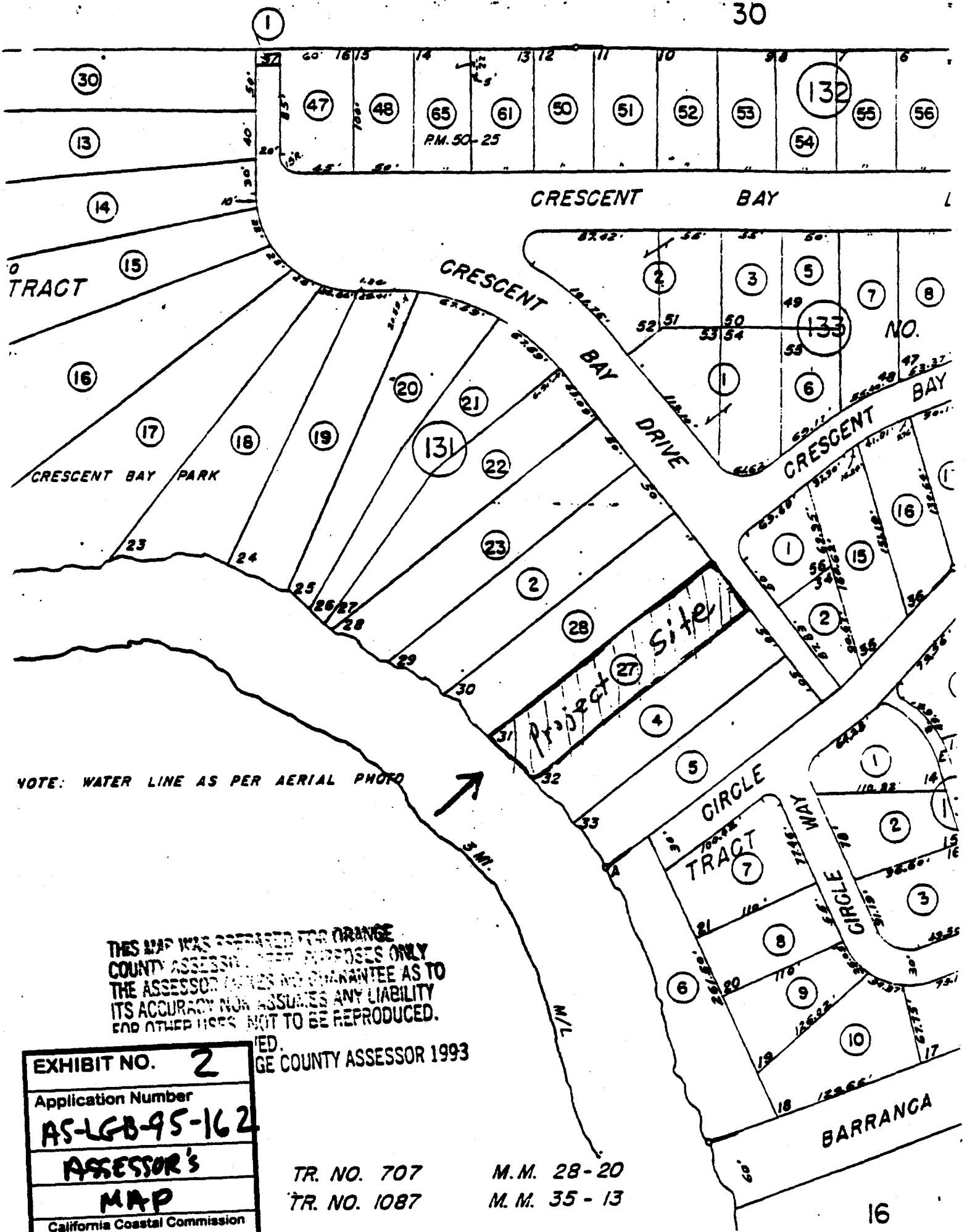


EXHIBIT NO.	1
Application Number	A5-LGB-95-162
VICINITY MAP	
California Coastal Commission	

SEE IX MAP



NOTE: WATER LINE AS PER AERIAL PHOTO

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR'S OFFICE PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED.

ORANGE COUNTY ASSESSOR 1993

EXHIBIT NO. 2
Application Number AS-LGB-95-162
ASSESSOR'S MAP
California Coastal Commission

TR. NO. 707
TR. NO. 1087

M.M. 28-20
M.M. 35-13

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Date 6-23-95Commission Reference # 5-LGB-95-026

NOTIFICATION OF APPEAL PERIOD

TO: City of Laguna Beach

FROM: California Coastal Commission

Please be advised that on June 22, 1995 our office received a notice of local action on the coastal development permit described below:

Local Permit # CD# 95-33Name of Applicant: Jack McNaughton

Project
 Description:

Construct on-grade, access stairs to the beach.Location 287 Crescent Bay Drive, Laguna Beach, CA. 92651

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on July 7, 1995. Our office will notify you if an appeal is filed.

Note: The notice of local action did not include written findings supporting the decision. So that we may complete our record of this decision, please forward a copy of the adopted findings to our office within 30 days. (This note is applicable only if a check mark has been entered.)

If you have any questions, please contact us.

H2: 4/88
 4713F
 MV/lm

cc: Jack McNaughton

EXHIBIT NO. 3
Application Number AS-LGB-95-162
NOTICE of
FINAL ACTION
California Coastal Commission

5-260-95-026

off 7/7/95
6

49th day

8.11.95
180th

12/20/95



RECEIVED

JUN 22 1995

CALIFORNIA
COASTAL COM
SOUTH COAST DISTRICT

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS**

The following project is located within the City of Laguna Beach Coastal Zone:

Applicant: Jack McNaughton Date: June 19, 1995
Mailing Address: 287 Crescent Bay Drive, Laguna Beach, CA 92651
CD No: 95-33 Project Description: construct on-grade access stairs to the beach.

Location: 287 Crescent Bay Drive, Laguna Beach, CA 92651
On June 6, 1995, a coastal permit application for the project

- was:
- approved.
 - approved with conditions.
 - denied.

- This action was taken by the:
- City Council.
 - Design Review Board.
 - Planning Commission.
 - Administrative Approval.

The action did involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is:

- not appealable to the Coastal Commission.
- appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111.

cc: Coastal Commission
Property owner/agent
All known interested persons

Attachment

1
2 RESOLUTION NO. 95.044

3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LAGUNA BEACH OVERTURNING THE
5 DENIAL OF THE BOARD OF ADJUSTMENT/DESIGN
6 REVIEW BOARD AND APPROVING VARIANCE
7 APPLICATION 6207, DESIGN REVIEW 95-068
8 AND COASTAL DEVELOPMENT PERMIT 95-33
9 AT 287 CRESCENT BAY DRIVE

10 WHEREAS, on June 6, 1995, the City Council at a regular
11 meeting held a hearing on an appeal of the decision of the Board of
12 Adjustment/Design Review Board denying Variance Application 6207,
13 Design Review 95-068 and Coastal Development Permit 95-33; and

14 WHEREAS, the design of the stairs in an environmentally
15 sensitive area was subject to review by the Design Review Board;
16 and

17 WHEREAS, the application to encroach into the bluff top
18 setback and below elevation 12 was subject to review by the Board
19 of Adjustment; and

20 WHEREAS, the construction on an environmentally sensitive
21 ocean front slope was subject to a Coastal Development Permit; and

22 WHEREAS, after considering the findings of the Board of
23 Adjustment and other evidence presented at the hearing, the City
24 Council has determined that the decision of the Board of Adjustment
25 should be overturned and Variance 6207 approved.

26 NOW, THEREFORE, BE IT RESOLVED that the City Council of
27 the City of Laguna Beach does resolve as follows:

28 Section 1: The City Council hereby determines that
the findings of the Board were in error, and that there are legal
justifications to approve the variance.

1 A. There are special circumstances applicable to the
2 property involved which cause the strict application of the zoning
3 ordinance to deprive the subject property of privileges enjoyed by
4 other property in the same vicinity and zone, in that: the adverse
5 topography creates a hardship depriving this property of privileges
6 enjoyed by other property in the neighborhood.

7 B. The requested variance is necessary for the preser-
8 vation of a substantial property right of the applicant, which
9 right is possessed by other property owners under like conditions
10 in the same vicinity and zone, in that: numerous adjacent property
11 owners have stairs to the beach. This request is consistent with
12 that and necessary for the preservation of a property right
13 possessed by other property owners in the neighborhood.

14 C. The granting of the variance will not be detrimental
15 to the public health, safety, convenience and welfare or injurious
16 to property or improvements in the vicinity in which the property
17 is located, in that: the on grade stairs are less erosive or
18 damaging to the slope than notching stairs into the hillside would
19 be and is therefore not detrimental to the health and welfare of
20 adjacent properties.

21 D. The granting of the variances will not be contrary
22 to the objectives of the zoning regulations and the General Plan,
23 in that: the zoning regulations and the General Plan encourage
24 improvement to ones property.

25 Section 2: The decision of the Design Review Board
26 denying Design Review 95-068 is hereby overturned and the design
27 approved.

1 preserving the majority of the existing natural vegetation.

2 B. Any development located between the sea and the
3 first public road paralleling the sea is in conformity with the
4 Certified Local Coastal Program and with the public access and
5 public recreation policies of Chapter 3 of the Coastal Act in that:
6 vertical and lateral public access exists to and along this portion
7 of the coast and the proposed development will not create any
8 adverse impacts to this access; therefore no clear nexus can be
9 demonstrated in this case for a public access dedication.

10 C. The proposed development will not have any
11 significant adverse impact on the environment within the meaning of
12 the California Environmental Quality Act in that the proposed
13 project as redesigned to minimize impacts on visual and scenic
14 quality of coastal resources, does not present any adverse impacts
15 on the environment.

16 ADOPTED this 6th day of June, 1995.

17 Harmon Blackburn
Mayor

18 ATTEST:

19 Verna L. Rollinger
City Clerk

20 I, Verna L. Rollinger, City Clerk of the City of Laguna
21 Beach, certify that the foregoing Resolution was duly adopted at a
22 regular meeting of the City Council of said City held on June 6,
1995.

23 AYES: COUNCILMEMBERS: Freeman, Dicterow, Baglin,
Blackburn

24 NOES: COUNCILMEMBERS: None

25 ABSENT: COUNCILMEMBERS: Peterson

26 Verna L. Rollinger
City Clerk of the City of
27 Laguna Beach, California

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Date: 6-23-95Commission Appeal # A5-LGB-95-162**COMMISSION NOTIFICATION OF APPEAL**TO: City of Laguna BeachFROM: California Coastal Commission

Please be advised that the local coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal. P.R.C. Section 30623.

Local Permit # CD 95-33Name of Applicant : Jack McNaughton

Project Description

Construct on-grade, access stairs to the beach.Location : 287 Crescent Bay Drive, Laguna BeachLocal Decision ApprovedName of Appellant : June SloanDate Appeal Filed : June 23, 1995

The Commission Appeal # assigned to this appeal is A5-LGB-95-162.
 The Commission hearing date—substantial issue determination and possible vote—for this appealed item is tentatively set for August 8-11, 1995.

Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the local jurisdiction consideration of this coastal development permit must be delivered to the Long Beach/South Coast Area Office of the Commission (California Administrative Code Section 13112). Please include copies of the following: plans; relevant photographs; staff reports and related documents; findings, if not already forwarded; all correspondence; and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact the Area Office noted above.

H7: 4/88
 4714F
 MV/lm

cc: Jack McNaughton

EXHIBIT NO. <u>4</u>
Application Number <u>A5-LGB-95-162</u>
APPEAL
California Coastal Commission

APPEAL INFORMATION SHEET

JUN 14 1995

LOCAL COASTAL PROGRAM DEVELOPMENT PERMITSCALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICTPlease read these instructions before completing the appeal application.Commission Form D - Appeal from Coastal Permit Decision of Local Government.

Appeals to the Coastal Commission from local government decisions on coastal permit applications are limited to certain types of decisions. The information below outlines the limitations and also describes the requirements for filing appeals.

Time Frame for Filing an Appeal. An appeal must be filed by 5:00 P.M. of the 10th working day after a sufficient local government notice of final action on the permit application was received by the Commission. 14 Cal. Admin. Code Section 13110. (The local government is required to send a notice of final local action to the Commission within 7 calendar days of a final local action.) The appeal must be filed in the Commission district office having jurisdiction over the affected local government. The final date for filing an appeal is available from the local permit decision notices posted in the Commission's offices and may also be obtained by calling the local Commission district office.

Persons Eligible to Appeal. The applicant, any aggrieved person or any two members of the Commission may appeal. P.R.C. Section 30625. An "aggrieved person" is any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision being appealed, or who, by other appropriate means prior to a hearing, informed the local government of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit. P.R.C. Section 30801.

Decisions Which May Be Appealed. (P.R.C. Section 30603)

- A. Within the appeals area, as shown on the Commission-adopted Post-LCP Certification Permit and Appeal Jurisdiction Map, any approval decision is appealable.
- B. In coastal counties only, an approval decision on a development that is not designated as the principal permitted use under the certified zoning ordinance, or zoning district map, is appealable.
- C. Any decision on a major works project or major energy facility is appealable.

Proper Grounds for an Appeal. (P.R.C. Section 30603)

- A. For a development located between the sea and the first public road parallel to the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance, the grounds for an appeal are limited to one or more of the following allegations:
 1. The development fails to provide adequate physical access to or along the shoreline or public or private commercial use or interferes with such uses.

(OVER)

2. The development fails to protect public views from any public road or from a recreational area to, and along, the coast.

3. The development is not compatible with the established physical scale of the area.

4. The development may significantly alter existing natural landforms.

5. The development does not comply with shoreline erosion and geologic setback requirements.

B. The grounds for appealing the decision on a project in any other location are limited to allegations that the development does not conform to the certified local coastal program.

Exhaustion of Local Appeals. Pursuant to 14 Cal. Admin. Code Section 13111 and 13573, the process of appealing a local decision to the Commission cannot begin until all possible appeals to local appellate bodies first have been made and have been exhausted; except that exhaustion of local appeals is not required if any of the following occur:

A. The local government requires an appellant to appeal to more local appellate bodies than have been certified in the implementation section of the local coastal program, or designated in the LUP implementing procedures, as appellate bodies for permits in the coastal zone.

B. An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.

C. An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of Article 17 (LCP Implementation Regulations) of the California Administrative Code.

D. The local government charges a fee for the filing or processing of appeals.

Appellant Notification of Appeals. Section III of the appeal application form is for the identification of persons interested in the project being appealed. An additional important step is that the appellant notify these persons and the local government of the appeal filing, within one week of the filing. Notification must be by mailing or delivering a copy of the completed appeal application form, including any attachments, to all interested parties, at the addresses provided to the local government. Failure to provide the required notification may be grounds for Commission dismissal of the appeal. 14 Cal. Admin. Code Section 13111(c).

Commission Review of an Appeal. If the Commission hears a coastal development permit or appeal, the Commission shall approve the permit if it finds that the proposed development is in conformity with the certified local coastal program (P.R.C. Section 30604(b)). Furthermore, every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). In determining whether a proposed development is in conformity with the certified LCP, the Commission may consider aspects of the project other than those identified by the appellant in the appeal itself, and may ultimately change conditions of approval or deny a permit altogether.

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED

Please Review Attached Appeal Information Sheet Prior To Completion of this Form. JUN 1995

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

SECTION I. Appellant(s)

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

JUNE SLOAN
277 CRESCENT BAY DR
LAGUNA BEACH CA 92651 (714) 494-3051
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: LAGUNA BEACH CITY COUNCIL
2. Brief description of development being appealed: APPROVAL BY THE CITY COUNCIL GRANTING STAIRS TO THE BEACH AND CONSTRUCTION BELOW THE SET BACKS REQUIRED BY LCP.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 287 CRESCENT BAY DR LAGUNA BEACH CROSS STREET PCH
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions: _____
 - 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: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

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: JUNE 6, 1995

7. Local government's file number (if any): VARIANCE APPLICATION 6207
COASTAL PERMIT 95-33
DESIGN REVIEW 95-068

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:

JACK McNAUGHTON
297 CRESCENT BAY DR
LAGUNA BEACH CA 92651

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) JUVE SLON
297 CRESCENT BAY DR
LAGUNA BEACH CA 92651

(2) RICHARD D. NUMIS, ESQ
P.O. BOX 5016
LAGUNA BEACH CA 92652

(3) DOUGLAS DUARAK

(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.

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.)

PHOTOS ATTACHED

THE LOCAL COASTAL PROGRAM HAS STRICT PROHIBITIONS

PREVENTING THE BUILDING OF STAIRS OR OTHER STRUCTURES ON THE BLUFF TOP AND BELOW REQUIRED SETBACKS. THE PRESENT APPROVAL ALLOWS BUILDINGS ON THE BLUFF TOP BY CLEARING EXISTING FOLIAGE AND OTHER NATURAL LANDSCAPE. FURTHER, THERE ARE RAILROAD TIES AND STAIRS TO THE BEACH NOT TO MENTION A "LANDING" JUST ABOVE THE BEACH WHICH WERE APPROVED.

THIS APPROVAL BY THE LAGUNA BEACH CITY COUNCIL IS CONTRARY TO THE CLEAR AND SPECIFIC RULES SET FORTH IN THE LOCAL COASTAL PROGRAM.

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. SEE ADDITIONAL SHEET!

SECTION V. Certification

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

Richard D. Nunn
Signature of Appellant(s) or Authorized Agent

Date 6/12/95

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

Section VI. Agent Authorization

I/We hereby authorize Richard D. Nunn, Esq to act as (my)our representative and to bind me/us in all matters concerning this appeal.

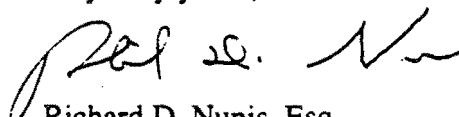
Diane S. Brown
Signature of Appellant(s)

Date 6/12/95

The property at 287 Crescent Bay Drive was instructed in 1985 by the local Coastal Commission that stairs to the beach were not permitted and would require a separate hearing. Contrary to that order, the owner at 287 Crescent Bay Drive built concrete steps and then wooden steps (see photos) without hearings or approval. He then argued successfully that he was only continuing the existing steps to the beach. This type of behavior should not be rewarded as the decision would set a precedent in the City of Laguna Beach for any house on the beach to build stairs to the coastline below.

I appreciate your time and consideration in this very sensitive and important situation.

Very truly yours,



Richard D. Nunis, Esq.

OVER

PUBLIC HEARINGS

6/6/95

7. PUBLIC HEARING FOR THE PROPOSED UNDERGROUNDING UTILITY ASSESSMENT DISTRICT 93-1

Consideration of the revised assessments

Recommendation: Proceed with the project by adopting three Resolutions and authorizing the City Manager to enter into a construction contract in the amount of \$398,411 with Lambco Engineering.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

8. TENTATIVE PARCEL MAP 90-250, VARIANCE 6184 AND COASTAL DEVELOPMENT PERMIT 95-17, BINION SUBDIVISION

Proposal to subdivide 29.6 acres into two, 1 acre single-family building sites, a .54 acre private common access driveway parcel and 27.5 acres of permanent open space to be dedicated to the City with a variance from the access standards, a Coastal Development Permit and associated Negative Declaration

Recommendation: Adopt the Resolution approving Tentative Parcel Map 90-250, Variance 6184, Coastal Development Permit 95-17 and the associated Negative Declaration.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

9. APPEAL OF DENIAL OF CONDITIONAL USE PERMIT 94-22 AND COASTAL DEVELOPMENT PERMIT 94-51 AT 509-513 SOUTH COAST HIGHWAY (WYLAND)

Revised proposal to construct a mixed commercial/residential project

Recommendation: Adopt the Resolution overturning the denial and approving Conditional Use Permit 94-22 and Coastal Development Permit 94-51 at 509-513 South Coast Highway.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

10. APPEAL OF DENIAL OF CONDITIONAL USE PERMIT 95-17 TO ESTABLISH A RETAIL STORE SPECIALIZING IN EUROPEAN DESIGNER CLOTHING, ACCESSORIES AND SHOES FOR WOMEN AT 424 FOREST AVENUE

Proposal to establish a 900 sq. ft. retail store specializing in European designer clothing, accessories and shoes for women

Recommendation: Adopt the Resolution overturning the denial and approving Conditional Use Permit 95-17 at 424 Forest Avenue.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

11. APPEAL OF DENIAL OF VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33 AT 287 CRESCENT BAY DRIVE

Proposal to construct stairs and landings on the slope above the beach at Crescent Bay

Recommendation: Deny the appeal and sustain the denial of Variance Application 6207, Design Review 95-068 and Coastal Development Permit 95-33 at 287 Crescent Bay Drive.

Motion _____ Second _____ Action _____

Vote: Freeman _____ Dicterow _____ Baglin _____ Peterson _____ Blackburn _____

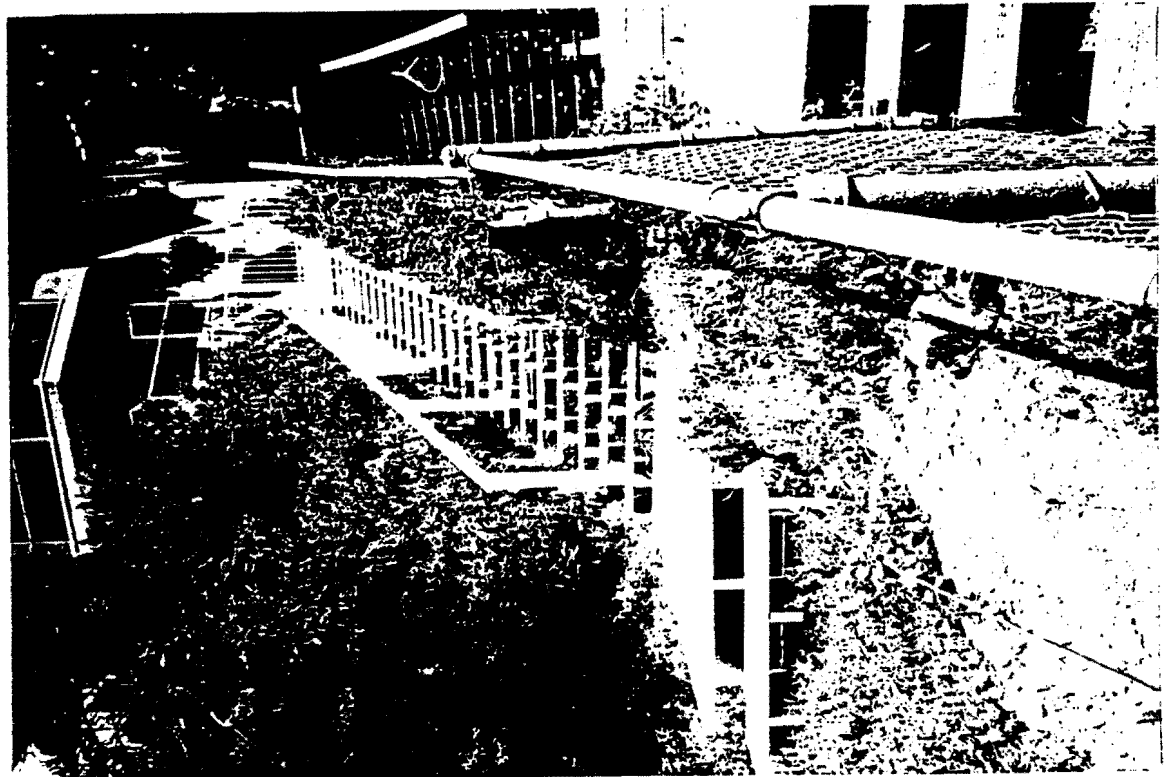
CONSENT CALENDAR

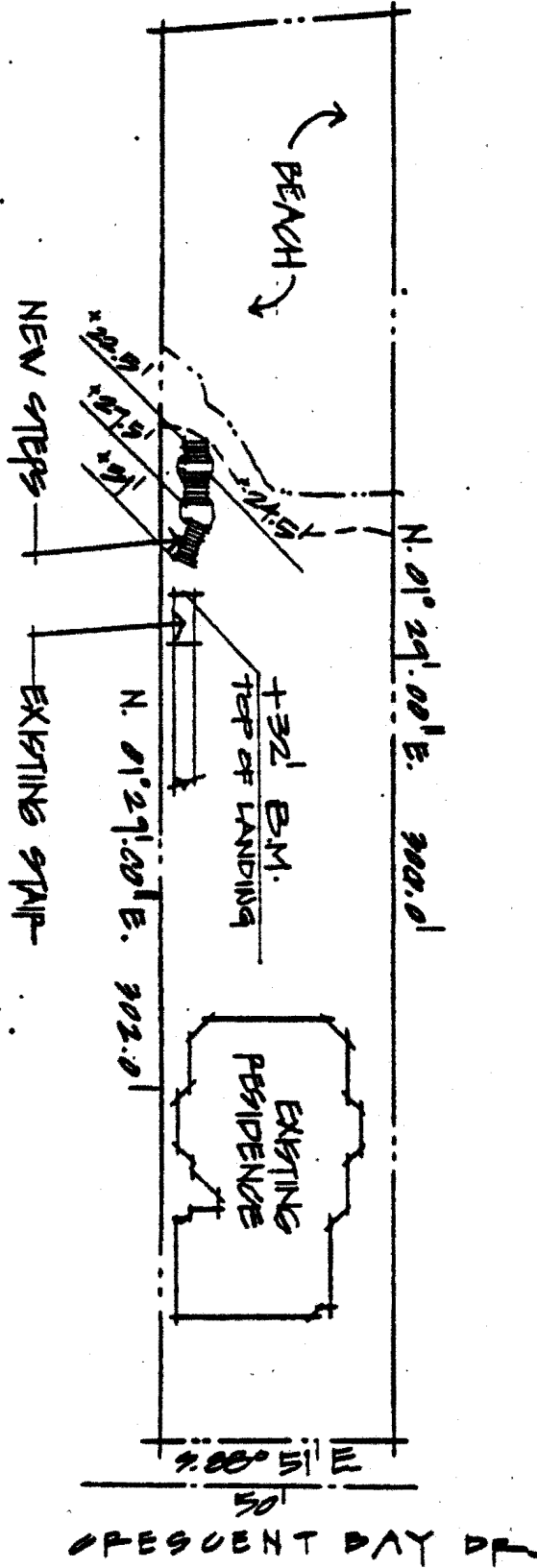
12. Adopt the Minutes of the Adjourned Regular Meeting of May 6, 1995, the Adjourned Regular Meeting of May 9, 1995, the Regular Meeting of May 16, 1995 and the Adjourned Regular Meeting of May 23, 1995.

13. Deny the claims of Richard T. Roach, J. for damages in the amount of \$1,000,000 and Ellan Seluta for damagers in the amount of \$1,000,000 and refer the claims to the Claims Adjuster.

14. Approve General Warrants	\$ 466,787.99	5-19-95
Approve Payroll #23	\$ 431,594.98	5-11-95
Approve Payroll #24	\$ 424,804.67	5-25-95







APR 20 1995
 PLANNING DEPARTMENT

STAKING PLAN

STAIR EXTENSION DRAWINGS FOR
 MR. JACK McNAUGHTON
 287 OPESCENT BAY DRIVE
 LAGUNA BEACH, CA. 92651

job # 9407
 date 4-17-95

2082 a coast hwy.
 laguna beach
 california 92651
 (714) 487-1284

EXHIBIT NO. 5
Application Number AS-LGB-95-162
SITE PLAN
California Coastal Commission

RECEIVED

JUL 20 1995

11. RESOLUTION NO. 95-044 APPROVING DESIGN REVIEW 95-068, VARIANCE APPLICATION 6207, AND COASTAL DEVELOPMENT PERMIT 95-33 AT CRESCENT BAY DRIVE - PUBLIC HEARING (67)

The applicant proposed to construct stairs and landings on the slope above the beach at Crescent Bay. The project required a variance to perform construction oceanward of the bluff top setback. The project designer presented the project, and explained how the construction was to occur. Some neighbors wrote in support of the project. The owner provided a history of his ownership of the property. The adjacent neighbor spoke in opposition of the project.

Due to the bluff top location of the proposed stairway, staff prepared a memorandum to the Board which described the unique history and circumstances of the proposal. The memorandum recommended approval of the request.

Some of the Boardmembers initially found favor with the project, due to the modest nature of the improvements and the fact that so many others in the neighborhood have stairway access to the beach. Other Boardmembers expressed reservations about the setback encroachment and lack of justification to grant the variance.

Mayor Blackburn opened the Public Hearing.

Lance Polster, architect, said the purpose of the proposal is to connect to some of the boulders below, that the applicant has a right to achieve what everyone else has, and the privilege should be granted for safety reasons. Jack McNaughton, applicant, said he has been trying to get some protection since 1983, and he feels he is not asking for anything more than what others have. Richard Nunez, representing adjacent property owner Mrs. Stoan, opposed the access because it will be prescient setting. Polster said they are dealing with prior approvals that are existing, and the reasons why this is a unique situation is they are trying to connect up with the rest of the steps.

Mayor Blackburn closed the Public Hearing.

Councilmember Freeman spoke in support of the project, adding this was not prescient setting. Councilmember Baglin said it is a right enjoyed by others in the immediate area, that there is no adversity caused by this, and when he visited the property he felt the wall next door was far more obtr. Councilmember Dicterow concurred, adding this area was close to the fire, and many got trapped in

EXHIBIT NO.	6
Application Number	MS-LGB-95-162
VARIANCE	
APPROVAL	
California Coastal Commission	

neighborhoods, and this would offer another escape route. Mayor Blackburn said she is very familiar with the area, and clearly the applicant is not getting a privilege not afforded to others, so findings can be made.

Moved by Mayor Blackburn, seconded by Councilmember Freeman and carried unanimously 4/0/1 to adopt Resolution No. 95.044 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH OVERTURNING THE DENIAL OF THE BOARD OF ADJUSTMENT/DESIGN REVIEW BOARD AND APPROVING VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33 AT 287 CRESCENT BAY DRIVE".

CONSENT CALENDAR

Moved by Mayor Blackburn, seconded by Councilmember Freeman and carried unanimously 4/0 to adopt Consent Calendar items 13-23.

12. MINUTES OF THE CITY COUNCIL

Note: This item was removed for discussion.

Moved by Mayor Blackburn, seconded by Councilmember Baglin and carried unanimously adopted the Minutes of the Adjourned Regular Meeting of May 6, 1995, the Adjourned Regular Meeting of May 2, 1995, the Regular Meeting of May 16, 1995 and the Adjourned Regular Meeting of May 23, 1995 as amended.

13. CLAIMS AGAINST THE CITY

Denied the following claims and referred them to the Claims Adjuster:

Richard T. Roach Jr. for damages in the amount of \$1,000,000, and

Ellan Seluta for damages in the amount of \$1,000,000.

14. WARRANTS

General Warrants:	\$ 466,787.99	5/19/95	Approved
Payroll #23:	\$ 431,594.98	5/11/95	Approved
Payroll #24:	\$ 424,804.67	5/25/95	Approved

unless it would be associated with a focused sign program including enforcement that all present tenants have to remove their not approved signs. The signs on the building are an absolute eyesore for the community. He was glad the owner has decided to apply for the variance to correct this situation. He would condition any variance on the owner of the building bringing in a focused sign program plan that would establish parameters for all of the signs under one program and would be binding upon every tenant in this building.

Mr. Oligino thought the arguments are persuasive for a variance. He agreed that the justification could be made for the variance based on a comprehensive program that will tell the Board what the signs will look like for the building. This should be reviewed when a sign application is submitted to make sure that the sign is designed with the sign program for the building in mind. They would have his vote with those conditions.

Mr. Sabaroff said he would support that.

Mr. Vail agreed with what had been said. He said the justification would be special circumstances. It would also be considered a hardship, because the building definitely needs better signage. It is very important that it be a comprehensive sign program. They will start with a fresh slate and only keep what is appropriate. He suggested they give it a two-year period to see how it looks.

Mr. Chapman thought the variance could be justified based on this being a penalty for single ownership. He also felt this is a hardship situation and that the building definitely needs better signage. This is an opportunity to develop a sign program for the entire building. He referred to a similar program being carried out in Santa Barbara. This could be done in an artistic manner and have a continuous design theme across this huge, stucco building. He suggested that the signs do not have to be sand blasted redwood, but some creativity in materials and colors could be used to dress up this building. The building owner would be allowed to submit a sign program during the next six months. He suggested they grant the variance for one year for the new tenants to comply with the variance or it will be revoked. Then allow two years for the existing tenants to set aside the funds to covert their signs to coincide with the sign building.

Mr. Chapman made a motion, seconded by Mr. Vail, to ad 033 approving VA 6205, based on a hardship and the penalty and that the owner of the building submit an applicator sign program for the entire building within the next six variance be granted for one year for the new tenants to co program for the building and that two years be allowed tenants to set aside the funds to covert their signs to sign program for the building, or it will be revoked. 7 unanimously.

EXHIBIT NO. 7
Application Number AS-66B-95-162
BOARD
MINUTES
California Coastal Commission

VARIANCE APPLICATION 6207, DESIGN REVIEW 95-068 AND COASTAL DEVELOPMENT PERMIT 95-33: JACK MCNAUGHTON, 287 CRESCENT BAY DRIVE, LOT 31, TRACT 707. DENIED.

The applicant requests permission in the R-1 Zone to construct a stairway to the beach that: 1) encroaches below elevation 12 MSL, and 2) encroaches into the ocean bluff top setback; including design for construction in an environmentally sensitive area; as well as a Coastal Development Permit.

Letters of support were received from Ann & Bill McDonald, 267 Crescent Bay Drive, and James L. Lund, 299 Crescent Bay Drive.

more

A letter was read to the Board from staff saying that there were extenuating circumstances and that due to the things outlined in staff's letter, it recommended approval of the project.

Lance Polster, architect, introduced Jack McNaughton, the owner of the property. The intention is to repair and extend the stairway to the beach. The stairs would be secured to the slope, they will consist of railroad ties and the landings will be decomposed granite, with infill of the rocks enough to provide a path to the beach.

Mr. McNaughton gave a background of his ownership of the home and covered the many attempts to be allowed to build a seawall to protect the bluff and the slope from scouring and erosion. These were all rejected by the City. He said everyone in the area has access to the beach. He was told at the time he bought the property that he could have beach access. He explained that his next door neighbor and he are located between two existing seawalls. He has approval to have access to the beach. Stairs were built at the time the house was built to a point where they would meet the seawall if it was constructed.

Richard Nunis, speaking for his mother, June Sloan, had concerns about the variance being granted for beach access, and feared slide conditions in the slope.

Bill Beeler opposed the project because of possible slides on the bluff.

Mr. Polster, in rebuttal, said his client has the right to the same privileges enjoyed by others in having access the beach from his property. He pointed out that the stairs are not concrete, but railroad ties that are built to conform to the natural slope with decomposed granite landings. There are special circumstances applicable to the property. He has not been allowed to stabilize the slope with a the sea wall. He should at least have access to the beach like all of his neighbors.

Mr. McNaughton described the stairs and said that four steps were never proposed. The original design was for 14 steps to match those of Mrs. Sloan. Then someone came up with four, even though the city wanted 14 steps. They would like access to the beach in the same way that everyone else in the neighborhood enjoys.

Mr. Vail was ready to support the variance and design review based on like conditions enjoyed by others in the same vicinity and zone. If they have a right to go down to the beach, then the bluff top setback has to be crossed. Testimony taken without any evidence would support the variance based on topography and the fact that this is a very modest request and does not add significant weight to the bluff. He thought it was a reasonable request.

Mr. Goldstein agreed with Mr. Vail and did not feel it was fair to deprive this person of the rights enjoyed by others in the neighborhood. The applicant would have his vote.

Mr. Sabaroff said he would agree with what has been said by Messrs. Vail and Goldstein.

Mr. Chapman said he still had problems with this. The project was not to have new stairs to the beach, but to repair the existing stairs. Discussion among Boardmembers and clarification of the projet, and the findings with staff, some reevaluation occurred

Mr. Vail made a motion, seconded by Mr. Sabaroff to deny VA 6207 due to lack of justification, DR 95-068 and CD 95-33. The motion carried 3-2. Messrs. Goldstein and Oligino voted no.

MEMORANDUM

EXHIBIT NO. 8
Application Number AS-LGB-95-162
LGB STAFF
REC.
California Coastal Commission

DATE: May 3, 1995
TO: Board of Adjustment/Design Review
FROM: Department of Community Development ^B
SUBJECT: Proposed Beach Access Stairway - 287 Crescent Bay Drive

Chapter 25.50.004 of the Municipal Code provides, in part, that "no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply". The applicant requests a variance from this regulation in order to extend an existing stairway to the beach in Crescent Bay.

Although staff policy would normally not provide a recommendation for a request of this kind, certain extenuating circumstances that are unique to this application should be considered by the Board during their deliberations. These circumstance are:

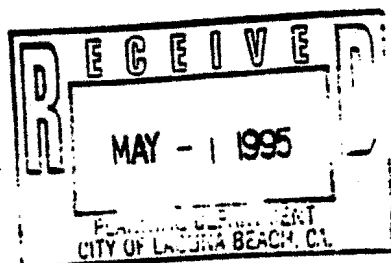
1. As stated in the applicant's letter to the Board, there were no regulations in effect at the time the original residence and top portion of the stairway were constructed that would have prohibited its construction.
2. Staff can verify that prior applications for the construction of a seawall in Crescent Bay made the downslope stairway transition to the beach an uncertainty and at least a proximate cause for delay of its completion.
3. The proposal is not necessarily "new" construction, but a continuation of a project initiated and originally conceived at a time when such activity did not require a variance.
4. The adjacent properties on either side have enjoyed long-standing similar private access stairs to the beach.
5. The proposed construction consists of railroad tie stairs fitted to the natural terrain, thereby minimizing visual and environmental effects.
6. An existing seawall located on the property to the south encroaches an additional 17 feet oceanward beyond the proposed stairway end.

It should also be noted that the proposed stairway as shown on the plans does not encroach below elevation +12, thereby avoiding one of the two points of variance described on the public hearing notice for the project.

Based on the foregoing considerations, staff recommends that the request be approved.

John J. McNaughton
287 Crescent Bay
Laguna Beach, CA 92651

EXHIBIT NO. 9
Application Number AS-LGB-95-162
McNaughton Letter
California Coastal Commission



May 1, 1995

RE: Laguna Beach Board of Adjustment/Design Review Board
Meeting May 4, 1995
Subject: Permission to complete steps to beach by John McNaughton

Dear Design Review Board Members:

While living in Newport Beach, my wife and I visited Laguna Beach on numerous occasions and fell in love with the city, its beautiful beaches and its people.

We decided to move there and build on a beautiful lot located at 287 Crescent Bay Drive. Before deciding to purchase the vacant lot, I visited City Hall and asked if there was anything wrong with the lot; can I build stairs to the beach?; and could I build a sea wall to protect the property from storms?

I was told:

The files show no major problems and it was buildable; in all likelihood. I could build stairs to the beach as nearly all waterfront homes do; neighbors in Crescent Bay have sea walls and you may apply for this protection.

When constructing my new home, I decided to build the stairs only halfway down the bluff, as I didn't know how it would tie into my planned sea wall.

In 1983 I hired an engineering firm "Peter & Peter" to complete plans for a sea wall. This was presented to the Design Review Board and was rejected.

Design Review Board Members
May 1, 1995
Page 2

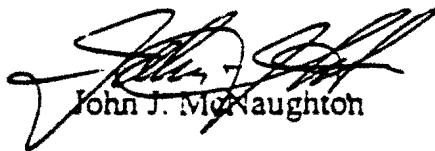
In 1988, I joined with five other Crescent Bay owners to form the "Crescent Bay Shore Defense System." Our purpose was to construct a protection device for the six waterfront homes. Our engineers were "Tetrotec", and plans were submitted to the Design Review Board in 1990 and were approved, but later overturned by the City Council.

In 1991, my next-door-neighbor and I hired "Noble Consultants" to design and submit plans for a shore protection device for our two properties which are located between two existing sea walls. This was presented to the Design Review Board and was rejected.

After these three unsuccessful attempts to protect my property from sea erosion, I have decided to extend my stairs to the beach without tying into a shore protection device and ask your permission to do so.

I have enjoyed living in Laguna Beach and have attempted to help the community in many ways. I am active in our Neighborhood Watch Program in the Crescent Bay Area; am a member of the North Laguna Community Association; was a member of the board of the Art Institute of Southern California; and am presently an active board of directors member of the Laguna Playhouse.

Sincerely,



John J. McNaughton

JJM:ss

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

Filed: December 12, 1984
49th Day: January 30, 1985
180th Day: June 10, 1985
Staff Report: January 9, 1985
Meeting of: January 24, 1985
Staff: Gary Timm

STAFF REPORT: CONSENT CALENDAR

APPLICANT: Mr. & Mrs. Jack McNaughton

PERMIT NO.: 5-84-825

PROJECT LOCATION: 287 Crescent Bay Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: Construction of a single family dwelling with attached two car garage on a coastal bluff in Crescent Bay.

LOT AREA 15145 sq. ft.

ZONING R-1

BLDG. COVERAGE 2312 sq. ft.

PLAN DESIGNATION single family residential G.P., LUP draft, LUP adopt, LUP cert., LCP

PAVEMENT COVERAGE 2620 sq. ft.

PROJECT DENSITY 2.9 du/acre

LANDSCAPE COVERAGE 1316 sq. ft.

HEIGHT ABV. FIN. GRADE 20' 5"

LOCAL APPROVALS RECEIVED: Approval in Concept - City of Laguna Beach

COASTAL ISSUES: Access, geologic hazards, development

SUBSTANTIVE FILE DOCUMENTS: P-78-4260 (Nelson), 5-84-63 (Vanoff), 5-84-205 (Montapert), 5-84-588 (Nunes), Statewide Interpretive Guidelines.

SUMMARY Staff recommendation is approval with standard condition and special conditions regarding lateral access and geologic hazards.

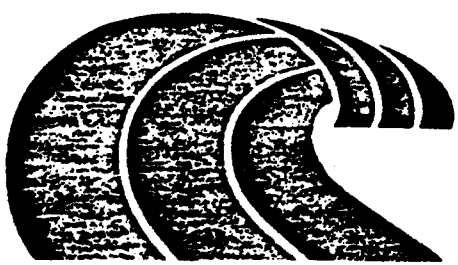


EXHIBIT NO. 10
Application Number AS-LGB-95-162
CDP
5-84-825
California Coastal Commission

STAFF RECOMMENDATION

Staff recommends the Commission adopt the following resolution:

Approval with Conditions

- (c) The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality act.

I. Standard Conditions: See Attachment X.

II. Special Conditions:

1. LATERAL ACCESS CONDITION - prior to issuance of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer.

Such easement shall include all lands seaward of the toe of the bluff (as determined by the Executive Director) to the mean high tide line. The form and content of the approved document shall include a topographical map prepared by a licensed civil engineer showing the location and elevation contours of the bluff with respect to the landward property line. The map shall be suitable for recording with other necessary documents.

Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may effect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Applicant's Assumption of Risk.

Prior to the issuance of a coastal permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for 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 the applicants understand that site is subject to extraordinary hazard from landslides, wave damage, and/or erosion and
- (b) The applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and
- (c) 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 landslides, wave damage and/or erosion.

3. Plans Conforming to Geologic Recommendation

Prior to issuance of coastal permit applicant shall submit a statement from the geologist/consultant responsible for preparation of the Soils and Geologic Investigation Report dated June 18, 1984 verifying that all recommendations proposed in the report have been incorporated into the final design of the proposed development and upon completion of construction the applicant shall submit the geologists verification stating that the recommendations have been carried out in the construction of the project.

4. Bluff Setback and Protection

Prior to issuance of permit applicant shall submit revised plans for the approval of the Executive Director which indicate that;

- (a) no development shall be located within 25 feet of the edge of the coastal bluff. A topographical map prepared by a licensed civil engineer or registered geologist shall define the bluff edge.

4. Bluff Setback and Protection (continued)

(b) all landscaping shall consist primarily of native, drought resistant plants to minimize the need for irrigation and to protect the bluff face.

(c) a drainage system will be provided which directs water away from the bluff to the street or through a pipe to the face of the bluff (provided that no alteration of bluff face is necessary).

5. Future Improvements

Any future additions or improvements to the property including private stairways, guest houses, shoreline protection devices, alterations on or down the bluff, grading or disturbance of native vegetation on the bluff top or face shall require a Coastal Development Permit from the Commission or its successor agency.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Project Description

The applicant proposes to construct a three-story single family dwelling on a vacant 15,000 sq. ft. coastal bluff lot in Crescent Bay. The lot is located in a developed residential area with both adjacent lots containing single family homes. The proposed project does not violate a string line drawn between the nearest adjacent corners of the adjacent structures. Two development permits for a single family dwelling have been approved by the Commission in the past (P-76-8048 & P-78-4260).

B. Public Access. The Coastal Act contains strong policy provisions in Sections 30210, 30211 and 30212, requiring public access to and along the shore in new development projects. However, the requirement for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes . . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted, shall be provided subject to certain conditions.

Section 30210.

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

Section 30211.

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

Section 30212 of the Coastal Act contains policy provisions regarding the location and type of public access to be provided.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

In addition to the above provisions of the Coastal Act Section 30214(a) addresses the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and re-pass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Vertical access to the beach currently exists in Crescent Bay by means of two dedicated accessways with walkways and stairways leading down to the beach. Lateral access also exists along the beach as a result of past permit approval conditions established by the Commission or as a result of deed restrictions placed on the approval of the original tract map by the city.

In 1979, the Commission began work on the Interpretive Guidelines for public access in order to provide a comprehensive review of the policies developed in permits in the previous 24 years. These Guidelines were and are intended to provide the public, including permit applicants, with a general description of how the Coastal Act has been applied in previous cases and indicate the general approach the Commission would use in future actions. They are not regulations, do not supercede the statute and need not be followed in any particular case.

The major question presented in this case is how much access is appropriate given the circumstances. The question of the appropriate width and description of lateral accessways was one of the more important issues addressed in the Guidelines.

The Coastal Act's basic policy is that maximum access must be provided in new development projects, in a time, place and manner responsive to the facts and circumstances outlined in Section 30214. The Commission, through a long line of permit decisions and in the Guidelines, has developed a policy approach which implements these requirements. Although each permit is reviewed on its own merits, many cases contain similar factual circumstances. The Commission has attempted to provide a uniform and consistent policy approach which protects both private and public interests.

In cases where single family residential development is proposed, the Commission noted two basic circumstances: (1) development on property topographically indistinct from the sandy beach, and, (2) development above the beach on a bluff, or behind another significant natural boundary (e.g. major terrestrial vegetation). Most of the applications to build on ocean front property fall into the first category. Those on the bluff, or behind a natural feature were required to provide access to the toe of the bluff, or to the natural feature, or to an existing seawall.

In developing the Guidelines, the Commission was faced with the mandate to ensure maximum access, but also with the serious concern of landowners that public use of beaches could seriously interfere with enjoyment of an adjacent residence. The Commission recognized the tendency of the vast majority of beach visitors to stay near the shoreline where residences exist on the beach, but to use the entire beach to the toe of the bluff or other physical feature where residential structures are not present. This frequently observed behavior is common to beaches up and down the state, and represents a pattern of historic use which may have ripened into public prescriptive rights in many areas.

The requirement of public access from the mean high tideline to the toe of the coastal bluff has been applied to coastal permits statewide. Early regional permit decisions, appeals to the state commission and recent Coastal Commission decisions have been conditioned on the developers offer to dedicate an easement for public access and public recreation.

The Guidelines also state:

Describing an Accessway From a Fixed Inland Point. The most effeicient was to describe an accessway is as a distance from a fixed line landward of and parrallel to the mean high tideline extending seaward to the property line (mean high tideline). When this description is used, the area of dry sand beach may vary from wide areas of sandy beach available for public uses during the low tide conditions, to very narrow stretches of sandy beach - resulting in little area for public use during high tide or storms. In using a fixed inland point the Commission must determine that the public retains the benefit of maximum public access to the shoreline throughout the majority of the year. In Crescent Bay the daily mean high tideland may extend landward to the base of the bluff at various times of the year.

In prior actions the Commission has used the fixed inland point to describe accessways in most instances involving bluff top development. In 5-84-63 (Vanoff) the Commission approved a bluff top residence in Malibu with a condition to provide lateral access from the toe of the bluff to the mean high tideline.

Generally, where development has occurred on blufftops, the Commission has overwhelmingly determined that the maximum public access that would be compatible with the privacy needs of property owners is access to the toe of the coastal bluff.

The proposed development contributes to a continuing cumulative burden on public access through the incremental intensification of uses along the shoreline in Laguna Beach. As previously mentioned, vertical access is provided to Crescent Bay and several properties provide lateral access. Further, the beach has historically been used by the public to the toe of the bluff. Therefore, the Commission find that the proposed project does create a burden on public access. Only as conditioned, to provide maximum public access, is the proposed project consistent with Chapter 3 of the Coastal Act.

C. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Many oceanfront parcels such as the subject property are susceptible to flooding and wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars.

Section 30001.5 of the Coastal Act States, in part, that one of the basic goals of the state is to:

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

The proposed development is located on a coastal bluff which is subject to wave action and erosion. In addition past geology reports prepared for the subject site and for the property immediately east of the site indicate that the proposed project site is part of an ancient landslide. Erosion along the toe of the bluff could adversely impact the stability of the bluff in the future according to the geology report for the adjacent property (5-84-588 Nunes).

The Coastal Act recognizes that new development may involve the taking of some risk. These policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development, and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

Because the risk of harm cannot be completely eliminated, the Commission is requiring the applicants to waive any claim of liability on the part of the Commission or of any public agency for damage to life or property which may occur as a result of the permitted development. The waiver, or applicant assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the sites, and which may adversely affect the stability or safety of the proposed development.

The applicants may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits the development should be held liable for the applicant's decision to develop. Therefore, the applicants are required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop.

The Commission finds that this condition is consistent with, and necessary to carry out, one of the State's basic goals for the coastal zone, i.e., consideration of the economic needs of the people of the state; and the Coastal Act policy which requires that new development minimize risks to life and property in areas of high flood and erosion hazard. Only as conditioned can the Commission find the projects consistent with Sections 30253 and 30001.5 of the Coastal Act.

D. Bluff top Development

Section 30253 of the 1976 Coastal Act provides that "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard; (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs". Section 30251 provides that: "Permitted development shall be sited and designed...to minimize the alteration of natural landforms..."

The Statewide Interpretive Guidelines in discussing geologic stability of bluff top development state:

To meet the requirements of the act, bluff and cliff developments must be sited and designed to assure stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms. Bluff and cliff developments (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, waste water disposal and other activities and facilities accompanying such development) must not be allowed to create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.

As previously mentioned, there is geologic evidence of an ancient landslide existing on a portion of the subject site. In addition, several retaining walls and other protective devices have been built on the beach to protect dwellings built out to the edge of the bluff. Most of these structures are potential violations of the Coastal Act and are under investigation. Further, there is evidence available which suggests that these protective devices are contributing to erosion along the toe of the bluff.

The Commission has routinely applied a 25 ft. bluff top setback to both protect the fragile bluff edge from destruction during construction of the proposed dwelling as well as protect the structure from the hazards created by erosion of the bluff edge. Setting this proposed structure 25 ft. back from the bluff edge should eliminate the potential for problems related to slumping and erosion of the bluff edge for the expected life of this proposed structure. In addition, a prohibition of structures within this 25 ft. bluff setback and down the bluff would serve to protect the integrity of the bluff and structures built on the lot.

Additional measures exist which tend to reduce the impact of wave damage, erosion, landslides and development on coastal bluffs in addition to building further back from the bluff edge. These measures include planting or protecting native, drought resistant plants on the bluff top and face and directing drainage away from the bluff face:

The Commission therefore finds that the condition requiring a 25 ft. setback and other bluff top protective measures are consistent with Section 30253 of the Coastal Act which requires that new development minimize risks due to geologic hazards and be sited to eliminate the need to construct protective devices that would alter bluffs or cliffs.

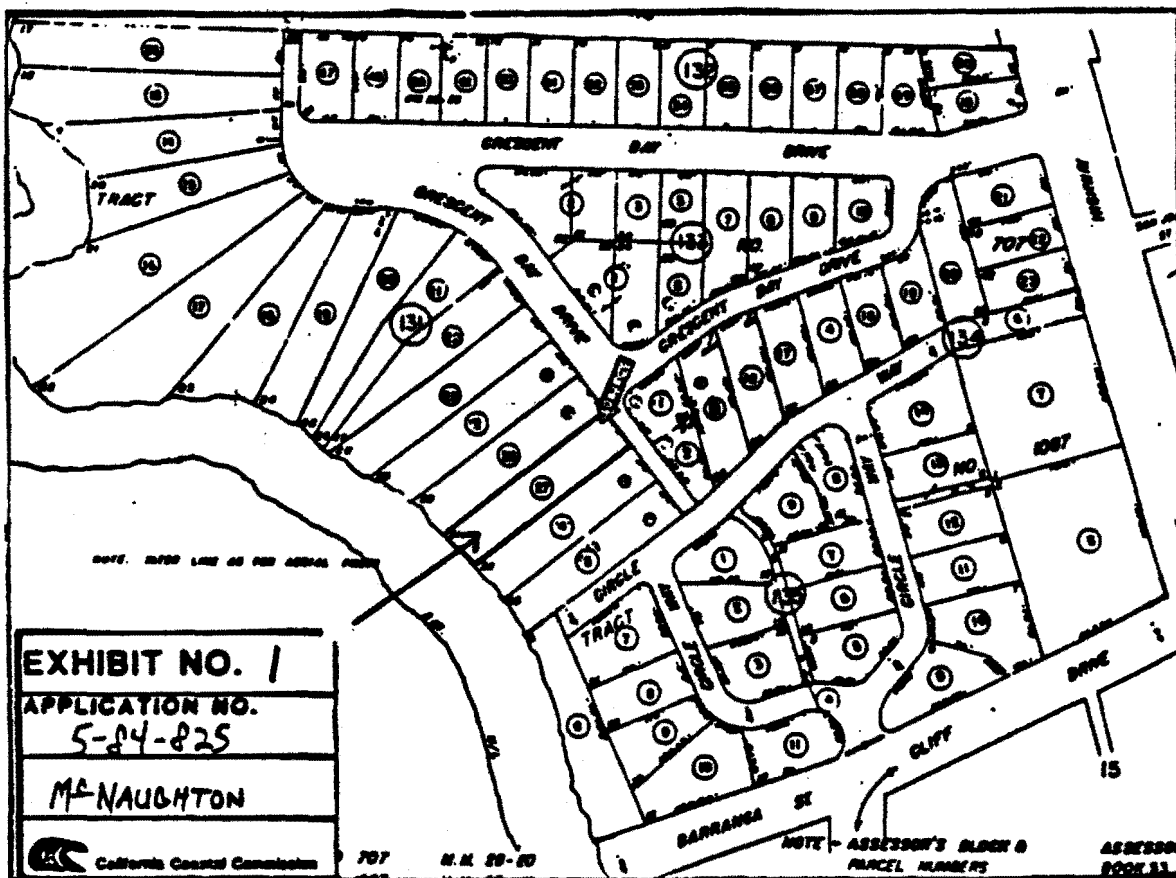
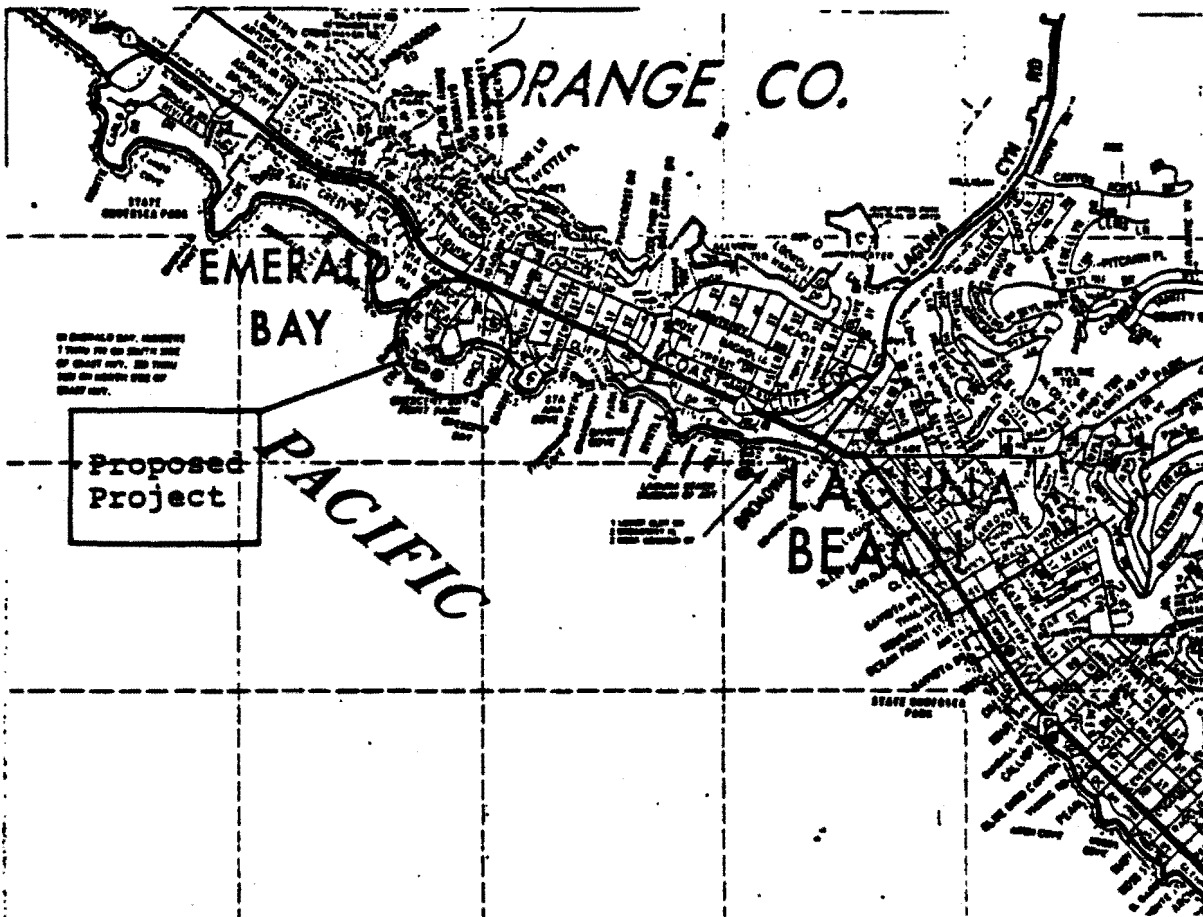
E. Local Coastal Program

Section 30604(a) of the Coastal Act states, in part:

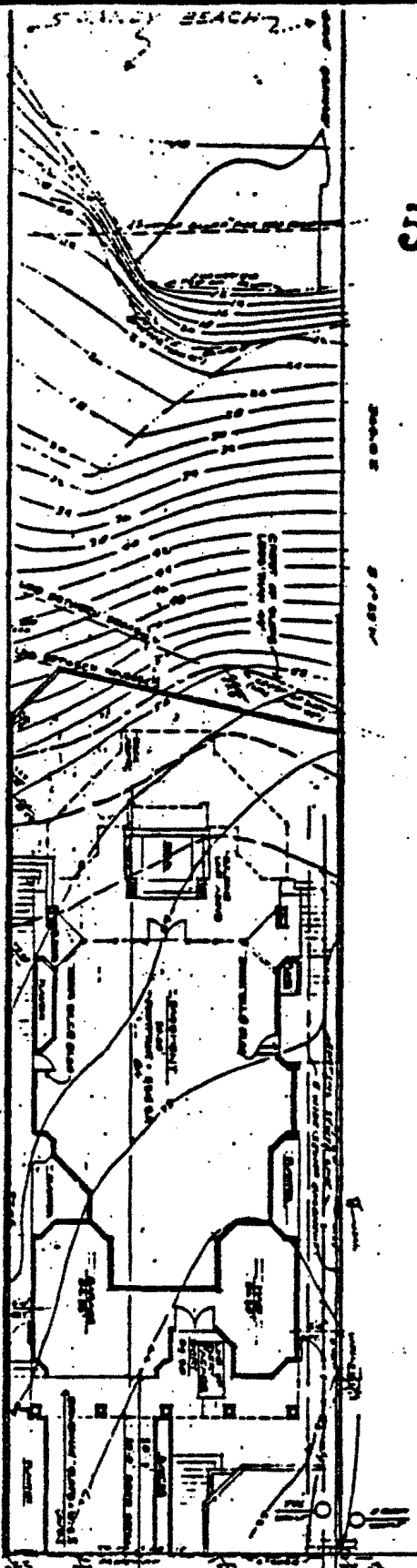
Section 30604

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach is resubmitting the Land Use Plan portion of its LCP to the Commission in early 1985. The proposed development as conditions is consistent with the policies of the submitted LUP and, therefore, will not prejudice the city's ability to prepare a Local Coastal Program consistent with Chapter 3 of the Coastal Act.




5-84-825



CRESCENT BAY DRIVE

DATE OF APPROVAL: 08/20/84
BY: J. McNaughton
PROJECT NO. 5-84-825
PLANNING NO. 5-84-825
CITY OF LANTANA, FLORIDA
PLANNING DEPARTMENT

PILOT PLAN

EXHIBIT NO. 2
APPLICATION NO. 5-84-825
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

TH-116



FILED: 5/6/87
49th DAY: 6/16/87
180th DAY: 10/25/87
STAFF: G. Timm:do
STAFF REPORT: 8/03/87
HEARING DATE: 8/25-28/87

AMENDMENT
STAFF REPORT AND RECOMMENDATION

Application: 5-84-825A

Applicant: Jack McNaughton
2700 Harbor View
Corona Del Mar, CA

Description: Amend permit to construct a single family dwelling on a coastal bluff in order to add a swimming pool to the seaward portion of the site.

Site: 287 Crescent Bay Dr., Laguna Beach, Orange County.

SUMMARY:

Staff recommends approval of the proposed amendment with a Special Condition which requires the applicant to assume liability from geologic hazards associated with the proposed development.

STAFF RECOMMENDATION

Staff recommends the Commission adopt the following resolution:

I. Approval with conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse environment within the meaning of the California Environmental Quality Act.

EXHIBIT NO.	11
Application Number	AS-LGB-95-162
	CDP
	5-84-825A
California Coastal Commission	

211-47

II. STANDARD CONDITIONS: See Attachment X.

III. SPECIAL CONDITIONS:

This permit is subject to the following Special Condition:

1. Assumption of Risk.

Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landslides, wave damage and/or shoreline erosion, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and History.

The proposed amendment is to legalize the construction of a swimming pool as an accessory use to a single family dwelling located on a coastal blufftop lot in Crescent bay. The development does not violate a stringline drawn between the nearest adjacent corners of adjacent structures.

The Commission previously approved a permit to construct a single family dwelling on the site with several Special Conditions. The Special Conditions included a lateral access easement, the applicant's assumption of risk, a bluff setback and landscaping requirement and a future improvements permit requirement.

B. Shoreline Development.

As a means of controlling seaward encroachment of residential development on a beach or blufftop in order to prevent adverse impacts on public access or coastal views as required by the Coastal Act, the Commission has applied the "stringline" policy to minimize or limit the seaward extension of buildout in past permit actions (Sections 30210, 30211, 30212, and 30251 - adopted by reference). As applied to beach or blufftop development, the stringline limits construction or extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks (including pools) to a similar line drawn between the nearest corners of the adjacent decks. In

addition, the Commission has approved a policy to require either a 25-foot setback or a stringline measurement in the Certified Laguna Beach Land Use Plan. Since the development site is located in an existing developed area and the structure is infilling, the applicable means of determining the setback in this situation is the stringline method.

As mentioned, the development does not extend seaward of a stringline drawn between the nearest adjacent structures; therefore, the Commission finds that the development is consistent with the shoreline development policies of the Coastal Act and Certified Land Use Plan.

C. Hazards.

Section 30253 of the Coastal Act states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Many oceanfront parcels such as the subject property are susceptible to wave damage such as severe erosion from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low interest loans and other benefits) in the millions of dollars in Los Angeles and Orange Counties alone. Winter storms in 1982-83 severely damaged many existing residential structures, decks, bulkheads, and piers.

As indicated in the original permit staff report, the southeasterly portion of the bluff is underlain by landslide deposits which, when subjected to erosion from wave action at the toe of the slope, could lead to reactivation of the landslide.

The Coastal Act recognizes that new development may involve the taking of some risk. These policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development, and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

Because the risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The waiver, or

applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

The Commission finds that this condition is consistent with and necessary to carry out, one of the State's basic goals for the Coastal Zone; i.e., consideration of the economic needs of the People of the State, and the Coastal Act policy which requires that new development minimize risks to life and property in areas of high flood and erosion hazards. Only as conditioned can the Commission find the project consistent with Section 30253 of the Coastal Act.

D. Local Coastal Program.

The Commission certified the Land Use Plan to the Laguna Beach LCP in March, 1986. The Commission finds that the proposed development, as conditioned, is consistent with the policies of the Certified LUP and will not prejudice the ability of the City to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

E. Violation.

Although development has taken place prior to submission of this permit amendment, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

Attachment X

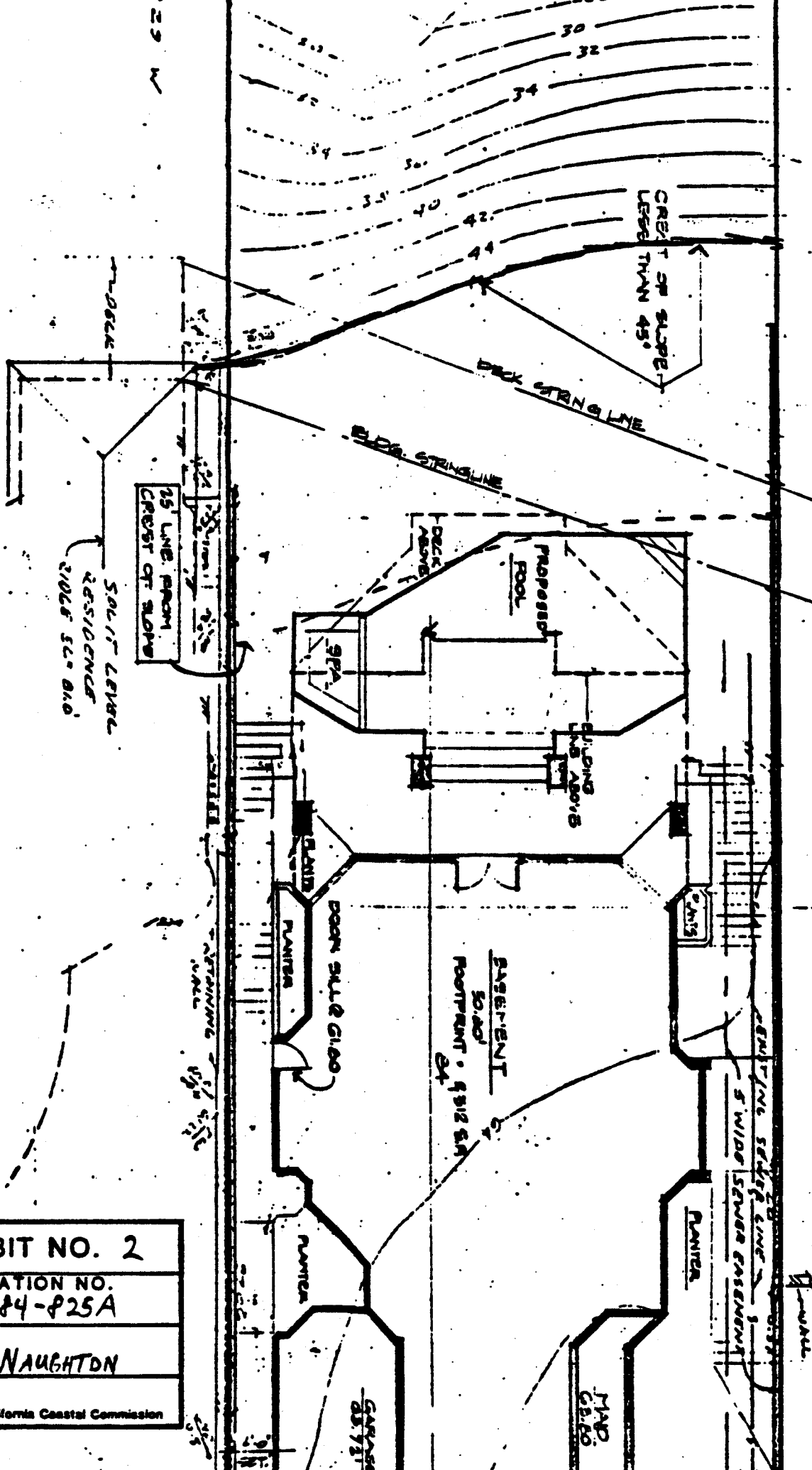
To: Permit Applicants
From: California Coastal Commission
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

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

06.01 51029 W



Mid-Near Final Paper
Footprint Area 2019.04.16

EXHIBIT NO. 2
APPLICATION NO. 5-84-P25A
MC NAUGHTON
California Coastal Commission

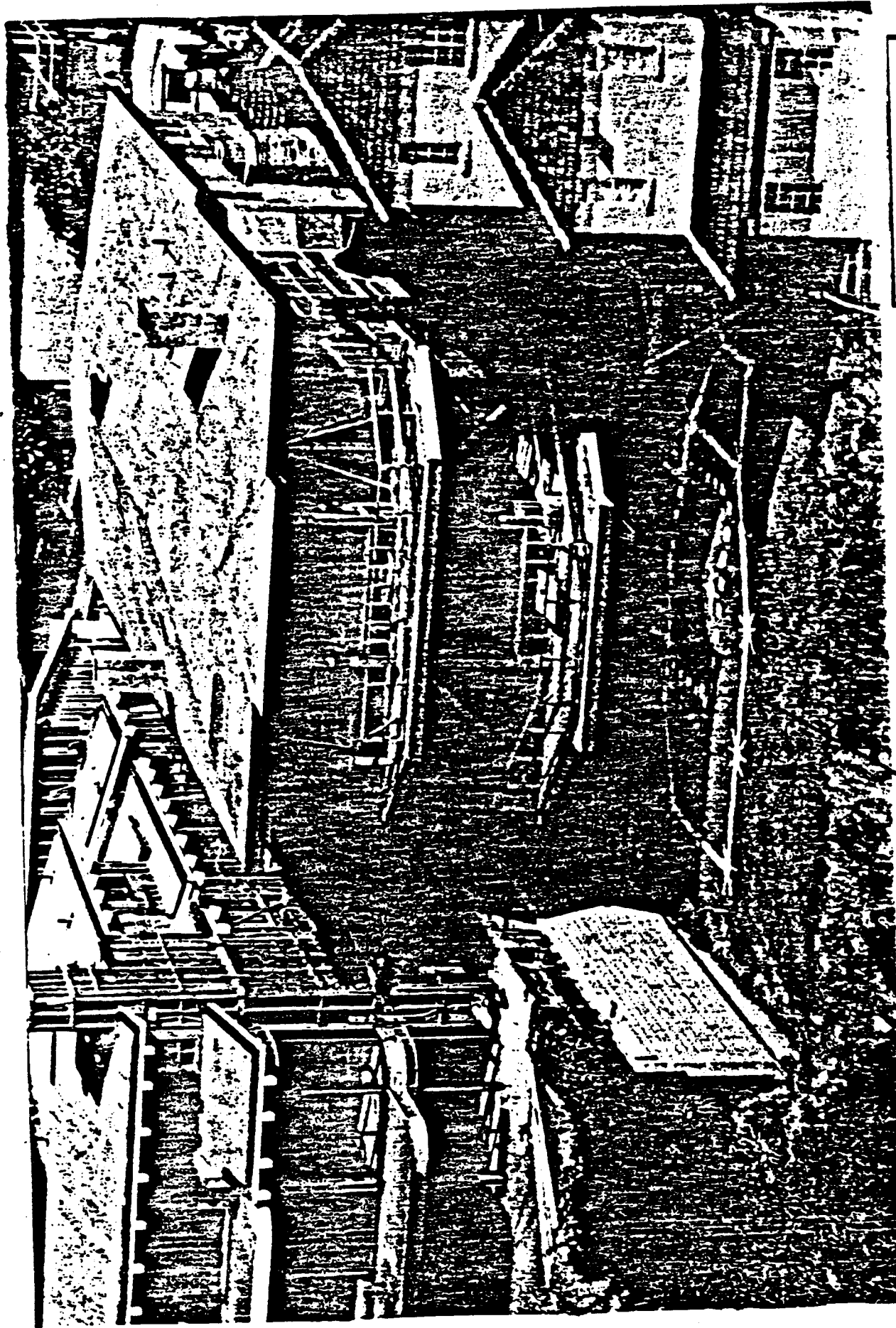


EXHIBIT NO. 3
APPLICATION NO. 5-84-825A
MCNAUGHTON

PROPOSED POOL LOCATION

SITE
287 CRESCENT BAY

1367 CIRCLE WAY

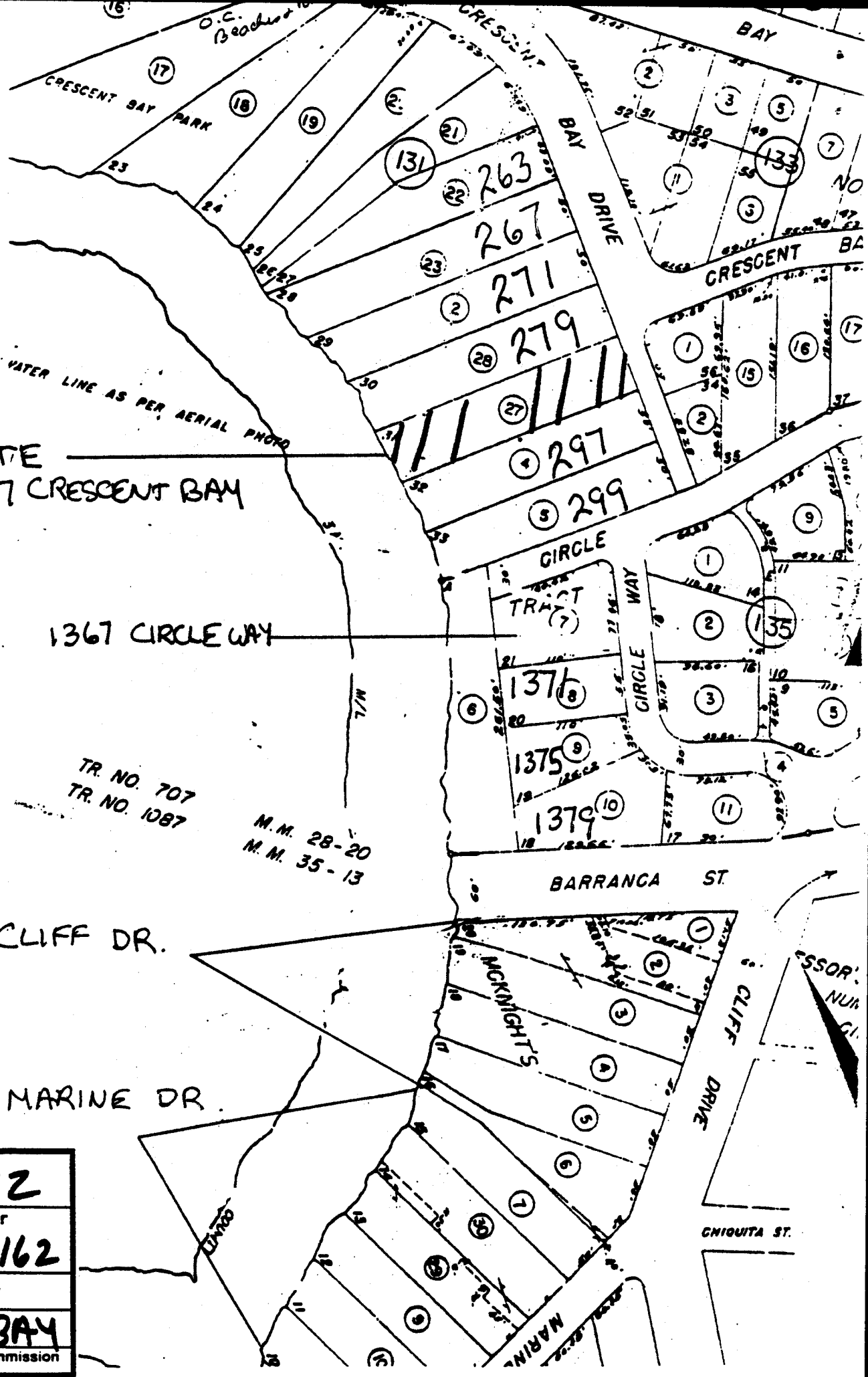
TR. NO. 707
TR. NO. 1087

M.M. 28-20
M.M. 35-13

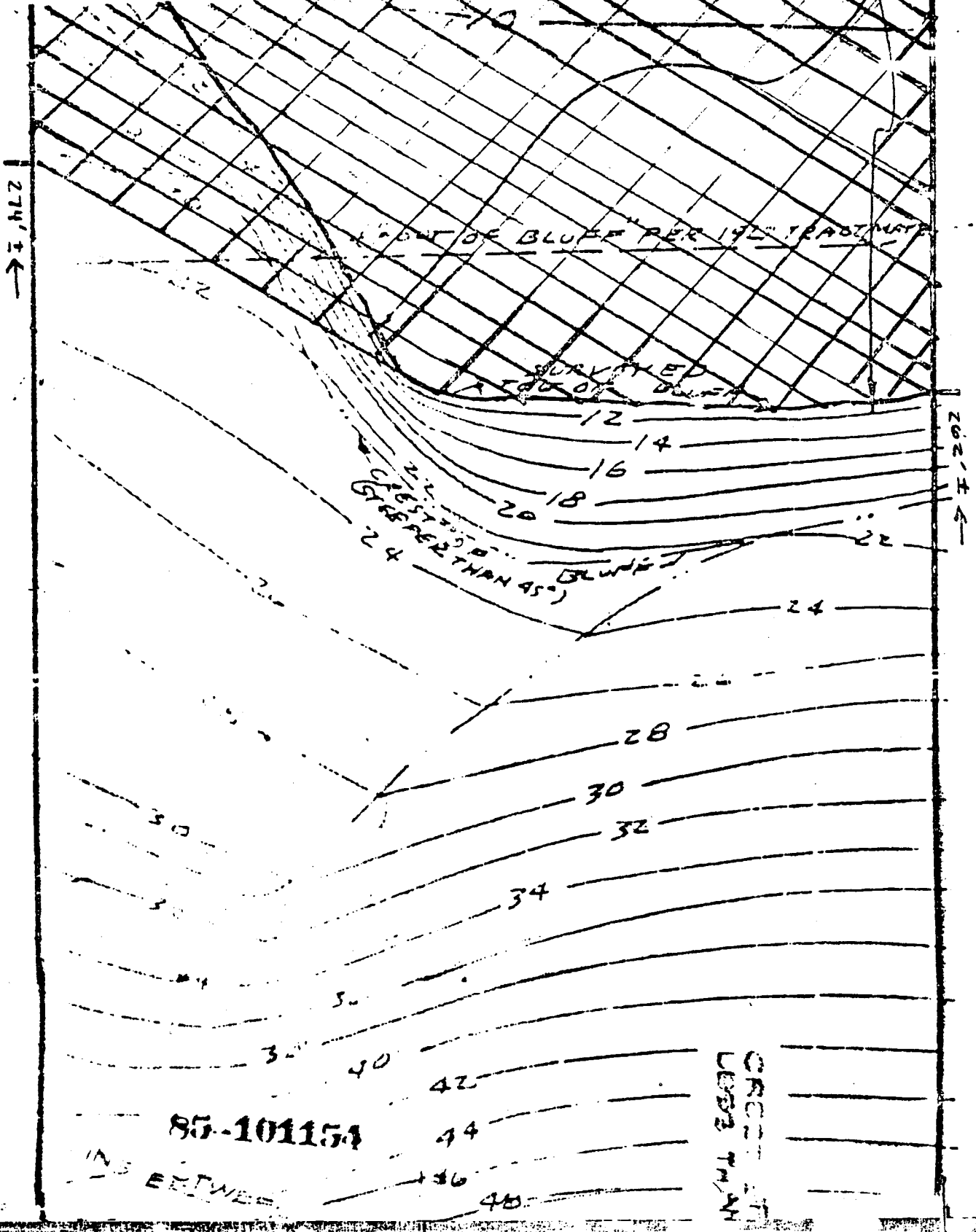
CLIFF DR.

MARINE DR.

EXHIBIT NO.	12
Application Number	AS-LGB-95-162
MAP of	
CRESCENT BAY	
California Coastal Commission	



3020 I 0202
M 62015



85-101154

LINE BETWEEN

ORIGINALLY
LARGER THAN

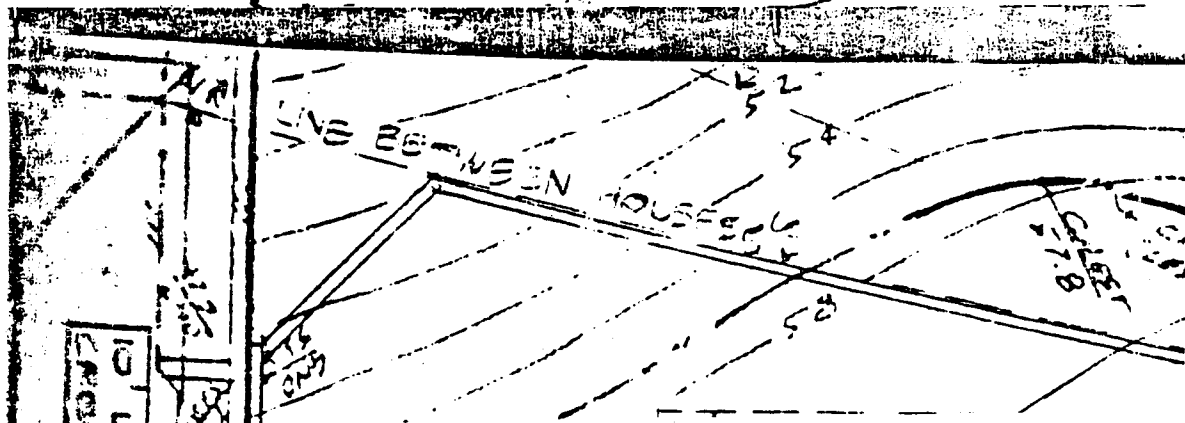


EXHIBIT NO.	13
Application Number	AS-LGB-95-162
LATERAL EASEMENT	
California Coastal Commission	

SECTION SCALE 1"

SETBACK LINE

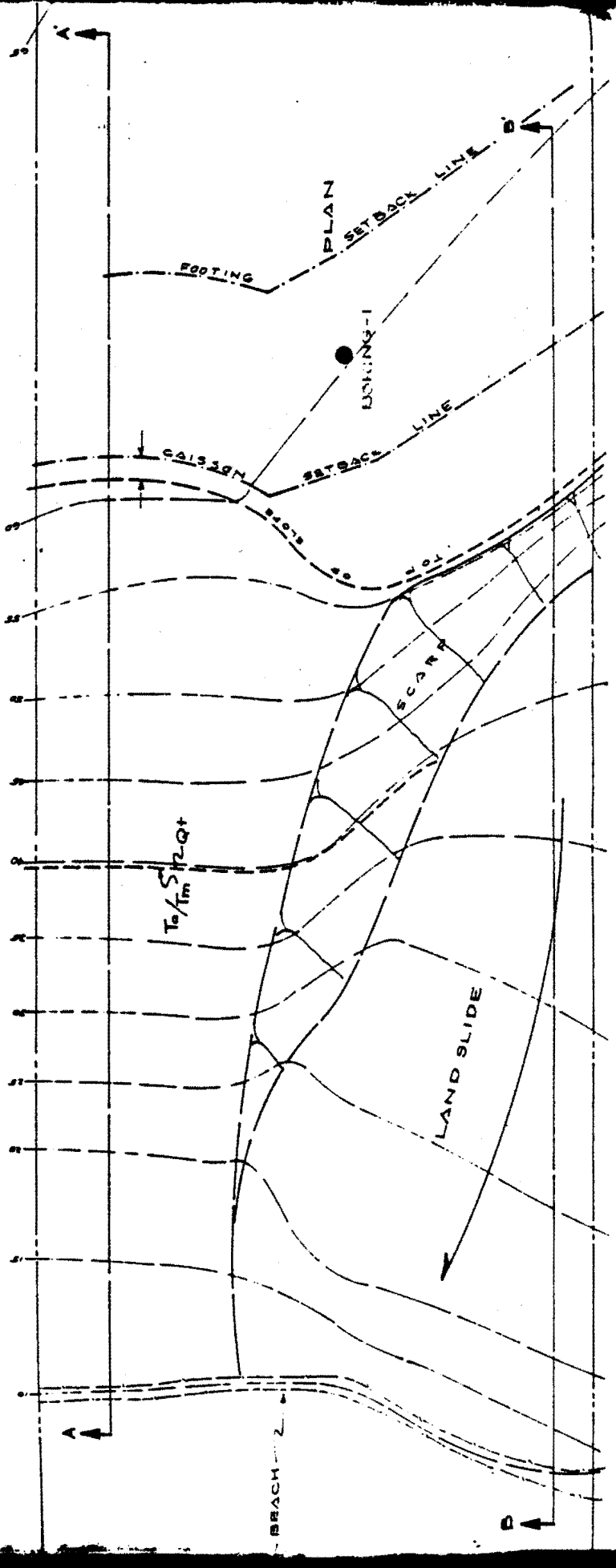


EXHIBIT NO.	14
Application Number	AS-LGB-95-162
GEO MAP	
287 CRESCENT	
California Coastal Commission	

N. 01° 29' 00" E.

46
44
42
40
38
36
34
32
30
28
26
24
22
20
18
16

CREST OF SLOPE

TOE OF SLOPE

EXIST. STAIR


3"

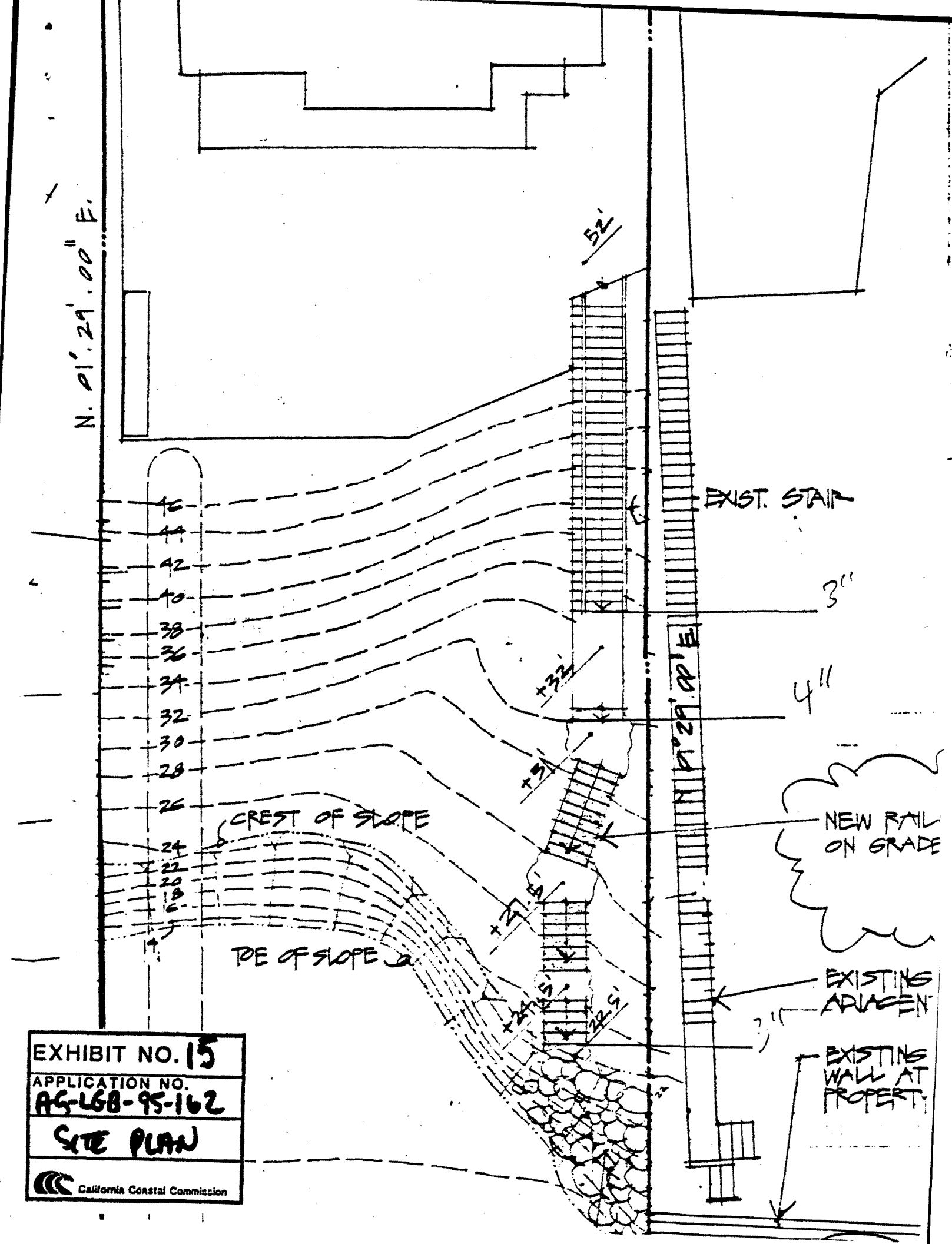
4"

NEW RAIL ON GRADE

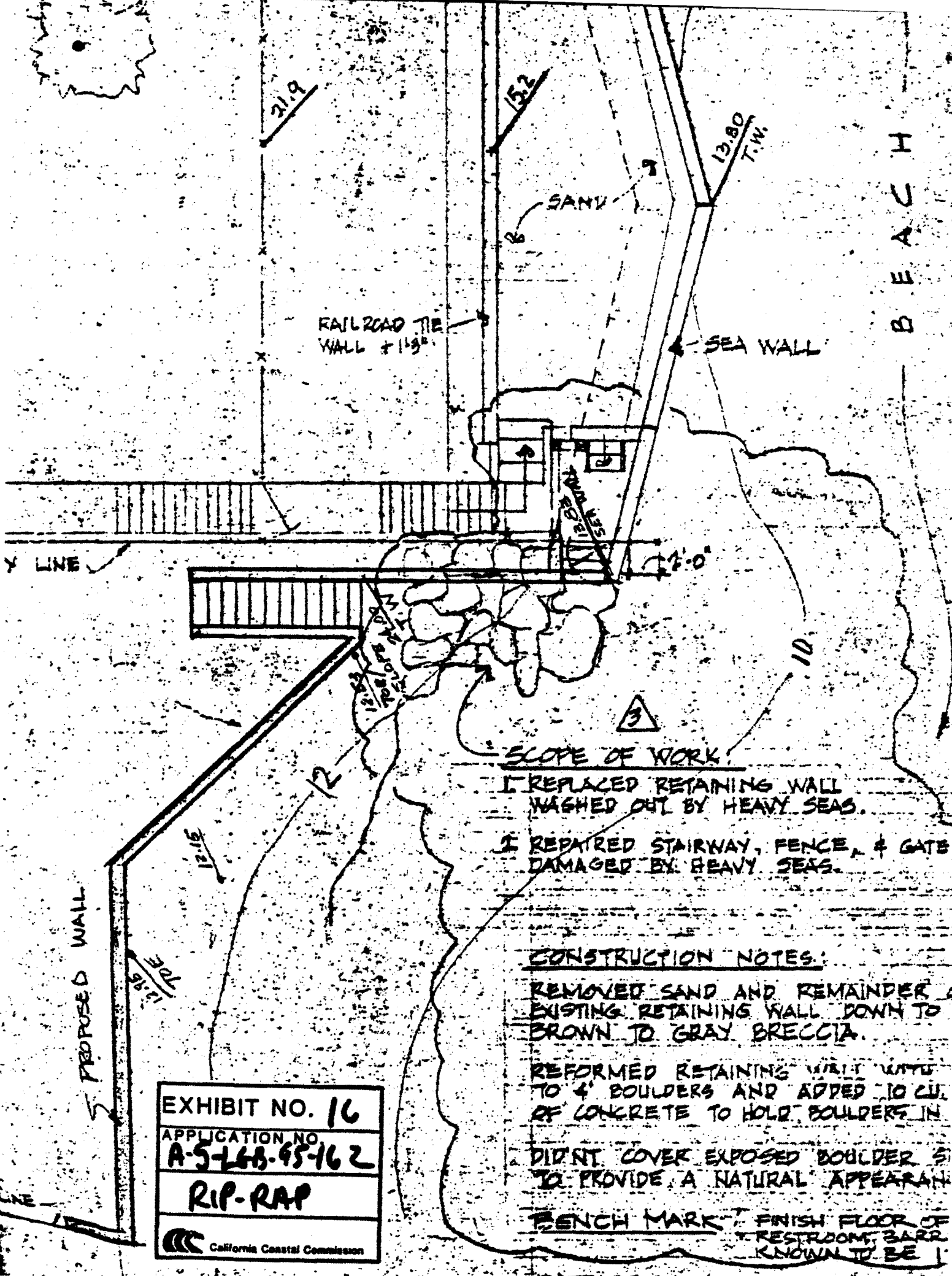
EXISTING ADJACENT

EXISTING WALL AT PROPERTY

EXHIBIT NO. 15
APPLICATION NO. AG-L68-95-162
SITE PLAN
 California Coastal Commission



B E A C H



RAILROAD TIE WALL + 1.90'

SANV

13.80 T.W.

SEA WALL

X LINE

3

SCOPE OF WORK

- 1 REPLACED RETAINING WALL WASHED OUT BY HEAVY SEAS.
- 2 REPAIRED STAIRWAY, FENCE, & GATE DAMAGED BY HEAVY SEAS.

CONSTRUCTION NOTES:

REMOVED SAND AND REMAINDER EXISTING RETAINING WALL DOWN TO BROWN TO GRAY BRECCIA.

REFORMED RETAINING WALL WITH WHITE TO 4' BOULDERS AND ADDED 10 CU. OF CONCRETE TO HOLD BOULDERS IN.

DIDNT COVER EXPOSED BOULDER 5 TO PROVIDE A NATURAL APPEARANCE.

BENCH MARK FINISH FLOOR OF RESTROOM BARR KNOWN TO BE 1'

PROPOSED WALL

EXHIBIT NO. 16
APPLICATION NO. A-5-L-68-95-162
RIP-RAP
California Coastal Commission

DATE OF SURVEY: 10-25-84



APPLICATION FOR BUILDING PERMIT
DEPARTMENT OF COMMUNITY DEVELOPMENT
CITY OF LAGUNA BEACH, CA. 92651

808 FOREST AVENUE

(714) 497-0715

APPLICANT TO FILL IN INFORMATION AND DECLARATIONS WITHIN RED LINES. USE BALLPOINT PEN ONLY.

PRINT A

VARIATION

DESCRIPTION OF WORK
REMOVE EXISTING STEPS (CONCRETE IN GRADE)

Francis
5/10/94

ASSASSOR PARCEL NO **053-131-27**

PROJECT ADDRESS
287 CREEK BAY DRIVE

VALUATION **72,000.00**

PLAN CHECK NO. _____

SPEC. HSP REQ'D FOR
 CONCRETE MASONRY
 STRUCT STEEL SOILS
 OTHER

EXISTING USE **STAIRS** PROPOSED USE **STAIRS**

CONDITION OF SOIL AT PROJECT
 UNDISTURBED TYPE CONST
 COMPACTED FILL PERMIT NO. **94-450**
 LOOSE FILL

OWNER NAME **John J. McNaughton** TEL NO. _____

ADDRESS **287 CREEK BAY DRIVE LB. 92651** ZIP CODE _____

CONTRACTOR NAME _____

ADDRESS _____ TEL. NO. _____

CITY _____ ZIP CODE _____

DESIGNER NAME _____

ADDRESS _____ TEL. NO. _____

CITY _____ ZIP CODE _____

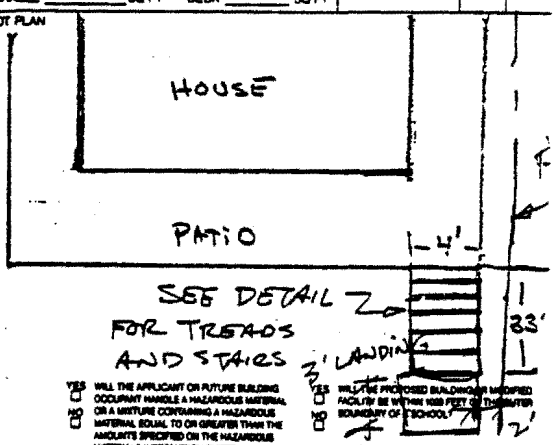
LAND AREA _____ SQ FT CARPORT _____ NO. STORIES _____

EXIST BLDG. _____ SQ FT. / GARAGE _____ SQ. FT. NO. UNITS _____

NEW CONSTRUCTION GARAGE _____ SQ FT MAXIMUM HEIGHT IN FEET _____ PARKING SPACES _____

HABITABLE _____ SQ FT DECK _____ SQ FT

PLOT PLAN



I HEREBY CERTIFY THAT I AM LICENSED UNDER PROVISIONS OF CHAPTER 9 (COMMENCING WITH SECTION 7000) OF DIVISION 3 OF THE BUSINESS AND PROFESSIONS CODE, AND MY LICENSE IS IN FULL FORCE AND EFFECT.

CONTRACTOR'S SIGNATURE _____

CONSTRUCTION LIAISON AGENCY: I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, C.V.C.)

LENDERS NAME _____

LENDERS ADDRESS _____

OWNER-BUILDER DECLARATION: I hereby affirm that I am exempt from the Contractor's License Law for the following reason:
 I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale.
 I, as owner of the property, am exclusively contracting with licensed contractors to construct the project.
 I am exempt under Sec. _____ BSPC for this reason.

DATE *5/10/94* OWNER *John J. McNaughton*

YES WILL THE APPLICANT ON FUTURE BUILDING OCCUPANT HANDLE A HAZARDOUS MATERIAL OR A MIXTURE CONTAINING A HAZARDOUS MATERIAL SOIL TO OR GREATER THAN THE ANALYTES SPECIFIED ON THE HAZARDOUS MATERIALS INFORMATION SHEET?

YES WILL THE ATTENDED USE OF THE BUILDING BY THE APPLICANT ON FUTURE BUILDING OCCUPANT REQUIRE A PERMIT FOR CONSTRUCTION OR MODIFICATION FROM THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAMD)? SEE PERMITTING CHECKLIST FOR GUIDELINES.

YES I HAVE READ THE HAZARDOUS MATERIAL INFORMATION GUIDE AND THE SCAMD REPORTING CHECKLIST (UNREQUIREMENT BY REGULATIONS UNDER THE STATE OF CALIFORNIA HEALTH & SAFETY CODE, SECTIONS 25261, 25262, AND 25263 CONCERNING HAZARDOUS MATERIALS REPORTING).

PRINT NAME _____ OWNER OR AUTHORIZED AGENT

WORKER'S COMPENSATION DECLARATION: I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers Compensation Insurance, or a certified copy thereof filed with the Building Policy No. _____ Insurance Company _____

Assessor's Signature _____ Expiration Date _____

CERTIFICATE OF EXEMPTION FROM WORKER'S COMPENSATION INSURANCE: I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner as an owner or contractor's agent.

Owner's or Contractor's Signature _____

AN OSHA PERMIT IS REQUIRED FOR EXCAVATIONS OVER 5'0" DEEP AND DEMOLITION OR CONSTRUCTION OF STRUCTURES OVER 3 STORIES IN HEIGHT. (714) 838-0145

HAZARDOUS FIRE AREA	YES	NO	<input checked="" type="checkbox"/>
GEOTECHNICAL REPORT REQUIRED	YES	NO	<input checked="" type="checkbox"/>
UNDERGROUND - UTILITIES REQUIRED	YES	NO	<input checked="" type="checkbox"/>
HEALTH DEPARTMENT REQUIRED	YES	NO	<input checked="" type="checkbox"/>
PUBLIC WORKS PERMIT REQUIRED	YES	NO	<input checked="" type="checkbox"/>

Expiration: Every permit issued by the Building Official under the provisions of the Code shall expire by expiration and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is abandoned or abandoned at any time after the work is commenced for a period of 180 days.

CONTRACTOR/OWNER & BUILDER NAME **John J. McNaughton** CITY _____ ZIP CODE _____

ADDRESS **287 CREEK BAY DR LB 92651**

I certify that I have read the conditions and terms of the permit and that I am the owner of the duly submitted plans of the owner. I agree to comply with all city and state laws relating to building construction. I hereby authorize representatives of the City of Laguna Beach to enter upon the above-described property for inspection purposes, if after making the Certificate of Exemption from the Worker's Compensation Insurance of the Labor Code (which becomes subject to such provisions) I will be forthwith comply. In the event I do not comply, the Contractor shall be deemed to have accepted the permit.

DATE *5/10/94*

CONTRACTOR OWNER AGENT FOR CONTRACTOR AGENT FOR OWNER

CITY	PLUMBING PERMIT	AMT.	CITY	MECHANICAL PERMIT	AMT.
	EACH FITTURE			INSTALL FURN DUCTS UP TO 100,000 BTU	
	EACH BUILDING SEWER			OVER 100,000 BTU	
	EACH WATER HEAT AND/OR VENT			BOILER/COMPRESSOR UP TO 3 HP	
	EACH GAS SYSTEM 1 TO 4 OUTLETS			BOILER/COMPRESSOR 3-10 HP	
	EACH GAS SYSTEM 5 OR MORE			VENT PAN SINGLE DUCT	
	EACH METAL, ALTER REPAIR WATER PIPE			EXTEND DUCTWORK	
	LAWN SPRINKLER SYSTEM-INCL. BREAKER			MECH EXHAUST - HOOD/DUCTS	
	ISOLANCE			RELOCATION OF EA FURNACE/HEATER	
	ISOLANCE			ISOLANCE	

No SX FES FEE SUMMARY

PLAN CHECK	
BUILDING PERMIT	81.00
SMIP IN	
TOTAL	

TOTAL PLUMBING		TOTAL MECHANICAL	
CITY	ELECTRICAL PERMIT	AMT.	DATE
	FITTURES		ZONING <i>LD2</i> <i>5-10-94</i>
	OUTLETS		PUBLIC WORKS
	SUBPANEL		FIRE
	SERVICE METER		PLANS APPROVED BY <i>John Stinson</i> <i>5/10/94</i>
	TEMPORARY POWER		APPROVED FOR ISSUANCE DATE <i>5/10/94</i>
	HABITABLE AREA 50 FT		
	GARAGE AREA 30 FT		
	ISOLANCE		
	TOTAL ELECTRICAL		

EXHIBIT NO. 17

Application Number **AS-LB-B-95-162**

1 of 3

California Coastal Commission

TOTAL FEES PAYABLE TO CITY OF LAGUNA BEACH **\$81.50**

PRIOR TO FINAL INSPECTION A CASHIER'S CHECK, CERTIFIED CHECK OR MONEY ORDER MUST BE DEPOSITED WITH THE CITY IN THE AMOUNT OF _____

INSPECTION RECORD CARD

COMMUNITY DEVELOPMENT, BUILDING DIVISION
City of Laguna Beach 497-3311

Job Address _____

Owner _____

Contractor _____

DATE _____

BUILDING PERMIT NO. _____

ELECTRIC PERMIT NO. _____

PLUMBING PERMIT NO. _____

MECHANICAL PERMIT NO. _____

OTHER PERMIT NO. _____

The following inspections must be called for by the permit contractor (24 hrs. in advance). No electrical wiring, plumbing heating, foundations, caissons, groud or structural members shall be covered until inspections are made by city inspection.

BUILDING	DATE	ELECTRICAL	DATE	MECHANICAL	DATE
SETBACKS		TEMPORARY POWER		REFRIGERATION	
FOUNDATIONS-FORMS		UNDERGROUND		AIR-COND.	
FOOTINGS				HOOD	
REINFORCING STEEL		PARTIAL ROUGH		DUCTS/VENTS	
CAISSONS-PILES				HEATING	
MASONRY		ROUGH WIRING			
UNDER FLOORS/SILLS/JOISTS					
FLOOR SHEATHING		FIXTURES			
ROOF SHEATHING		FINAL ELECTRICAL		FINAL ELECTRICAL	
FRAMING		PLUMBING	DATE	PLUMBING	DATE
		UNDERGROUND			
				SEWER	
		ROUGH PLUMBING		OK COVER	
				FINAL SEWER	
INSULATION		TOP OUT			
EXTERIOR LATH					
INTERIOR LATH		GAS			
SCRATCH COAT		TEST			
FINAL BLDG				FINAL PLUMBING	

INSPECTOR'S NOTES

9/8/94. Stairs OK. Needs to pull loose fill off ocean Bluff prior to start final by

NOTE: Do not occupy Building until Final Approval by all Departments!

EXHIBIT NO. 17

Application Number
A5-LGB-95-162

2 of 3

California Coastal Commission

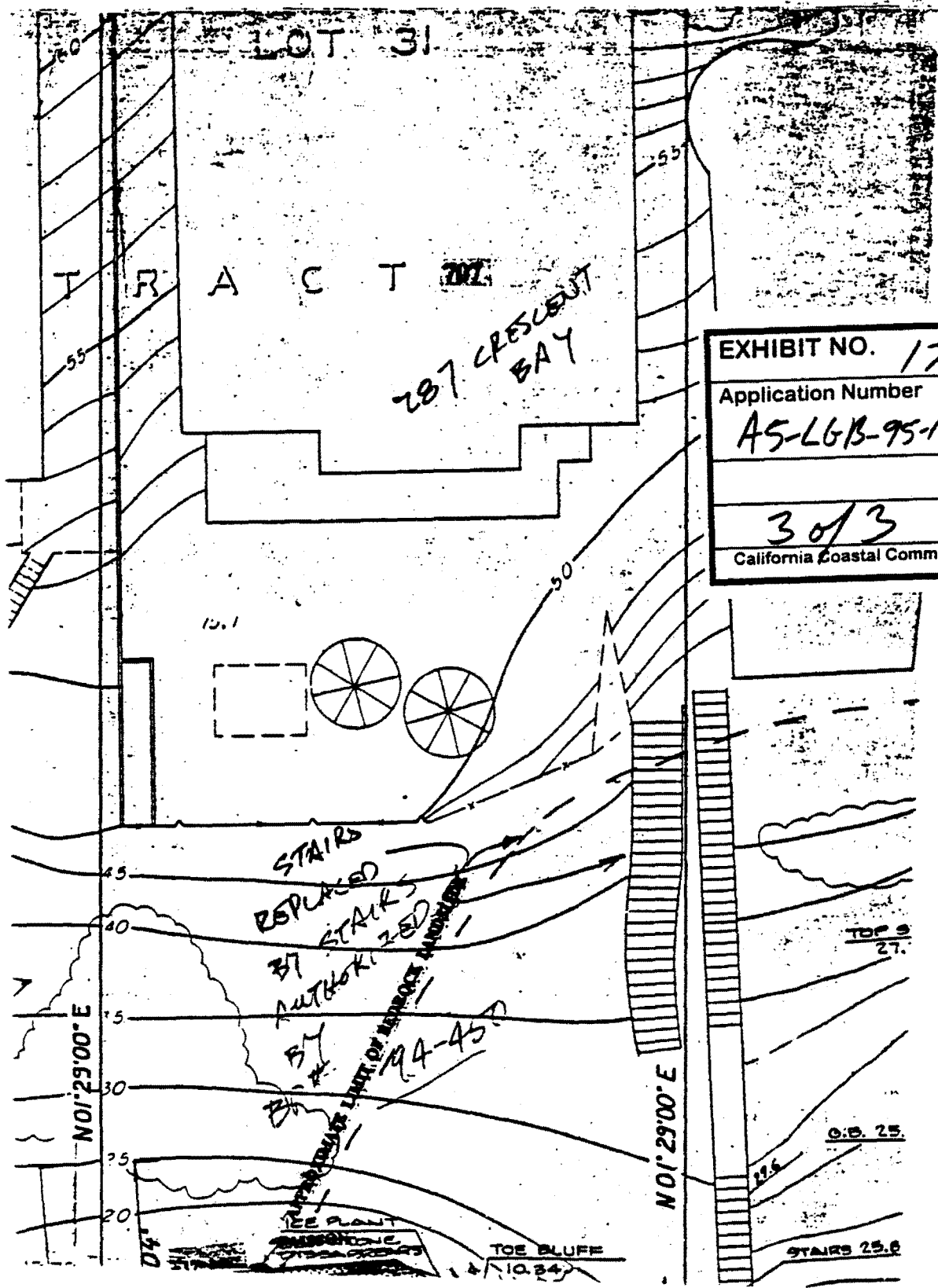


EXHIBIT NO. 17
Application Number A5-LGB-95-162
3 of 3
California Coastal Commission

