

CALIFORNIA COASTAL COMMISSION

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W16b

Request filed: 1/4/99
 Staff: D. Carl
 Staff report: 1/14/99
 Hearing date: 2/3/99

STAFF REPORT REQUEST FOR RECONSIDERATION

Application Number.....**A-3-PSB-98-049-R, Cliffs Hotel Revetment & Dewatering Plan**
Applicant.....Tokyo Masuiwaya California Corporation (Agent: Sherman Stacey)
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.
Commission Action.....Proposed project **denied** on November 5, 1998 by a vote of 9 to 0.

Procedural Note

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Sections 13109.1 et seq.).

The regulations state further that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states in applicable part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

Applicant's Contention

The Applicant contends that there is "new evidence which the applicant, in the exercise of reasonable diligence, could not have produced prior to the public hearing on November 5, 1998. The evidence has been discovered by the Applicant through analysis and preparation of the engineering plans required by Special Condition No. 2 imposed on Permit Amendment No. 4-83-490-A1." The three pieces of new

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evidence cited by the Applicant are:

- "1. Allowing further erosion will not prevent the installation of a future concrete protective device."
- "2. Worker safety requirements mandate excavation of the bluff face in order to remove the rock."
- "3. Removal of the rock revetment will only achieve a few years before new shoreline protection works are required."

Each of these claims is examined in detail in the findings below. The full text of the Applicant's reconsideration request is attached as Exhibit A.

Summary of Staff Recommendation

The staff recommends that the Commission **DENY** the request for reconsideration.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

1. Denial

The Commission hereby denies the request for reconsideration of the proposed project on the grounds that no new relevant evidence has been presented nor has there been an error of fact or law with the potential of altering the Commission's initial decision.

2. Findings and Declarations

The Commission finds and declares as follows:

Note that the Commission-adopted staff report for A-3-PSB-98-049 is attached in full as Exhibit B. For any references below to the Commission's November 5, 1998 findings on this project, please refer to Exhibit B.

2a. Applicant's First Claim Of New Evidence

"Allowing further erosion will not prevent the installation of a future concrete protective device."

The Commission's findings and decision on A-3-PSB-98-049 explicitly acknowledge that the shoreline will continue to erode if a shoreline protective device is not installed in front of the Cliffs Hotel. In fact, the Commission's 11/5/98 findings went to great length to analyze the contribution of this further erosion to sand supply (cite A-3-PSB-98-049 staff report, pages 23 - 33). However, at no point did the Commission find that consideration of future shoreline protection options was precluded. Rather, the Commission's denial of the revetment was based in part on the analysis that there was not now an imminent threat to existing development. Although the Commission's findings were silent on whether there might be a point in the future when an existing structure might be in danger from erosion, the Commission identified some criteria for identifying such a threat.

To conclusively show that the Cliffs Hotel structures were in danger from erosion, there would need to be an imminent threat to these structures. While each case is evaluated based upon its

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own merits, the Commission has generally interpreted "imminent" to mean that a structure would be imperiled in the next two or three storm cycles (generally, the next few years). (cite A-3-PSB-98-049 staff report, page 18)

In the case of the Cliffs Hotel, the Commission clearly recognized that there might be a time in the future when there might be an existing structure in danger from erosion. The Commission also made it quite clear in the A-3-PSB-98-049 staff report that if a shoreline structure for the Cliffs Hotel site were approvable, a vertical wall would be the preferred alternative (cite A-3-PSB-98-049 staff report, pages 2, 33, 40, 42, 44, & 45). The Applicant's claim does not constitute 'relevant new evidence' that would alter the Commission's initial decision.

The Applicant goes on to state that the bluff face is a shale material that has different erosional characteristics than the asphaltic and bituminous sandstone that had previously fronted the bluff; were this weaker shale material to be re-exposed by removing the revetment, a hole would be dug. The exposure of the weaker shale materials is the basis for the original "emergency" concern expressed by the Applicant and, as such, the Commission was very aware of this condition. The method of future erosion (i.e., a "hole" or sea cave) was not previously explicitly identified by the Applicant, nor was it explicitly identified in the Commission's 11/5/98 findings. The Applicant did present slides at the 11/5/98 hearing in which the Applicant identified *previous* retreat as beginning with a sea cave. It can reasonably be surmised that the Commission extrapolated this previous method of erosion as potentially indicative of future erosion at the site (as the Applicant seemed to be inferring from the 11/5/98 slide presentation). Moreover, the Commission makes decisions on shoreline protection applications on a regular basis and it is reasonable to assume that the Commission recognized that the erosion at this site may take the form of a sea cave as opposed to the entire bluff face eroding landward. In any event, the Commission's 11/5/98 findings were based upon the worst case scenario presented by the Applicant's submitted 4-foot per year erosion rate; whether this 4-foot per year constituted 4-foot per year of sea cave retreat or alternatively constituted 4-foot per year of the entire bluff face is immaterial. The Applicant is not claiming that this twist on the method of erosion changes the underlying retreat assumptions. The Applicant's claim does not constitute 'relevant new evidence' that would alter the Commission's initial decision.

The Applicant further contends that the above-described potential sea cave (or "hole") would fill with a shale-sand mixture incapable of preventing scour from undercutting a vertical seawall. It is true that sand and shattered shale will not prevent scour; it is likewise true that a well-designed vertical wall would not use this material for its foundation. If, in the future, a vertical wall were to be approved for this site, the foundation would need to be placed deeply enough to go into competent shale, not sand or shattered shale. If it were not possible to place the foundation in competent shale, the design engineer might need to consider a broader concrete base for the vertical wall, grout injection at the base, and/or the use of a scour apron fronting the wall. Many vertical seawalls in the Pismo Beach area have been installed along bluffs that have shale at the base, so this design constraint is not unusual. The Applicant has not provided any new evidence that would distinguish this property from the other properties in the Pismo Beach area that have installed vertical seawalls for shoreline protection.

The Applicant has long been aware of these site conditions; presumably the existing revetment was designed with a recognition of the underlying sand and shattered shale materials. As such, the presence of sand and shattered shale should have been known to the Applicant, or the Applicant's engineers, well in advance of the November 1998 Commission hearing. Moreover, the Applicant's geotechnical reports have acknowledged a vertical wall as a feasible alternative at this site; at no time

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have these reports indicated that a vertical wall would be precluded by the presence of a shale-sand mixture at its base. In fact, although the existing revetment at the site is not keyed into competent materials, the Applicant's original geotechnical report for the site specifically recommended that shoreline protection be keyed "into firm bedrock" (Earth Systems Consultants, 1/30/96). The Commission's 11/5/98 findings explicitly identified the need for shoreline protection at this location to be keyed into the underlying bedrock (cite A-3-PSB-98-049 staff report, pages 42 – 44). The Applicant's claim does not constitute 'relevant new evidence' that would alter the Commission's initial decision.

This above evidence presented by the Applicant is information that the Applicant, in exercise of reasonable diligence, should have known about and which could have been specifically presented at the November 1998 hearing on this matter. The Commission's staff engineer has prepared a response to the Applicant's request for reconsideration that likewise concludes that the Applicant's first claim does not constitute new evidence that was unavailable to the Commission at the time of its decision (see Exhibit C).

In conclusion, the Commission finds that the Applicant's first claim of new evidence, that "allowing further erosion will not prevent the installation of a future concrete protective device," does not constitute 'relevant new evidence' that would alter the Commission's initial decision on the project.

2b. Applicant's Second Claim Of New Evidence

"Worker safety requirements mandate excavation of the bluff face in order to remove the rock."

The Applicant contends that workers would be in danger were the revetment to be removed. The fact that the removal of the revetment presents certain engineering challenges and potential safety issues is not new information. The Applicant met with Commission staff prior to the 11/5/98 hearing to discuss these very issues. Moreover, in Commission staff's oral presentation at the 11/5/98 hearing, it was acknowledged that there would be risks involved in removing the rock as had been previously discussed with the Applicant at the above-mentioned pre-hearing meeting. Furthermore, the Applicant went to great lengths to describe the crane safety factors involved in the *installation* of the revetment; the placement of the rock presented similar worker safety issues as would its removal (i.e., working under a steep eroding bluff). Since the applicant has had workers on the site to install the revetment, and later to retrieve rock which had migrated from the revetment, the Applicant (and Cal OSHA) should have already been familiar with the worker safety issues associated with this job site prior to the November 1998 hearing on this matter.

In addition, as described in the Commission's findings for A-3-PSB-98-049, the Applicant has acknowledged the hazardous nature of the of the bluff area by deed restriction which states in part:

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...(cite A-3-PSB-98-049 staff report, page 11)

The Commission reviews and acts on innumerable requests for shoreline armoring and the Commission understands that working on and around eroding bluffs is a difficult undertaking. As evidenced by the

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Commission-required deed restriction language, the Applicant likewise understands the bluff at this location is "subject to extraordinary hazard from erosion and from bluff retreat."

The Commission was aware that denying the revetment at the Cliffs Hotel would necessitate the removal of the rip-rap by the Applicant. As discussed during the 11/5/98 hearing on this item, the Commission has previously required the removal of emergency-placed rock revetments (such as the rock revetment at the Cliffs Hotel). As evidenced by this discussion on 11/5/98, it is reasonable to assume that the Commission understood the worker safety issues when the project was denied.

Under this heading, the Applicant also presents the scenario that engineering standards "would require excavating the face of the bluff back to a slope no greater than 1 horizontal to 1 vertical in the alluvium plus $\frac{3}{4}$ horizontal to 1 vertical in the shattered rock above the rock revetment" were the revetment to be removed. However, this scenario is just one of many possible ways to remove the revetment; it is also likely the most destructive of the natural landform. If this is the *only* way to protect workers when working below an unstable bluff, then why wasn't this same construction method employed when the revetment was installed? The bluff composition has not changed since the revetment was installed, why would worker safety requirements change? It is incongruous to claim that it was safe when the revetment was installed for workers to be operating at the foot of the bluff, and now it is so unsafe that the bluff would need to essentially be removed to protect these same workers during a revetment removal operation.

Although the Commission did not explicitly discuss removal methods at the 11/5/98 hearing on this matter, the Commission was presented with the bluff characteristics which required placement of rock by crane. Based on the Commission's long history of decision making on revetments (and the associated eroding bluff materials), and given the Commission's previous experience with requiring the removal of revetments, it is reasonable to assume that the Commission generally recognized that the rocks would be removed in the same manner as they were installed; namely by crane. This does not constitute 'relevant new evidence'. However, if the *only* method for removing the revetment were to be to also destroy the entire bluff as described by the Applicant, then this might constitute relevant new information. Commission staff is not of the opinion that this is the only option.

Instead of removing the entire bluff to remove the revetment (the scenario described by the Applicant), another option would be to combine support by a blufftop crane with a smaller pulley crane on the beach (at a safe distance from the bluff face) to pull the rocks onto the beach, one by one. Once on the beach, the rocks could be broken into smaller pieces and lifted to the bluff top for removal from the site. If a blufftop crane would further destabilize the bluff (and decrease worker safety), Commission staff has confirmed that there are cranes available that can make a 16,000 pound pick from up to 350 feet away. Such a crane could be placed inland in the parking lot and avoid the blufftop altogether. It is likely that there are other revetment removal options available that could provide for both worker safety and resource protection.

The Applicant's claim that essentially the entire bluff seaward of the Cliffs Hotel would have to be removed to even allow for the removal of the revetment is not supportable and, as such, does not constitute 'relevant new evidence'. The Commission's staff engineer has identified at least one method which would not require bluff destruction; it is likely that there are also other less environmentally damaging methods available that meet current engineering practices. The Commission's staff engineer is "not convinced that the only way to remove the existing revetment is to destroy the bluff" (see Exhibit C).

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Finally, the Applicant was aware from the beginning that the emergency-approved revetment was a temporary, interim measure that would need to be removed if it were not eventually permitted through the regular coastal permit process. Whether or not the Applicant was informed of this fact by the City of Pismo Beach, the Applicant was directly informed by Commission staff (by letter dated September 3, 1997, the same day that work began on the revetment according to the October 29, 1998 declaration of Fred Schott) that denial would require removal of the revetment. The Applicant claims now that worker safety precludes them from removing the temporary measures without removing the entire bluff. The Applicant understood, or should have understood, that removal of the revetment from the eroding bluff after it had been installed was one possibility. As such, good engineering discipline, and *reasonable diligence*, would have required the Applicant to prepare for this contingency; protection of both worker safety and the natural landform are just two of the engineering factors that would, and should, have entered into this contingency scenario.

Worker safety and the composition of the bluffs at the Cliffs Hotel are not new issues. This evidence presented by the Applicant is information that the Applicant, in exercise of reasonable diligence, should have known about and which could have been specifically presented at the November 1998 hearing on this matter. The Commission was aware of the ramifications of denying the revetment and the Applicant has not provided 'relevant new evidence' that would alter the Commission's initial decision. The Commission's staff engineer has prepared a response to the Applicant's request for reconsideration that likewise concludes that the Applicant's second claim does not constitute new evidence that was unavailable to the Commission at the time of its decision (see Exhibit C).

In conclusion, the Commission finds that the Applicant's second claim of new evidence, that "worker safety requirements mandate excavation of the bluff face in order to remove the rock," is not supportable by the facts of the case and as such does not constitute 'relevant new evidence' that would alter the Commission's initial decision on the project.

2c. Applicant's Third Claim Of New Evidence

"Removal of the rock revetment will only achieve a few years before new shoreline protection works are required."

As discussed in finding 2a above, the Commission's findings and decision on A-3-PSB-98-049 explicitly acknowledge that the shoreline will continue to erode if a shoreline protective device is not installed in front of the Cliffs Hotel. Likewise, the Commission clearly recognized that there might be a time in the future when there might be an existing structure in danger from erosion when the case could be made in support of shoreline protection. The Applicant claims that the Commission found "that the bluff could erode to the foundations of the buildings." This is not true. The Commission's findings in A-3-PSB-98-049 state in applicable part:

Nonetheless, even when applying the applicant's 4-foot per year retreat rate, natural bluff retreat would not reach the restaurant structure for almost 20 years (see Exhibit 13). In fact, in another 7 years, using the 4-feet of erosion per year rate, there would still be approximately 50 feet of setback remaining. (cite A-3-PSB-98-049 staff report, pages 17 & 18)

The Commission did not find that the bluff could erode to the foundations of the buildings. Rather, in the above description, the Commission is using the Applicant-provided estimate of future bluff retreat (Exhibit 13 of the A-3-PSB-98-049 staff report) to show that, using the Applicant's own figures, the blufftop would not reach the structures themselves for nearly 20 years. The substantive point made in

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the same paragraph is that 50 feet of blufftop setback would remain after 7 years of bluff retreat when the Applicant's 4-foot per year rate is applied.

Based upon a series bluff failure potential calculations (see page 3 of Exhibit A), the Applicant now posits another possible future scenario (that shoreline protective works would be necessary at the site by 2003 were the revetment removed). That shoreline protective works may be considered at some future point is not 'relevant new evidence.' In fact, the Commission found that there might be a time in the future when an existing structure could be found in danger from erosion were the threat to that structure to be imminent (i.e., "imperiled in the next two or three storm cycles (generally, the next few years)"). That shoreline protection would be *required* at the site by the year 2003, is a new scenario asserted by the Applicant.

However, the basis for the 2003 estimate is not entirely clear. In fact, notwithstanding the Applicant's assumptions and calculations presented vis-à-vis failure potential of the shale and alluvium layers, the Applicant then makes two competing observations in arriving at this estimate: (1) "that the toe of the bluff cannot erode back more than 20 feet in the southerly portion of the property before new protection works will be necessary;" and (2) that "if the rock were removed in 1999, new shoreline protection works would be necessary by 2003." Based on the Applicant's previously identified 4-foot per year rate of erosion, the first contention implies 5 years until shoreline protection is necessary (20 feet at 4 feet per year), while the second implies 4 years (1999 to 2003). More than anything, this inconsistency helps to demonstrate the uncertainty about future erosion rates at this site (as discussed at great length in the A-3-PSB-98-049 staff report, pages 15 – 19). Although the Applicant's 2003 estimate is within the range of conceivable possibilities when the revetment is removed in 1999, so is the year 2006 (i.e., 50 feet of setback remaining after 7 years of erosion as described above). The Applicant has not presented any 'relevant new evidence' which conclusively shows that one is more correct than the other, or is more correct than earlier estimates.

The Commission was well aware of the uncertainty surrounding future erosion at the site. The Applicant has quantified this threat in terms of a 4-foot per year retreat rate. As discussed in the staff report, there are other methods of calculating retreat rates at this site *using the same information* that yield lower retreat rates. In fact, although the staff report based findings on the worst-case scenario of a 4-foot per year erosion rate, the Commissioners discussed the uncertainty of retreat rates at this location and discussed the probability that the actual retreat rate at this site was much lower than the 4-foot per year forwarded by the Applicant. The Commission rightly acknowledged the fact that the Commission reviews innumerable requests for shoreline protection and has this body of experience to draw upon when presented with erosion and retreat rate uncertainty. The 4-foot per year rate is an extremely high rate when compared with retreat rates statewide, or even elsewhere in Pismo Beach, where there are rapidly eroding shoreline areas.

The site is subject to extraordinary hazard from erosion and bluff retreat; the Applicant has previously acknowledged this fact through deed restrictions on the property. The Applicant has quantified this threat in terms of a 4-foot per year retreat rate. The Applicant is attempting to introduce an alternative interpretation of this core information with the reconsideration request; namely that shoreline protection will be needed at the site by the year 2003. Although this is the first time that a more precise timeframe describing when the structures at the site would be in danger has been offered by the Applicant, it is not 'relevant new information.' In fact, it is in agreement with the A-3-PSB-98-049 findings; namely that "the Commission finds that the existing Cliffs Hotel structures are not currently in danger from erosion" (cite A-3-PSB-98-049 staff report, page 18).

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This above evidence presented by the Applicant is information that the Applicant, in exercise of reasonable diligence, should have known about and which could have been specifically presented at the November 1998 hearing on this matter. The Commission's staff engineer has prepared a response to the Applicant's request for reconsideration that likewise concludes that the Applicant's third claim does not constitute new evidence that was unavailable to the Commission at the time of its decision (see Exhibit C).

In conclusion, the Commission finds that the Applicant's third claim of new evidence, that "removal of the rock revetment will only achieve a few years before new shoreline protection works are required," does not constitute 'relevant new evidence' that would alter the Commission's initial decision on the project.

Exhibits

Exhibit A: Applicant's request for reconsideration

Exhibit B: Commission-adopted A-3-PSB-98-049 staff report

Exhibit C: Memo from the Commission's staff engineer regarding reconsideration request contentions

FRED GAINES
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December 3, 1998

RECEIVED

DEC 04 1998

Dr. Charles Lester
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, California 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Local Government Appeal No. 3-PSB-98-049
Tokyo Masuiyawa California Corporation
The Cliffs at Shell Beach, Pismo Beach
Shoreline Protective Works

Dear Dr. Lester:

On behalf of Tokyo Masuiyawa California Corporation, the owner of The Cliffs at Shell Beach in Pismo Beach, I hereby request reconsideration of the decision of the California Coastal Commission on November 5, 1998 to deny the permit which was the subject of Appeal No. 3-PSB-98-049. This request for reconsideration is made under the authority of Public Resources Code §30627 and California Code of Regulations, Title 14, §§13109.1, et seq. A check in the amount of \$400.00 in payment of the filing fee required by California Code of Regulations §13055(a)(11) is enclosed.

This request for reconsideration is based upon new evidence which the applicant, in the exercise of reasonable diligence, could not have produced prior to the public hearing on November 5, 1998. The evidence has been discovered by the Applicant through analysis and preparation of the engineering plans required by Special Condition No. 2 imposed on Permit Amendment No. 4-83-490-A1.

1. Allowing further erosion will not prevent the installation of a future concrete protective device. The removal of protection at the base of the bluff will allow further erosion of the bluff face. The bedrock material presently on the shoreline does not extend below the new material which is being eroded. The bedrock material is the exposed surface of the asphaltic and bituminous sandstone which used to extend above the surface on the face of the bluff. When the present shale on the bluff face erodes, the material at and below the toe of the bluff is also shale. The shale will erode both vertically and horizontally. In short, wave action will dig a hole in the shale behind the exposed top of the bituminous sandstone.

The hole which is dug behind the exposed top of the

EXHIBIT A

bituminous sandstone will fill with a mixture of sand and pieces of shale which precipitate from the face of the bluff. The depth of the shale is substantially below the surface. Neither the shale sand mix which will cover the surface nor the shattered shale material beneath it are materials capable of preventing wave scour from undercutting a vertical seawall.

2. Worker safety requirements mandate excavation of the bluff face in order to remove the rock. The removal of the rock creates worker safety concerns within the jurisdiction of the California Occupational Safety Hazard Administration. The existing rock which forms the revetment also creates a buttress which supports the slope above. Removal of a buttress wall on an oversteep slope is a dangerous and unusual operation. OSHA requires that a civil engineer design a plan for removal which will protect worker safety. The normal practice for removing a buttress wall at an oversteep slope is to cut the slope back to an engineered grade prior to the removal of the wall. Otherwise, workers below the oversteep slope are at unreasonable risk of massive and unpredictable soil failures which can easily cause death or injury.

Engineering standards for cutting back the slope depends on the nature of the soils. The shale and alluvium at the Cliffs Hotel property would require excavating the face of the bluff back to a slope no greater than 1 horizontal to 1 vertical in the alluvium plus a 3/4 horizontal to 1 vertical in the shattered rock above the rock revetment. At this angle, workers can safely operate on the beach. Unfortunately, such a cut will eliminate the operational area for the cranes necessary to remove the rock. There is no possibility of reforming the excavated area once removed.

3. Removal of the rock revetment will only achieve a few years before new shoreline protection works are required. If the rock revetment is removed, the erosion of the bluff cannot continue for more than a few years before new protective works will be required. Special Condition No. 2 to Permit Amendment No. 4-83-490-A1 required the Applicant to prepare a plan for anticipated bluff erosion and facility relocation. In developing this plan, the Applicant's engineers have determined that the toe of the bluff cannot erode back more than 20 feet in the southerly portion of the property before new protection works will be necessary.

Calculations in the Commission's findings were that the bluff could erode to the foundation of the buildings. This is simply not possible. Buildings would be required to be removed

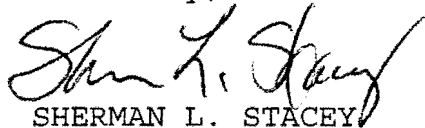
Mr. Charles Lestei
California Coastal Commission
December 3, 1998
Page 3

when the soils and slopes are in danger of failure or no longer capable of being prevented from ultimate failure. This event occurs long before the bluff has eroded the remaining 78 feet to the existing buildings. Building setback from slopes is based upon the soil types. There are two soil types present at the Cliffs Hotel property: shale and alluvium. The alluvium cannot be permitted to erode to a location where the slope from the base of the alluvium to the failure point of the supporting rock exceeds of slope of 1 to 1. The alluvium has a relatively uniform height of approximately 37 feet. In order to comply with setback requirements of the uniform building code, the toe of the alluvium cannot be allowed to erode to a point closer than 55 feet ($37 + 37 + 3 + 6 = 55$) of the buildings even if the alluvium was the only soil material. The shale beneath the alluvium is highly fractured and shattered and easily eroded. Analysis of the shattered shale indicates that it cannot support the alluvium at an angle greater than 53° . Since the shale has a height of approximately 40 feet, this means that the building must be set back from any future toe of the entire bluff an additional 30 feet.

When the failure potential of the two materials is added together, it becomes clear that when the bluff erodes at the toe to a point 85 feet from the foundations of the buildings, the buildings will be in danger because no protection after that point can assure their safety. At the present erosion rate of 4 feet per year (which can easily be exceeded in any given year), this would mean that even if the rock were removed in 1999, new shoreline protection works would be necessary by 2003.

This request for reconsideration is based upon the facts stated above and such additional supporting evidence as may be provided prior to or at the hearing on the request. Prior objections or disputes of fact or application of law are not intended to be waived by any omission or failure to repeat such objections or disputes in this request.

Sincerely,


SHERMAN L. STACEY

SLS/sh

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

EXHIBIT

A



CALIFORNIA COASTAL COMMISSION

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DN
10/16/98



Th12c

Filed: 5/5/98
49th day: 6/23/98
180th day: 11/1/98
Staff: D. Carl
Staff report: 10/15/98
Hearing date: 11/5/98

Prior Commission Actions
Open & Continue: 6/8/98
Substantial Issue: 10/14/98

ADOPTED

PROJECT DENIED 11/5/98 (VOTE 9-0)

**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 descriptionRegular 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

conflicts with the Commission's original approval of the Cliffs Hotel in 1983 (CDP 4-83-490) that effectively prohibited development between the hotel and the ocean, except for development that would not impede public access (i.e., a stairway or access path). These prior conditions are also incorporated in recorded deed restrictions for the Cliffs site. Under their certified LCP, the City did not have the legal authority to approve a development that directly conflicted with a prior approval of the Commission. 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. As discussed at length in these findings, even using the Applicant's geological information, the principal structures here are not in imminent danger. Therefore, the "no project" alternative is feasible. In addition, there are other drainage and dewatering measures available (and proposed by the applicant) to minimize erosion risks that are approvable under the LCP. Further, the project directly encroaches on approximately 4,900 square feet of beach previously dedicated and deed-restricted for public access; it interferes with lateral and surfing access; it fails to mitigate distinct and quantifiable sand supply impacts; it is visually incompatible with the bluff face; and fails to minimize long-term structural stability. For all of these reasons, a substantial issue was raised and the revetment cannot be approved under the City of Pismo Beach certified LCP or the access and recreation policies of the Coastal Act. Finally, were a shoreline structure found to be required and approved by the Commission, and based upon information available today, the appropriate alternative in this case would be to construct a vertical seawall that minimized beach encroachment and was built to approximate the natural landform. Mitigation for sand supply, public access, and other impacts would also be necessary.

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1. SUBSTANTIAL ISSUE DETERMINATION

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).

The range of issues raised by the appellants in their appeals are paraphrased below. (Please note that the complete text of each appeal is available for review at the Commission's Central Coast District Office in Santa Cruz.)

Appeal of Commissioners Areias & Nava

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

- The project is inconsistent with the underlying recorded property restrictions required as a condition of the Commission's original approval of the Cliffs Hotel in 1983 (CDP 4-83-490). The applicant is bound by these restrictions and cannot apply for development that is inconsistent with these restrictions.
- The project is inconsistent with the conditions of the Commission's original Cliffs Hotel approval which required the recorded deed restrictions. The City did not have the legal authority to approve a coastal permit that is inconsistent with a condition required by a previous Coastal Commission issued permit.
- The revetment is inconsistent with Coastal Act Sections 30210 and 30211 which protect public access and with LCP Policies S-6 and PR-22, and LCP Zoning Ordinance Section 17.078.060 which likewise protect public access and require shoreline protective devices to maintain and enhance public access features. The revetment will cover approximately 3,000 to 4,000 square feet of public recreational beach previously deed-restricted for public access as part of the Commission's original approval of the Cliffs Hotel. As such, the project will not maintain public access and it will not maximize public access. Instead, the project will result in a loss of public beach access. The project, as approved and conditioned by the City, does not contain any mitigation for this loss.
- The revetment may be inconsistent with LCP Policy S-6 which only allows revetments when necessary to protect principal structures in danger from erosion. It is not clear that the Cliffs Hotel is in immediate danger from erosion. The City's approval did not adequately analyze the immediate risk factors and the 'no structure' alternative.
- The revetment is inconsistent with LCP Policy S-6 which only allows shoreline protective devices if the protective device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. These impacts have not been adequately quantified in the City's approval and no measures have been provided to mitigate for the loss of sand from the eroding bluff.

Appeal of The Surfrider Foundation

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

- The revetment will disrupt natural shoreline processes, threaten the beach, and adversely alter natural landforms. [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 cover recreational beach area, interfere with the public's use of the beach, and limit lateral beach access. In addition, the lateral blufftop open space cannot be protected at the expense of sandy beach access. [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, 30220, and 30240.]
- The sewage lift station and holding tank violate the property's recorded deed restrictions and cannot be legally protected. This point was made evident by the Commission when the same project was denied in December of 1996.
- The project will result in visual impacts contrary to LCP policies. [Staff note: while not identified by the

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.]

2. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

The staff recommends that the Commission, after public hearing, **DENY** a coastal development permit for the proposed development.

Motion

I move that the Commission **DENY** a permit for the proposed development.

Staff Recommendation

Staff recommends a **YES** vote which would result in denial of the proposed development.

Resolution for Denial

The Commission hereby **denies** a permit for the proposed development on the grounds that the project as approved by the City of Pismo Beach is not in conformity with the provisions of the certified City of Pismo Beach Local Coastal Program, that it is located between the sea and the first public road nearest the shoreline and it is not in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, and that it will have significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

3. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Description and Setting

The proposed project is for a revetment and implementation of a dewatering plan for the Cliffs Hotel at 2757 Shell Beach Road in the northern portion of the City of Pismo Beach in southern San Luis Obispo County (see Exhibits 1 & 2). The proposed work would all be done on the blufftop and toe of the bluff seaward of the hotel and restaurant on the site. The specific work proposed consists 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 (see site plans, elevations, and photos in Exhibits 3 – 7)

The Cliffs Hotel is perched on top of a near vertical bluff approximately 75 feet high. The blufftop in front of the Hotel has a public access pathway, provided pursuant to the Commission's original approval of the Cliffs Hotel structure in 1983 (CDP 4-83-490), which allows for blufftop lateral public access from northwest to southeast in front of the hotel. Likewise, this approval secured the entire blufftop area for public access uses (see Exhibit 7 for an aerial photo of the site). At present, this blufftop area does not connect to continuing lateral segments up or down coast of the Cliffs Hotel site. Although continuous blufftop lateral access is envisioned by the LCP for the north Pismo Beach bluffs, this recreational feature has not yet been realized. In fact, the blufftop at the hotel represents a stand alone segment of this vision as it is sandwiched between a steep arroyo to the north and a fenced-off vacant parcel to the south.

At the base of Cliffs Hotel bluff is a narrow stretch of beach which opens up to a larger pocket beach, approximately 450 feet long and about 75 feet wide, where the proposed revetment would be (has been) constructed along the southern portion of the site. This beach area in front of the Cliffs was deed-

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

enforcement case V-3-96-003 to pursue the matter of the unpermitted sewage holding tank placed within the geologic setback area. According to the City's findings in support of the current application, the sewage holding tank has since been inactivated. Commission staff and the permittee have continued a dialogue regarding the most appropriate resolution for the unpermitted tank. The two potential means of resolution discussed to date involve removing the tank versus disabling it and leaving it in place. However, as of the date of this staff report, the matter remains unresolved. Furthermore, according to recent staff discussions with the Applicant's representative, there is an operating sewage lift station immediately inland of the sewage holding tank, as well as a number of sewage lines, likewise present in the setback area. These sewage apparatus appear to have been installed without a coastal permit as well. Disposition of the sewage holding tank issue, as well disposition for any other unpermitted elements present in the setback area, is not a part of the proposed project currently before the Commission. Staff anticipate that V-3-96-003 will be reevaluated following the Commission's action on the current revetment and dewatering application.

Current revetment project

On August 28, 1997, citing new geotechnical information, potential public safety issues, and the length of the regular permit processing time frame in relation to upcoming El Niño storms, the City issued an emergency permit for the proposed revetment in the same location denied by the Commission 8 months prior. This action was reported to the Commission at its September 1997 hearing. Subsequently, the City processed the required follow-up regular permit for the emergency authorization. Following an approval by the City's Planning Commission (on February 24, 1998) that was appealed to the City Council, the City of Pismo Beach approved the follow-up coastal permit on April 21, 1998. At that time, in the course of researching the Commission's files, the requirements of previous Commission actions were clarified. In particular, the property's deed restrictions do not allow for any development seaward of the Cliffs Hotel other than public access pathways and stairways. These deed restrictions also do not allow for the construction of any structures that, in the opinion of the Executive Director, would impede public access. Further, in light of these deed restrictions and the requirements of the Commission's original approval, the applicant did not have the authority to apply for a permit, and the City did not have the legal authority to approve a coastal permit, for the construction of the proposed revetment. Only the Coastal Commission could approve an amendment to CDP 4-83-490 that would allow for such construction. Although, as such, the revetment is technically a violation of CDP 4-83-490, because the applicant diligently obtained City approval for the project, an enforcement case was not opened pending receipt of an amendment application for the revetment.

As discussed earlier, citing these inconsistencies, and further raising the issue of conformance with the City of Pismo Beach LCP shoreline protective work policies and Coastal Act access policies, the City's follow-up regular approval was appealed by Commissioners Areias & Nava on May 5, 1998 (A-3-PSB-98-049, the project currently before the Commission). On the same date, the project was likewise appealed by the Surfrider Foundation and Bruce McFarlan. This de novo staff report is the culmination of these appeals. Following the filing of these appeals, the normal course of events would have been to review the project on appeal in terms of its conformance with the certified LCP. However, in this case, because the proposed project directly affects conditions attached to the original permit for the hotel issued by the Coastal Commission, only a Coastal Commission-approved amendment to CDP 4-83-490 could allow for the proposed project. The applicant was made aware of this by letter dated May 26, 1998. At that time, the applicant was also informed that in the opinion of the Executive Director, the proposed revetment would impede public access by covering 3,000 to 4,000 square feet of beach area heretofore used for public recreational purposes, specifically contrary to the property restrictions (see Exhibit 12); the applicant's submitted plans show this coverage is actually closer to 4,900 square feet.

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.

C. Coastal Development Permit Findings

1. Coastal Development Permit Process

Section 30253 of the Coastal Act addresses the need to ensure long-term structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future:

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.*

The City of Pismo Beach LCP mirrors the Coastal Act in this regard. Specifically, LCP Policy S-3 states, in applicable part:

S-3 Bluff Set-Backs: *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Under LCP Policy S-3 and Coastal Act Section 30253, new blufftop development must be setback a sufficient distance from the bluff edge to allow the natural process of erosion to occur without creating a need for a shoreline protective device. At a minimum, new development should be set back far enough to protect the principal structures from erosion for the reasonable economic life of the project (a minimum of 100 years per City policy). Under this approach, obviously, future erosion of the setback area (including even undercutting and large block failure) is to be expected.

The original construction of the Cliffs Hotel was approved by the Commission in October of 1983, prior to the certification of the City's LCP. At that time, the Commission used the applicant's site specific geotechnical report which estimated a 3-inch per year retreat rate for the site, to require the Cliffs Hotel structures be set back 100 feet from the bluff edge. With this setback, the Commission found that after 100 years of erosion, there would still be approximately 75 feet of blufftop between the proposed hotel structures and the bluff edge. The Commission further found that shoreline protective devices (such as this current revetment request) would not be required to protect the Cliffs Hotel in the future. In fact, the 100-foot setback area was deemed adequate by the Commission and the applicant to allow for natural retreat processes to continue without reaching the structures on the site for 400 years. In addition, the required public access area would be protected:

The Commission finds that the proposed project, as conditioned, is consistent with PRC Section 302[5]3 (1 & 2) and will assure structural stability and structural integrity and neither create or significantly contribute to erosion, geologic instability, or destruction of the site or surrounding area, nor require the construction of bluff or cliff protective devices (seawalls, etc.)

The 100 foot setback proposed in the plans as submitted...should be sufficient to protect [the blufftop] accessway from erosion for 100 years.

To implement these findings, the original Cliffs Hotel developers were required to record a deed

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

discussed above, the access deed restrictions allows new grading, landscaping and other structural improvements if the Executive Director determines that the proposed development will not impede public access (and of course, if the proper permits are obtained). The geologic hazard deed restriction does not allow any development within the set back area except "pathways and stairways," there are no provisions for any other future improvements in the document. The proposed revetment appears to be at least partially located within the 100' geologic hazard area. In order to consider the placement of the revetment in this area, an amendment to the deed restriction to allow it as a use must be obtained from the Coastal Commission.

In sum, the effect of these property restrictions (in terms of how the land can be developed) is that the entire area between the principal Cliffs Hotel structures and the Pacific Ocean is restricted to public access uses. The deed restriction for geologic hazard setback and waiver of liability flatly precludes any development within 100 feet of the hotel and restaurant other than "pathways and stairways." The deed restriction for public access implies a potential for additional development if it will not "impede access." Thus, in order to allow new development in this area, the geologic deed restriction must be amended and the Executive Director must find that the new development will not impede access. Neither of these have occurred in this case. As a result, the revetment is specifically not an allowed structural improvement based on the property's deed restrictions relevant to public access. The development is also not consistent with the provisions of the geologic hazard deed restrictions.

The Cliffs Hotel case is symptomatic of any number of cases statewide in which coastal developers build along an eroding shoreline and then ask for shoreline protection when natural shoreline processes continue. Section 30253 and equivalent LCP policies (in this case, LCP Policy S-3) require developers to show that their development will not require the construction of protective devices. Developers, in turn, provide site specific geotechnical reports to show that, in fact, their development is consistent with Section 30253 and/or equivalent LCP policies and thus will not require shoreline protection in the future. In essence, the developer is making a commitment to the public (through the Commission, and its local government counterparts) that, in return for building their project, the public will not lose public beach access, sand supply, visual resources, and natural landforms, and that the public will not be held responsible for any future stability problems.

Such a commitment was made in this case in 1983. In addition, the developers knowingly and voluntarily entered into property restrictions in which they acknowledged the "extraordinary hazard from erosion and from bluff retreat" associated with building at this location and they assumed all responsibility for this choice. As further evidence of the developers' assumption of risk, they further restricted the property to allow for *only* public access improvements seaward of the hotel. Although the current Applicant was not the original Cliffs Hotel developer, the current Applicant also knowingly and voluntarily accepted these same recorded property restrictions when the property was purchased.

Now, the applicant is asking for shoreline altering development to protect the hotel structures. If one takes the property restrictions and 1983 commitment at face value, the proposed revetment is essentially prohibited. More important, the City did not have the authority to override the previous coastal development permit through a subsequent action, notwithstanding the existence of a certified LCP. The correct course of action under the Coastal Act and the LCP for the project applicant is to apply for an amendment to the original coastal development permit from the Commission. Therefore, **the Commission finds that the proposed revetment must be denied because (1) the City did not have the authority to approve a development that was in direct conflict with the Commission's original approval and the corresponding property restrictions; and (2) the approval is not**

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?

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 effects 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.

Defining the "existing structure"

The first component of the LCP Policy S-6 "existing principal structure in danger from erosion" test is to identify the existing structure that is to be protected. In this case, the applicant has identified both the lateral access area and the hotel/restaurant as the 'existing structures' to be protected. It is clear that the hotel and restaurant are existing principal structures. However, the lateral access area is less clearly so.

The lateral access area has been represented by the applicant as a 50-foot wide easement area adjacent to the hotel and restaurant. This is not, in fact, the case. The Commission's original approval resulted in two deed restrictions (as discussed above) which provided for public access over the entire 100-foot area between the hotel structures and the sea. This means that the entire blufftop area seaward of the Cliffs' structures is the blufftop lateral accessway.

The 50-foot area cited by the applicant refers to the City of Pismo Beach LUP requirements for development within the North Spyglass Area where structures are required to be set back sufficient distance to allow for 100-years of bluff retreat *plus* an extra 50 feet for public access uses. These setback distance requirements were the same in the 1983 LUP (used by Commission as guidance for CDP 4-83-490) as they are now in the current certified LCP. In 4-83-490, the Commission found that the deed restrictions for public access seaward of the Cliffs' structures were sufficient to satisfy *both* of these setback requirements. However, this setback area was not segmented into two 50-foot areas in the Commission's approval or the recorded deed restrictions.

In addition, although there is a pathway within the setback, this pathway does not connect either upcoast or downcoast with a continuous recreational trail. In fact, the pathway at the Cliffs stops at either end of the Cliffs Hotel property. The Cliffs is sandwiched between a steep arroyo to the north and a vacant parcel to the south blocked off with a chain link fence. Although the LCP envisions continuous blufftop access along the northern Pismo Beach bluffs (of which the Cliffs property is one segment), this continuous accessway has not been developed. Thus, although available for use by the general public, it is not now a part of continuous public access trail.

The setback area seaward of the hotel is not a structure. It is not a building. It is not part of a continuous developed recreational trail (e.g., such as those found on West Cliff Drive in Santa Cruz or Scenic Road in Carmel). More important, as an access feature (and potential future trail segment), this lateral access area will remain as long as there is any amount of blufftop between the hotel structures and the bluff edge. Therefore, the entire setback would have to disappear before its viability would be threatened. As is detailed below, setback viability is not threatened at this time. Note that even in an extreme case (where very little space remained between the hotel and the bluff edge), the lateral access area could be relocated inland.

It also should be noted that any other "structures" located within the lateral access area have not received coastal permits and, as such, do not qualify as existing structures under the Coastal Act. This includes the sewage holding tank and any related structures subject to pending enforcement case V-3-96-003 (discussed earlier). As such, lacking any subsequent coastal permits to recognize and/or permit structural elements within the access area, the Commission finds that there are no structures present between the hotel and restaurant structures and the sea that qualify for protection under LCP Policy S-6 or Section 30235 of the Coastal Act.

In conclusion, the Commission finds that the 'existing structures' identified for protection in this

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

processes is improving the reliability of estimates. In this case, the current 4-foot per year estimate is the third different retreat rate used by the Cliffs Hotel in as many applications before the Commission. The first application (approved in October of 1983) based setback distances upon a 3-inch per year rate. When the Commission then denied a similar revetment project in December of 1996 (A-3-PSB-96-100, as previously described), ESC estimated the bluff retreat rate at the site as ranging from 4.5 inches (northern section) to 13 inches (southern section) per year based upon a four decade time frame (i.e., from 1955 to 1996); the Commission denied this earlier application in part because it was found that there was not an existing structure at risk. Since this denial, there has been a maximum retreat of 5 feet in front of the restaurant structure and essentially no retreat in front of the hotel itself and the retreat estimate has been revised upwards to 4 feet per year.

The current 4-feet per year rate was calculated based upon 6 feet of retreat that took place just south of the Cliffs Hotel parcel on the adjacent vacant lot over a one-and-one-half year period from December of 1995 to June of 1997 (see Exhibit 13). There are at least three methodological problems with this estimated retreat rate: (1) the 6-foot retreat event forming the basis for the rate calculation was documented on the parcel to the south of the Cliffs Hotel and not on the Cliffs Hotel parcel itself; (2) the one-and-one-half year period is too short a timeframe from which to draw accurate conclusions about long term erosion rates; and (3) the 18-month period included two winter seasons which skews the "average" toward a winter average.

The use of a retreat event from the adjacent parcel for calculating the Cliffs Hotel bluff retreat rate is defensible inasmuch as this adjacent bluff area is a part of the same geologic bluff area. More problematic, however, is the one-and-one-half year time frame. Bluff erosion is both episodic and long term; the applicant's use of an erosion rate based on a one-and-one-half year period for a section of bluff south of the property in question is not a fundamentally sound predictor of future events in front of the hotel and restaurant structures. While episodic events can, and do, occur with some frequency, the established method of estimating erosion rates is to use a long enough period of time to account for both ongoing erosion and acute, episodic events.

Furthermore, since there is a strong seasonal component to erosion, the use of time measurements other than full annual increments can over or under estimate a projected long-term annual trend. This problem is especially apparent when trying to make long term predictions from only a short-term data set. In fact, for many areas of the coast, erosion is mostly a winter concern. The high wave energy associated with winter storms causes far more erosion than the lower energy wave conditions that typically occur in the summer and fall. It is likely that the time period used for the current retreat rate estimate could have been extended to start in March of 1995 and continue until December of 1997 and the same 6-feet of erosion would have been noted over a 34-month time period. This would yield an erosion rate of 2.1 feet per year. Assuming constant retreat at 2.1 feet per year, it would take 37 years for the blufftop to retreat to the restaurant patio. After 13 years, there would still be a 50-foot wide blufftop area between the restaurant and the bluff edge (see Figure 1 below).

Alternatively, one could estimate the retreat rate for the site based upon aggregate retreat over many years. The maximum amount of retreat previously documented by ESC at the site for the period from 1955 to 1996 was 45 feet in the southern part of the Cliffs property. From December of 1995 to June of 1997, ESC further documented a maximum retreat of 5 feet in front of the restaurant and six feet at the parcel to the south. Therefore, the blufftop has retreated a maximum of 50 feet in 42 years along the southern part of the Cliffs property — providing a historic blufftop retreat rate of approximately 14 inches per year. Assuming constant retreat at this long-term rate, it would take 67 years for the blufftop to

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

<i>Based upon...</i>	<i>Using a retreat rate of...</i>	<i>The soonest the Cliffs Hotel restaurant structure would be undercut is in...*</i>
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

applying the applicant's 4-foot per year retreat rate, natural bluff retreat would not reach the restaurant structure for almost 20 years (see Exhibit 13). In fact, in another 7 years, using the 4-feet of erosion per year rate, there would still be approximately 50 feet of setback remaining.

To conclusively show that the Cliffs Hotel structures were in danger from erosion, there would need to be an *imminent* threat to these structures. While each case is evaluated based upon its own merits, the Commission has generally interpreted "imminent" to mean that a structure would be imperiled in the next two or three storm cycles (generally, the next few years). For reference, in the previous revetment denial at this location (A-3-PSB-96-100), the Commission found that were the structure being protected (i.e., at that time, the sewage holding tank) to be "in alignment with the restaurant, then it would be approximately 80 feet back from the bluff edge and *no shoreline protection would be needed.*" (emphasis added) The restaurant is currently about the same distance from the bluff edge as it was at that time.

In this case, hypothetically, even after a couple of years of retreat at 4-feet per year, and even if a catastrophic, episodic bluff failure of 10 to 20 feet were to occur at the "potential landslide failure mechanism" (as described by the applicant's geotechnical consultants), approximately 50 feet of blufftop would remain. This implies that the Cliffs Hotel structures are not in imminent peril. According to the applicant's geotechnical information, after the next few storm cycles, there would still be time (and blufftop) available with which to reevaluate the danger to the Cliffs Hotel structures. **As such, the Commission finds that the existing Cliffs Hotel structures are not currently in danger from erosion.**

The applicant further contends that if the revetment is not constructed within the next year, a vertical wall will be required to preserve the 50-foot access corridor. There are three problems with this line of reasoning. One, it assumes that the lateral blufftop accessway is limited to 50 feet. As seen above, this is not the case. As long as there is any amount of blufftop space available, the lateral access area will remain. This means that the threshold for protecting the lateral accessway is not 50 feet seaward from the Cliffs Hotel structures, but rather much closer.

Secondly, at least part of the applicant's reasoning is that the crane that is proposed to be used to construct the revetment requires at least 45 feet of setback to operate safely (i.e., the crane would be placed on the blufftop seaward of the hotel and restaurant). This may be accurate for the type of equipment that the applicant proposes to use for the project. However, there are other types of cranes available that would not be limited by the blufftop distance. For example, a larger crane could be positioned in the parking lot. Another alternative would be to gain access from the sea if necessary (e.g., a larger crane positioned on floating barge that can reach the beach). The fact that these other options are available shows that equipment is not a limiting factor. More importantly, the potential for limited future options for shoreline protection (e.g., rip-rap now versus a seawall later) is not one of the criteria for permitting shoreline structures found in LCP Policy S-6 and Coastal Act Section 30235.

Third, even if the case were made that a structure was at risk, it is premature for the applicant to conclude that the preferred alternative is a rip-rap revetment lacking an in-depth analysis of impacts, potential mitigations and potential design alternatives (see discussion beginning on page 23).

Finally, the applicant contends that the existing structures at the site are in danger because of the specter of El Niño and winter storm events. In terms of El Niño, predictions of a stronger than usual winter storm period did, in fact, materialize. During this winter 1997-98 storm period, the proposed revetment was already in place as a temporary measure under emergency permit authorization from

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?

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.*

The "no project" alternative

The City of Pismo Beach found the proposed project to be "[t]he "least environmentally damaging" alternative" and further found the project "consistent with the Land Use Element of the general Plan, and the development standards of the Zoning Code." However, as discussed in detail in the finding above, the 'no project' alternative is, in fact, feasible in this situation. As discussed above, it has not been conclusively shown that there is an existing structure in danger from erosion in this case.

Given that the no project alternative is feasible, and there are other soft alternative available that would minimize or avoid impacts (see below), the Cliffs Hotel and restaurant do not *require* a hard shoreline protective device. **The Commission finds that the revetment portion of the project, therefore, does not meet the second test of LCP Policy S-6 and does not meet the requirements of LCP Zoning Ordinance Section 17.078.060(4).**

Other "soft" alternatives

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 that the activity may have on the environment. In addition to the "no project" alternative, if the Cliffs Hotel structures were in danger from erosion (which they are not) other alternatives typically considered include: abandonment of threatened structures (generally not considered feasible unless the property owner can be compensated; no such compensation is available in this case); relocation of the threatened structures (something which would appear to be infeasible given the size of the Cliffs Hotel and restaurant buildings themselves; although the 20-foot wide restaurant patio area could possibly be relocated thus increasing the setback by 20 feet); upper bluff retaining walls (effective when the lower bluff is stable; not the case at the Cliffs site according to the geotechnical reports); sand replenishment program (no such program is in place in Pismo Beach); and other drainage and maintenance programs on the blufftop itself.

In the case of the Cliffs Hotel, the previous finding has shown that the existing structures are not currently in danger from erosion. Nevertheless, there may be measures that could be put in place that would help to reduce potential future threats at the site thereby reducing the need for hard protective devices. This is consistent with the intent of LCP Policy S-3:

S-3 Bluff Set-Backs: *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City of Pismo Beach LCP bluff erosion/instability section also references Coastal Act Section 30253 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.*

The bluff retreat at the Cliffs Hotel site is at least partly due to surface and subsurface (i.e., groundwater

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.

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. Staff anticipate that the enforcement case regarding development in the setback area (V-3-96-003) will be reevaluated following the Commission's action on the current revetment and dewatering application.

Second, the existing storm drain, into which the proposed blufftop drainage elements are proposed to connect, is located approximately 25 to 30 feet seaward of the location for it as approved in 4-83-490. This original approval showed the storm drain essentially running directly adjacent to the hotel and restaurant structures. Lacking an amendment to alter the approved location of this drainage device, the current location of this structure is inconsistent with this previous approval. Because the storm drain is an integrated feature of the structures on the site, it may be claimed at some future date that were the storm drain shown to be in danger from erosion, then, by extension, the Cliffs Hotel structures would also be in danger. This is a problem because this line of reasoning could potentially shorten the "danger from erosion" threshold by 25 to 30 feet (or about 7 years based upon the estimated 4-foot per year retreat rate). Were a facilities relocation plan in place that would serve to identify all development within the deed-restricted setback area, and provide a plan for relocating that development in advance of the retreat of the bluff, this element could 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.

Third, although the proposed drainage swale/pathway is a welcome improvement (both for facilitating pedestrian access and for diverting surface flows away from the bluff face), siting this swale/pathway within 15 feet of the bluff edge may be inappropriate given the estimated 4-foot per year bluff retreat rate. To do so may be ill advised in light of the known erosion hazards along this section of bluff. However, given that the pathway also functions as swale to divert surface flows, a location near the bluff edge is necessary in order for the structure to function as envisioned. The problem with balancing these competing needs is that, as a pathway, the most conservative placement would be directly adjacent to the hotel and restaurant structures; as a swale to collect surface flows, the most conservative placement is directly adjacent to the bluff edge. Were a facilities relocation plan in place that would serve to identify all development within the deed-restricted setback area, and provide a plan for relocating that development in advance of the retreat of the bluff, this element could 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.

And finally, conspicuously missing from the proposed project is the placement of an inland-sloped, impermeable geomembrane barrier under the ornamental landscape (i.e., turf) area landward of the swale/pathway system. The consulting geotechnical engineering firm (ESC) recommended this geomembrane to reduce the significant impact that irrigation has on bluff retreat at this site. Likewise, the City of Pismo Beach required the geomembrane drainage system as a condition of approval (Condition 8c). The Cliffs Hotel representative indicated that this element is not a part of the current application by letter dated August 5, 1998. It is clear from the lush nature of the turf area in front of the Cliffs Hotel that the blufftop is heavily irrigated. This irrigation only adds to the high moisture content of the bluffs and common sense dictates that the Hotel needs to control this contribution to bluff instability. Alternatively, the Cliffs Hotel could choose to install native drought resistant plants in this buffer area to remove this source of destabilizing irrigation (also an option recommended by ESC). Therefore, consistent with the ESC recommendation, the City's conditions of approval, and to complement the

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?

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

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

coastal dependent uses. If permitted, seawall design must...eliminate or mitigate any adverse impacts on shoreline sand supply.

17.078.060(6)(a): *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 eliminate or mitigate impacts on local shoreline sand supply.*

These sand supply impact requirements address increasingly well-documented impacts of shoreline structures on natural sand dynamics, sand supply to beaches, and direct and indirect impacts to public access resources. For example, it is now well established that the development of shoreline structures can affect the beach and its users in several ways: (1) by directly encroaching on the beach; (2) by changing the beach profile and reducing the area located seaward of the ordinary highwater mark; (3) by interfering with bluff erosion that supplies sand to nourish the beach; (4) by causing greater erosion on adjacent public beaches; (5) by interrupting longshore and onshore processes; and (6) for rip-rap designs, by creating future impediments by rocks falling or moving out onto the beach.

Furthermore, as recently discussed in CDPs 4-97-071 (Schaeffer, City of Malibu, approved by the Commission in November 1997) and 3-97-065 (Motroni/Bardwell, City of Capitola, approved by the Commission April 8, 1998), *these sand supply impacts occur for both vertical seawalls and rock revetments.* Even though the precise impact of a shoreline structure on the beach is a persistent subject of debate within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whether it is a vertical bulkhead or a rock revetment. The main difference between a vertical bulkhead and rock revetment is their physical encroachment onto the beach (i.e., a vertical wall generally takes up less beach space). Additionally, rock revetments, such as that proposed, dissipate the wave energy and typically result in less localized beach scour. However, it has been well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or a vertical seawall will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach and the interruption of longshore processes. In addition, and not insignificantly, seawalls and revetments directly encroach on the beach. Ninety-four experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following statement of the adverse effects of shoreline protective devices:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect. (In Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography))

This section describes the sand supply impacts that would be associated with the proposed Cliffs Hotel

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

events. This loss of beach occurs because the natural balance between landward movements of the fore beach and back beach or bluff has been changed by the construction of a more resistant back beach structure, preventing the landward migration of the back beach or bluff.

As discussed in the access finding below beginning on page 33, it is important to recognize that the beach lost in this case is a public beach because it has been deed restricted for public access. Further, any beach that would be created as the bluff retreats inland naturally would likewise be considered public as the deed restrictions extend seaward from the Cliffs Hotel structures themselves. This loss of public access must also be mitigated. However, before discussing these access concerns, it is important for the purposes of the required impact mitigation under Coastal Act and LCP requirements to be able to quantify the sand supply impact. In previous decisions, the Commission has used a scientific methodology for this purpose, developed in part out of its experience with shoreline structure impacts in the San Diego Region (see *Report on In-Lieu Fee Beach Sand Mitigation Program*, January 1997; also CDP 6-93-131 (Richards)). Using this methodology, the actual long-term loss of this public beach due to fixing the back beach is equal to the long-term erosion multiplied by the width of property which has been fixed by a resistant shoreline protective device:

The area of beach lost due to long-term erosion (A_w) is equal to the long-term average annual erosion rate (R) times the number of years that the back beach or bluff will be fixed (L) times the width of the property that will be protected (W). This can be expressed by the following equation:

$$A_w = R \times L \times W$$

Page 1 of Exhibit 14 generally illustrates this calculation. Since the actual amount of long-term erosion cannot be predicted precisely, erosion is approximated by the long-term average annual erosion rate times the number of years that the back beach or bluff will be fixed. The width of the property which would be fixed can be determined from the proposed project design (approximately 435 linear feet of shoreline according to the proposed plans). The erosion rate has been estimated at 4-feet per year by the Applicant's geotechnical consultant. Although the projected lifetime of the proposed revetment structure has not been determined in this case, if the structure were in place it would result in an annual long term loss of beach at the site due to fixing the back beach location as follows:

$$A = 4 \text{ feet/year} \times 435 \text{ feet} = 1,740 \text{ square feet/year}$$

To convert the 1,740 square foot loss of beach per year into the volume of sand necessary to restore the beach commensurately in cubic yards, coastal engineers use a conversion value representing units of cubic yards per square foot of beach. This conversion value is based on the regional beach and nearshore profiles, and overall characteristics. When there is not regional data to better quantify this value, it is often assumed to be between 1 and 1.5, the idea being that to build a beach seaward one foot, there must be enough sand to provide a one-foot wedge of sand through the entire region of onshore-offshore transport. If the range of reversible sediment movement is from -30 feet msl to +10 feet msl, then a one-foot beach addition must be added for the full range from -30 to +10 feet, or 40 feet total. This 40-foot by 1 foot square parallelogram could be built with 1.5 cubic yards of sand (40 cubic feet divided by 27 cubic feet per cubic yard). If the range of reversible sediment transport is less than 40 feet, it will take less than 1.5 cubic yards of sand to rebuild one square foot of beach; if the range of reversible sediment transport is larger than 40 feet, it will take more than 1.5 cubic yards of sand to rebuild one square foot of beach.

In this case, the Commission has not been able to establish an actual conversion factor for the Pismo

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, gulying, 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:

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

In this case, ESC has determined that there are few sand bearing materials to be found in the Cliffs Hotel bluff and that the proposed revetment would reduce sand supply by a few dump truck loads. Specifically, according to the geologic bluff study by ESC:

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

ESC has estimated that the revetment will result in the equivalent of a few dump truck loads of sand being removed from the sand supply system. Based upon 10 cubic yards per dump truck, this translates into approximately 30 cubic yards of sand over 5 years or 6 cubic yards per year. This amount is not the result of strict use of the above equation.

In fact, a more precise estimate can be generated by performing the sand supply calculation stated above. In this case, the retreat rate is 4-feet per year, the height of the structure ranges from 18 to 30 feet, and the height of the bluff is approximately 75 feet. Although the upper bluff would be expected to lay back slightly were the revetment to be installed, for the most part, retreat in the upper bluff would be stalled. Lacking a definitive rate for this minor upper bluff retreat, the calculation below assumes the same 4-foot per year rate for the upper bluff with bluff protection in place (this is the more conservative approach as an assumed rate of zero would result in *more* sand materials being retained due to placement of the structure). To further err on the conservative side (i.e., less impact), a constant 18 foot height of structure is applied below although the structure is proposed as high as 30 feet in sections. In terms of sand content, according to ESC, the general sand content of the bluff is approximately 10% to 15% for the upper two-thirds of the bluff consisting of the clayey marine terrace deposits. The lower one-third of the bluff can be further broken down to about 5% sand content for the two-thirds of the lower bluff that is Monterey shale, and about 85% sand content for the remaining one-third of the lower bluff that is Bituminous sandstone (per communication with Rick Gorman and Mike Simms of ESC). Using these figures, the generalized sand content of the bluff can be calculated. The result is a sand content estimate for the Cliffs Hotel bluff ranging from 17.2% to 20.5%. Using the most conservative sand content estimate (i.e., about 17%), and using a value of 1 for the life of the structure (L) to result in an annual rate, the following calculation conservatively estimates the annual retention of sand from the bluff at the site if the structure were in place:

$$V = (.17)(435'/\text{year})(1 \text{ year})[(4'/\text{year})(18') + (\frac{1}{2})(57')(4'/\text{year})](1 \text{ cubic yard}/27 \text{ cubic feet})$$

$$V = 509 \text{ cubic yards/year}$$

Using staff's estimate, qualified with the 17% sand content multiplier, the project will result in the loss of approximately 509 cubic yards of sand per year due to retention of bluff materials.

Encroachment on the Beach

Shoreline protective devices such as seawalls, revetments, gunnite facings, groins, et cetera all are

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.

This observation was underscored more recently in 1987 by Robert G. Dean in *Coastal Sediment Processes: Toward Engineering Solutions*, stated:

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.

In addition, there is evidence showing that a seawall, gunnite facing, or revetment will adversely effect the supply and demand equilibrium particular to discrete sections of coastline. For example, the National Academy of Sciences found that retention of material behind a revetment may be linked to increased loss of material directly in front of the wall. The net effect is documented in *Responding to Changes in Sea Level, Engineering Implications* (National Academy Press, 1987) which provides:

A common result of sea wall and bulkhead placement along the open coastline is the loss of the beach fronting the structure. This phenomenon, however, is not well understood. It appears that during a storm the volume of sand eroded at the base of a seawall is nearly equivalent to the volume of upland erosion prevented by the seawall. Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...

It is likely that the proposed revetment will cause both scour and end effects. However, such impacts are difficult to quantify and, lacking a more precise methodology, end scour impacts have not been calculated for the proposed Cliffs Hotel revetment.

Interruption of Onshore and Longshore Processes

If a revetment is built on an eroding beach and the device eventually becomes a headland jutting into the ocean, the revetment can function like a groin modifying or interrupting longshore transport and causing an upcoast fillet of deposition and a downcoast indenture of erosion typical of sand impoundment structures. According to the geologic bluff study by ESC:

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

Nevertheless, over the long run, it is possible that the proposed revetment project would interrupt onshore and longshore processes. In fact, as seen above in terms of fixing the back beach location on a narrow beach area such as that fronting the Cliffs, it is possible that the revetment will extend into ocean at some tides as the beach in front of it disappears. Were this to occur, the revetment would act as a groin to interrupt these processes. However, this impact is difficult to quantify and, lacking a more precise methodology, onshore and longshore transport impacts have not been calculated for the proposed Cliffs Hotel revetment.

Sand Supply Conclusion

The City did not find a sand supply impact. According to the City's negative declaration:

Erosion of the bluff does not significantly contribute to sand development because of the high clay and silt content of the soil. Fine particles are generally deposited further out to sea. The

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 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.**

Were the revetment to be approved, the above-described sand supply impacts would require mitigation under both the Coastal Act and the LCP. In the past, the Commission has mitigated the direct impacts of shoreline structures by requiring redesign of seawalls, use of vertical walls rather than rip-rap, requiring lateral public access easements, requiring other in-kind access improvements, and other such measures to meet sand supply mitigation requirements. The Commission, though, has only recently developed the scientific methodology necessary to reasonably quantify the sand supply impacts of shoreline structures and to account for potential mitigations.

Although it is not feasible to use sand replenishment as an alternative means of individually protecting structures on the top of the bluff, it is feasible to pursue a sand replenishment strategy that can introduce an equivalent amount of sandy material back into the system as a means of mitigating the loss of material inputs that will be caused by the protective device. Obviously, such an introduction of material, if properly planned, can feed into the littoral cell that supplies sand to not only the publicly used beach at the base of the subject bluff but also the popular beaches throughout the area, thereby mitigating the public access and recreation impacts. However, absent a comprehensive program that provides a means to maximize the benefits of individual mitigation efforts in the area now and in the future, and absent a program that evaluates and guides the use of the most appropriate sites and methods for introducing the material so that it will mitigate this project's impacts and maximize benefits to the sandy beaches, the Commission would not be able to specify a direct in-kind placement of sandy material as mitigation were this revetment to be approvable.

As an alternative mitigation mechanism, the in-lieu fee is often used when in-kind mitigation of impacts is not presently available. The Commission has successfully used the in-lieu fee mechanism to mitigate sand supply impacts in the San Diego region. To implement this mechanism, the sand supply impacts must be quantified (as above) and then translated into a specific dollar amount. This fee is then put in an interest-bearing account or special deposit account for future allocation to an identifiable sand replenishment effort developed through a program that is specifically designed to address the impacts caused by the project at issue. In-lieu fees are particularly appropriate in cases such as this, where although there may be as yet unidentified opportunities for the development of beach replenishment by the City in the future within the littoral cell, in-kind replacement today, by a single applicant, is not an undertaking likely to result in successful resource impact mitigation. Nonetheless, the impacts must be mitigated by law. This is also particularly important to acknowledge given that the Cliffs Hotel parcel is adjacent to a series of heavily used public recreational beach areas (see also access finding below).

Overall, even if the Commission were to find that the City's permit action was valid, and even if the revetment had been shown to be justified to this point, and absent any other mitigation proposals for the sand supply impacts of the project, the Commission would be obligated to require in-lieu fee mitigation in order to approve the proposed structure under Policy S-6 of the LCP and Sections 17.078.060(4)(c) and 17.078.060(6)(a) of the LCP Zoning Ordinance.

Costs for local sand replenishment in the Pismo Beach area may vary widely, depending on the particular location of the source, and the total volumes being costed out. Undelivered sand from landfill sites in Southern California is as low as \$1/cubic yard. In San Diego, where the Commission has implemented an in-lieu fee program, the cost for sand and delivery is approximately \$6/cubic yard. In the Motroni/Bardwell case (CDP 3-97-065) delivered sand ranged from approximately \$5 to \$9 per cubic yard. Although a more precise cost factor would need to be obtained were the revetment to be approved, by using the low and high sand supply costs from above, a general range of the cost of sand can be determined for the proposed Cliffs Hotel revetment as follows:

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

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.*

17.078.060(4)(b): 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 provide for lateral beach access.

17.078.060(6)(b) & (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: (b) provide lateral beach access; (d) enhance public recreational opportunities.

There are three major public access and recreation areas associated with the proposed project. First, there is the lateral access area present at the top of the bluff which the proposed revetment purports to protect. Second, there is the pocket beach at the base of the bluffs which would be partially covered with rock, and the associated beach and intertidal areas extending along the parcel as well as both upcoast and downcoast. And third, the Reefs Right surfing area is present offshore to the northwest of the Cliffs Hotel site. Each of these is discussed below.

4b(1). Blufftop Access Impacts

As earlier discussed in the finding beginning on page 13, the lateral blufftop area at the top of the bluff (as protected for public access by the property's deed restrictions) currently ranges from 78 feet to 130 feet wide. The Applicant proposes to reconstruct the pathway through this blufftop access area which provides developed access from the north of the Cliffs property to the south. **With or without the proposed revetment, this lateral access area would be maintained.** This is important because one purpose of the City's access setback policy is to provide for continuous lateral access along this section of the coast; the Cliffs Hotel represents one segment of this trail. It should be noted this lateral trail does not exist to the north of the Cliffs parcel as a steep arroyo remains to be bridged (though beach access is provided by stairway) and does not exist to the south as the parcel remains vacant adjacent to the Cliffs Hotel property and is blocked off by a chain link fence extending from Shell Beach Road to the bluff edge..

As previously discussed, although the blufftop is expected to recede naturally if the revetment is not approved, this recession does not currently threaten the blufftop lateral accessway because the improved path can be relocated landward as the erosion occurs. In fact, as long as there is any amount of blufftop between the hotel structures and the bluff edge, the lateral access area will still exist. **In conclusion, the Commission finds that the blufftop accessway would not be negatively impacted by the project. As such, the project's blufftop accessway impacts are consistent with the above described Coastal Act and LCP access and recreation policies.**

4b(2). Beach Access Impacts

If approved, the proposed revetment would cover approximately 4,900 square feet of recreational beach area at the base of the bluffs in front of the Cliffs Hotel (see Exhibits 3, 6 & 7). This pocket beach in front of the Cliffs is part of a larger beach that is accessed by a stairway along the northern property line of the Cliffs Hotel which extends from Shell Beach Road to the beach along the edge of a steep arroyo. This stairway was required as a condition of the Commission's original approval of the Cliffs Hotel in 1983.

The beach area stretching to the north from the stairway (and thus directly north 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. 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

effects on the dynamic shoreline system and the public's beach use interests. First, the revetment would lead to a progressive loss of sand as shore material is not available to nourish the sand supply system. Second, and particularly in combination with the loss of sand generating materials, the proposed revetment would fix the back beach location. The effect on public use is that the useable beach space narrows; eventually this beach area between the revetment and the water would be expected to disappear. Third, changes in the shoreline profile, particularly changes in the slope of the profile which result from a reduced berm width, alter the useable beach area restricted for public access. A beach that rests either temporarily or permanently at a steeper angle than under normal conditions will have less horizontal distance available for the public to use. This reduces the actual area in which the public can pass on property restricted for public access. Fourth, the proposed revetment would cumulatively affect public access by causing accelerated and increased erosion on the adjacent beaches. This effect may not become clear until such devices are constructed individually along a shoreline. Fifth, since the proposed revetment is not sited so far landward that it would only be acted upon during severe storm events, beach scour, particularly during the winter season, will be accelerated because there is less beach area to dissipate the wave's energy. This will act to exacerbate the narrowing of the useable beach space available for public access.

Despite the clear encroachment on public access areas, the City did not find any public beach access impacts. Specifically, the City found that "the placement of the riprap revetment would retain open sand in the cove above the mean high tide line for public use of the beach. The revetment extends oceanward 10 to 25 feet from the existing rock bluff, retaining an average of 25 feet of beach." Although this statement may be generally accurate in terms of the revetment's oceanward encroachment and the location of the mean high tide line as shown on the proposed plans (see also below), it does not tell the whole story regarding the effect of the project on public beach access. It is incorrect to say that the revetment "retains" beach. What it does is *eliminate* a portion of the beach resulting in a narrower beach. The negative declaration likewise dismisses any public access impacts because the area of revetment encroachment "is not an essential lateral route for beach users." These findings incorrectly describe the beach access impact.

Public Trust Issues

In addition to publicly owned recreational beach parks, the public has ownership and use rights in the lands of the State seaward of the mean high tide line as it exists from time to time (public trust lands) and may also have rights landward of the mean high tide line through historic public use (public prescriptive rights). As mentioned above, in the case of the Cliffs Hotel, the beach area is also deed restricted for public access uses only (see Exhibits 8 – 11 for the full text of these recorded documents).

By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water-oriented recreation, open space and environmental protection. Public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is known as the ordinary high water mark. (Civil

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

in navigable waters guaranteed to the public under the California Constitution and state common law; (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated as the public walks the wet or dry sandy beach. This area of use, in turn, moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

In this case, the public has been granted the right of access through the Commission's original approval of the Cliffs Hotel in 1983; this right is described in the deed restrictions required as a condition of approval (see Exhibits 8 – 11). Nonetheless, as discussed above in terms of sand supply impacts, there is evidence that the proposed revetment will be subject to wave uprush which may result in some potential adverse individual and cumulative impacts on sand supply, beach profile, and ultimately, public access as a result of fixing the back beach location, retention of beach material, localized beach scour, coverage of sandy beach area, and interruption of the alongshore and onshore sand transport process.

The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with, or will only minimally interfere with, those rights. In the case of the proposed project, the potential for the **permanent** loss of sandy beach, and a corresponding permanent loss of public access, does exist as a result of the proposed revetment.

Beach Access Impacts Conclusion

Although the proposed drainage and dewatering elements *would not* have an impact on beach access, as shown above, the revetment portion of the proposed project *would* negatively impact public beach access and recreation. The Negative Declaration and the City's approval did not consider the above-described access impacts to be significant. The City did, however, require an easement for lateral access from the top of the bluff seaward. Given that this area is already protected for public access by the property's underlying deed restrictions, the functional effect of the easement is effectively negated. The proposed revetment would result in the direct loss of approximately 4,900 square feet of recreational beach area; would limit the public's ability to gain access both up and down coast laterally along the pocket beach being covered, particularly at higher tides; would eventually result in the migration of rock(s) seaward on the beach and into the intertidal zone where they would become a public access and public safety impediment; would eventually result in a loss of useable beach area by fixing the back beach location, retaining potential beach materials, contributing to beach scour, potentially alter the longshore transport of materials, and contributing to erosion and steepening of the shore profile, all to the detriment and availability of tidelands and the public trust. As such, even if the Commission were to find that the City's permit action was valid, and even if the proposed revetment were consistent to this point with the Coastal Act and the LCP, **the Commission finds that the proposed revetment is inconsistent with the beach access policies of Coastal Act Sections 30210, 30211, and 30240, LCP Policy S-6, and LCP Zoning Sections 17.078.060(4)(b), 17.078.060(6)(b) and 17.078.060(6)(d).**

4b(3). Surfing Access Impacts

The third major category of access and recreation that would potentially be affected by the proposed project is surfing access. 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"). 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.

Therefore, given the protection and priority status conferred upon this surfing area by the Coastal Act and the LCP, it is inconsistent with the Act and the LCP to allow the rock installation. Although the proposed drainage and dewatering elements *would not* have an impact on surfing access, the revetment portion of the proposed project *would* impact surfing access. Furthermore, it is reasonable to presume, lacking an analysis to the contrary, that there would be at least some negative impacts due to altered shoreline dynamics, wave refraction, and a reduced exit/entry point associated with the placement of the revetment. As such, even if the Commission were to find that the City's permit action was valid, and even if the proposed revetment were consistent to this point with the Coastal Act and the LCP for allowing shoreline structures, **the Commission finds that the proposed revetment is inconsistent with the access policies of Coastal Act Sections 30210, 30211, 30220, and 30240, and LCP Zoning Section 17.078.060(6)(d) because of its surfing impacts.**

4b(4). Access and Recreation Conclusion

The preceding discussion establishes distinct and identifiable impacts due to the Applicant's proposed revetment: (1) the direct loss of 4,900 square feet of recreational beach; (2) increased difficulty for the public to gain access both up and down coast laterally along the pocket beach being covered, particularly at higher tides; (3) a loss of useable beach area by fixing the back beach location, retaining potential beach materials, contributing to beach scour, potentially alter the longshore transport of materials, and contributing to erosion and steepening of the shore profile, all to the detriment and availability of tidelands, shorelands and the public trust; and (4) adverse impacts on the offshore surf break, as well as access thereto at the ocean/shore interface. Furthermore, the revetment has been shown to be inconsistent with the property's underlying public access deed restrictions. 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 to this point with the Coastal Act and the LCP for allowing shoreline structures, **the Commission finds that the proposed revetment is inconsistent with the access and recreation policies of Coastal Act Sections 30210, 30211, 30220, and 30240, LCP Policy S-6, and LCP Zoning Section 17.078.060(4)(b), 17.078.060(6)(b), and 17.078.060(6)(d).**

Finally, from an access and recreation impact perspective, and based upon information available today, the proposed revetment would result in more adverse impacts than would a vertical wall in this instance. In past permit actions, the Commission has required that new shoreline protective devices be located as landward as possible in order to reduce the adverse impacts to the sand supply and public access resulting from the development. A vertical wall would occupy less beach space than would the proposed revetment and would be located further landward. In addition, vertical walls can be constructed with lateral access 'benches' that provide for a continuation of lateral access as the beach eventually narrows and disappears due to the erection of the hard protective device. As such, the vertical wall would have lesser impacts in terms of beach coverage, lateral access, surfer and beach goer safety, and the interrelated sand supply impacts discussed above. Furthermore, a vertical wall could be contoured and rilled to approximate the natural bluff contours and therefore have a lesser wave refraction impact on surfing. **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 access and recreation, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

4c. Visual Impacts

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

while traversing the site laterally; from the beach when making use of the remainder portion of the pocket beach; from the water for surfers accessing Reefs Right and Finger Jetty; and from the water for recreational and commercial boaters offshore.

The revetment has been placed without regard to these visual impacts. In fact, there has clearly been no effort to minimize these visual impacts. Commission experience in other Central Coast communities has shown that it is possible to minimize the tremendous visual impacts associated with these unsightly piles of rock through landscape 'caps' and sand camouflaging. For example, in Carmel, 35-foot tall rock revetments are essentially invisible to the public eye because they have been constructed with landscaping elements which drape over the top of the rocks and sand which is piled up at the base of the structures. Regular maintenance, particularly following storm events, keeps these revetments so camouflaged and the visual impacts are essentially eliminated. Some level of similar effort could have been put forth on the Cliffs site but was clearly never considered.

There are direct impacts on the public viewshed due to the proposed revetment. The revetment has not been designed to protect views, has not been designed to minimize the alteration of natural landforms, is not visually compatible with the character of the surrounding area, and is not designed in any way that is sensitive to the need to prevent significant scenic degradation of a publicly used recreational area. 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 point with the Coastal Act and the LCP for allowing shoreline structures, **the Commission finds that the proposed revetment is inconsistent with the visual resource policies of LCP Policy S-6, and LCP Zoning Sections 17.078.060(4)(c), 17.096.020(1) and 17.096.020(4).**

Furthermore, from a scenic and visual impact perspective, and based upon information available today, a vertical wall would be the more visually attractive alternative in this instance. A vertical wall can be colorized, textured, and rilled to match the existing bluffs in ways that are not possible with piles of rock. These techniques have proven to be quite successful in other Central Coast communities (for example, the Del Monte Forest area of Monterey County) as well as statewide. Although revetment camouflaging can be quite successful, it is not clear that in this case such camouflaging over the whole of the structure would be possible. In fact, while a vegetation 'cap' along the top of the proposed revetment would be feasible, the narrow beach area available would limit sand options at the base. **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 aesthetics and visual concerns, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

4d. Structural Stability Impacts

LCP Policy S-3 address the need to ensure long-term structural integrity of the site, minimize future risk, and avoid additional, more substantive protective measures in the future:

S-3 Bluff Set-Backs: *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City of Pismo Beach LCP bluff erosion/instability section also references Coastal Act Section 30253

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

re-evaluate (and re-engineer as necessary) the structure at least one time per year following the winter storm season, the proposed revetment has not been designed to minimize risks and has not been designed to assure stability and structural integrity. 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 structural stability policies of LCP Policy S-3.**

Furthermore, from a structural stability perspective, and based upon information available today, a vertical wall would be the preferred structural alternative in this case. The impacts associated with excavating a keyway for a revetment would be similar to excavating a keyway for a vertical wall. The level of future maintenance, however, would be higher for a revetment (as a general rule) than for a vertical wall. Because pumped concrete and other vertical wall materials can more easily gain access to the base of the bluff at the Cliffs than can rocks weighing up to 8 tons, a vertical wall does not share the construction difficulties associated with the 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 structural stability concerns, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.**

4e. Natural Landform Impacts

LCP Policy S-6 and LCP Zoning Section 17.078.060 protect coastal bluffs from activities which would alter the natural landform. Policy S-6 and Section 17.078.060 state in applicable part:

S-6 Shoreline Protective Devices. *Design and construction of protective devices shall minimize alteration of natural landforms....*

17.078.060(4)(a): *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 respect natural landforms.*

Likewise, Section 30253(2) of the Coastal Act addresses the need to protect the natural coastal bluff landform:

30253(2): *New development shall 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.*

In this case, the revetment would alter natural landforms in its long-term effects, rather than requiring modification of the bluff face. As seen earlier in the sand supply impact discussion, these long-term natural landform impacts on and adjacent to the Cliffs Hotel would be significant. Furthermore, the overall result of installing a rock revetment (or a vertical wall for that matter) is to create an artificial shoreline feature. As discussed above, there are methods for camouflaging this artificial feature to make it more natural looking. None of these methods have been applied to the proposed revetment project and there has clearly been no effort to adapt the project to the natural landform.

The negative declaration states that "although the rock is not natural the appearance is naturalistic."

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

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

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,

and avoid additional, more substantive protective measures in the future:

S-3 Bluff Set-Backs: *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City of Pismo Beach LCP bluff erosion/instability section also references Coastal Act Section 30253 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.*

The experience of the Commission in evaluating the consistency of proposed developments with the risk related policies of the Coastal Act and LCPs regarding development in areas subject to problems associated with geologic instability, flood, wave, or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden on the people of the state for damages, the Commission has regularly required that the applicants agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. That is precisely what was done when the Commission originally approved the Cliffs Hotel development in 1983 (See Exhibits 8 & 10). As a subsequent development project on this site, were the Commission to approve this proposed project, a condition requiring the Applicant to assume the risks of development at the Cliffs site would be required.

6. City of Pismo Beach Local Coastal Program

The City of Pismo Beach LUP was certified on October 14, 1982 and the zoning element was certified with suggested modifications on January 11, 1984; the City agreed to the modifications and assumed permit-issuing authority on April 13, 1984. Pursuant to this certified program, and as detailed earlier in this staff report in the project history, the City issued an emergency permit for the proposed revetment as well as a follow-up regular coastal permit. This City-issued coastal permit was then appealed to the Coastal Commission (related file A-3-PSB-98-049). At that point, the normal course of events would have been to review the project on appeal in terms of its conformance with the certified LCP. However, in this case, the appeal could not be the only instrument for the project due to the conditions of the Commission's original approval for the Cliffs Hotel.

In the course of further researching the Commission's Cliffs Hotel files, the requirements from previous Commission actions were clarified by Commission staff. In particular, it became apparent that the applicant did not have the authority to apply for a permit, and the City did not have the legal authority to approve a coastal permit, for the construction of the proposed revetment. The reason for this, as previously discussed, is because such construction would have been inconsistent with the underlying property restrictions required when the Coastal Commission originally permitted the Cliffs Hotel (CDP 4-83-490). Because the proposed project directly affects conditions attached to the original permit for the

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.

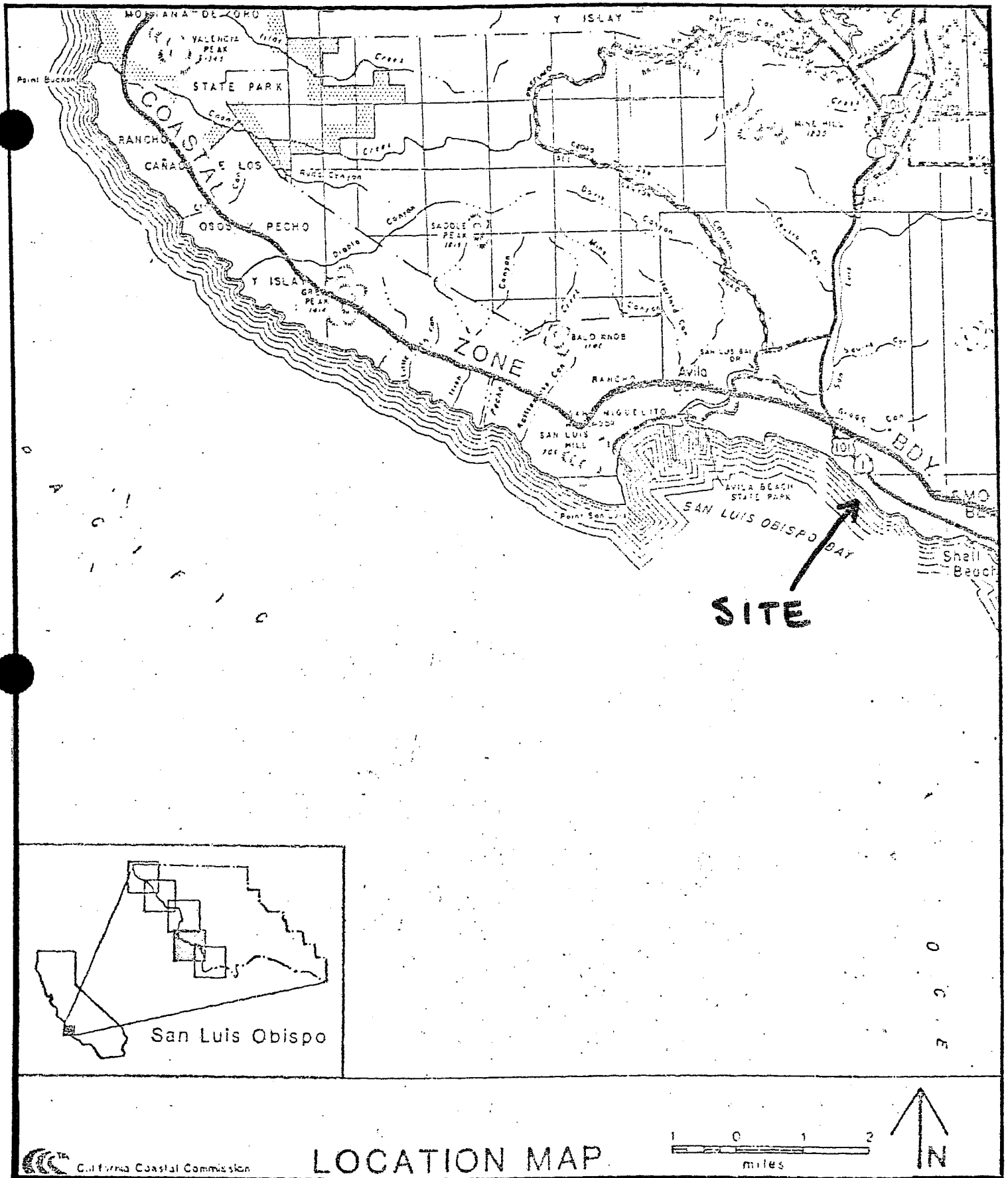
7. California Environmental Quality Act (CEQA)

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.

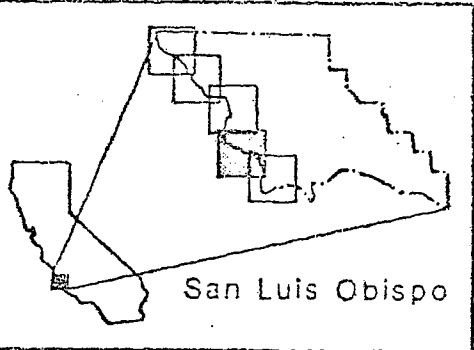
The City issued a negative declaration for the revetment on January 16, 1998. Commission staff commented on the negative declaration on February 20, 1998 and identified concerns about the project and the need for better information to support the negative declaration findings including: the need for 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.

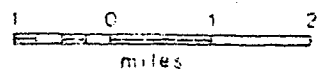
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SITE



LOCATION MAP



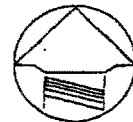
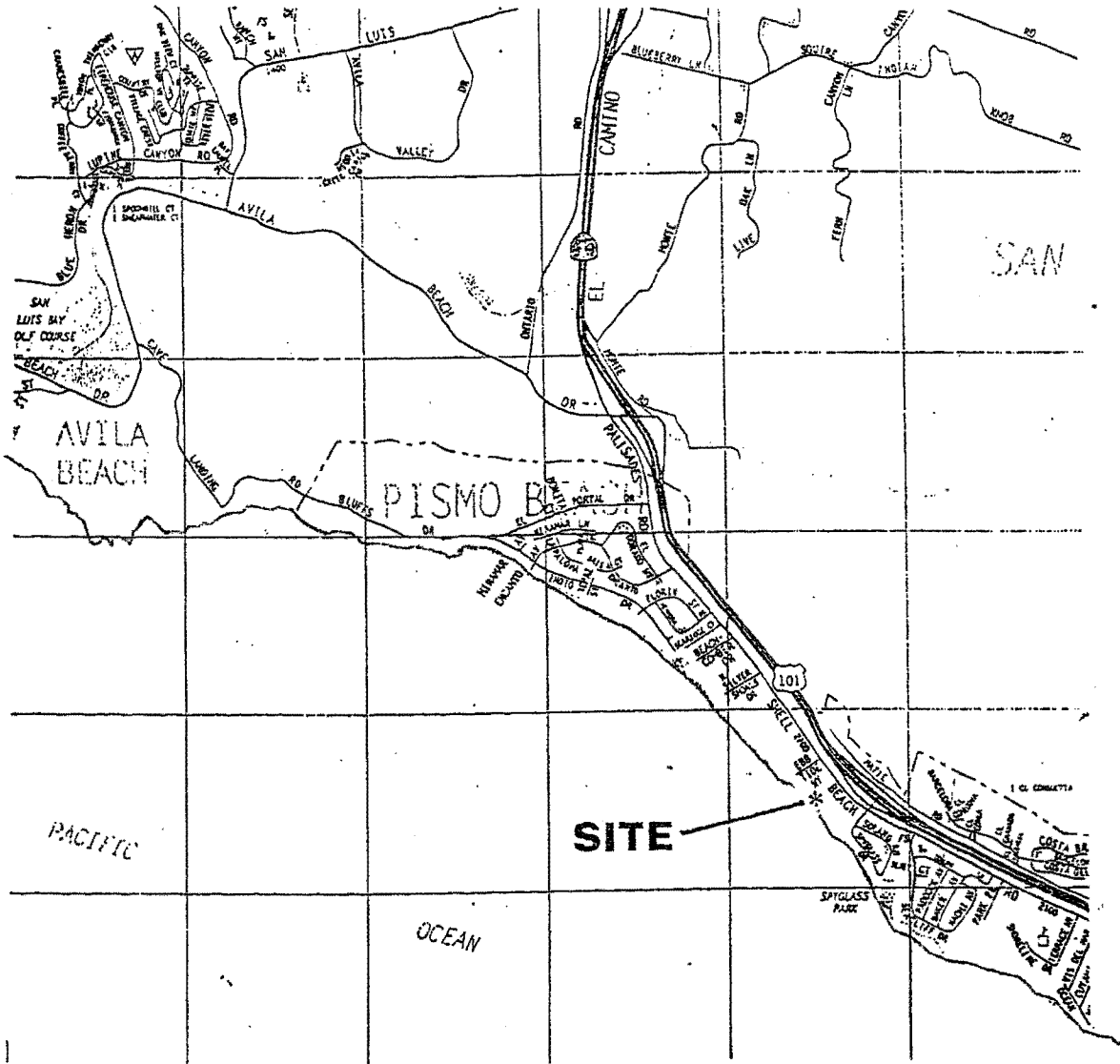
**A-3-P38-98-049
EXHIBIT 1
REGIONAL LOCATION**

EXHIBIT B

VICINITY MAP

CLIFFS RESORT HOTEL

Shell Beach, California



NOT TO SCALE



Earth Systems Consultants

Northern California

January 7, 1996

RG

Pacific Geoscience Division

4378 Santa Fe Road, San Luis Obispo, CA 93401

NGG-7457-05

EXHIBIT 2

PROJECT LOCATION

EXHIBIT B

RESTAURANT

HOTEL

SUMP PIT / PUMP

TOP OF BLUFF

FINISH STAIRWAY SURF AREA

3 dewatering wells

storm drain

PATH SWALE

rock revetment

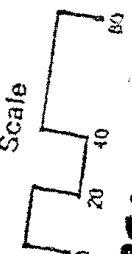
mean high tide line

beach



[Symbol] = REVETMENT

Scale



DRAINAGE BOX

PATH TO BEACH STAIRWAY (EXISTING)

REEFS RIGHT SURF AREA

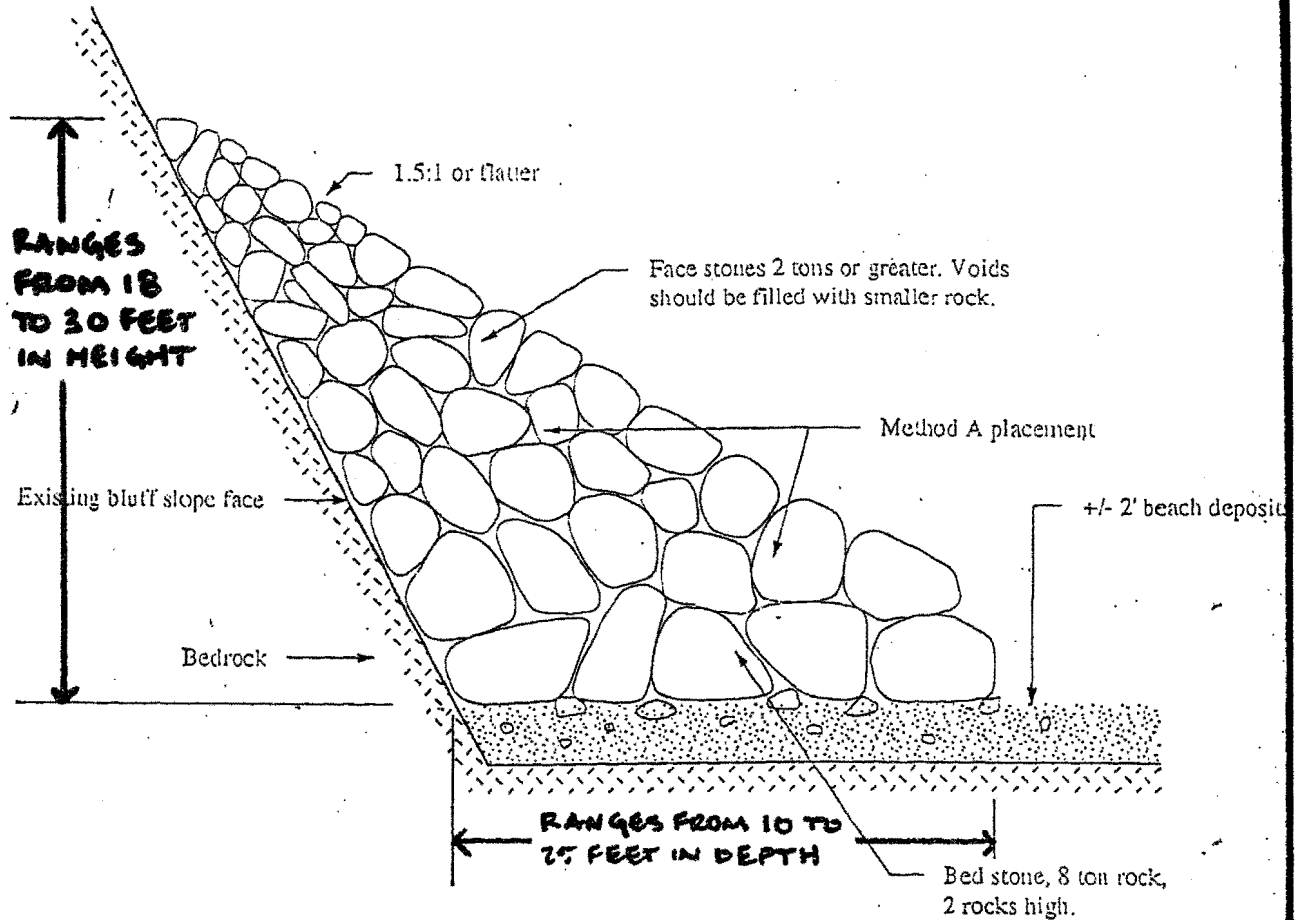
EXHIBIT B

EXHIBIT 3
SITE PLAN

ROCK SLOPE PROTECTIVE STRUCTURE DETAIL

CLIFFS RESORT HOTEL

Shell Beach, California



NOT TO SCALE



Earth Systems Consultants

Northern California

August 6, 1997

4378 Santa Fe Road, San Luis Obispo, CA 93401

(805) 544-3276 (805) 544-1786 FAX

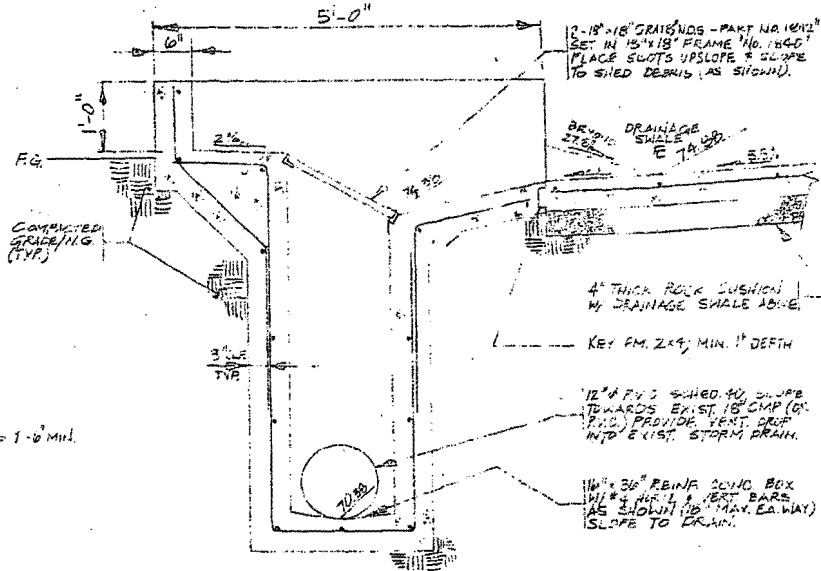
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EXHIBIT 4

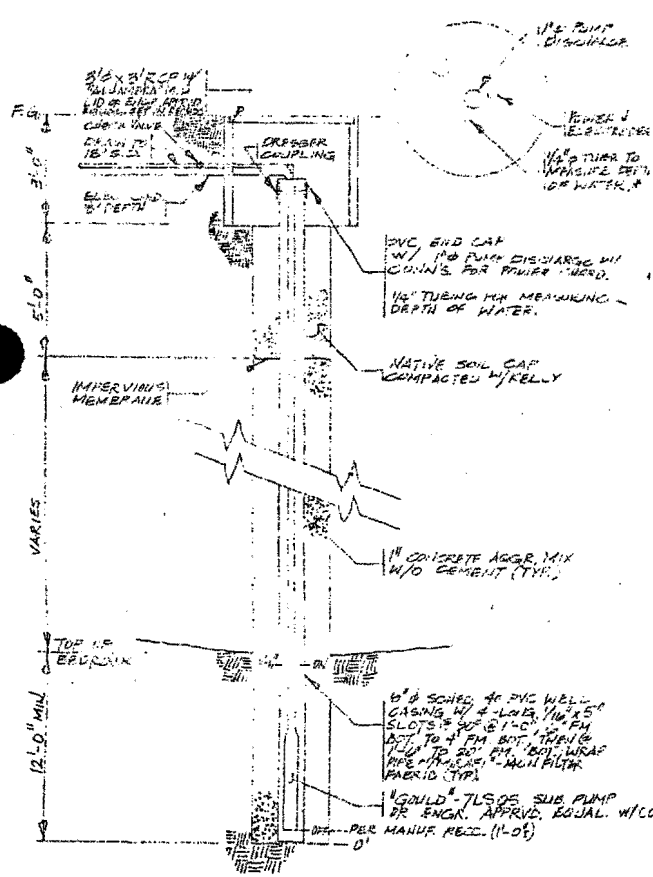
GENERAL REVETMENT CROSS SECTION

EXHIBIT B

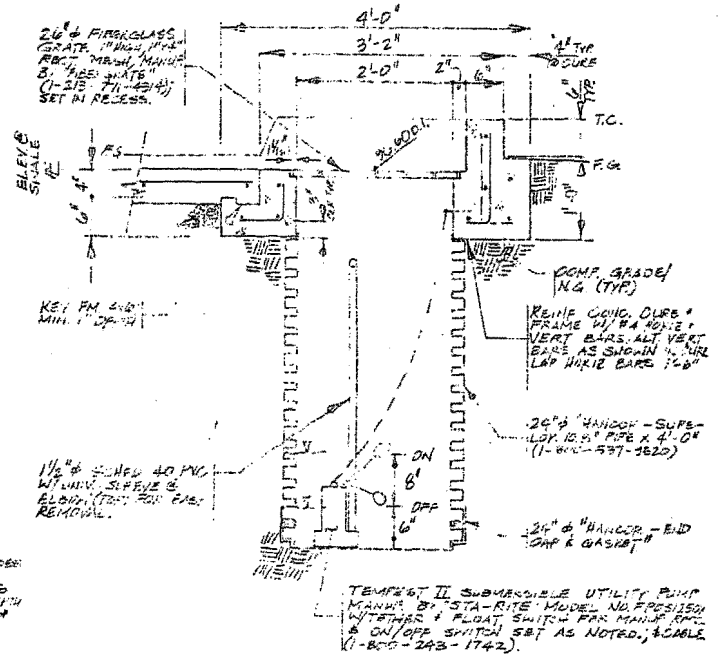


NOTE: LAP #4 BARS 1'-0" MIN.

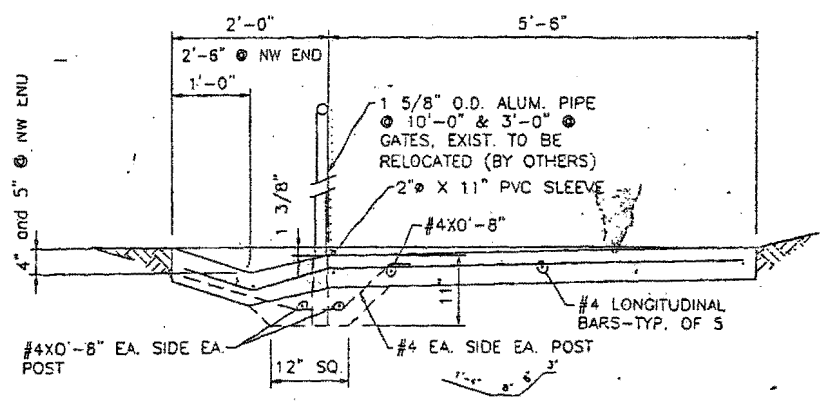
A DRAINAGE BOX @ NORTH END OF PROJECT - SECTION



G TYP. DEWATERING WELL - SECTION



D SUMP PIT & PUMP @ SOUTH END OF PROJECT - SECTION

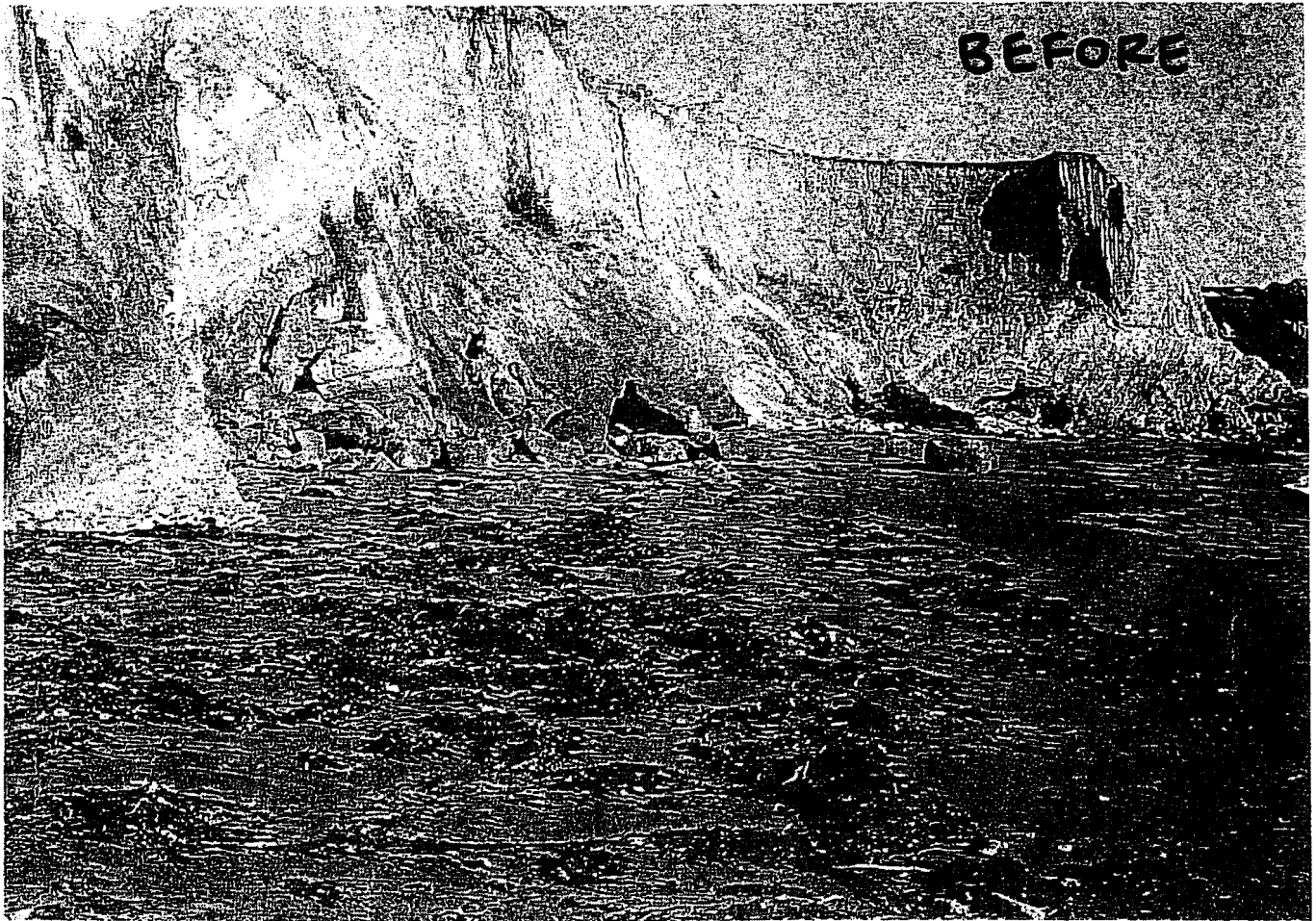


B1 AS-BUILT DRAINAGE SWALE

**EXHIBIT 5
DEWATERING
ELEMENTS
CROSS SECTION**

EXHIBIT B

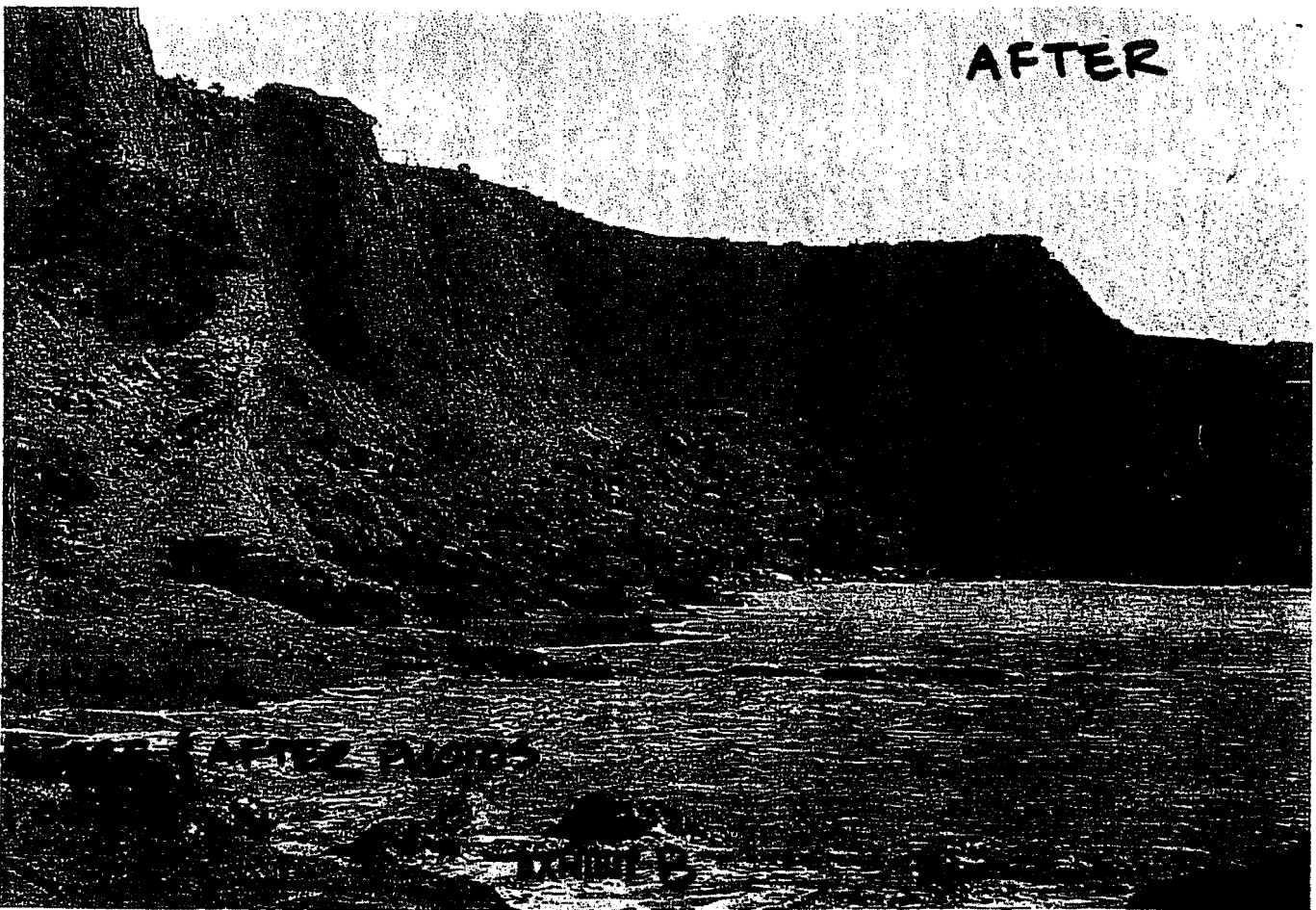
SCALE: 3/4" = 1'-0"



BEFORE

View looking to Southeast :
(standing on reef opposite surf break)

Upper Photo is before Rock Placement
. > Lower Photo is after Rock Placement

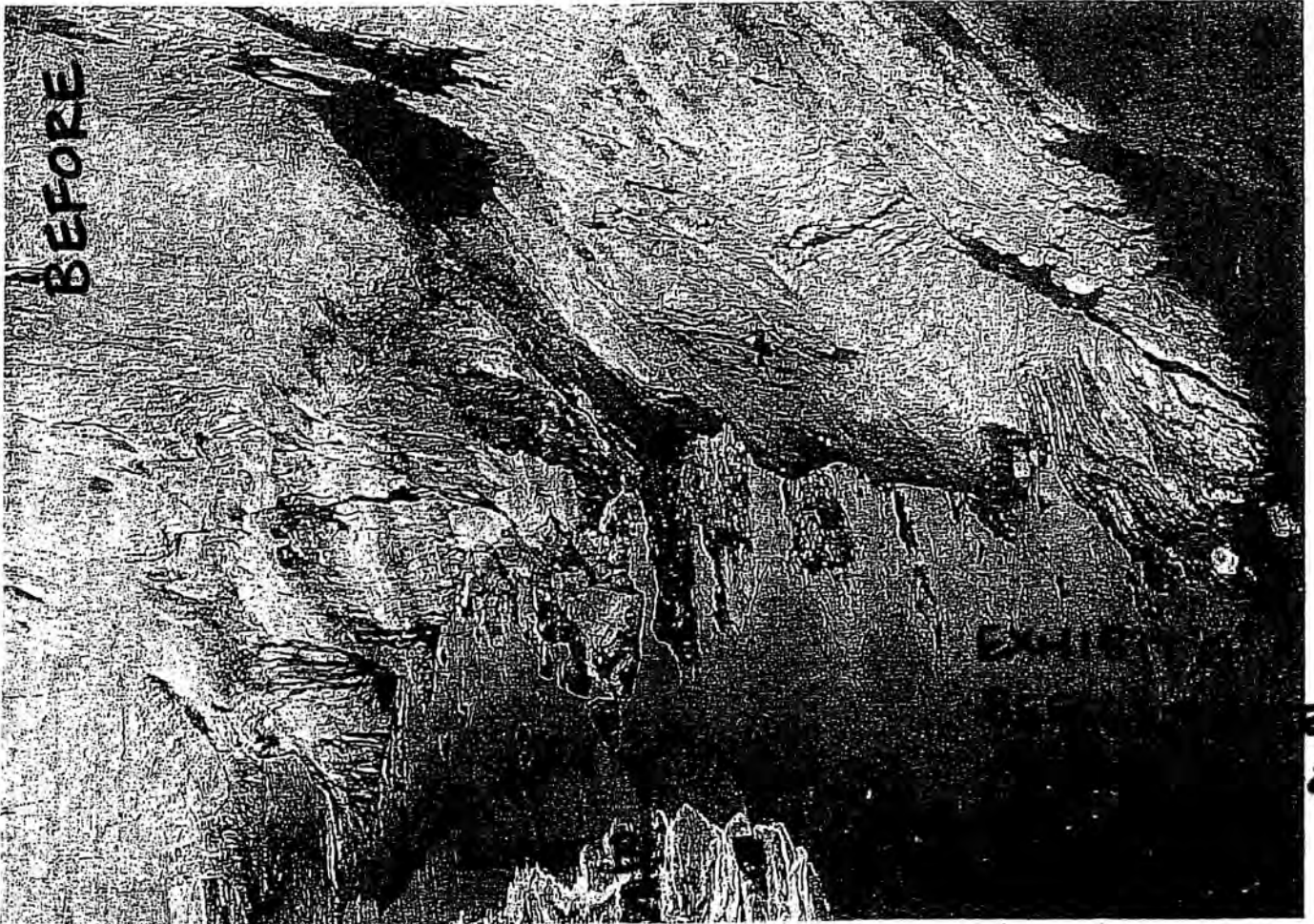


AFTER

E
B
C

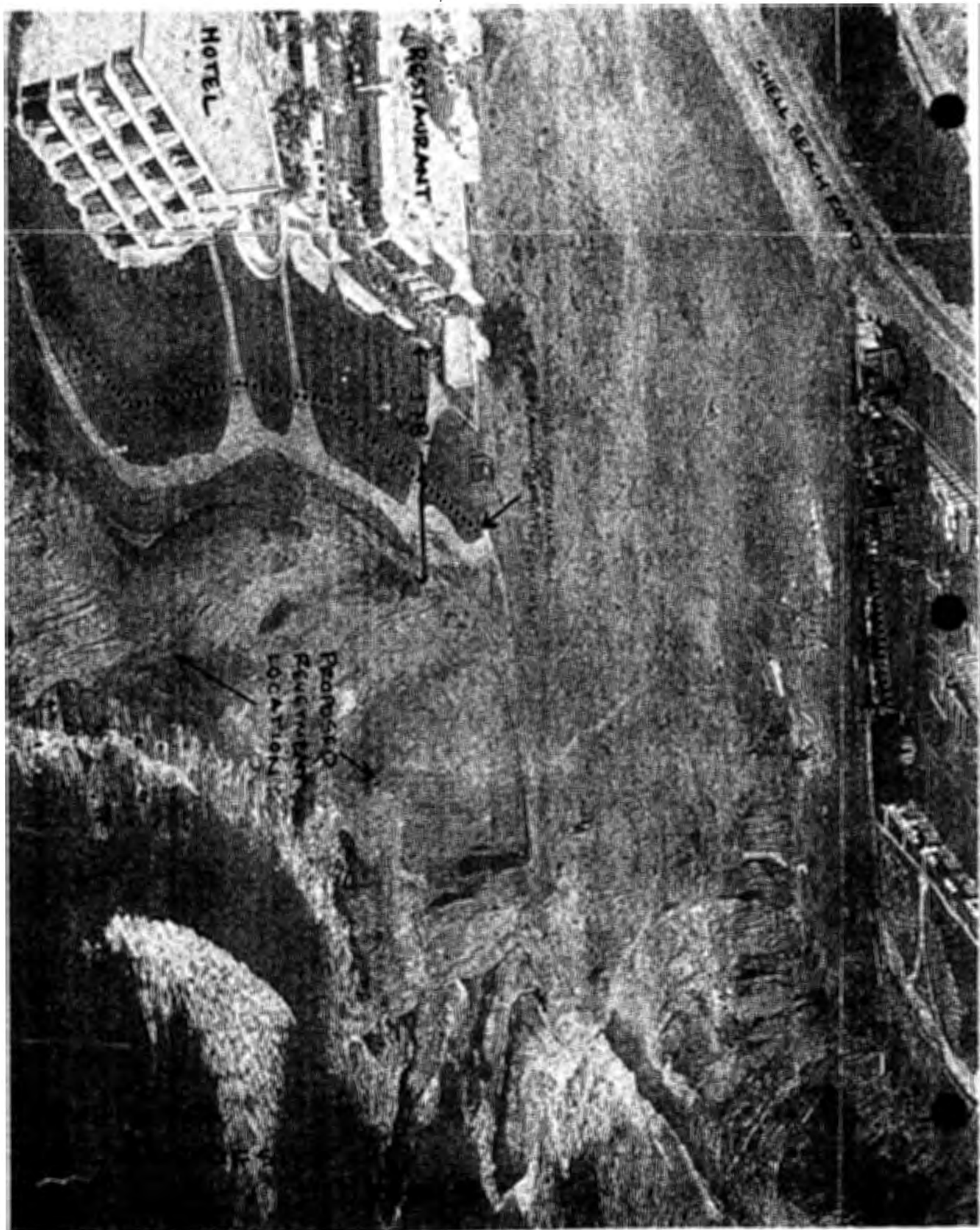


Left Photo is before Rock Placement
Right Photo is after Rock Placement



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

22



HOTEL

RESTAURANT

SHELL BEACH FORD

R-119

Proposed
Riverbank
Location

RECORDING REQUESTED BY
SAFECO TITLE INSURANCE COMPANY

5/15/84 90118 5

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

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)

EXHIBIT B

VOL 2576 PAGE 89

134X52

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

Geologic Hazard Setback and Waiver of Liability

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

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

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

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

**EXHIBIT 8
(2 OF 8)**

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 ⁻³⁻
B

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
(5078)**

EXHIBIT B

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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

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)**

EXHIBIT B

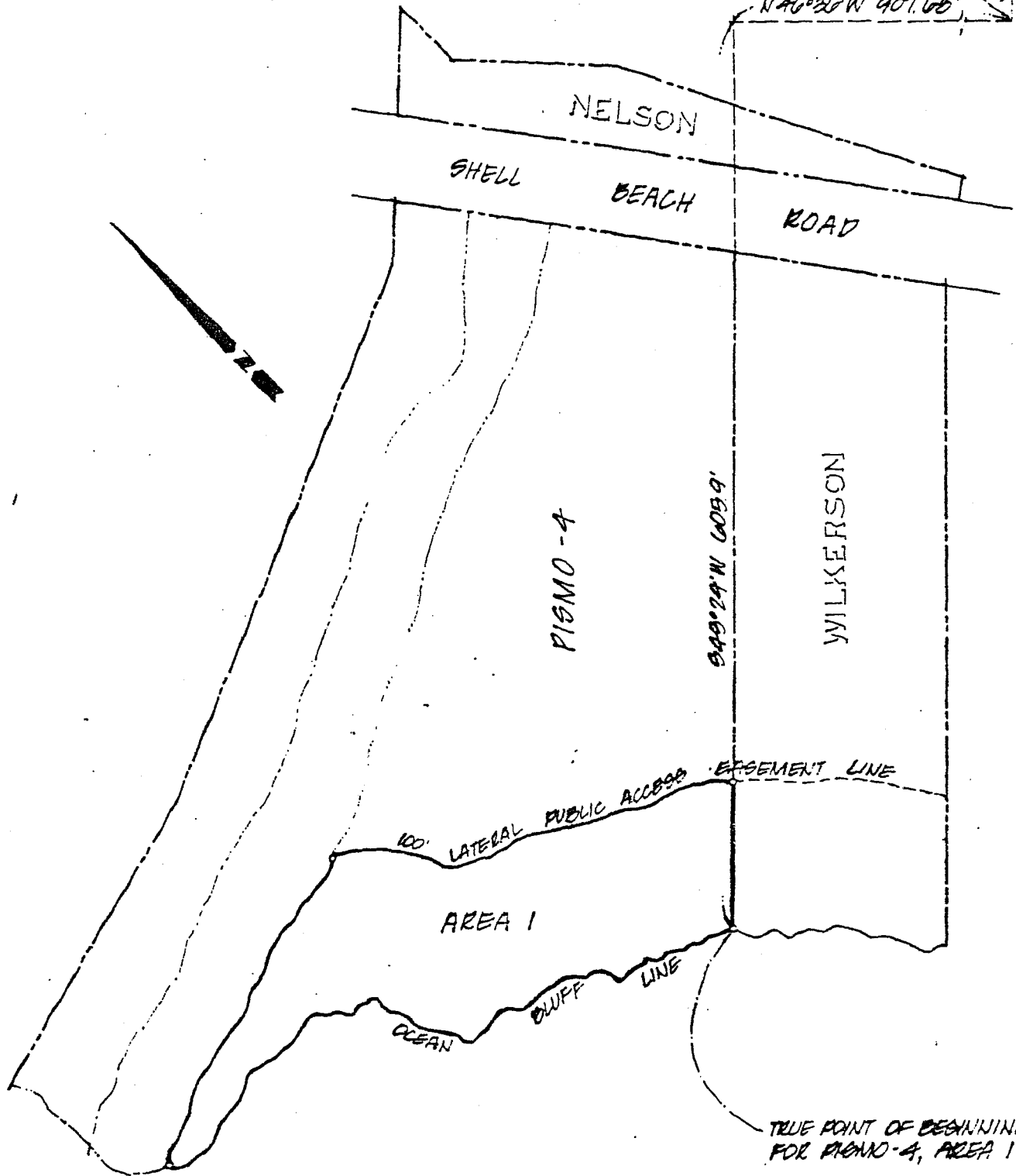
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GEOLOGICAL SETBACK FOR PISMO-4: AREA 1

POINT OF BEGINNING

S 49°24'N 4000'

N 40°24'W 907.68'



TRUE POINT OF BEGINNING
FOR PISMO-4, AREA 1

EXHIBIT 8
(8 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 9:13 AM
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

EXHIBIT B

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.

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

VII. 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

EXHIBIT 9
(2 OF 11)

-2-

EXHIBIT B

VOL 2576 PAGE 98

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

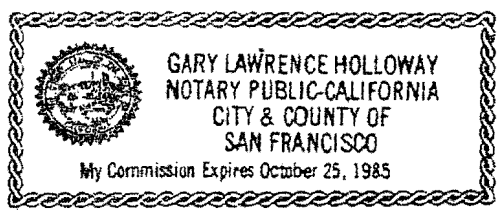
This is to certify that the deed restriction set forth above, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the authority conferred by the Commission when it granted Permit No. 4-83-490, on October 13, 1983, and that the Commission consents 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)
COUNTY OF San Francisco) ss.

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-
TITL E
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 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 9
(6 OF 11)**

EXHIBIT B

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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 westerly 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 B

EXHIBIT 9
(7 OF 11)

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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.

Area 2: Lateral Public Access Easement (Beach Dedication)

Beginning at the Southwest corner of Area 1, herein above described, said point being at 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 2505 of Official Records at Page 371 to the intersection with the ordinary high tide of the Pacific Ocean; Thence, Northwesterly along said ordinary high tide of the Pacific Ocean to the intersection with a line which is due West of the Northwest corner of said Area 1. said point being the intersection point of said top of the ocean bluffline with said existing top of bank of the creek channel as described in said Area 1; Thence, East to said northwest corner; Thence, Southeast along the westerly line of said Area 1 and said top of ocean bluffline to said Southwest corner of said Parcel 1 and the True Point of Beginning.

Area 3: Vertical Public Access Easement (101st Beach Access Dedication)

According to that certain deed recorded in Book 594 of Official Records at Page 386 in the Office of the County Recorder, referenced in said deed recorded in Book 2505 at Page 371: 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;

EXHIBIT 9
(80F11)

EXHIBIT B

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 B

EXHIBIT 9

(90511)

2576 405

15) Thence continuing, South $69^{\circ} 38' 13''$ West 19.71 feet to a point on the centerline of the pathway to the beach as it existed on January 7, 1983:

Thence, along the following described centerline of a 40 foot strip of land, said strip of land lying 10 feet on either side of and parallel with said centerline of the said existing pathway:

- 16) North $85^{\circ} 44' 37''$ West 37.85 feet;
- 17) South $59^{\circ} 30' 56''$ West 21.86 feet;
- 18) South $81^{\circ} 56' 06''$ West 21.80 feet;
- 19) North $56^{\circ} 27' 29''$ West 34.99 feet;
- 20) North $57^{\circ} 08' 47''$ West 14.99 feet;
- 21) South $59^{\circ} 31' 12''$ West 14.30 feet;
- 22) South $61^{\circ} 51' 24''$ West 12.16 feet;
- 23) South $88^{\circ} 00' 51''$ West 13.61 feet;
- 24) South $72^{\circ} 25' 46''$ West 20.74 feet;
- 25) South $26^{\circ} 56' 02''$ West 10.60 feet;
- 26) South $56^{\circ} 49' 19''$ West 16.88 feet;
- 27) North $84^{\circ} 11' 29''$ West 13.06 feet;
- 28) South $88^{\circ} 19' 39''$ West 12.30 feet;
- 29) North $30^{\circ} 32' 00''$ West 40.00 feet more or less to the toe of the existing bluff at the beach as it existed on January 7, 1983.

The beginning and ending lines of said 10 foot strip of land shall be lengthened or shortened to intersect said southwesterly line of Book 1214 at Page 434 of Official Records, and the lines of said 40' strip of land noted above;

The beginning and ending lines of said 40' strip of land shall be lengthened or shortened to intersect the lines of said 10' strip of land noted above and said existing toe of bluff.

Containing .22 acres, more or less.

EXHIBIT A
(10 of 11)

EXHIBIT B

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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' W 40.00'

N 46° 30' W 907.68'

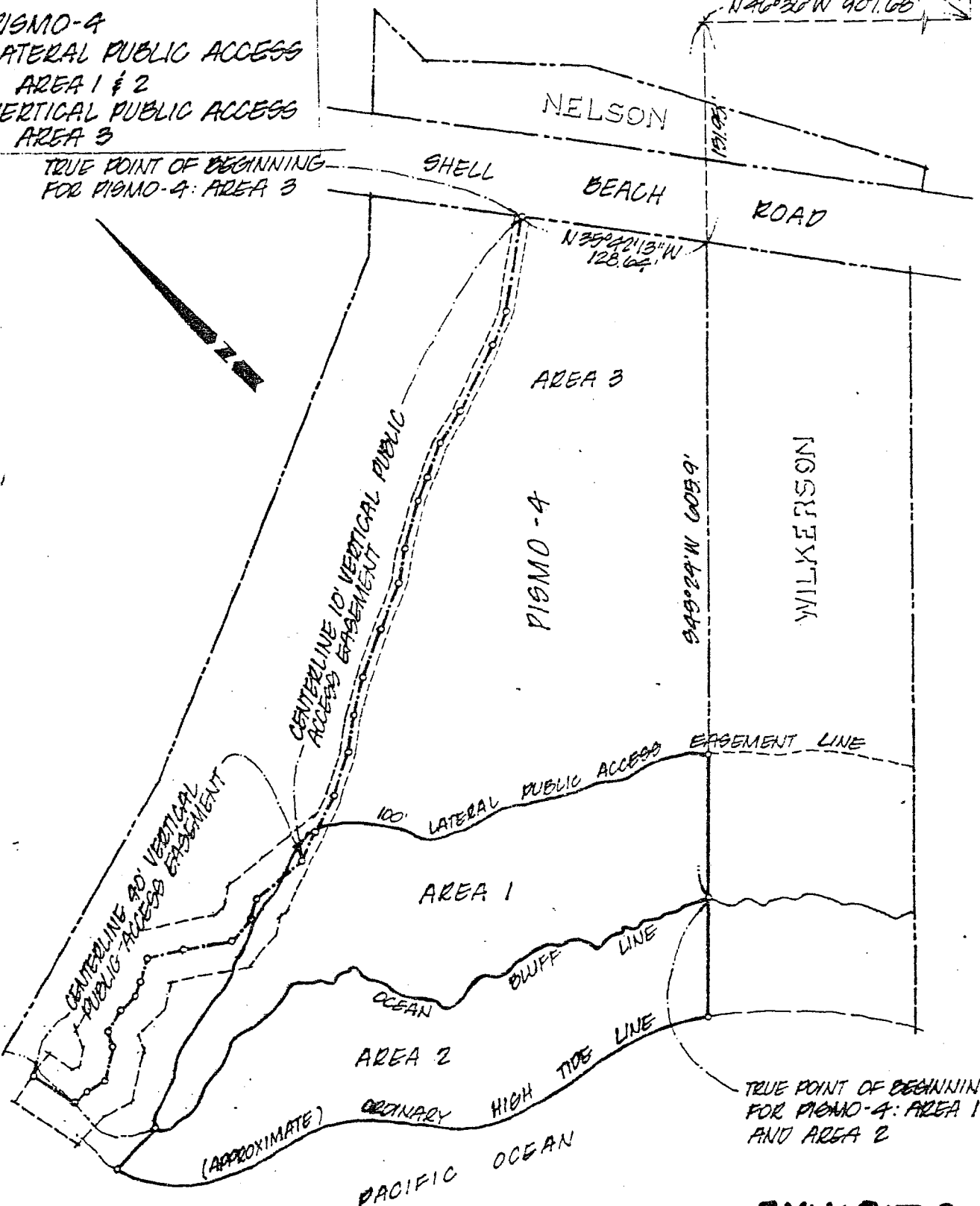


EXHIBIT 9
(11 OF 11)

RECORDING REQUESTED BY

3/19/84 9040 6

SAFECO TITLE INSURANCE COMPANY

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

DOC. NO 13539
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL

MAR 19 1984

FRANCIS M. COONEY
County Clerk-Recorder

TIME 8:02 AM

DEED RESTRICTION

I. WHEREAS, L. R. Wilkerson Interests, Inc., a Texas corporation (hereinafter referred to as the "Owner") is the record owner of the real property located in San Luis Obispo County, California, described in attached Exhibit A, hereby incorporated by reference (hereinafter referred to as the "Subject Property"); and

II. WHEREAS, Stephen D. Cox, an individual, and H. Joseph Wade, an individual (hereinafter collectively referred to as the "Applicants"), have contracted with the Owner to purchase the Subject Property; and

III. WHEREAS, the Subject Property is located within the Coastal Zone as defined by the California Public Resources Code (hereinafter referred to as the "California Coastal Act") in section 30103; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Applicants have applied to the California Coastal Commission for a Coastal Development Permit for a development to be located on the Subject Property; and

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

**EXHIBIT 10
(10FB)**

DEED RESTRICTION 2A

EXHIBIT B

VOL 2576 PAGE 129

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;

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 Applicants, 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 which may result to the California Coastal Commission from its granting of Permit No. 4-83-490 from these hazards;
- (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 10
(3 OF 8)

-3-
EXHIBIT B

VOL 2576 PAGE 131

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.

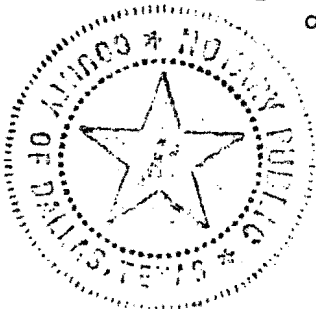
DATED: 2/21, 19 84.

L. R. Wilkerson Interests, Inc.

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

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

On this 21ST 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 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 10
(5 OF 8)

EXHIBIT B

VOL 2576 PAGE 133

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)

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.

**EXHIBIT 10
(70F8)**

EXHIBIT B

GEOLOGICAL SETBACK FOR WILKERSON: AREA 1

POINT OF BEGINNING

S 43° 24' N 40.00'

N 46° 56' W 772.68'

NELSON

SHELL BEACH ROAD

WILKERSON

S 43° 24' N 623.6'

PISMO - 4'

AREA 1

100' LATERAL PUBLIC ACCESS EASEMENT LINE

OCEAN SWEEP LINE

TRUE POINT OF BEGINNING
FOR WILKERSON, AREA 1

**EXHIBIT 10
(80F8)**

EXHIBIT B

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 9041 6

12:00
12:00

DOC. NO 13540
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL

MAR 19 1984

FRANCIS M. COONEY
County Clerk-Recorder

TIME 8:02 AM

DEED RESTRICTION

I. WHEREAS, L. R. Wilkerson Interests, Inc., a Texas corporation (hereinafter referred to as to the "Owner"), is record owner of real property located in San Luis Obispo County, California, more specifically described on Exhibit A, which is attached hereto and incorporated by reference (hereinafter referred to as the "Subject Property"); and

II. WHEREAS, Stephen D. Cox, an individual, and H. Joseph Wade, an individual (hereinafter collectively referred to as the "Applicants"), have contracted with the Owner to purchase 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, pursuant to the California Coastal Act of 1976, the Applicants have applied to the California Coastal Commission for a Coastal Development Permit to develop the the Subject Property; and

VI. 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 II
(1059)

EXHIBIT B

DEED RESTRICTION 3B

VOL 2576 PAGE 137

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

IX. 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 such portion of the Subject Property. Applicants, their assigns or successors 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 assigns or successors in interest, 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

EXHIBIT II
(3029)

EXHIBIT B -3-

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 21ST day of FEBRUARY, in the year 1984, before me [Signature], 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
(4029)

EXHIBIT B

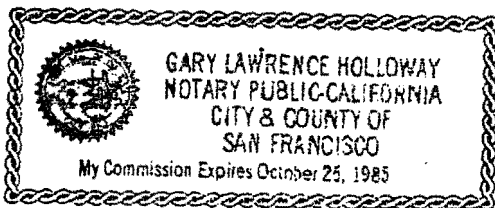
This is to certify that the deed restriction set forth above, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the authority conferred by the Commission when it granted Permit No. 4-83-490, on October 13, 1983, and that the Commission consents 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)
COUNTY OF San Francisco) ss.

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-
TITILE
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 II
(SOPA)

EXHIBIT B

VOL 2576 PAGE 141

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 B

**EXHIBIT II
(6029)**

VOL 2576 PAGE 142

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 II

(7029)

EXHIBIT B

Vol 2578 Page 112

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 B

EXHIBIT II
(8029)

VOL 2576 PAGE 144

EXHIBIT B

LATERAL PUBLIC ACCESS
NILKERSON: AREA 1 & 2

POINT OF BEGINNING

S 43° 24' N 40.00'

N 42° 36' W 772.68'

NELSON

SHELL BEACH ROAD

NILKERSON

S 43° 24' N 623.6'

PISMO - 4

100' LATERAL PUBLIC ACCESS EASEMENT LINE

AREA 1

AREA 2

OCEAN

BLUFF LINE

HIGH TIDE LINE

(APPROXIMATE)

ORDINARY

PACIFIC

OCEAN

TRUE POINT OF BEGINNING
FOR NILKERSON, AREA 1

EXHIBIT II
(90E9)

EXHIBIT B

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
PISMO BEACH, CA 95060
(415) 27-4863
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 B**EXHIBIT 12
MAY 26, 1998
LETTER
(1052)**

Toshiaki Sasaki, President, Tokyo Masuiwaya Corporation
Deed Restriction Requirements From CDP 4-83-490
May 27, 1998
Page 2

We look forward to resolving these issues expeditiously. If you should have any questions regarding this matter, please feel free to contact me directly at (408) 427-4863.

Sincerely,

Charles Lester PH DGM

Charles Lester
District Manager
Central Coast District Office

cc: Dennis Delzeit, Public Services Director, City of Pismo Beach Community
Development Department

Enc: Cliffs Hotel Deed Restriction ← STAFF NOTE: SEE EXHIBITS 8, 9, 10, & 11
FOR DEED RESTRICTIONS

EXHIBIT 12
MAY 26, 1998 LETTER
(2 OF 2)

EXHIBIT 8

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

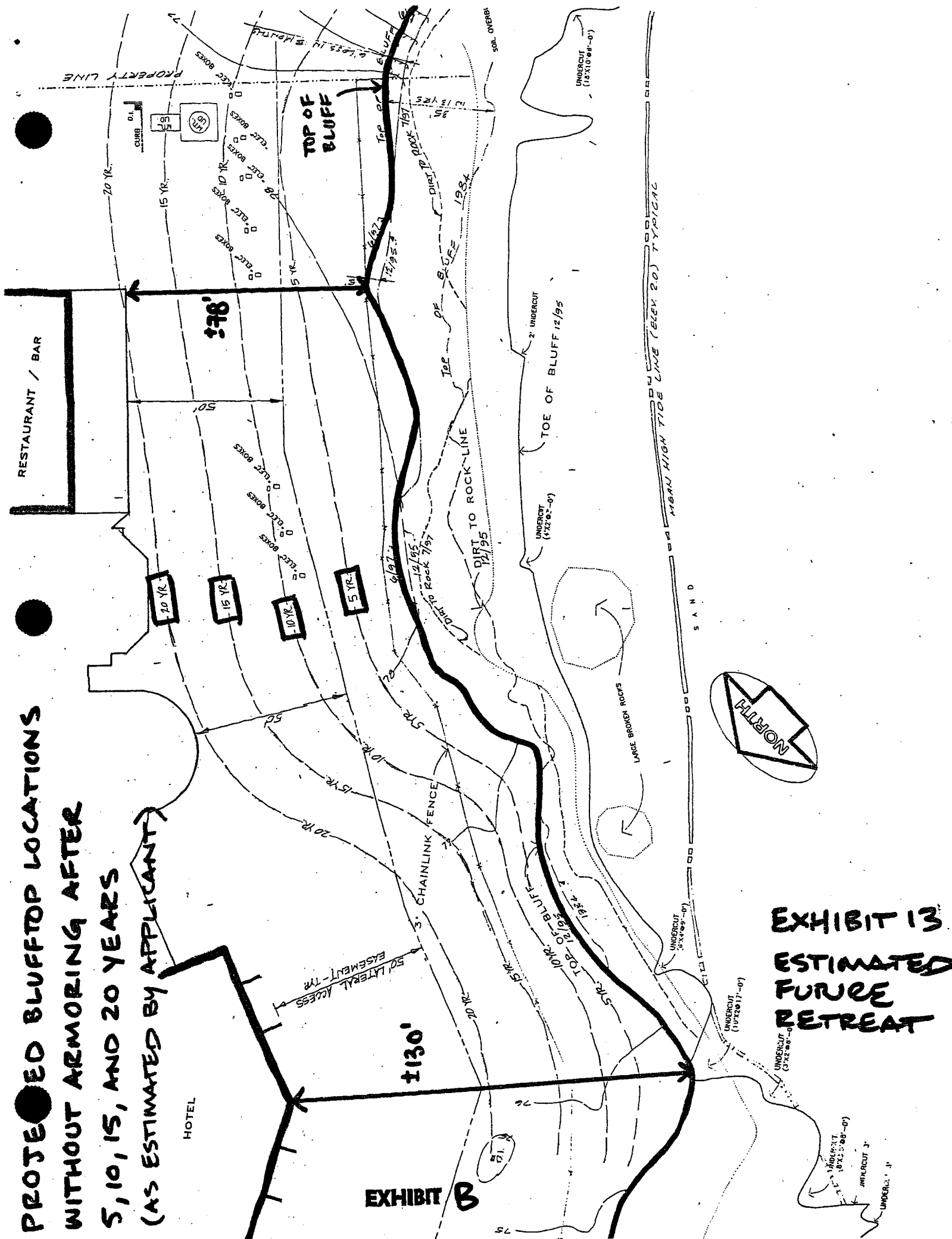


EXHIBIT B

**EXHIBIT 13:
ESTIMATED
FUTURE
RETREAT**

Figure 4-3 Long-term Loss of Beach Area with a Fixed Back Beach.

EXHIBIT 14
SAND SUPPLY
CALCULATIONS
(1083)

EXHIBIT B

Area of beach lost as shoreline retreats (not offset by new beach area since bluff cannot retreat) (Aw in methodology).

Seawall
(Fixed Back Beach)

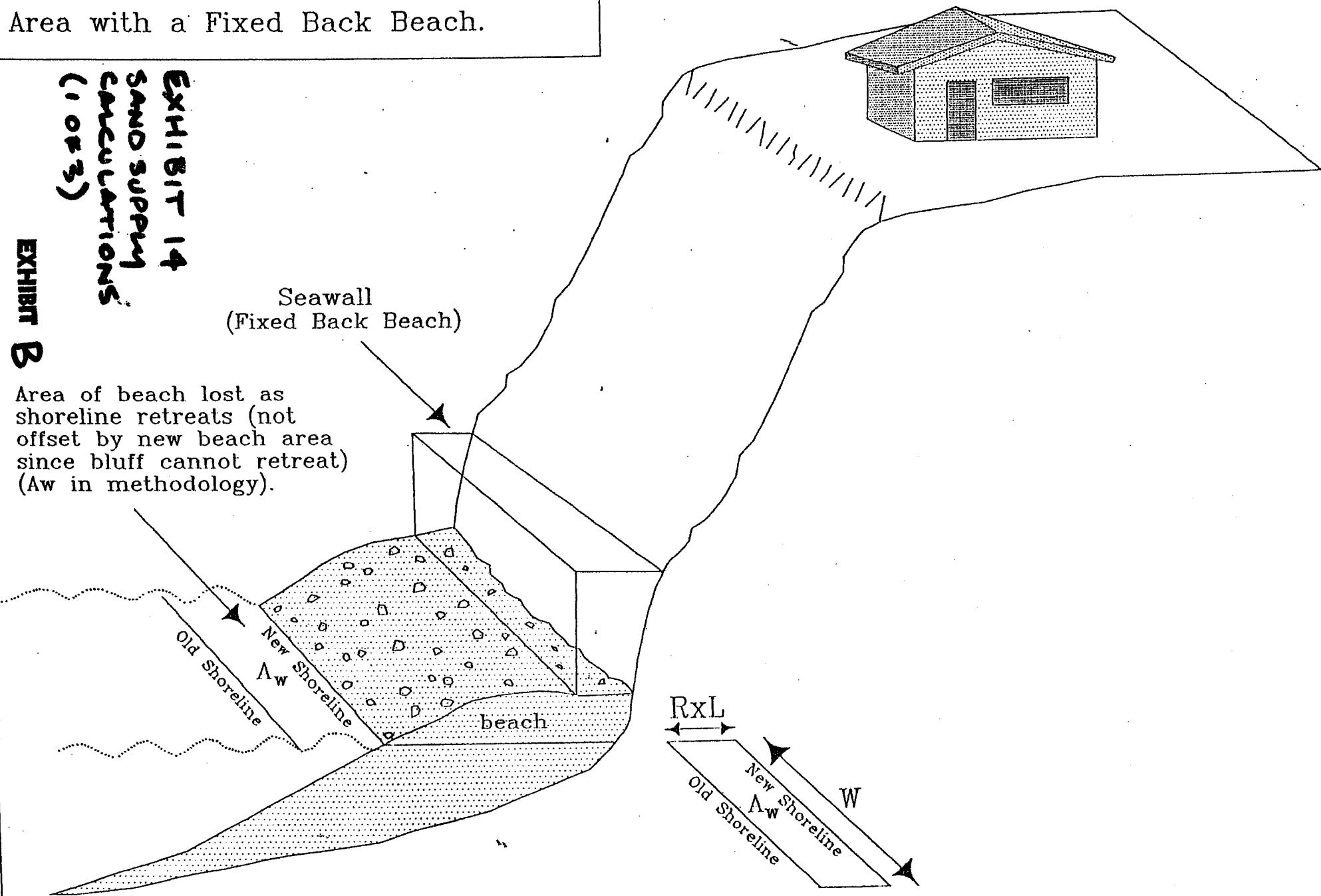


Figure 4-4 Material Added to Littoral System from Natural Bluff Erosion.

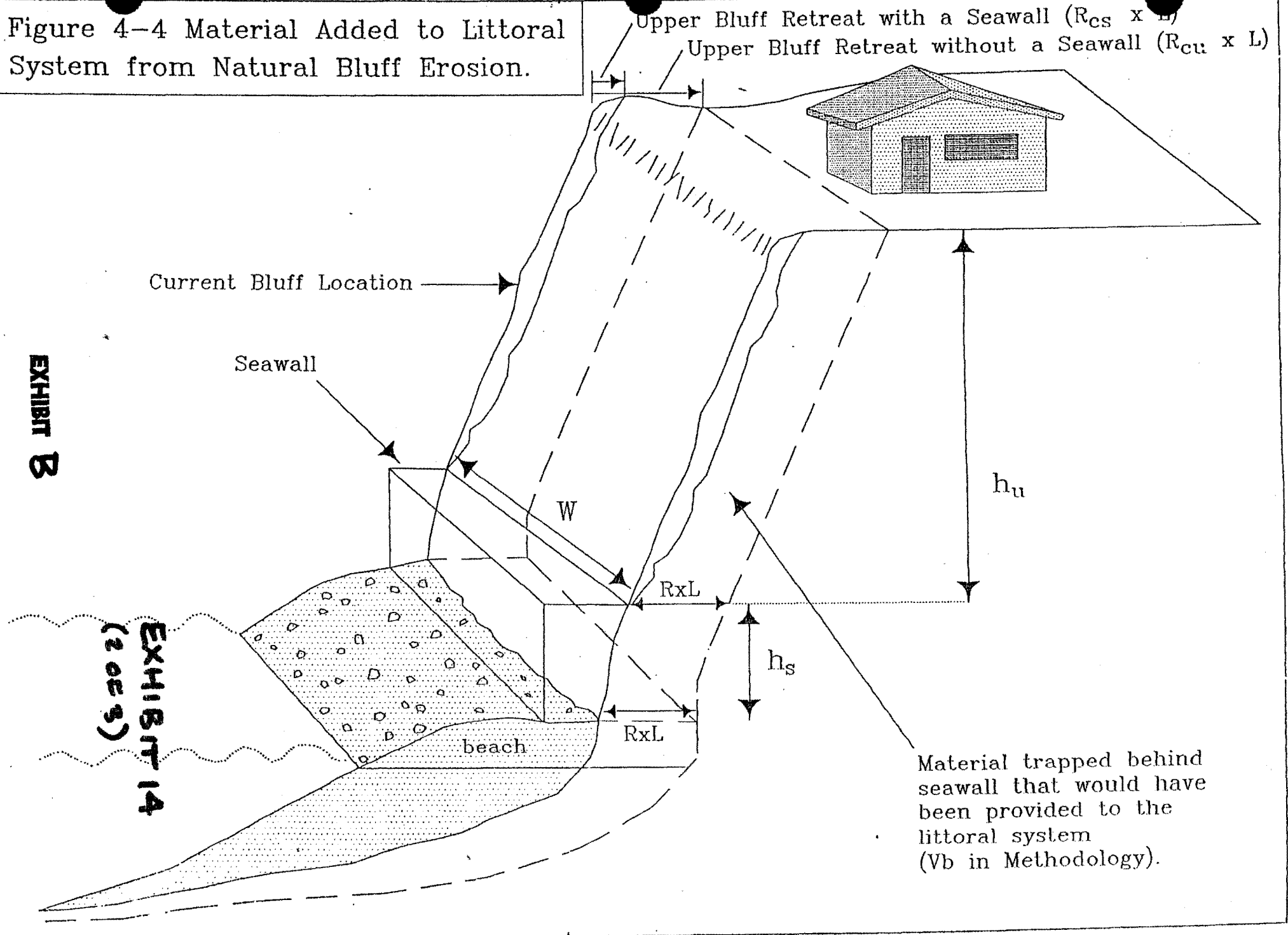


Figure 4-2 Encroachment Area-Beach
Area Lost Due to Placement of a
Structure on the Beach.

EXHIBIT 14
(3 OF 3)

EXHIBIT B

Seawall

E

W

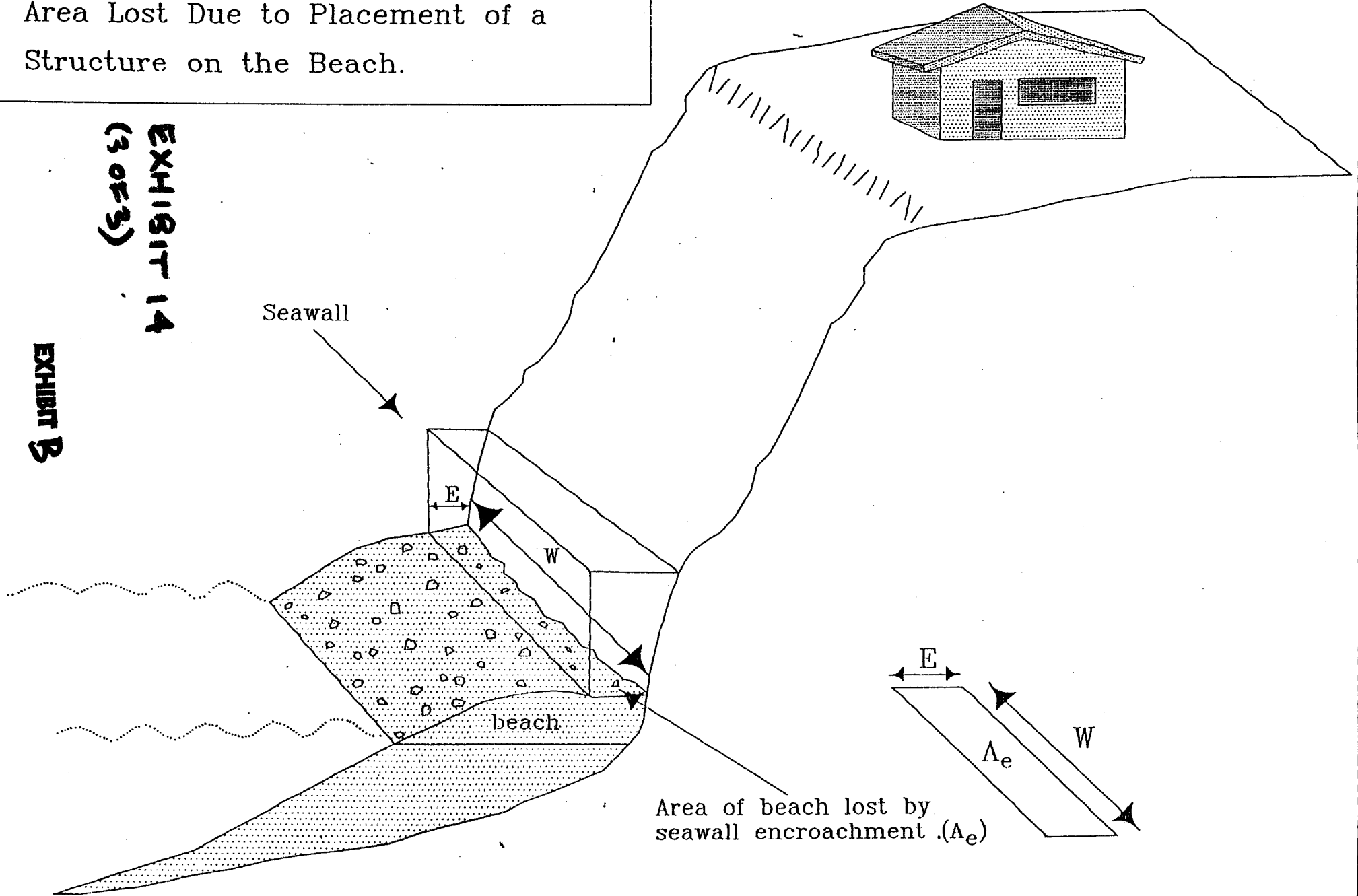
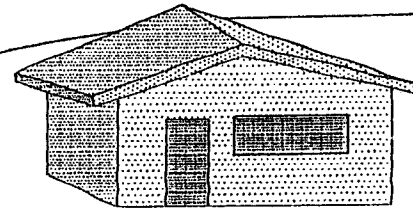
beach

Area of beach lost by
seawall encroachment (Λ_e)

E

Λ_e

W



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, SUITE 300
SAN JOSE, CA 95060
(415) 747-4863
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)**

5. Revetments do not necessarily present a more "natural" look than a vertical seawall. There are vertical seawalls having textured facing which appears very similar to the natural bluff. This may or may not be workable at this site, but that cannot be known unless it is considered as part of an alternatives analysis.

6. The negative declaration states that discharging intercepted surface and groundwater through the existing storm drain into the ravine "would not significantly change the quality or quantity of the existing discharge." What is the volume of the existing discharge? What would be the volume of the additional discharge? How do they compare? How would the additional discharge affect erosion in the ravine?

7. Although it is true in some situations that vertical seawalls can contribute to the impacts from wave refraction, backwash, scour, and end effects, that may not necessarily be the case here. Because the shoreline to be protected at the project site is relatively short and the bluff is curved, any of these impacts would likely be slight, regardless of the design of a protection structure there. Any protection design must be based in part on the frequency and intensity of wave attack at the bluff.

8. How would the rip-rap be maintained? Regular wave attack could dislodge some of the rock from a revetment and deposit it on the beach. If that were to occur, the rock must be placed back onto the revetment, and that could require the use of heavy equipment. Could the equipment operate from the bluff top? If not, how would rock be replaced?

9. What kind of equipment would be necessary to remove the sewage holding tank, if it were to be removed? Would it be different from that needed to reposition rocks from the revetment? What would be the effect of groundwater concentrating around the tank if it is left in place? Would it tend to destabilize the bluff?

Thank you for the opportunity to comment on this project.

Sincerely,



Steve Guiney
Coastal Planner

cc: Lesley Ewing

EXHIBIT 15
(2 OF 2)

EXHIBIT B

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

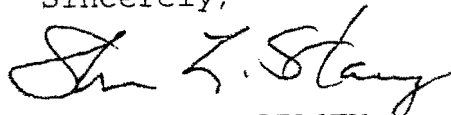
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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)

EXHIBIT B

Surfrider Foundation
Washington State Chapter
7012 32nd St. Ct. N.W.
Gig Harbor, WA 98335
(253) 265-6751

RECEIVED

OCT 08 1998

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 6, 1998

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

To whom it may concern:

I am writing this letter on behalf of the Washington State Chapter of the Surfrider Foundation. We greatly support the removal of the rock wall under the Cliff's Hotel at Reef's Right surf spot in Pismo Beach. If this wall is removed it will save one of the few "unspoiled" portions of the California coastline.

We in Washington State are concerned because we are dealing with a similar issue. The first seawall in our state was built with an "emergency" permit and has yet to come down. We are putting forth every effort to remove the wall and to also stop seawalls from becoming the common "solution" to erosion. We do not want the West Coast of the United States to mimic the East Coast. We want to protect our beaches from "New Jerseyization".

Also, the majority of our members are originally from California. I, myself, used to frequently visit Pismo Beach and would hate to see it overcome by the devastation a seawall can cause.

Unfortunately, it is difficult to undo the damage that has been done to our Pacific beaches, but I thank the California Coastal Commission for its effort concerning the seawall in Pismo. If the wall is removed it will be a victory for the local beach, as well as the entire West Coast.

Thank You,

Christine Hanna

Christine Hanna
Surfrider Foundation
Washington State Chapter

EXHIBIT 16
CORRESPONDENCE
(2 OF 2)

EXHIBIT B

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

REMONTE, SUITE 2000

FRANCISCO, CA 94105-2219

(415) 904-5260



December 31, 1998

TO: Charles Lester
Dan CarlFROM: Lesley Ewing *Lesley*

SUBJECT: December 3, 1998 letter from Sherman L. Stacey Re: Permit Amendment No. 83-490-A1; Tokyo Masuiyawa California Corporation; The Cliffs at Shell Beach, Pismo Beach Shoreline Protective Works

Thank you for sending me a copy of the request for reconsideration of the Commission's November 5, 1998 decision on Permit Application No. 4-83-490-A1. Mr. Stacey has provided three new pieces of evidence to support this request and asserted that the evidence could not have been produced prior to the November 5, 1998 hearing. My comments below address these three new pieces of evidence.

- 1. Allowing further erosion will not prevent the installation of a future concrete protective device.** In our analysis of the site, we have recognized that the shoreline will continue to erode if there is no shoreline protective device. In the Commission's findings, the denial of the revetment was based on the analysis that there was not now an imminent threat to existing development. The Commission's finding were silent on whether there might be a point in the future when an existing structure might be in danger from erosion. However, recognizing that erosion would continue to occur at this property, it is reasonable to assume that the Commission recognized that there might be a time in the future when there might be an existing structure in danger from erosion. This is not new evidence that was unavailable to the Commission at the time of its decision.

Mr. Stacey goes on to state that the bluff face is a shale material that has different erosion characteristics than the asphaltic and bituminous sandstone that had previously fronted the bluff and had been used in establishing the bluff retreat rates for the original development. The exposure of this less resistant shale is the basis for the original "emergency" concern expressed by the applicant and, as such, the Commission was very aware of this condition. It is not new evidence that was unavailable to the Commission at the time of its decision.

Finally, Mr. Stacey describes the erosion processes for the shale material and states that, "neither the shale sand mix which will cover the surface nor the shattered shale material beneath it are materials capable of preventing wave scour from undercutting a vertical seawall." It is true that sand and shattered shale will not prevent scour, and a well-designed vertical wall would not use this as foundation material. If, in the future, a vertical wall were to be approved for this site, the foundation would need to be placed deeply enough to go into competent shale, not sand or shattered shale. If it would not be possible to place the foundation in competent shale, the design engineer might consider a broader concrete base for the vertical wall, grout injection at the base, and /or the use of a scour apron fronting the wall.

Many vertical seawalls in the Pismo area have been installed along bluffs that have shale at the base, so this design constraint is not unusual. The current letter has not provided any new evidence that would distinguish this property from the other properties in the Pismo area that have installed a vertical seawall for shoreline protection. Nor has this letter stated what new analysis of the shale has been undertaken since the alternatives analysis (that I believe was part of the 1/30/96 submittal from Earth Systems Consultants) found that a vertical seawall was a feasible alternative to the proposed revetment. Finally, the existing revetment should have been designed with a recognition of the site conditions, so the presence of sand and shattered shale should have been known to the applicant, or the applicant's engineers, well in advance of the November 1998 Commission hearing. I do not think that any of the information provided in this section that would constitute "new evidence that was unavailable to the Commission at the time of its decision."

2. **Worker safety requirements mandate excavation of the bluff face in order to remove the rock.** Again, I do not think that any of the information provided in this section would constitute "new evidence that was unavailable to the Commission at the time of its decision." I am not aware of the California Occupational Safety Hazard Administration; but I will assume that Mr. Stacey means to refer to the California Occupational Safety and Health Administration (CAL OSHA). If so, they were in existence at the time the Commission made its decision and worker safety issues could have been raised then.

Since the applicant has had workers on the site to install the revetment and later to add additional rock to the revetment, Cal OSHA should be familiar already with this job site. I am not as familiar with Cal OSHA as Mr. Stacey, but if he could provide us with the name or names or the people with whom he has been in contact, I would be happy to discuss this project with them to explore safe removal options. One option that comes to mind is to combine support by a blufftop crane with a smaller pulley crane on the beach (at a safe distance from the bluff face) to pull the rocks on to the beach, one by one. Once on the beach, the rocks could be broken into smaller pieces and lifted to the bluff top for removal from the site. Very likely, there are other options that could provide for worker safety and resource protection. If the applicant's engineer cannot design a safe removal plan, the applicant may want to put out an RFP to a broader audience. At this point, I am not convinced that the only way

to remove the existing revetment is to destroy the bluff, and then not have the workspace to allow the crane to remove the rock.

3. **Removal of the rock revetment will only achieve a few years before new shoreline protection works are required.** Much of this was discussed in Item 1. Mr. Stacey's comment overlooks the findings by the Commission that, if there were to have a need for some form of shoreline protection at the Cliffs Hotel property, it was very unlikely that a rock revetment would have been found to be the least environmentally damaging feasible alternative. Removal now of the rock revetment will achieve more than "a few years before new shoreline protection works are needed." There is speculation as to the future need for, timing of, and legality of shoreline protection. Removal of the existing revetment will insure that, if a future Commission finds that some form of shoreline protection is needed at this site, that future Commission can work from a full analysis of all feasible alternatives and the least environmentally damaging feasible alternative can be utilized.

There is also much speculation about the future rates of erosion at this site. Mr. Stacey has posited one possible future scenario. The Commission findings discussed the current uncertainty about future erosion rates at this site. Mr. Stacey's scenario is within the range of erosion rates that the Commission considered and does not provide any "new evidence that was unavailable to the Commission at the time of its decision."

While I do not view Mr. Stacey's concerns about work safety to be new evidence, I am concerned that the applicant may not now be taking full advantage of the breadth of technical input that may be needed to develop a safe removal plan. We have time, during the next few months to work with the applicant's engineers, with Cal OSHA and, possibly with other experts that the applicant could hire, to develop a plan that will protect the workers and the fragile bluff top environment. As noted by Mr. Stacey, it will be possible to remove the revetment in a manner that will be both unsafe for the workers and damaging to the environment. The only benefit to this approach is that the applicant can say, "I told you so!"

The applicant has hired competent technical staff, but, from Mr. Stacey's letter, it seems that the proposed project - removing the existing revetment without harm to the workers or the bluff top environment - is not one that falls within their current area of expertise. A license to practice engineering or engineering geology does not mean the licensee is an expert in all aspects of engineering. The applicant's technical staff should be commended for recognizing early in the process that they cannot now undertake this project successfully. There is time during the next few months to augment this expertise. To the extent practicable, I will be happy to either help the applicant's existing technical staff coordinate with others who may have more experience in rock removal, or help the applicant identify additional technical experts who can make this a safe and successful project. Please send this offer on the applicant if you think it is appropriate. And, let me know if there are other parts of this project on which I should comment.

