

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT**  
**APPEAL (DE NOVO REVIEW)**

**Appeal number**.....**A-3-PSB-98-049, Cliffs Hotel Revetment & Dewatering Plan**

**Applicant**.....Tokyo Masuiwaya California Corporation  
 (Agents: Fred Schott & Sherman Stacey)

**Appellants**.....Commissioners Areias & Nava, the Surfrider Foundation, and Bruce McFarlan

**Local government**.....City of Pismo Beach

**Local decision**.....Approved with conditions, 4/21/98

**Project location**.....Blufftop, bluff, and beach seaward of the Cliffs Hotel at 2757 Shell Beach Road in the northern portion of the City of Pismo Beach in southern San Luis Obispo County (APN: 010-041-044).

**Project description**.....Regular follow-up permit to previous emergency authorization (on August 28, 1997) for the construction of a rock revetment (approximately 435 feet long, 18 to 30 feet high) as well as three new dewatering wells, a sump pump, an emergency generator at the sewage lift station, a blufftop concrete swale to intercept surface water flow and divert it into a storm drain system, an irrigation system with moisture sensing controls, and blufftop landscaping.

**File documents**.....City of Pismo Beach certified LCP; City of Pismo Beach permit files 96-080, 97-130; Coastal Commission permit files 4-83-490, 4-83-490-A1, A-3-PSB-96-100.

**Staff recommendation**...**Denial**

**Staff Summary:** This is an appeal of a regular follow-up permit to an emergency authorization for the construction of a rock revetment and other drainage and dewatering plans for the Cliffs Hotel in the City of Pismo of Beach. On October 14, 1998, the Commission found that a substantial issue exists with respect to the proposed project's conformance with the certified City of Pismo Beach LCP. **Staff is recommending that the Commission now deny the coastal development permit for this development.** The primary reason for this recommendation of denial is that the City's approval directly

4. Exhibits
  1. Regional Location
  2. Project Location
  3. Site Plan
  4. General Revetment Cross Section
  5. Dewatering Elements Cross Section
  6. Before & After Photos
  7. Air Photo of Site
  8. Geologic Hazard Deed Restriction (north)
  9. Public Access Deed Restriction (north)
  10. Geologic Hazard Deed Restriction (south)
  11. Public Access Deed Restriction (south)
  12. May 26, 1998 Letter to Applicant from Commission Staff
  13. Estimated Future Retreat
  14. Sand Supply Calculations
  15. Commission Staff Comments on Negative Declaration
  16. Correspondence

## **1. SUBSTANTIAL ISSUE DETERMINATION**

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On October 14, 1998, the Commission found that the proposed project raised a substantial issue with respect to its conformance with the certified City of Pismo Beach LCP. At that time, the de novo review on the merits of the project was postponed per the applicant's request (see Exhibit 16). What follows is a short summary of the City's action and the appeals of that action that resulted in the Commission's finding of substantial issue.

### **City of Pismo Beach Action**

On August 28, 1997, the City of Pismo Beach issued an emergency permit for the proposed project. Shortly thereafter, the emergency work was completed. Subsequently, the required follow-up regular coastal permit was approved, initially at the Planning Commission level, on February 24, 1998. That approval was appealed to the City Council, which ultimately denied the appeal and approved the proposed project with conditions on April 21, 1998.

### **Appeals of City's Approval**

The Commission's ten-working day appeal period for this action began on May 5, 1998 and concluded at 5:00 P.M. on May 18, 1998. On the first day of the appeal period, the proposed project was appealed by Commissioners Areias & Nava, the Surfrider Foundation and Bruce McFarlan. In general, the relevant issues raised by the appellants fall into three areas: (1) the project is inconsistent with both the underlying recorded property restrictions and the Commission's previous findings and conditions at this site, which do not allow for development other than pathways and stairways seaward of the Cliffs Hotel (CDP 4-83-490); (2) it has not been clearly demonstrated that there are structures in danger from erosion and that there are no other less environmentally damaging feasible alternatives available than the proposed revetment (LCP Policy S-6, LCP Zoning Ordinance Section 17.078.060 et al); (3) the project has not mitigated for its negative impact on sand supply, public access, natural landforms, visual resources, and long-term site stability (LCP Policies S-3 and S-6, LCP Zoning Ordinance Sections 17.078.060 et al and 17.096.020 et al, Coastal Act Sections 30210, 30211, 30220, and 30240).

appellant, the applicable policy references in this case include LCP Policy S-6 and LCP Zoning Ordinance Sections 17.078.060 et al and 17.096.020 et al.]

- The project is inconsistent with LCP Policy S-6 which only allows shoreline protective devices if no other feasible alternatives are available. In this case, alternatives to the proposed project do exist. [Staff note: while not identified by the appellant, an additional applicable policy reference in this case is LCP Zoning Ordinance Sections 17.078.060 et al.]
- The project is inconsistent with LCP Policy S-3 and LU-C-2 which require setbacks to allow for 100 years of natural erosion to take place without the placement of hard protective devices.
- The Coastal Act does not allow for the permanent erection of structures under emergency authorization which are valued at more than \$25,000.
- The Commission's original approval in 1983 was based upon a 3-inch per year retreat rate when the City's Spyglass/Palisades EIR report of 1979 estimated that the retreat rate for this section of bluffs was 12-inches per year. The "greed of the original developers may have caused the Cliffs to be too close to the bluff top." Contrary to LCP Policy S-3 and LU-C-2, "the Cliffs Hotel did not have the proper set back to insure the 100 year bluff erosion zone."

#### ***Appeal of Bruce David McFarlan***

This appeal contends that the proposal is inconsistent with the LCP for the following reasons:

- The emergency permit authorized by the City circumvented the Coastal Commission's previous denial designed to protect an illegally placed sewage pump station and represents an abuse of the emergency permit process, a "denial of due process," an "end around" on public input, and a contradiction of the Commission's previous decision. Moreover, this project represents the same project previously denied by the Commission.
- The project impacts sandy beach access in violation of the LCP and the Coastal Act. [Staff note: while not identified by the appellant, the applicable policy references in this case include LCP Policy S-6, LCP Zoning Ordinance Section 17.078.060 et al, and Coastal Act Sections 30210, 30211, and 30240.]
- The description of the risk to the Cliffs Hotel is vague and ambiguous. Furthermore, the retreat rate used to justify the project is questionable, as is the assertion that overwatering is not contributing to erosion problems at the site. [Staff note: while not identified by the appellant, the applicable LCP references in this case include LCP Policy S-6 and LCP Zoning Ordinance Section 17.078.060 et al.]
- The revetment will impact sand transport, natural landforms, and visual resources. These impacts have not been detailed by the City's environmental review of this project. [Staff note: while not identified by the appellant, the applicable LCP references in this case include LCP Policy S-6, and LCP Zoning Ordinance Sections 17.078.060 et al and 17.096.020 et al.]
- The project is inconsistent with the underlying recorded property restrictions which do not allow for any development other than a stairway seaward of the 100-year setback. [Staff note: while not identified by the appellant, the applicable LCP references in this case include LCP Policy S-3 and LU-C-2.]

restricted for public access as a condition of the Commission's original approval of the Cliffs Hotel in 1983. The pocket beach is part of a larger public beach complex accessed by a stairway along the northern property line of the Cliffs Hotel; the stairway extends from Shell Beach Road to the beach along the edge of a steep arroyo. This stairway was also required as a condition of the Commission's original approval in 1983.

The beach area stretching to the northwest from the stairway (directly northwest of the Cliffs Hotel site) is a much used, broad sandy beach backed by high bluffs similar to the Cliffs site. South of the stairway, the beach area narrows and access is gained to the pocket beach in front of the Cliffs over a rocky promontory which limits access southward at high tides. Another rocky promontory, which also limits access at high tides, is located near the southern Cliffs Hotel property line. Past this point begins another sandy pocket beach and some further rocky areas that can be accessed by a path connecting inland from Shell Beach Road through Spyglass Point City Park.

Beach and blufftop recreational access at the Cliffs Hotel site is complemented by offshore recreational access for surfing. The area offshore of the northern portion of the Cliffs Hotel property is the site of a well known reef-based surfing break most commonly referred to as "Reefs Right" (or alternatively as "Palisades" or "The Cliffs"). A second surf break, commonly known as "Finger Jetty," is located offshore near the southern property boundary of the Cliffs Hotel property.

## **B. Project History**

### **Past regulatory actions**

The Cliffs Hotel and Restaurant development was originally approved by the Commission on October 13, 1983 (CDP 4-83-490). This approval was conditioned to provide a 100-foot setback from the blufftop edge and to limit development seaward of the hotel to public access pathways and stairways; these requirements were formalized by recorded deed restrictions. The permittee was also required to construct a pathway and stairway from Shell Beach Road to the sea with a connecting pathway segment on the blufftop in front of the hotel. Signed beach access public parking for at least 19 vehicles seaward of Shell Beach Road was also required. Finally, in addition to the 100-foot setback requirement, the permittee was required to record a deed restriction assuming liability for developing in an area "subject to extraordinary hazard from erosion and from bluff retreat." (See Exhibits 8 through 11 for the full text of the recorded property restrictions. Note that, because there were two parcels seaward of Shell Beach Road when the project was originally permitted, there are four deed restrictions – two for each original parcel.)

On December 12, 1996, the Commission denied, on appeal, a proposal that would have allowed concrete and pile upper bluff stabilization, modified surface/underground drainage system, and a rock rip-rap revetment (similar to the current application) at the base of the bluffs. **A-3-PSB-96-100** was denied in part because the project was designed to protect a sewage holding tank which had been constructed without the benefit of a coastal permit within the 100-foot setback area contrary to the conditions of 4-83-490, and contrary to the recorded property restrictions which disallowed any development with the exception of public access pathways in the 100-foot area. Furthermore, the Commission deemed the project inconsistent with the LCP because the City's approval did not consider less environmentally damaging alternatives and it did not consider or mitigate impacts to shoreline processes, sand supply, and the public viewshed.

Following the Commission's denial of the previously proposed revetment, Commission staff opened

Therefore, two agenda items before the Commission on the November 1998 agenda essentially represent the same project (i.e., the de novo portion of this appeal, A-3-PSB-98-049, and the amendment request, 4-83-490-A1). Not only that, but because the project was approved by the City of Pismo Beach as an emergency, the "proposed" project has already been constructed. However, for the Commission's review purposes, for both the amendment and the appeal, the revetment and dewatering elements must be treated as if they do not exist. Where appropriate, though, on the ground observance and information about the project as constructed are provided.

#### **Applicability of prior discussions with Commission staff**

In the summer of 1997, the applicant met with staff to discuss the need for shoreline protection at the Cliffs site based on new geological information (see discussion in the finding beginning on page 13 below). In addition, staff conducted one site visit to assess the risks from erosion. Based on this preliminary review, staff informed the applicant that "it appear[ed] that bluff protection [was] warranted at the Cliffs Hotel site." As will be seen below, this early opinion has been revised following the more detailed staff analysis now incorporated into these findings. More important, the applicant and the City have asserted that this opinion was, in part, the basis for pursuing the *emergency* installation of a rock revetment over the Labor Day weekend in 1997. However, this preliminary staff opinion should not be countenanced in this action for a variety of reasons.

First and foremost, the preliminary opinion offered in the summer of 1997 was not part of any official submittal to the Commission. No applications to amend the original permit for the Cliffs Hotel were received or reviewed by Commission staff. Nor was any application that might have been prepared for review by the City of Pismo Beach submitted to the Commission for its review and comment. More important, because there was no official submittal before the Commission staff, no recommendation was prepared or submitted to the Commission itself, which is the official decisionmaker for coastal development permit or appeal decisions. The opinion that bluff protection appeared warranted constituted preliminary staff-level advice only. As such, it is not a binding determination.

Second, because the applicant made no official application or project submittal, staff did not conduct a detailed, comprehensive analysis of the information submitted by the applicant, as would typically be done in a formal permit or appeal review. Rather, staff was offering a *preliminary* opinion based on *limited* review and presentation of materials by the applicant. Although staff offers preliminary advice on many projects, and does its best to offer good advice, it is always understood that such advice is preliminary and, more importantly, always subject to further more detailed review in the formal coastal development permitting process, particularly by the Commission itself.

Finally, staff articulated no opinion as to whether an *emergency* permit was appropriate for the circumstances of the Cliffs Hotel. Nor was any official request made or made known to the Commission prior to the City's action and the beginning of work on the revetment. Commission staff first became aware of the City of Pismo Beach emergency authorization on Labor Day weekend, after receiving phone calls from the public that preparations were being made to place rocks on the beach at the Cliffs site. As discussed in detail below, even using the applicant's geological studies, it is difficult to make a case that an "emergency," defined in the City's LCP as "a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services," existed or would currently exist (without the revetment) at the Cliffs site. In short, even if staff had believed that a shoreline structure was warranted in the near future, this should have been pursued through the normal coastal development permit process.

restriction that was designed to ensure the project's consistency with Coastal Act Section 30253 over the course of its lifetime. This deed restriction states:

*The undersigned Owners, for themselves and for their heirs, assigns, and successors in interest, covenant and agree: (a) that no development other than pathways and stairways shall occur within the 100 foot setback portion of the Subject Property shown and described on Exhibit B attached hereto and incorporated herein by reference; (b) that the Applicants understand that the portion of the Subject Property described on Exhibit A is subject to extraordinary hazard from erosion and from bluff retreat and that the Applicants assume any liability from these hazards which may result to the California Coastal Commission from its granting of Permit No. 4-83-490; (c) the Applicants unconditionally waive any claim of liability on the part of the California Coastal Commission for any damage from such hazards; and (d) the Applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion or landslides.*

This deed restriction, in which the applicant assumes the risk for building along an eroding coastline, is supplemented by a second, and complementary, deed restriction also required as a condition of the Commission's original approval. This second property restriction states, in applicable part:

*[N]o grading, landscaping, or structural improvements that in the opinion of the Executive Director of the California Coastal Commission, or his successor, would impede public access, other than public walkways and stairways, shall be constructed on the Subject Property.*

Thus, the first deed restriction is for geologic hazards and waiver of liability, and the second is for ensuring that public access would be permitted on the site.

The access deed restriction covers the area between the oceanside elevation of the hotel and restaurant and the seaward property line (see Exhibits 9 & 11). An exhibit attached to the deed restriction when it was recorded in 1984 shows the deed restricted area to be about 200 feet in length, and evenly divided between bluff top and beach portions. These proportions have now changed as the bluff top land has eroded away. The deed restriction limits development to access pathways/stairways and any other grading, landscaping or structural improvements that, in the opinion of the Executive Director, would not impede public access. Thus, under the terms of the deed restriction, before any development can occur in the deed restricted access area, the Executive Director must be consulted and find that the proposed development will not impede public access. If the Executive Director determines that the proposed development will impede access, then the project cannot go forward unless the deed restriction is amended to allow the development. The deed restriction can only be amended by submitting a request for such a change to the Coastal Commission.

The deed restriction for geologic hazard setback and waiver of liability (Exhibits 8 & 10) flatly precludes any development within 100 feet of the hotel and restaurant other than "pathways and stairways." This other deed restriction on the property provides for a geologic set back, places future owners on notice regarding dangers associated with the site (eroding bluffs), and places the assumption of risks involved in building and maintaining structures on the site on the property owner. The geologic set back area runs the width of the site and extends out 100' from the hotel and restaurant buildings to what was, at the time the deed restriction was recorded, the edge of the bluff. Thus, the geologic hazard set back area and the bluff top portion of the access area occupy the same physical space on the site. This is relevant because the deed restrictions do not contain equivalent limitations on new development. As

allowed under the conditions and corresponding deed restrictions. The proper course of action in such cases is for the applicant to apply to the Commission for an amendment to the original permit.

Nonetheless, were the Commission to find that its prior action and the resultant deed restrictions did not prevent the City from taking such an action, the approved revetment is also inconsistent with a variety of LCP policies concerning erosion risks, feasible alternatives, and the mitigation of public access, sand supply, visual resources, and other coastal resource impacts. Each of these reasons is discussed in detail below.

## **2. Is the Cliffs Hotel in Danger from Erosion?**

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Policy S-6 of the City of Pismo Beach LCP addresses the use of shoreline protective devices:

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

This policy reflects, and indeed incorporates, Section 30235 of the Coastal Act:

**30235:** *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

With the exception of new coastal-dependent uses, LCP Policy S-6 and Section 30235 limit the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The LCP further limits these criteria to protecting existing *principal* structures. While the Commission must always consider the specifics of individual projects, the Commission has usually interpreted Section 30235 likewise to apply to principal structures only. The Coastal Act provides these limitations because shoreline structures have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach (see findings below beginning on page 23).

If the Commission were to find that the City's permit action was valid, then under LCP Policy S-6 and Coastal Act Section 30235, the Commission shall approve a shoreline structure if it finds that (1) there is an existing principal structure in danger from erosion; (2) shoreline altering construction is *required* to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply. The first and most important analytical test of this policy is to determine whether or not there is an existing principal structure in danger from erosion.

case are the hotel and restaurant, not the 50-foot lateral access area cited by the Applicant, nor any other unpermitted structures that may be present in the setback area.

#### **Describing the "danger from erosion"**

According to the project's geotechnical reports by Earth Systems Consultants (ESC), the proposed revetment is necessary to thwart ongoing bluff retreat and thus "protect the 50-foot lateral access easement that is currently being used for recreation, and the buildings on site." As detailed above, only the buildings on site constitute structures in this case. The structure on the site that is closest to the bluff is the restaurant. The restaurant building is approximately 78 feet from the bluff edge. The hotel, on the north of the property, is approximately 130 feet from the top of the bluff. The project plans show that since 1984 the top of the bluff has retreated anywhere from 10 to 25 feet in front of the restaurant with larger (35 feet at the southern property line) and smaller (essentially zero in front of the hotel) retreat areas to the south and north (see Exhibit 13).

ESC has estimated that the southeastern portion of the Cliffs Hotel bluff is retreating at a rate of 4-feet per year. The increase in the estimated retreat rate from the original 1983 Commission approval, a jump from 3-inches per year to 4-feet per year, has generally been caused, according to the project's geotechnical reports, by a weaker rock formation that has been exposed in the southern portion of the bluff. The bluffs at the Cliffs Hotel generally consist of a 34 to 38 foot marine terrace alluvial layer on top of approximately 40 feet of Pismo and Monterey Formation rock which form the base of the bluff. While ESC indicates that landscape irrigation, natural groundwater, and precipitation may be responsible for some blufftop soil instability and minor sloughing, ESC has concluded that "the accelerated retreat of the bluff in this [southern] area is definitely due to the retreat of the weak shale exposed in the lower part of the bluff." According to ESC, as the stronger bituminous Pismo sandstone layer erodes, the weaker and older Monterey formation shale material is exposed which erodes at a much faster rate.

Also contributing to decreased stability in the southern bluff area, according to ESC, is a "non-active fault exposed in the bedrock face of the bluff [that] has fractured and weakened the sandstone rock in this area." As evidence, the applicant has used ground penetrating radar profiles by the consulting geologist, Gary Mann, to more accurately describe the structural geology of the bluff. In the bluff generally fronting the restaurant, Mr. Mann has identified a problem area of fractured bedrock with some groundwater seepage as well as a previous failure section where unstable shale will likely soon be encountered. In the bluff generally fronting the hotel, Mr. Mann has identified an area of fractured bedrock with some groundwater seepage as well as some sections of weaker shale fracture zones to the north. Along the southern property line, Mr. Mann has identified an unstable shale-marine terrace interface described as a "potential landslide failure mechanism" which could "potentially fail catastrophically and result in 10 to 20 foot sections of bluff removal in one episode." Nonetheless, Mr. Mann corroborates ESC's findings by concluding that "all of the bluff failures and problem areas located at the Cliffs Resort Hotel site have a primary and common failure mechanism associated with buttress rock removal as a result of unstable rock conditions (fractures, faults, folds) that serve to concentrate the effects of direct wave action resulting in undercutting, rock falls, and accelerated shale erosion." In essence, while there may be any number of contributing factors, the consulting geotechnical engineers conclude that the bluff in front of the Cliffs Hotel property is retreating due to wave contact at the base of the bluff.

#### **Analyzing the retreat rate**

Bluff retreat rates can be difficult to accurately predict, although the increase in understanding of coastal



retreat to the restaurant patio. After 24 years, there would still be a 50-foot wide blufftop area between the restaurant and the bluff edge (see Figure 1 below).

Another perspective on the estimated retreat rate for the Cliffs Hotel site comes from David Chipping, currently a professor at Cal Poly San Luis Obispo. Mr. Chipping is a widely respected geologist with a long history of studying the north Pismo Beach bluffs. In his 1979 study for the draft EIR done for the Cliffs Hotel planning area, Mr. Chipping estimated a rate of approximately 12-inches per year in the area of the proposed revetment. For one-hundred year site stability, in this 1979 study Mr. Chipping further recommended that structures sited in this area be set back 165 feet to 192 feet from the bluff edge (i.e., a greater setback distance than the 100-foot setback adopted by the Commission in their original approval of the Cliffs Hotel). Commission staff recently asked Mr. Chipping to review the current reports developed by the Applicant's geotechnical consultants and he indicated that he generally agreed with the geotechnical evaluation as far as the method of erosion. However, he also indicated that a long-term retreat rate in the neighborhood of 12-inches per year was more reasonable for the subject site. Assuming constant retreat at this long-term rate, it would take 78 years for the blufftop to retreat to the restaurant patio. After 28 years, there would still be a 50-foot wide blufftop area between the restaurant and the bluff edge (see Figure 1 below).

**Figure 1 - Retreat Rate Comparisons**

<b>Based upon...</b>	<b>Using a retreat rate of...</b>	<b>The soonest the Cliffs Hotel restaurant structure would be undercut is in...*</b>
Cliffs Hotel original geotechnical report	3 inches per year	312 years
Chipping's 1998 consultation and 1979 draft EIR report for the area	12 inches per year	78 years
Cliff Hotel geotechnical report for A-3-PSB-96-100 (denied 12/96)	13 inches per year	72 years
Long term documented erosion since 1955 at the Cliffs Hotel site	14 inches per year	67 years
Cliffs Hotel current geotechnical report adjusted for seasonal accuracy	2.1 feet per year	37 years
Cliffs Hotel current geotechnical report	4 feet per year	19½ years

\* That is, how long it would take for the existing 78 feet of blufftop in front of the restaurant to be eliminated assuming constant retreat at this long-term rate.

### **Analyzing the danger to the existing structure**

As Figure 1 demonstrates, the retreat rate that one uses is crucial for estimating the danger from erosion for existing structures. In general, the preferred method for estimating retreat would be to use the long-term average (i.e., the 14-inch per year estimate based upon 40+ years of documented erosion at the site). However, in this case, the increased erosion rate has been blamed on a relatively new phenomenon (i.e., stripping away the more resistant sandstone to expose the less resistant shale underneath). As such, this long-term trend may or may not be accurate for the geologic conditions that exist today.

Likewise, however, the 18-month, two winter season retreat rate calculated by the applicant is also problematic for estimating the threat to the existing structures on the bluff. Being skewed toward a winter average, this estimate probably represents a worst-case scenario. Nonetheless, even when

the City of Pismo Beach. Since the bluff was armored during this event, the "probable" threat associated with the El Niño weather phenomenon did not come to pass. ESC had quantified this threat as "a loss of bluff equal to at least 5 years' loss, and more likely equal to 10-15 years' loss" (i.e., using ESC's 4 foot per year rate, this would calculate to between 20 to 60 feet of retreat). Now that the El Niño storm event of winter 1997-98 has passed, the "probable" bluff retreat associated with this event has also passed.

The threat of winter storm events, El Niño and otherwise, is always present for blufftop landowners. This ongoing "threat" does not of itself constitute danger to a blufftop structure, rather it is one of the known dangers of building along the coast. The applicant has explicitly acknowledged as much through the previously described deed restriction on the property that states that the subject site "is subject to extraordinary hazard from erosion and from bluff retreat." Through this property restriction, the applicant has knowingly assumed responsibility for the hazards of building along an eroding shoreline. This does not imply, however, that there is an *imminent* threat to the existing Cliffs Hotel structures.

### Conclusion

The applicant has not shown that there is an existing structure in danger from erosion. The hotel structure is approximately 130 feet from the top of the bluff and the restaurant is approximately 78 feet from the top of bluff. Even disregarding retreat rate calculation issues, and assuming constant long-term retreat using the applicant's 4-foot per year estimated retreat rate, it would take 19½ years for the restaurant structure to be reached by erosion; in 7 years, the blufftop width (and thus the lateral access area) would still be expected to be 50 feet wide (see Exhibits 7 & 13). Even if a catastrophic, episodic event (10 to 20 feet as calculated by the applicant) were also added to the mix, the blufftop (and access area) would still be expected to be 46 to 50 feet wide after two to three storm cycles. As such, the Commission finds that neither the Cliffs Hotel structures nor the access area are currently in danger from erosion.

**The Commission finds that the revetment portion of the project, therefore, does not meet the first test of LCP Policy S-6.** As such, the Commission is not required to approve the proposed revetment. Moreover, even if the Commission were to find that the City's permit action was valid, in light of the proposed revetment's negative impacts on coastal resources (see findings starting on page 23), and the range of less environmentally damaging feasible alternatives available (see next finding), the revetment is not consistent with the certified LCP and applicable Coastal Act policies and is denied.

### 3. Are There Any "Soft" Alternatives To Reduce Potential Future Threats at the Cliffs Hotel Site?

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Even if the Commission were to find that the City's permit action was valid, and even if the Commission found that there is an "existing structure in danger from erosion," the second test of LCP Policy S-6 would need to be met: is the proposal to alter the shoreline with the placement of rock slope protection *required* to protect the existing structure? That is, although LCP Policy S-6 and, as incorporated by reference, Section 30235, allow for the protection of structures in danger from erosion, revetments are *not allowed* unless they are also the *necessary* solution. In short, there must be no feasible alternative to the use of a hard shoreline structure to protect the existing structures at the site. Likewise, LCP Zoning Ordinance Section 17.078.060, Shoreline Protection Criteria and Standards, also states, in part:

**17.078.060(4):** *Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses.*

and irrigation) flows. These flows have consistently been identified by the applicant's geotechnical reports as contributors to the bluff retreat at the site. In fact, the geotechnical report for the previous application for a revetment at this site (which was denied by the Commission) identified landscape irrigation as a significant contributing factor in bluff retreat at the site. This report was also submitted in support of this project.

On each visit to the Cliffs Hotel site, Commission staff has continued to observe active seepage of water from the bluff face. It is likely that this seepage is a combination of groundwater flows from the San Luis Mountain range just east of Highway 101 (east of the Cliffs Hotel) and on-site irrigation practices. The consulting geologist, Gary Mann, has also identified a spring towards the center of the property. Mr. Mann also determined that the large bluff failure along the southern property line of the site was a landslide failure. Given its location directly adjacent to the unpermitted sewage holding tank, it seems reasonable to assume that some amount of groundwater retention and/or leakage associated with the sewage holding tank may also have contributed to this landslide.

#### **Proposed drainage, dewatering and landscape measures**

To address these surface and subsurface flow problems, the applicant has proposed a comprehensive set of dewatering, drainage, and landscape measures on the blufftop designed to help enhance the stability of the bluff. These include three new dewatering wells, a sump pump, an emergency generator at the sewage lift station, a blufftop concrete swale to intercept surface water flow and divert it into a storm drain system, a moisture-sensing irrigation system, and drought resistant landscaping seaward of the diversion swale (see Exhibits 3 & 5).

In general, these new blufftop drainage elements should help reduce potential future threats at the Cliffs Hotel site. The additional surface and subsurface runoff that would be collected and deposited into the existing storm drain would not substantially alter the quantity or quality of runoff from the site, but would direct it in a manner which would reduce its impacts on bluff stability. The new dewatering wells, the sump pump, the storm drain drop inlet, the moisture-sensing irrigation system, and the drought resistant landscaping seaward of the swale/pathway are appropriate, soft solutions that should help to minimize upper bluff saturation and any corresponding retreat of the upper terrace layer of the bluff. As such, the Commission finds that these elements would be approvable provided assurance was provided for the inland relocation of facilities as the bluff retreats, and that further assurance was provided that the landscaping and irrigation installed provided for suitable native plant stabilization and irrigation measures consistent with the need to ensure long term slope and plant protection at the site. However, as discussed above in CDP Finding 1, the City did not have the legal authority to approve the applicant's application. Such an application would need to be processed by the Commission as an amendment to the original permit. Other development proposed by the applicant is not currently approvable without further elaboration and/or modification through such an amendment process.

The applicant also proposes the installation of an emergency generator to serve the sewage lift station. The sewage lift station is not, however, shown on any of the approved plans for the original Cliffs Hotel (4-83-490). It is not clear that the sewage lift station has ever received a coastal permit. As such, it is not possible to approve an emergency generator for an unpermitted structure. If there were some other purpose for the generator as a stand alone apparatus, then its appropriateness could be considered. However, based on the fact that it is specifically designed to serve what appears to be an unpermitted structure, the Commission cannot approve the generator unless and until the lift station is properly permitted. Were a facilities relocation plan in place that would serve to account for, and resolve the status of, all facilities present in the bluff setback area, this element could be approvable as well.

comprehensive set of dewatering and drainage elements described above, were the project to include the subsurface installation of a sloped, impermeable geomembrane under any turf areas landward of the path, or the installation of drought and salt resistant native landscaping over the entire bluff setback, this element would be approvable as well. However, as discussed above in CDP Finding 1, the City did not have the legal authority to approve the application. Such an application would need to be processed by the Commission as an amendment to the original permit.

### Conclusion

Although LCP Policy S-6 and LCP Zoning Section 17.078.060(4) allow for the protection of structures in danger from erosion, revetments are not allowed unless they are also the required solution. That is, there must be no feasible project alternative. In addition, Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives that would substantially lessen significant adverse environmental effects. In the case of the Cliffs Hotel revetment, the Commission finds that the "no project" alternative is feasible and that there are other feasible soft alternatives available short of a hard protective device. **As such, the Commission finds that the proposed revetment does not satisfy the second test of LCP Policy S-6, that it is inconsistent with LCP Zoning Section 17.078.060(4), and that it is not approvable under CEQA.** Moreover, the revetment would negatively impact coastal resources (see finding below). Accordingly, even if the Commission were to find that the City's permit action was valid, the revetment is denied.

There are a full range of proactive dewatering and drainage elements that have been proposed at the Cliff Hotel site which represent "soft" alternatives to the proposed revetment. As described above, the Commission finds that these measures would act to reduce potential future threats consistent with LCP Policy S-3 and CEQA Section 21080.5(d)(2)(A). However, as discussed above in CDP Finding 1, the City did not have the legal authority to approve the application. Such an application would need to be processed by the Commission as an amendment to the original permit.

## 4. How Would The Proposed Project Impact Coastal Resources?

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As has been described above, the Cliffs Hotel and restaurant structures are not currently in danger from erosion and a hard protective device is not required. As such, even if the Commission were to find that the City's permit action was valid, the proposed revetment does not meet the first two tests of LCP Policy S-6, and it is inconsistent with LCP Zoning Section 17.078.060(4) and CEQA Section 21080.5(d)(2)(A). But even if the revetment did satisfy these requirements, and the City's action were found to be valid, the impacts associated with the proposed revetment, as well as any proposed mitigation for these impacts would need to be analyzed for consistency with the LCP and Coastal Act access and recreation policies. As discussed below, such analysis provides further reasons why the proposed revetment is inconsistent with the LCP – and the Coastal Act.

### 4a. Sand Supply Impacts

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The third test of LCP Policy S-6 (as previously cited) that must be met in order to require Commission approval is that shoreline structures must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. This requirement is mirrored by LCP Zoning Section 17.078.060 which states in applicable part:

**17.078.060(4)(c):** *Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or*

revetment. As stated above, these impacts would be similar for the most part whether the structure were to be a vertical wall or a rock revetment. The project as proposed (and as further conditioned by the City of Pismo Beach at the local level) does not contain any mitigation for these sand supply impacts. In fact, the City did not find that there would be any sand supply impacts. However, as will be seen below, there are at least five major impacts to sand supply that are of major concern with the proposed project, three of which can be quantified for the purpose of determining specific mitigation requirements were the revetment to be actually permitted by the Commission.

### Fixing the Back Beach

Experts generally agree that where the shoreline is eroding, as is the case with the Cliffs Hotel site, the erection of a shoreline protective device will eventually define the boundary between the sea and the upland. On an eroding shoreline fronted by a beach, the beach will be present as long as some sand is supplied to the shoreline. As erosion proceeds, the entire profile of the beach also retreats. This process stops, however, when the retreating shoreline comes to a revetment. While the shoreline on either side of the revetment continues to retreat, shoreline retreat in front of the revetment stops. Eventually, the shoreline fronting the revetment protrudes into the water, with the winter mean high tide line fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the revetment.

In further support of this analysis, Dr. Craig Everts has found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself (Letter Report, March 14, 1994, to Lesley Ewing, California Coastal Commission, from Dr. Craig Everts, Moffatt and Nichols Engineers). This is particularly true where narrow beaches exist, as is the case with the Cliffs Hotel site. He concludes that:

*Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms. [emphasis added]*

Overall, Dr. Everts concludes that "[a] beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat."

The earlier finding analyzing the erosion danger at the Cliffs Hotel site presents site-specific data establishing that the subject parcel is located on a recessional or eroding shoreline (see finding beginning on page 13). The retreat rate for the proposed revetment area has been estimated by the consulting engineering geotechnical firm to be 4-feet per year. In short, the beach at the Cliffs Hotel would gradually migrate landward if left to its own natural devices.

It is highly likely that the placement of the proposed revetment would halt this landward migration and "fix" the location of the back beach or bluff, at least for the useful life of the revetment itself. The fixed position of the back beach will then result in a narrowing of the useable beach to a smaller and smaller corridor between the ocean waves and the shoreline protective device. Eventually, the dry beach will disappear and waves will hit the shoreline protective device during all but the most extreme low tide

Beach vicinity. However, if a 1.0 conversion factor is used (i.e., the low end of the spectrum of values typically assumed by coastal engineers), a conservative estimate of the cubic yard equivalent of 1,740 square feet per year can be calculated. **For the Cliffs Hotel site, this translates into a direct sand supply impact due to fixing the back beach location of 1,740 cubic yards per year.**

### Retention of Potential Beach Material

Beach material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, becoming beach material when the bluffs or dunes lose material due to wave attack, landslides, surface erosion, gullyng, et cetera. Coastal dunes are almost entirely beach sand, and wind and wave action often provide an on-going mix and exchange of material between beaches and dunes. Many coastal bluffs are marine terraces – ancient beaches which formed when land and sea levels differed from current conditions. Since the marine terraces were once beaches, much of the material in the terraces is often beach quality sand or cobble, and a valuable contribution to the littoral system when it is added to the beach. While beaches can become marine terraces over geologic time, the normal exchange of material between beaches and bluffs is for bluff erosion to provide beach material. When the back beach or bluff is protected by a shoreline protective device, the natural exchange of material either between the beach and dune or from the bluff to the beach will be interrupted and, if the shoreline is eroding, there will be a measurable loss of material to the beach. Since sand and larger grain material is the most important component of most beaches, only the sand portion of the bluff or dune material is quantified as beach material.

A seawall, gunnite facing or revetment also will probably prevent some of the material above it from becoming beach material; however, some upper bluff retreat may continue unless the shoreline protective device extends the entire height of the bluff. Page 2 of Exhibit 14 shows several possible configurations of the bluff face, with a protective structure. The solid line shows the likely future bluff face location with shoreline protection and the dotted line shows the likely future bluff location without shoreline protection. The volume of total material which would have gone into the littoral system over the lifetime of the shoreline protective device would be the volume of material between the solid line and the dotted line, along the width of protected property.

The actual erosion cannot be predicted, so the total erosion of the bluff must be approximated by the average annual long-term erosion of the bluff multiplied by the number of years that the structure will be in place. Finally, since the main concern is with the sand component of this material, the total material lost should be multiplied by the percentage of bluff material which is beach sand, giving the total amount of sand which would have been supplied to the littoral system for beach deposition if the proposed device were not installed. As discussed in the Commission's methodology, the quantification of this impact is expressed in the following equation:

*Volume of sand denied the beach by the protective device ( $V_b$ ) is equal to the percentage of sand in the bluff material ( $S$ ) times the total width of the protected property ( $W$ ) times the area between the solid and dotted lines in Page 2 of Exhibit 14 directly landward of the device [ $R \times h_s$ ], plus the area between the solid and dotted area above the device [ $1/2h_u \times (R + (R_{cu} - R_{cs}))$ ]. Since the dimensions and retreat rates are usually given in feet and volume of sand is usually given in cubic yards, the total volume of sand must be divided by 27 to provide this volume in cubic yards, rather than cubic feet. This can be expressed by the following equation:*

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2h_u \times (R + (R_{cu} - R_{cs})))]/27$$

physical structures which occupy space. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in a loss of public access (as discussed below) as well as a loss of sand. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location, or in the case of this revetment, as it spreads seaward over time. The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint. As discussed in the Commission's methodology, this impact may be quantified as follows:

*The encroachment area ( $A_e$ ) is equal to the width of the properties which are being protected ( $W$ ) times the seaward encroachment of the protection ( $E$ ). This can be expressed by the following equation:*

$$A_e = W \times E$$

Page 3 of Exhibit 14 illustrates this equation. Based upon the plans submitted by the Applicant, the proposed revetment covers approximately 4,900 square feet of beach. Over the long run, of course, this is a conservative impact, given the likelihood that scour will ultimately expose an increasing depth of the base of the structure, and further given that migration of rock from the revetment will eventually result in a larger footprint. **Nonetheless, using the sand conversion factor of 1.0 (as discussed earlier) the direct loss of beach due to this encroachment translates into a one-time impact of 4,900 cubic yards.**

### **Scour/End Effects**

End scour effects involve the changes to the beach profile adjacent to the revetment at either end. One of the more common end effects comes from the reflection of waves off of the revetment in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. This causes accelerated erosion on adjacent properties, thereby artificially increasing erosion hazards. Although a revetment typically absorbs more wave energy than does a vertical wall (thus typically producing less wave reflection), end scour does take place. According to ESC, these end effect impacts would be negligible for the proposed project.

Scour is the removal of the beach material from the base of a cliff, seawall or revetment due to wave action. The scouring of beaches caused by shoreline protective devices is a frequently observed occurrence. When waves impact on a hard surface such as a coastal bluff, rock revetment or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges that revetments, through this scouring action, have an effect on the supply of sand.

For example, in 1976 the State Department of Boating and Waterways (formerly called Navigation and Ocean Development) found in *Shore Protection in California* that:

*While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.*

*vast majority of beach sand is washed down from creeks and rivers, therefore the effect of the revetment in slowing the rate of bluff erosion would not be expected to alter sand quantities significantly at the cove. (emphasis added)*

*According to geologic investigations, layers of harder sandstone have historically been present along the bluff. As these naturally erode by constant wave action, softer rock is exposed which erodes deeply and quickly, creating accelerated bluff retreat. The rock revetment basically replaces the harder sandstone material that has since eroded, in effect replicating bluff conditions as they may have existed in the past. Because the rock is not being placed perpendicular to the shore, but rather directly against the existing bluff, the seasonal sand buildup and erosion mechanism should not be significantly altered. Therefore, it does not appear that the insertion of a rock revetment will dramatically alter sand buildup or wave characteristics as compared to conditions in the past. (emphasis added)*

It has become common practice to contend that the sand supply impacts of individual projects are negligible because the structure being proposed is small in relation to the coastline. This phenomenon has been described as the 'tyranny of small decisions' by Gary Griggs, James Pepper and Martha Jordan (*California's Coastal Hazards: A Critical Assessment of Existing Land-Use Policies and Practices*). More specifically:

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

The Coastal Act and the LCP do not give exceptions based upon the amount of impact – any impact must be mitigated. In contrast to the City's findings, the preceding discussion establishes distinct and identifiable impacts due to the Applicant's proposed shoreline structure: (1) a loss of 1,740 square feet of beach per year, resulting from fixing the back of the beach; (2) retention of 509 cubic yards of sand per year due to retention of bluff materials; and (3) an immediate loss of 4,900 square feet of beach which will continue for the life of the project. When beach area is converted to a volume of sand necessary to build an equivalent area of beach, a reasonable estimate of the total quantifiable impact of the proposed Cliffs Hotel revetment project on sand supply is 7,149 cubic yards of sand for the first year (i.e., applying the one-time loss due to the initial encroachment and annual figures for retention of materials and fixing the back beach) and 2,249 cubic yards of sand for every year thereafter.

The Applicant has not proposed, and the City's approval did not require, any mitigation for these impacts that the proposed revetment would have on sand supply. In fact, the City has not even mitigated for the 30 cubic yards of sand over 5 years (or 6 cubic yards per year) estimated by ESC. As discussed at length above, these impacts cannot be eliminated if the revetment were to be allowed. Therefore, even if the Commission were to find that the City's permit action was valid, and even if the proposed revetment had been consistent with the first two tests of LCP Policy S-6, and with LCP Zoning Section 17.078.060(4), given that the it has not been designed to eliminate or mitigate the quantifiable adverse impact on sand supply, **the Commission finds that the proposed revetment does not meet the third test of LCP Policy S-6, that it is further inconsistent with LCP Zoning Sections 17.078.060(4)(c) and 17.078.060(6)(a) and is denied.**



**For the first year: 7,149 cubic yards x \$1 to \$9 per cubic yard = \$7,149 to \$64,341**

**For every year thereafter: 2,249 cubic yards x \$1 to \$9 per cubic yard = \$2,249 to \$20,241**

Therefore, the Commission finds that the obligation that would be required in the case of the Cliffs Hotel revetment to mitigate for the quantified sand supply impact pursuant to LCP Policy S-6, and LCP Zoning Sections 17.078.060(4)(c) and 17.078.060(6)(a) would range from \$7,149 to \$64,341 for the first year, and would range from \$2,249 to \$20,241 for every year thereafter.

Finally, from a sand supply impact perspective, the proposed revetment would likely result in more adverse impacts than would a vertical wall in this instance. Of the quantifiable impacts discussed above, a vertical wall would have similar impacts in terms of fixing the back beach location and the loss potential beach materials. However, a vertical wall would generally have a smaller footprint than would the proposed revetment. **Therefore, based upon information available today, the Commission finds that if a shoreline protective structure were to be approved, and all other factors being equal, in terms of sand supply, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

#### **4b. Access & Recreational Impacts**

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The project is located between the first public road and the sea. As such, the project must be consistent not only with the certified LCP but also the access and recreation policies of the Coastal Act. Sections 30210-30214 of the Coastal Act state that maximum access and recreation opportunities be provided, consistent with, among other things, public safety, the protection of coastal resources, and the need to prevent overcrowding. Coastal Act Sections 30210 and 30211 specifically protect the public's right of access to the blufftop, sandy beach and surfing area in front of the Cliffs Hotel; Section 30240(b) further protects these recreational areas from degrading impacts:

***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.*

***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.*

***30240(b):** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Likewise, LCP Policy S-6 and Zoning Section 17.078.060 protect public access and recreation when shoreline protective devices are considered. Policy S-6 and Section 17.078.060 state in applicable part:

***S-6 Shoreline Protective Devices.** Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline.*

is a much used, broad sandy beach backed by high bluffs similar to the Cliffs site. South of the stairway, the beach area narrows and access is gained to the pocket beach in front of the Cliffs over a rocky promontory which limits access southward at high tides. Based on the Commission's original approval of the hotel, this beach area fronting the Cliffs Hotel is a public beach because it has been deed restricted for public access use. Another rocky promontory, which also limits access at high tides, is located at about the southern Cliffs property line. Past this point there is another sandy pocket beach and some further rocky areas which are accessed by a path which connects inland from Shell Beach Road through Spyglass Point City Park. In general, most beach goers frequent the beaches north of the Cliffs while the rocky areas and pocket beaches along the Cliffs site and southward are primarily visited by surfers and other visitors looking for the privacy of the pocket beaches, or those interested in exploring the rocky intertidal areas present there.

This entire stretch of coast, including the beach area in front of the Cliffs Hotel, has been extensively used for public access for many years. Commission staff site visits have confirmed this heavy use, even on weekdays. As the Commission previously found in the original Cliffs Hotel staff report (4-83-490), "[t]he site has historically been extensively used for public access including access...to and along the beach and rocky areas." In short, the beach area and lateral public access route that would be impacted by the proposed revetment is a significant public access resource much used by local residents and visitors.

The effect of covering this beach area with the proposed revetment would be to remove a portion of the beach from use. According to the project plans, approximately 4,900 square feet of useable beach would be lost. At higher tides, the impact on public use of the pocket beach would be exacerbated given that tidal influence foreshortens the beach at these times. Another effect would be to further limit the public's ability to gain access both up and down coast laterally along the pocket beach being covered, particularly at higher tides. Furthermore, the rocks that make up rip-rap revetments can tend to migrate onto the beach and present a public access and public safety impediment. While the City determined that the rocks would be unlikely to move, Commission experience has shown this rock migration to be the norm rather than the exception with rock revetments. Recent staff observations suggest that this has already occurred at the Cliffs Hotel site.

These adverse public access impacts would contradict Coastal Act Sections 30210, 30211, and 30240 which protect this recreational area and the public's right of access thereto. In addition, as discussed in the finding beginning on page 10 above, the property is specifically deed restricted to protect this public access. This deed restriction applies to the bluff and beach seaward of the Cliffs Hotel and states, in applicable part:

*[N]o grading, landscaping, or structural improvements that in the opinion of the Executive Director of the California Coastal Commission, or his successor, would impede public access, other than public walkways and stairways, shall be constructed on the Subject Property.*

The Applicant previously has been informed that, in the opinion of the Executive Director, the proposed revetment does impede public access by covering 3,000 to 4,000 square feet of beach area (plans submitted show this to be closer to 4,900 square feet) heretofore used for public recreational purposes (see Exhibit 12). As a result, the revetment is specifically not an allowed structural improvement based on the property's deed restrictions.

Furthermore, as noted above in the discussion of sand supply impacts, in addition to the direct loss of useable recreational beach area, the introduction of the proposed revetment would have a number of

Code, § 830.) In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of a sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

***The Commission must consider a project's direct and indirect impact on public tidelands.*** In order to protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year); and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands.

In order to minimize approving development that will encroach on public tidelands during any time of the year, the Commission, usually relying on information supplied by the State Lands Commission, will look to whether the project is located landward of the most landward known location of the mean high tide line. In this case, Applicant's plan shows the proposed revetment landward of the mean high tide. However, this claim has not been verified by the State Lands Commission. The Coastal Commission itself currently has no independent evidence that the mean high tide line has ever moved landward into the proposed project area. Nonetheless, given the ambulatory character of the mean high tide line, it may be the case that the proposed revetment lies partially below mean high tide.

In either event, even structures located above the mean high tide line may have an impact on shoreline processes – and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether a project will have indirect impacts on public ownership and public use of shorelands. In this case, as discussed earlier in these findings, there is substantial evidence that this project would result in some indirect impacts on tidelands because the proposed revetment is located in an area that is subject to wave attack and wave energy. This wave interaction with the revetment would contribute to erosion and steepening of the shore profile. The proposed revetment would fix the back beach location, retain potential beach materials, cover beach area, contribute to beach scour, potentially alter the longshore transport of materials, and contribute to erosion and steepening of the shore profile to the detriment of the availability of tidelands.

***The Commission also must consider whether a project affects any public right to use shorelands that exists independently of the public's ownership of tidelands.*** In addition to a development proposal's impact on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights

of a well known reef-based surfing break most commonly referred to as "Reefs Right" (or alternatively as "Palisades" or "The Cliffs"). This surfing area is actively used by locals as well as visitors to the area and consists of a break that allows for surfing both to the left and to the right (in relation to the shore). Reefs Right is a year round surfing attraction which generally is best at mid to low tides. During winter swell conditions, it can be difficult to paddle out to the break and surfers have been known to be dropped offshore by boats to gain access to the surf. A second surf break, commonly known as "Finger Jetty," is located offshore near the southern property boundary of the Cliffs Hotel property. While less used, Finger Jetty may also be impacted by the proposed project (see site plan, Exhibit 3)

Not only are these surfing areas protected by Coastal Act Sections 30210, 30211, and 30240 (as previously cited above), but this surfing access is additionally protected by Coastal Act Section 30220:

*30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Furthermore, LCP Zoning Section 17.078.060(6)(d) requires that shoreline structures *enhance* public recreational opportunities; in this case, surfing opportunities:

*17.078.060(6)(d): Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve Coastal dependent uses and that may alter natural shoreline processes shall not be permitted unless the City has determined that when designed and sited, the project will enhance public recreational opportunities.*

The negative declaration for the project did not find that there would be any significant adverse impacts on surfing access. This assertion was made primarily based upon the City's assessment that there would be minimal sand movement impacts due to the revetment and that, as a reef break, sand deposition was not a critical factor affecting the surfing break. However, lacking an in-depth analysis of the characteristics of the surfing area offshore, including the relationship of sand and sand generating materials to the quality of the surf at this location, it is not possible to come to a firm conclusion on the potential adverse impacts to the surfing break that would result from the placement of the revetment. Such a report would necessarily need to factor in the range of sand supply impacts more fully discussed earlier in this staff report. In the absence of such a report, and in light of the high level of use, and high quality of surf, associated with Reefs Right (and to a lesser degree with Finger Jetty) area, it would be premature at this time to dismiss potential impacts on surfing. Moreover, given the adverse sand supply impacts that would be associated with the revetment, it seems likely that there *would* be an associated impact, whether positive or negative, on surfing.

Furthermore, in addition to potential impacts associated with sand supply and shoreline dynamics, there would be direct impacts from the physical placement of revetment. First, there is the impact associated with wave refraction and how this refraction may or may not affect the surfing break. Given that any wave refraction would generally serve to muddle the surf break, more likely than not, this would result in a negative surfing impact. While anecdotal evidence supports this hypothesis, lacking a comprehensive analysis, this cannot be confirmed. Second, there is the impact of the surfers' safety. A surfer riding a wave into the pocket beach in front of the Cliffs would have approximately 10 to 25 feet less of beach width available for a safe exit from the water. In place of this wide sand buffer would be large rocks. It seems likely that surfers will be forced into rocks, particularly during times of high swells when the surf break would be heavily populated. This would represent an adverse surfing impact.

#### 4c. Visual Impacts

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The City of Pismo Beach LCP addresses the need to protect the scenic and visual qualities of the coast. LCP Policy S-6 states, in applicable part:

**S-6 Shoreline Protective Devices.** *Design and construction of protective devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts.*

This requirement is mirrored by LCP Zoning Sections 17.078.060 and 17.096 which state, in applicable part:

**17.078.060(4)(c):** *Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must use visually compatible colors and materials and...*

**17.096.020(1):** *All uses, developments and alterations of land included within this Overlay Zone shall not result elevation of land or construction of any improvement which would significantly block, alter or impair major views, vistas, viewsheds or major coastal landforms from designated scenic highways, public lands and waters or viewpoints in such a way as to materially and irrevocably alter the quality of the view.*

**17.096.020(4):** *All new developments shall minimize their impact on scenic values*

Sections 30251 and 30240 of the Coastal Act also protect the scenic and visual qualities of the public viewshed:

**30251:** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

**30240(b):** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The proposed drainage and dewatering elements should not have an adverse visual impact. In fact, Commission staff have been to the site and assessed the visual impacts of the pathway/swale and the landscaping and found them to be visually unobtrusive. The proposed revetment, however, has introduced an unnatural pile of rocks into an otherwise natural shoreline vista. The Negative Declaration determined that there were not any significant visual impacts "[b]ecause the revetment is only visible from the immediate cove in which it is placed and because the orientation of beach users is oceanward." The City further found that "[t]he rock revetment is not visually incompatible with the bluff." However, this pile of dark rocks is *not* compatible with the soft brown marine terrace and lower sandstone and shale bedrock. Furthermore, the revetment adversely impacts views: from the beach

which mirrors LCP Policy S-3 in this regard. Coastal Act Section 30253 provides, in applicable part:

**30253: 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.*

As discussed earlier in this staff report, the proposed drainage and dewatering elements would act to reduce potential future threats consistent with LCP Policy S-3. However, as discussed above in CDP Finding 1, the City did not have the legal authority to approve the applicant's application. Such an application would need to be processed by the Commission as an amendment to the original permit.

Although the whole purpose of the revetment portion of the project is to ensure stability of the bluff at this location, there are a couple of stability issues with the revetment. First, the proposed revetment has not been keyed into the underlying bedrock, but rather the rocks have simply been placed on top of the sandy beach. As the beach profile changes and scouring takes place, and as regular wave attack takes its toll, an un-keyed structure is liable to "float" around somewhat on the sand. As a result, an un-keyed revetment is more liable to shift and undulate than would be a keyed structure. Likewise, individual rocks are more likely to migrate out onto the beach or into the intertidal area, sometimes migrating just under the sand, where these rocks can become a public access impediment and a public safety hazard. Second, even though un-keyed (and, to a lesser degree, keyed) rock revetments have these known maintenance problems, such as the proposed revetment, the project does not include any regular maintenance program. Such a program could not only detect areas of subsidence and upsurge, but could also identify measures for retrieving wayward boulders. Commission experience is that standard practice is to monitor and maintain these structures at least once per year.

The opinion of the Applicant's geotechnical consultants (as echoed by the City in its approval) is that the un-keyed revetment constitutes the "least environmentally damaging" alternative. As has been demonstrated in the findings of this staff report, this is not the case. More specifically, Gary Mann states "[t]he omission of a key trench for the base of the rock seawall as well as its narrow width ensures the most environmentally sensitive solution to design and emplacement, and eliminates the need for disruptive hydraulic excavation of the cove area." (Mann 8/14/97) This sentiment is echoed on the City's findings which state that "[t]he placement of large riprap boulders is less environmentally damaging than the construction of a concrete seawall because a seawall requires excavation of the beach."

Although placement of rock without a key *may* be successful if the rock is large enough to resist ocean wave forces, such as the 6 to 8 ton boulders proposed for the base of the structure here, as a general rule, as discussed above, an un-keyed structure is more liable to have stability problems than would a keyed structure. These problems generally manifest themselves in terms of subsidence, upsurge, and rock migration. At least one of these problems is already evident at the Cliffs Hotel. In fact, though the City found it "unlikely that a rock weighing between two and eight tons will be dislodge onto the beach," rocks were in fact dislodged this past winter requiring retrieval and restacking (note, without benefit of a coastal development permit). It should be noted that ESC had previously recommended that a key be constructed to anchor the proposed revetment to the bedrock below the beach sand (ESC 1/30/96).

Without a keyway, and without a maintenance program designed both to retrieve migrating rocks and to

The City further found that “[t]he rock revetment is not visually incompatible with the bluff.” However, the fact that rocks are “natural” in the sense that they come from the ground, does not make the pile of rocks natural. In fact, the pile of rock is decidedly unnatural and does not respect the natural bluff landform. As such, even if the Commission were to find that the City’s permit action was valid, and even if the proposed revetment had been shown to be necessary and consistent with the Coastal Act and the LCP for allowing shoreline structures, **the Commission finds that the proposed revetment is inconsistent with the natural landform policies of LCP Policy S-6 and LCP Zoning Section 17.078.060(4)(a).**

Furthermore, as stated earlier, a vertical wall which could be contoured, colorized, and manipulated to approximate a natural landform is probably the best that could be expected in terms of adapting a protective structure to the natural landform at the Cliffs Hotel given the limited space available to successfully camouflage a revetment (see also visual resource discussion above). **Therefore, based upon information available today, the Commission finds that if a shoreline protective structure were to be approved, and all other factors being equal, in terms of natural landform concerns, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

#### **4f. Coastal Resource Impacts Conclusion**

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Even if the Commission were to find that the City’s permit action was valid (which it has not), and even if the proposed revetment had been shown to be necessary and consistent with the Coastal Act and the LCP for allowing shoreline structures (which it has not), the above findings have demonstrated that the revetment would result in significant and measurable impacts to sand supply, public access, visual resources, structural stability, and natural landforms. The project as proposed, and as conditioned by the City, does not contain any mitigation for these impacts. **As such, the Commission finds that the proposed revetment is inconsistent with the above-detailed Coastal Act and LCP policies and requirements.** Were the revetment to be approved, appropriate mitigations for these impacts would be necessary.

Furthermore, on balance, and based upon information available today, a vertical wall would be the preferred structural alternative in this case. It is widely acknowledged that either a vertical wall or a rock revetment will have measurable negative impacts on coastal resources. However, as detailed above, based upon the attributes of *this* site, a vertical wall would have less negative impacts on sand supply, public access, visual resources, structural stability, and natural landforms than would a revetment. **Therefore, based upon information available today, the Commission finds that if a shoreline protective structure were to be approved, and all other factors being equal, in terms of, , coastal resource impacts (to sand supply, access and recreation, aesthetic and visual resources, structural stability, and the natural landform), and if these impacts are properly mitigated, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

#### **5. Assumption of Risk**

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Oceanfront development is susceptible to bluff retreat and erosion damage due to storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low interest loans and grants) in the millions of dollars.

LCP Policy S-3 address the need to ensure long-term structural integrity of the site, minimize future risk,

hotel issued by the Coastal Commission, only a Coastal Commission-approved amendment to CDP 4-83-490 could allow for the proposed project; this factor was one of the reasons behind the appeal filed by Commissioners Areias & Nava. As a result, and as the applicant was subsequently informed by letter dated May 26, 1998, the proposed project would require a coastal permit amendment. This coastal permit amendment request is also before the Commission at the November 1998 hearing (4-83-490-A1).

Even if the Commission were to find that the City's permit action which resulted in this appeal was valid, the above findings have shown that the proposed project is not consistent with the certified LCP and is not consistent with the access and recreation policies of the Coastal Act. Because of these inconsistencies concerning erosion risks, feasible alternatives, and mitigations for sand supply, public access, visual resources, structural stability and natural landforms, the project is denied.

## **7. California Environmental Quality Act (CEQA)**

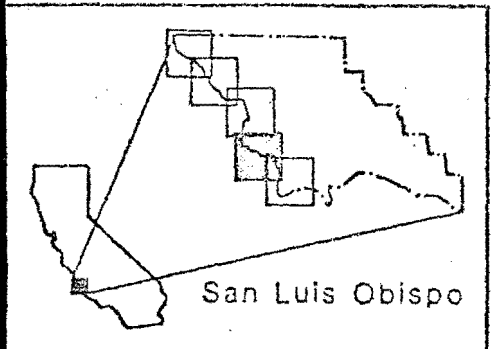
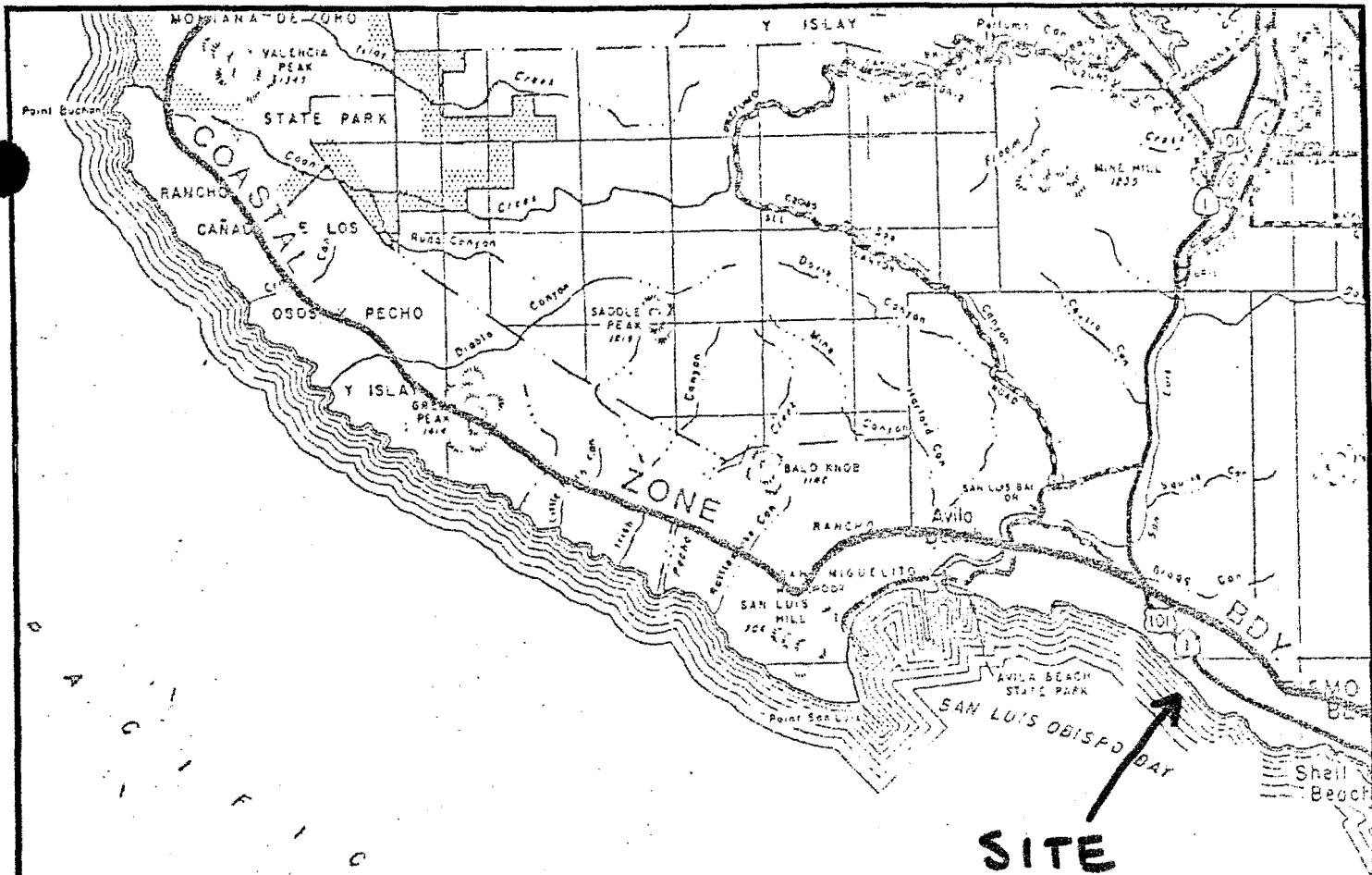
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Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City issued a negative declaration for the revetment on January 16, 1998. Commission staff commented on the negative declaration on February 20, 1998 and identified concerns about the project and the need for better information to support the negative declaration findings including: the need for information identifying an existing structure in danger; the need for a quantitative and qualitative comparison of alternatives to the revetment, at the least, a comparison of the revetment to a vertical wall and to the no project alternative; the need for a description and analysis of lateral and beach access impacts; the need for information detailing potential changes to the beach profile due to the revetment; the need for a comparison of a vertical wall to the revetment for aesthetic and visual impacts; the need for better information regarding maintenance of the revetment; the need for better information detailing the quantity and quality of intercepted surface and subsurface waters that would be discharged via storm drain; the need for a closer examination on the feasibility of a vertical wall; and better information detailing methods for removing or retaining the unpermitted sewage holding tank (see Exhibit 15). The City minimally responded to these comments, without adding to the body of information previously presented, and the negative declaration was subsequently adopted by the City's Planning Commission on February 24, 1998 and by the City Council on April 21, 1998.

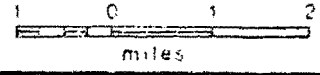
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The issues previously forwarded to the City by Commission staff, as well as others that have become apparent since the negative declaration, have been discussed in this staff report. As detailed in the findings above, there are less environmentally damaging feasible alternatives to the proposed project and there are a range of unmitigated impacts associated with the proposed project. As such, even if the Commission were to find that the City's permit action which resulted in this appeal was valid, the project is not approvable under CEQA and is denied.



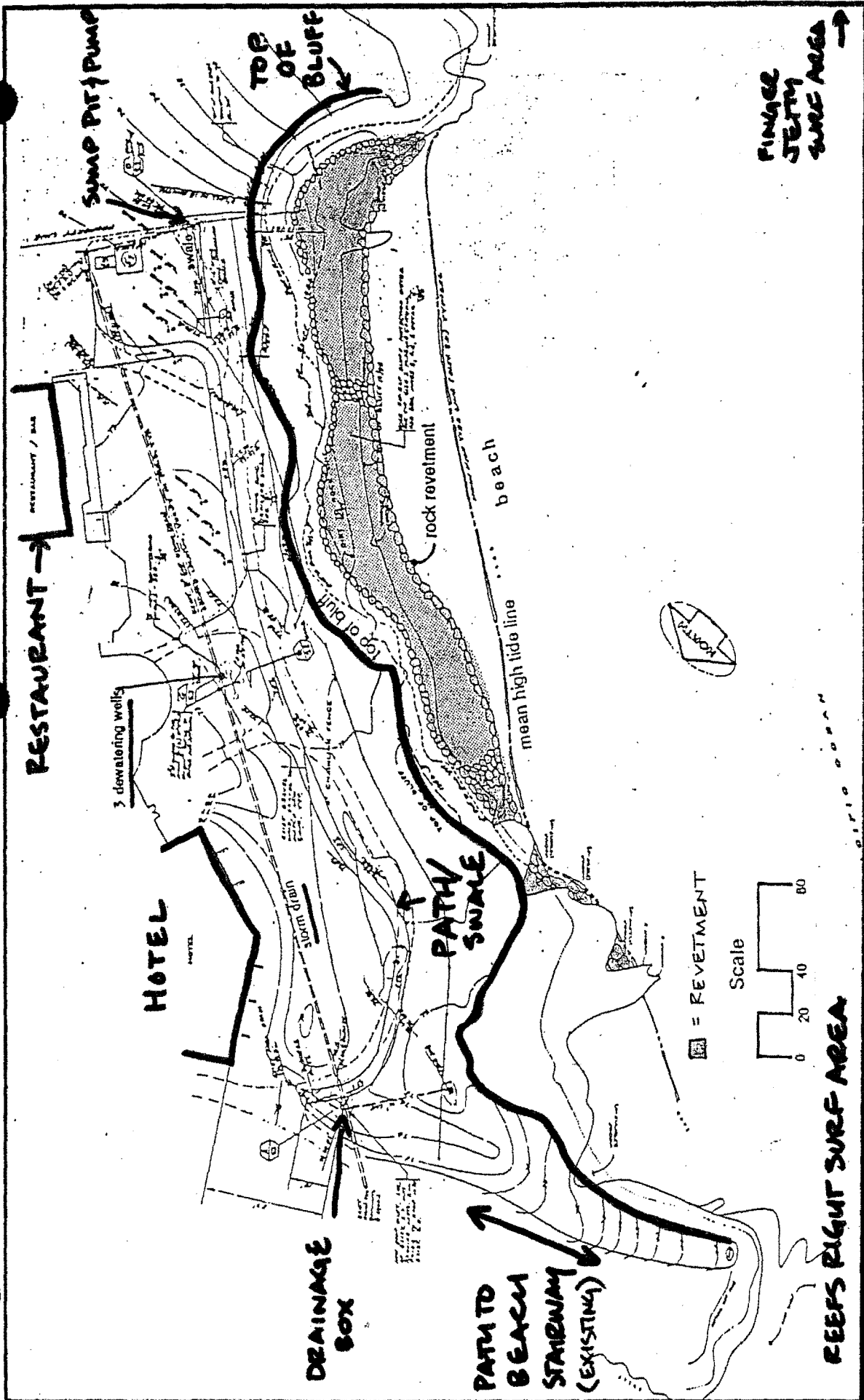


 California Coastal Commission

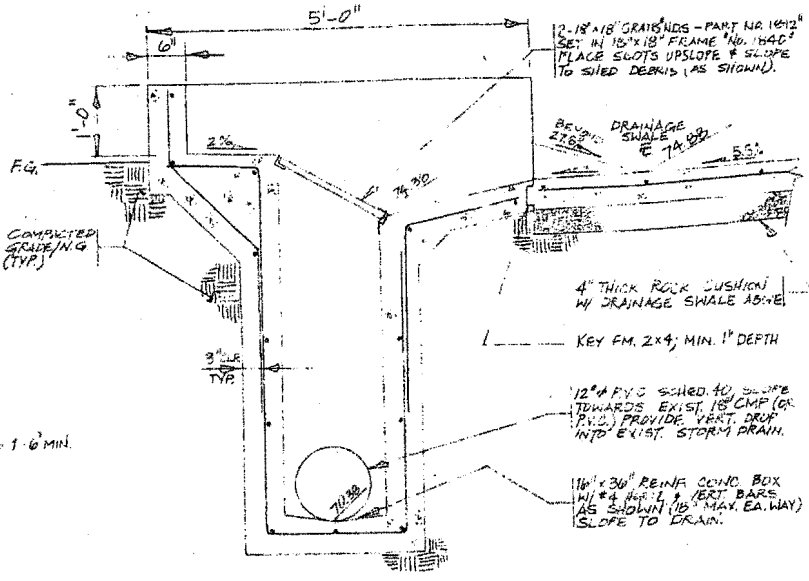
LOCATION MAP



A-3-P38-98-049  
 EXHIBIT 1  
 REGIONAL LOCATION

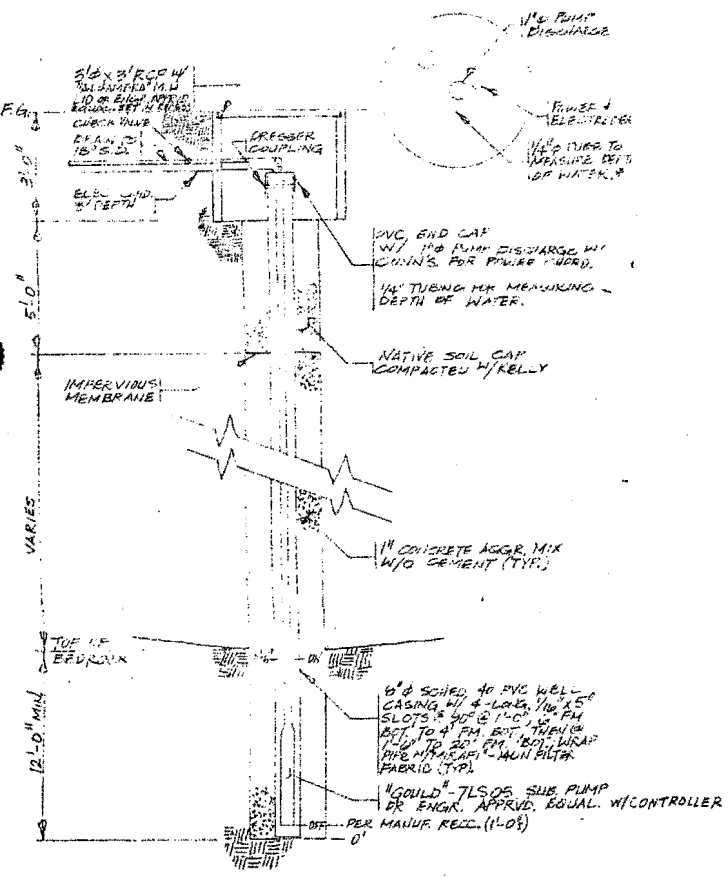


**EXHIBIT 3  
SITE PLAN**



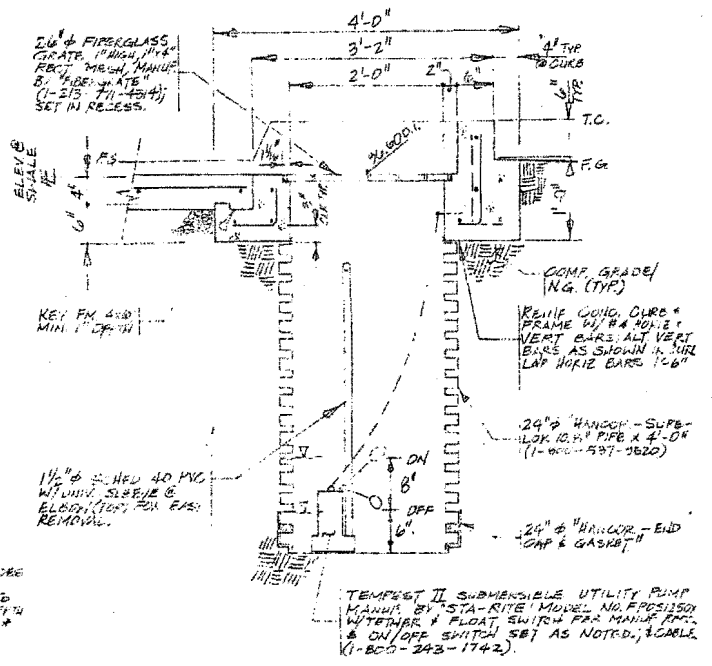
NOTE: LAP #4 BARS 1'-0" MIN.

**A** DRAINAGE BOX @ NORTH END OF PROJECT - SECTION

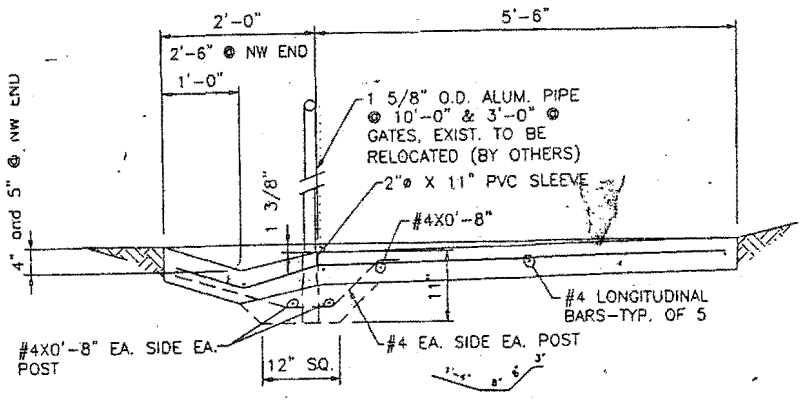


**G** TYP. DEWATERING WELL - SECTION

**EXHIBIT 5  
DEWATERING  
ELEMENTS  
CROSS SECTION**



**D** SLUMP PIT & PUMP @ SOUTH END OF PROJECT - SECTION



**B1** AS-BUILT DRAINAGE SWALE  
SCALE: 3/4" = 1'-0"



BEFORE

View looking to Northwest :  
(standing on vacant lot next to Hotel)

22



Left Photo is before Rock Placement . . . . .  
. . . . . > Right Photo is after Rock Placement

23

RECORDING REQUESTED BY  
SAFECO TITLE INSURANCE COMPANY

3/15/84 9010 6

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

DOC. NO. 13532  
OFFICIAL RECORDS  
SAN LUIS OBISPO CO., CA

MAR 19 1984  
FRANCIS M. COONEY  
County Clerk-Recorder  
TIME 8:00 AM

DEED RESTRICTION

134252

I. WHEREAS, Wade Construction Company, Inc., a California corporation and Windmark Corporation, a Texas corporation (hereinafter collectively referred to as the "Owners") are the record owners of real property located in San Luis Obispo County, California, more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference (hereinafter referred to as the "Subject Property"); and

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

III. WHEREAS, H. Joseph Wade, an individual who is President of Wade Construction Company, Inc., and Stephen D. Cox, an individual who is President of Windmark Corporation (hereinafter collectively referred to as the "Applicants"), applied to the California Coastal Commission for a Coastal Development Permit for development of the Subject Property; and

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

**EXHIBIT 8**  
**DEED RESTRICTION 1A**  
**(1 OF 8)**

VOL 2576 PAGE 89

NOW, THEREFORE, in consideration of the granting of Permit No. 4-83-490 to the Applicants by the California Coastal Commission, the Applicants hereby irrevocably covenant with the California Coastal Commission that there be and hereby are created the following restrictions on the use and enjoyment of the Subject Property, which shall be attached to and become a part of the deed to the Subject Property. The undersigned Owners, for themselves and for their heirs, assigns, and successors in interest, covenant and agree:

(a) that no development other than pathways and stairways shall occur within the 100 foot setback portion of the Subject Property shown and described on Exhibit B attached hereto and incorporated herein by reference; (b) that the Applicants understand that the portion of the Subject Property described on Exhibit A is subject to extraordinary hazard from erosion and from bluff retreat and that Applicants assume any liability from these hazards which may result to the California Coastal Commission from its granting of Permit No. 4-83-490; (c) the Applicants unconditionally waive any claim of liability on the part of the California Coastal Commission for any damage from such hazards; and (d) the Applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion or landslides.

Said deed restriction shall remain in full force and effect during the period that Permit No. 4-83-490, or any modification or amendment thereof, remains effective, and during the period that the development authorized by Permit No. 4-83-490 or any modification of said development remains in existence in or upon any part of, and thereby confers benefit upon, the Subject Property, and to that extent said deed restriction is hereby deemed and agreed by the Applicants to be a covenant running with the land, and shall bind Applicants and all their assigns or successors in interest.

**EXHIBIT 8  
(3 OF 8)**

EXHIBIT A

Those portions of Lots 4 and 5 of the Subdivisions of a part of the Ranchos El Pismo and San Miguelito, in the City of Pismo Beach, County of San Luis Obispo, State of California, as shown on map filed in Book A at page 157 of Maps, bounded by the following described lines:

Bounded Northwesterly by Northwesterly line of the land described in the deed to Thomas S. Nelson and Harry G. Nelson, recorded December 19, 1949 in Book 545 at page 177 of Official Records.

Bounded Northeasterly by the Southwesterly lines of the land described in Part 2 of the deed to the State of California, recorded April 2, 1963 in Book 1233 at page 415 of Official Records.

Bounded Southeasterly by the Northwesterly line of the land described in Parcel 1 of the deed to Albert Berger recorded January 24, 1951 in Book 594 at page 386 of said Official Records.

Bounded Southwesterly by the line of ordinary high water of the Pacific Ocean.

Excepting therefrom that portion of said lots conveyed to the State of California in deed recorded April 2, 1963 in Book 1233 at page 415 of Official Records.

**EXHIBIT 8  
(5 OF 8)**

with a line 100 feet distant from and parallel with said top of the existing ocean bluffline; Thence, Southeasterly and parallel with said existing top of ocean bluffline to the intersection with said Southeasterly boundary line of said property conveyed by said deed recorded in Book 2505 at Page 371 of Official Records; Thence, South  $43^{\circ} 24'$  West 100 feet more or less along said southeasterly boundary line to the True Point of Beginning. Containing .84 acres, more or less.

**EXHIBIT 8**  
**(7 OF 8)**



RECORDING REQUESTED BY

SAFECO TITLE INSURANCE COMPANY  
~~RECORDING REQUESTED AND RETURN TO:~~  
CALIFORNIA COASTAL COMMISSION  
631 HOWARD STREET, FOURTH FLOOR  
SAN FRANCISCO, CA 94105

3/19/84 9019 6 2 14.0  
DOC. NO. 13533  
OFFICIAL RECORDS  
SAN LUIS OBISPO CO., CA

MAR 19 1984  
FRANCIS M. COONEY  
County Clerk-Recorder  
TIME 8:00 AM

DEED RESTRICTION

I. WHEREAS, Wade Construction Company, Inc., a California corporation, and Windmark Corporation, a Texas corporation (hereinafter collectively referred to as the "Owners") are the record owner of the real property located in San Luis Obispo County, California, more specifically described on Exhibit A, which is attached hereto and incorporated by reference; and

II. WHEREAS, H. Joseph Wade, an individual who is President of Wade Construction Company, Inc., and Stephen D. Cox, an individual who is President of Windmark Corporation (hereinafter collectively referred to as the "Applicants"), applied to the California Coastal Commission for a Coastal Development Permit for the development of the Subject Property; and

III. WHEREAS, the California Coastal Commission is acting on behalf of the People of the State of California; and

IV. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and

V. WHEREAS, on October 13, 1983, Coastal Development Permit No. 4-83-490 was granted by the California Coastal Commission in accordance with the Staff Recommendation on the permit application subject to the following condition:

**EXHIBIT 9**

**DEED RESTRICTION 1B  
(1 OF 11)**

**VOL 2576 PAGE 97**

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the public access provisions of Section 30210 and 30212 and that a permit could not therefore have been granted.

NOW, THEREFORE, in consideration of the granting of Permit No.4-83-490 to the Applicants by the Commission, the Applicants hereby irrevocably agree that there be, and hereby is, created the following restriction on the use and enjoyment of the Subject Property to be attached to and become a part of the deed to the Subject Property:

The portion of the Subject Property described and illustrated on Exhibit B, a copy of which is attached hereto and incorporated herein by reference, may be used by members of the public for access from the first public road nearest the shoreline to the Pacific Ocean; no grading, landscaping, or structural improvements that in the opinion of the Executive Director of the California Coastal Commission, or his successor, would impede public access, other than public walkways and stairways, shall be constructed on the Subject Property. Applicants, their successors and assigns in interest, shall assume maintenance and management responsibilities for any system of accessways, stairs and/or walkways which may be constructed upon the Subject Property, and Applicants, their successors and assigns, will keep any such structural improvements in good repair for public use during the period of time that a 170 unit motel and 251 seat restaurant and conference room exist and are operated upon the Subject Property.

Said deed restriction shall remain in full force and effect during the period that said Permit No. 4-83-490, or modification or amendment thereof, remains effective, and during the period that the development authorized by Permit No. 4-83-490, or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the Subject Property described herein, and to that extent, said deed restriction is

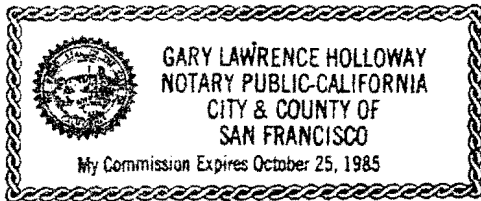
This is to certify that the deed restriction set forth above, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the authority conferred by the Commission when it granted Permit No. 4-83-490, on October 13, 1983, and that the Commission consents to recordation thereof by its duly authorized officer.

DATED: January 30 1984      Cynthia K Long

CYNTHIA K LONG STAFF COUNSEL  
CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA    )  
                                  ) ss.  
COUNTY OF San Francisco

On 30 January 1984, before me Gary Lawrence Holloway  
a Notary Public, personally appeared Cynthia K. Long,  
personally known to me to be (or proved to me on the basis of  
satisfactory evidence) to be the person who executed this  
instrument as the Staff Counsel, an authorized representa-  
                                  TITLE  
tive of the California Coastal Commission, and acknowledged to me  
that the California Coastal Commission executed it.



Gary Lawrence Holloway  
NOTARY PUBLIC IN AND FOR SAID  
COUNTY AND STATE

**EXHIBIT 9**  
**(50F11)**

EXHIBIT B

November 30, 1983 ✓  
E1092 ✓

(Pismo 4)

All that real property being situate in the County of San Luis Obispo, State of California, being a part of that certain portion Lot 5 of the Subdivisions of a part of the Ranchos El Pismo and San Miguelito described in a deed recorded in Book 2505 of Official Records at Page 371 in the office of the County Recorder of said County said portion of Lot 5 as described in said deed also being shown on a map filed in Book 17 of Records of Surveys at Page 34 in the office of said County Recorder; said part of said portion of Lot 5 being described as follows:

Area 1:

Lateral Public Access Easement (100' Park Dedication)

According to that certain deed recorded in Book 594 of Official Records at Page 386 in the Office of said County Recorder, referenced in said deed: Beginning at a point in the Southwesterly line of the California State Highway No. 101 at the most easterly corner of the land described in the deed to Thomas S. Nelson and Harry G. Nelson, recorded December 19, 1949 in Book 545 at Page 177 of Official Records of said County; Thence, South  $43^{\circ} 24'$  West 40.00 feet; Thence North  $46^{\circ} 36'$  West 907.68 feet; Thence along the Southeasterly line of said property described in said deed recorded in Book 2505 at Page 371 of Official Records, as described therein, South  $43^{\circ} 24'$  West 605.9 feet to a point at the top of ocean bluffline as it existed on January 7, 1983, said point being the True Point of Beginning of this description; Thence, along said existing top of ocean bluffline, Northwesterly 195 feet more or less; Thence, continuing along said existing top of ocean bluffline, Northerly 65 feet more or less; Thence, continuing along said existing top of ocean bluffline, Northwesterly 40 feet more or less; Thence, continuing along said existing top of ocean bluffline, more northwesterly 135 feet more or less to the intersection with the existing top of bank of a creek channel as it existed January 7, 1983; Thence, along said existing top of creek channel bank to the intersection

**EXHIBIT 9**  
**(7 OF 11)**  
2576 PAGE 102

Thence, North  $46^{\circ} 36'$  West, 907.68 feet; Thence, along the Southeasterly line of said property described in said deed recorded in Book 2505 at Page 371 of Official Records, as described therein, South  $43^{\circ} 24'$  West 151.95 feet to a point described in a deed recorded in Book 1214 of Official Records at Page 434 in the office of said County Recorder as the southwesterly corner of said property described by said deed; Thence, North  $35^{\circ} 42' 13''$  West along the Southwesterly boundary line of said property described by said deed, (North  $37^{\circ} 15' 33''$  West per Book 17 of Record of Surveys at Page 34 in the Office of said County Recorder) 128.64 feet to a point 5 feet southwest from the top of the existing creek channel bank as herein above described in Area 2, said point being the True Point of Beginning of this description; Thence, along the following described centerline of a 10 foot strip of land, said strip of land lying 5 feet on either side of and parallel with said centerline:

- 1) South  $55^{\circ} 17' 58''$  West, 64.15 feet;
- 2) South  $66^{\circ} 15' 54''$  West, 26.39 feet;
- 3) South  $70^{\circ} 14' 48''$  West, 50.41 feet;
- 4) South  $74^{\circ} 47' 56''$  West, 24.98 feet;
- 5) South  $65^{\circ} 39' 55''$  West, 24.58 feet;
- 6) South  $64^{\circ} 41' 46''$  West, 17.36 feet;
- 7) South  $60^{\circ} 24' 33''$  West, 34.00 feet;
- 8) South  $54^{\circ} 46' 10''$  West, 25.12 feet;
- 9) South  $63^{\circ} 07' 22''$  West, 32.28 feet;
- 10) South  $63^{\circ} 53' 46''$  West, 38.07 feet;
- 11) South  $57^{\circ} 58' 59''$  West, 28.18 feet;
- 12) South  $53^{\circ} 32' 56''$  West, 25.14 feet;
- 13) South  $60^{\circ} 02' 52''$  West, 33.83 feet;
- 14) South  $69^{\circ} 38' 13''$  West, 24.00 feet more or less to the intersection with the line 100 feet distant from and parallel with the existing ocean bluffline as herein above described in Area 1.

EXHIBIT 9  
(90511)

# EXHIBIT B

PISMO-4  
LATERAL PUBLIC ACCESS  
AREA 1 & 2  
VERTICAL PUBLIC ACCESS  
AREA 3

TRUE POINT OF BEGINNING  
FOR PISMO-4: AREA 3

POINT OF BEGINNING

S 43° 24' N 40.00'

N 46° 30' W 907.68'

NELSON

SHELL

BEACH

ROAD

N 55° 20' 13" W  
128.62'

AREA 3

PISMO-4

WILKERSON

S 43° 24' N 605.9'

CENTERLINE 10' VERTICAL PUBLIC  
ACCESS EASEMENT

CENTERLINE 90' VERTICAL  
PUBLIC ACCESS EASEMENT

100'

LATERAL PUBLIC ACCESS  
EASEMENT LINE

AREA 1

OCEAN

BLUFF LINE

AREA 2

ORDINARY

HIGH TIDE LINE

(APPROXIMATE)

PACIFIC OCEAN

TRUE POINT OF BEGINNING  
FOR PISMO-4: AREA 1  
AND AREA 2

EXHIBIT 9  
(11 OF 11)

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

Geologic Hazard Setback and Waiver of Liability

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

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

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

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

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

DATED: 2/21, 19 84.

L. R. Wilkerson Interests, Inc.

SIGNED BY: *L. R. Wilkerson*  
L. R. Wilkerson, President

STATE OF TEXAS )  
COUNTY OF DALLAS ) ss.

On this 21<sup>ST</sup> day of FEBRUARY, in the year 1984, before me the undersigned, a Notary Public in and for said County and State, personally appeared L. R. Wilkerson, an individual, personally known to me or proved to me on the basis of satisfactory evidence to be the President of the corporation which executed the attached instrument, on behalf of the corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

*P. Ann Smith*  
(Notary Signature Line)

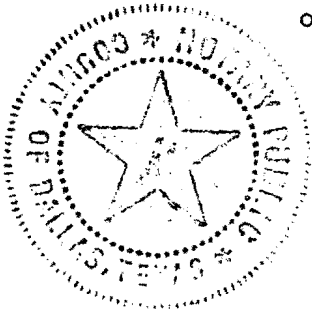




EXHIBIT B

November 30, 1983  
E1092

(Wilkerson)

All that real property situate in the County San Luis Obispo, State of California, being a part of that certain portion of Lot 5 of the Subdivisions of a part of the Ranchos El Pismo and San Miguelito, described in a deed recorded in Book 2298 of Official Records at Page 322 in the office of the County Recorder of said County, said portion of Lot 5, as described in said deed, also being shown on a map filed in Book 17 of Records of Surveys at Page 34 in the office of said County Recorder; said part of said portion of Lot 5 being described as follows:

Area 1: Lateral Public Access Easement (100' Park Dedication)

According to said deed: Beginning at a point in the Southwesterly line of California State Highway No. 101 at the most Easterly corner of the land described in the deed of Thomas S. Nelson and Harry G. Nelson, recorded December 19, 1949 in Book 545 at Page 177 of Official Records of said County; Thence, South  $43^{\circ} 24'$  West 40 feet; Thence, North  $46^{\circ} 36'$  West 772.68 feet to the True Point of Beginning of said deed recorded in Book 2298 at Page 322; Thence, along the Southeasterly boundary line of said property conveyed by said deed recorded in Book 2238 at page 322 of Official Records, South  $43^{\circ} 24'$  West 623.6 feet, to a point at the top of the ocean bluffline as it existed on January 7, 1983, said point being the True Point of Beginning of this description; Thence, along said existing top of ocean bluffline, Northwesterly 140 feet more or less to the Northwesterly boundary line of said property conveyed by said deed recorded in Book 2298 at page 322 of Official Records; Thence, along said Northwesterly boundary line North  $43^{\circ} 24'$  East to an intersection point with a line 100 feet distant from and parallel with said top of existing ocean bluffline; Thence, Southeasterly and parallel with said existing top of ocean bluffline to the intersection with said southeasterly boundary line of said property conveyed by said deed, Thence Southwesterly along said

**EXHIBIT 10**  
**(6 OF 8)**

# GEOLOGICAL SETBACK FOR WILKERSON: AREA 1

POINT OF BEGINNING

S 43° 24' N 40.00'

N 43° 36' N 772.68'

NELSON

SHELL BEACH ROAD

WILKERSON

S 43° 24' N 623.6'

PISMO - 4

AREA 1

100' LATERAL PUBLIC ACCESS EASEMENT LINE 1

BLUFF LINE

OCEAN

TRUE POINT OF BEGINNING  
FOR WILKERSON, AREA 1

**EXHIBIT 10  
(80F8)**

Deed Restriction. An executed and recorded document, in a form and content approved by the Executive Director of the Coastal Commission for lateral and vertical access. The document shall include legal descriptions of both the Applicant's entire parcel and the public access areas: the lateral accessway shall be for the area within the 100 feet setback line on the blufftop as shown in Exhibit 1 and the entire beach area seaward of the motel structures; the vertical accessway shall extend the length of the property from Shell Beach Road to the bluff top lateral access easement and continue down over the existing pathway to the shoreline as shown in Exhibit 1. The accessway shall be clearly marked by an official coastal access sign. The only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that in the opinion of the Executive Director would impede public access shall not be undertaken within the accessway areas.

The deed restriction 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 deed restriction shall bind any successor and assigns in interest of the Applicant or landowner.

The deed restriction shall provide that the applicant and his or her assigns or successors in interest shall assume maintenance, and management responsibilities for the system of accessways, stairs, and walkways described above and will keep these facilities in good repair and available for unimpeded public use at all times for the life of the project.

VII. WHEREAS, the real property described above is located between the first public road and the shoreline; and

VIII. WHEREAS, under the policies of Section 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline and along the coast is to be maximized in all new development projects located between the first public road and the shoreline; and

hereby deemed and agreed by Owners to be a covenant running with the land, and shall bind Applicants and all their assigns or successors in interest.

Applicant hereby agrees to cause Owner to record this Deed Restriction in the Recorder's Office for the County of San Luis Obispo as soon as possible after the date of its execution.

DATED: 2/21/84

L. R. WILKERSON INTERESTS, INC.

Signed By: [Signature]  
L. R. Wilkerson, President

STATE OF TEXAS )  
COUNTY OF DALLAS ) ss.

On this 21<sup>st</sup> day of FEBRUARY, in the year 1984, before me Ann Smith, a Notary Public in and for said County and State, personally appeared L. R. Wilkerson, an individual, who is personally known to me or proved to me on the basis of satisfactory evidence to be the President of L. R. Wilkerson Inter-

ests, Inc., the corporation which executed the attached instrument, on behalf of the corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

[Signature]  
NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE



**EXHIBIT II**  
**(4 OF 9)**

EXHIBIT A

That portion of Lot 5 of the Subdivision of the Ranchos El Pismo and San Miguelito, in the City of Pismo Beach, County of San Luis Obispo, State of California, according to map filed for record April 30, 1886, in the Office of the County Recorder of said County, described as follows:

Beginning at a point in the Southwesterly line of the California State Highway No. 101 at the most Easterly corner of the land described in the deed to Thomas S. Nelson and Harry G. Nelson, recorded December 19, 1949 in Book 545, at page 177 of Official Records of said County; thence South  $43^{\circ} 24'$  West 40 feet; thence North  $46^{\circ} 36'$  West 772.68 feet to the true point of beginning; thence continuing North  $46^{\circ} 36'$  West 135 feet; thence South  $43^{\circ} 24'$  West 700 feet, more or less, to the line of ordinary high tide line of the Pacific Ocean; thence Southeasterly along said line of ordinary high tide to a point that bears South  $43^{\circ} 24'$  West from the true point of beginning; thence North  $43^{\circ} 24'$  East 725 feet, more or less, to the true point of beginning.

Excepting any portion of said land, which at any time was tide land, which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

Also excepting therefrom that portion conveyed to the State of California, by deed dated October 24, 1962 and recorded December 4, 1962 in Book 1214 at page 434 of Official Records.

EXHIBIT II  
(6029)

Southeasterly boundary line, South  $43^{\circ} 24'$  West 100 feet more or less to the True Point of Beginning. Containing .34 acres more or less.

Area 2: Lateral Public Access Easement (Beach Dedication)

Beginning at the Southwest corner of Area 1, herein above described, said point being the top of the ocean bluffline herein above described, said point being the True Point of Beginning: Thence, South  $43^{\circ} 24'$  West along the Southeast boundary line of the property conveyed by above said deed recorded in Book 2298 of Official Records at Page 322, to the intersection with the line of ordinary high tide of the Pacific Ocean; Thence, Northwesterly along said line of ordinary high tide of the Pacific Ocean to the intersection with the Northwesterly boundary line of the property conveyed by the above said deed; Thence, North  $43^{\circ} 24'$  East along said Northwest boundary line to the northwest corner of said Area 1, said point being on said top of the ocean bluffline; Thence, Southeasterly along the westerly line of said Area 1 and said top of the ocean bluffline to said Southwest corner of said Area 1 and the True Point of Beginning.

**EXHIBIT II**  
**(8059)**

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
MONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HEARING IMPAIRED: (415) 904-5200



May 26, 1998

Toshiaki Sasaki, President  
Tokyo Masuiwaya California Corporation  
910 Prospect Street  
La Jolla, CA 92037

Subject: *Coastal Development Permit 4-83-490 Deed Restriction and Cliffs Hotel  
Revetment*

Dear Mr. Sasaki,

I am writing concerning the rip-rap revetment that was placed at the base of the bluffs seaward of the Cliffs Hotel property in Pismo Beach last fall. As you know, the revetment has been at issue since the City of Pismo Beach gave emergency authorization for it on August 28, 1997. The City's follow-up coastal permit is now the subject of an appeal filed with our office on May 5, 1998.

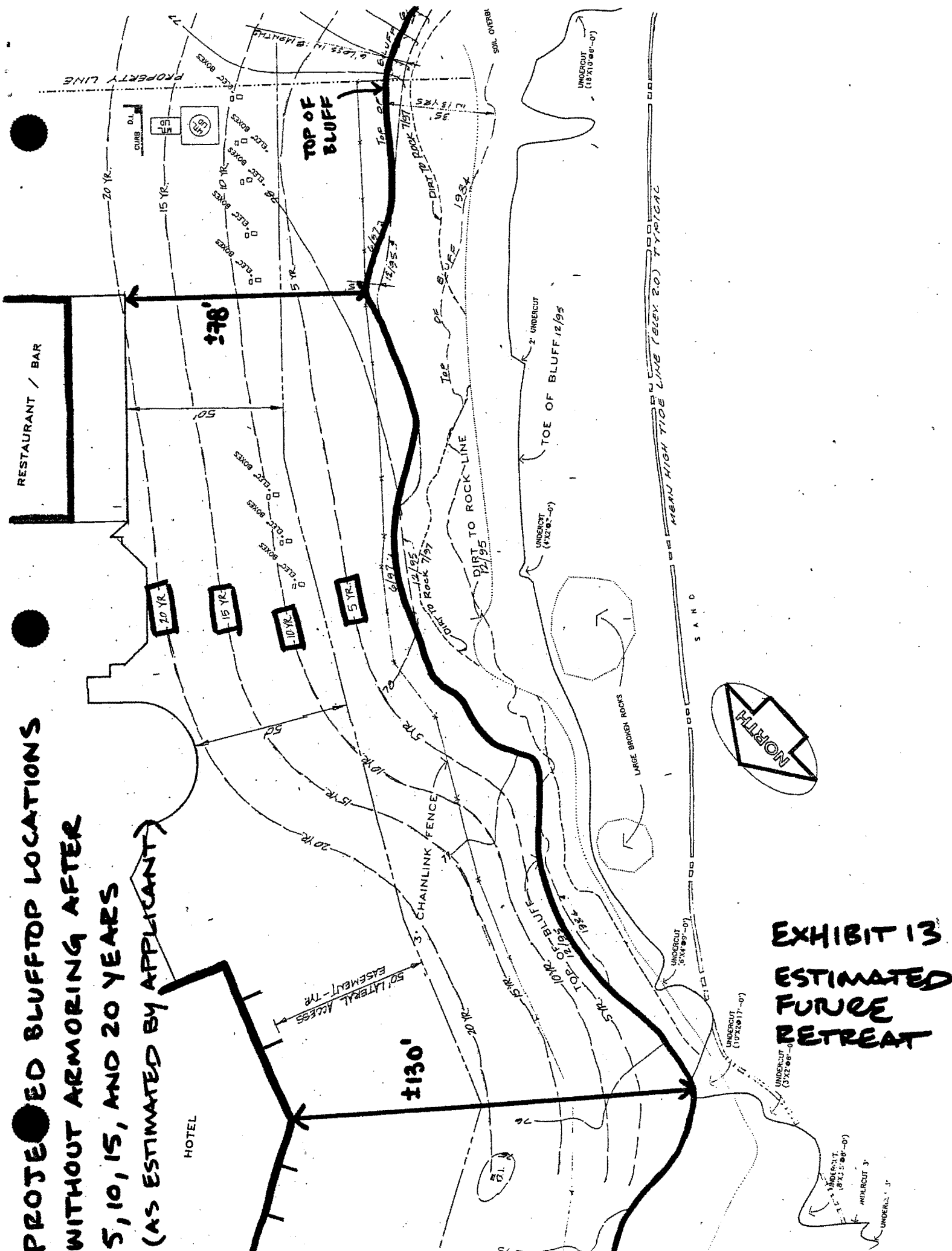
Further research into the matter has revealed a basic problem with the revetment. As a condition of the original coastal permit for the Cliffs Hotel (4-83-490), a deed restriction was recorded that does not allow any structural development on the beach or within the 100 foot bluff setback which, in the opinion of the Executive Director, impedes public access (see enclosed). In light of this property restriction, your company did not have the authority to apply for a permit to construct the revetment absent a determination from the Executive Director that it would not impede public access. Likewise, the City did not have the authority to approve a coastal permit for the revetment.

The Executive Director has determined that the Cliffs Hotel revetment impedes public access by covering 3,000 to 4,000 square feet of recreational beach area. Given this determination, only the California Coastal Commission could approve an amendment to CDP 4-83-490 to allow such construction. Therefore, if you would like to continue to pursue authorization for the revetment, you will need to apply for a coastal permit amendment to CDP 4-83-490 that would modify the property's recorded deed restriction to allow the revetment. Please call our office for details on the permit amendment process and relevant application materials.

Finally, please note that the City's coastal permit for the revetment (97-130) has been stayed pending the Commission's upcoming review of appeal A-3-PSB-98-049. As this deed restriction issue is inextricably linked with appeal A-3-PSB-98-049, we would encourage you to submit an amendment request as soon as possible.

**EXHIBIT 12**  
**MAY 26, 1998**  
**LETTER**  
**(1052)**

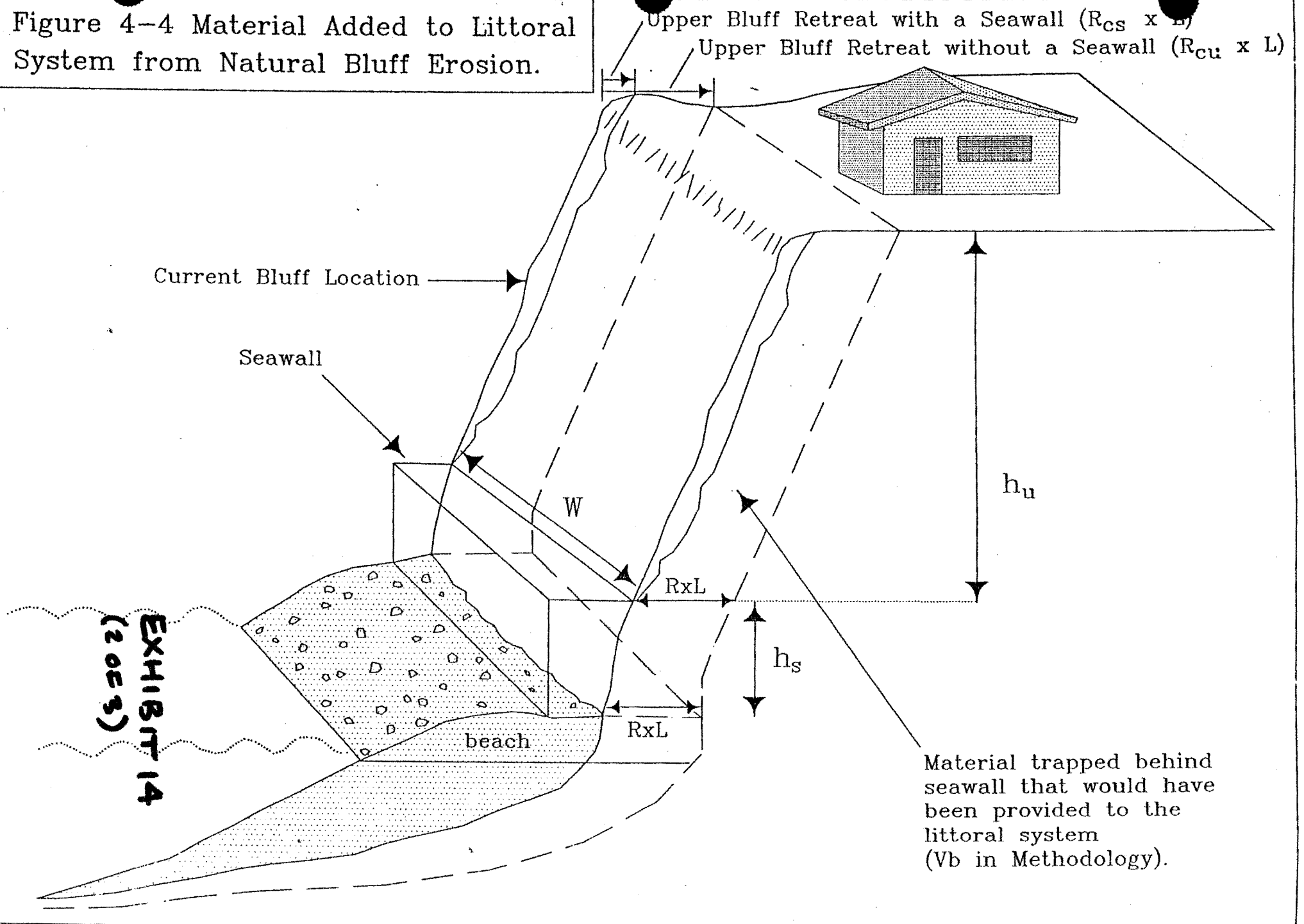
**PROJECTED BLUFFTOP LOCATIONS  
WITHOUT ARMORING AFTER  
5, 10, 15, AND 20 YEARS  
(AS ESTIMATED BY APPLICANT)**



**EXHIBIT 13  
ESTIMATED  
FUTURE  
RETREAT**



Figure 4-4 Material Added to Littoral System from Natural Bluff Erosion.



**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060

427-4863

HEARING IMPAIRED: (415) 904-5200



February 20, 1998

David Foote ASLA  
*c/o firma*  
849 Monterey Street, Ste. 205  
San Luis Obispo CA 93401

**SUBJECT: Negative Declaration/Request for Comments Project No.: 97-130, Cliffs Hotel,  
Pismo Beach**

Dear Mr. Foote:

After reviewing the proposed negative declaration we have the following comments.

1. Since the existing rip-rap revetment was installed under an emergency permit issued by the City, it now needs to undergo review for a regular coastal development permit. For review purposes, it is as if the revetment did not exist. Among other things, alternatives must be analyzed. Here, it appears that at a minimum there are three alternatives which should be analyzed. no project, a rip-rap revetment, and a vertical seawall. Analysis should include both quantitative and qualitative impacts of each alternative. Attached is a memo concerning Coastal Commission filing requirements for applications for shoreline protection structures. The same information required by the Commission should be provided to the local government.
2. The existing structure that is endangered must be clearly identified. The Coastal Act (Section 30235) and the City's LCP (Land Use Plan Policy S-6 and Implementation Plan Section 17.078.060) allow seawalls and revetments only when necessary to protect existing structures, coastal-dependent uses, and public beaches. Any determination that shoreline protection is needed must be based on all available information about the dangers from erosion including geotechnical and other reports and studies which provide erosion rates for the upper and lower bluff, with and without protection, with and without the interceptor swale and dewatering wells, and with and without the proposed project.
3. The negative declaration states that "The proposed project entails placement of a riprap revetment projecting between eight and sixteen feet onto the beach from the toe of the bluff. This zone currently is not an essential lateral route for beach users and an average of 20 feet of beach remains above the mean high tide line for beach users." What and where is the essential lateral route? A site plan is needed that shows the location of the essential lateral route and its change in location over the life of the revetment. How much area of the beach will be covered by the revetment? How much beach area would be covered by other alternatives?
4. How would the project, and the alternatives, affect the long-term change in location of the mean high tide line and in location of the toe of the bluff? This information will be helpful in determining the impacts (both short and long-term) of shoreline protection.

**EXHIBIT 15  
NEG DEC COMMENTS  
(1 OF 2)**

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG

LAW OFFICES OF  
**GAINES & STACEY**  
21700 OXNARD STREET, #1750  
WOODLAND HILLS, CALIFORNIA 91367

TELEPHONE  
(818)593-6355--(310)394-1163  
FAX--(818)593-6356

October 6, 1998

**RECEIVED**

OCT 08 1998

Mr. Dan Carl  
California Coastal Commission  
Central Coast Area Office  
725 Front Street, #300  
Santa Cruz, CA 95060

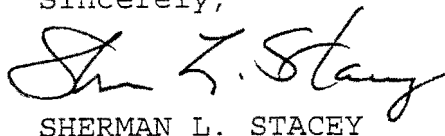
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Re: Tokyo Masuiwaya California Corporation (Cliffs Hotel)  
Appeal No. A-3-PSB-98-049

Dear Mr. Carl:

On October 1, 1998, representatives of the applicant, Tokyo Masuiwaya California Corporation, received a copy of the Staff Report on Appeal No. A-3-PSB-98-049 along with a notice of hearing set for October 14, 1998, in Oceanside, California. The applicant has determined that it is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled and requests in accordance with California Code of Regulations, Title 14, Section 13085, to postpone the hearing and vote to a subsequent meeting. The applicant waives applicable time limits for commission action on the application.

Sincerely,

  
SHERMAN L. STACEY

SLS/sh

cc: Mr. Toshiaki Sasaki  
Mr. Fred Schott  
Mr. Dennis Delzeit

**EXHIBIT 16**  
**CORRESPONDENCE**  
**(10F2)**