

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
427-4863

W14b

C.F.L.
1/4/99

**RECORD PACKET COPY**

Filed:	08/02/99
49 th Day:	09/20/99
49-Day Waiver:	09/17/99
Staff:	RB-SC
Staff Report:	12/16/99
Hearing Date:	01/13/00
Commission Action:	

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO HEARING**

LOCAL GOVERNMENT: County of San Luis Obispo

LOCAL DECISION: Approved with conditions, 06/29/99

APPEAL NUMBER: **A-3-SLO-99-050**

APPLICANT: **SHERMAN & MAUREEN RAILSBACK**

APPELLANT: Commissioners Sara Wan and Dave Potter

PROJECT LOCATION: 1120 Pacific Avenue (Estero Planning Area), Cayucos (San Luis Obispo County) (APN(s) 064-227-23)

PROJECT DESCRIPTION: Demolish an existing SFD; construct a new SFD; construct a seawall and fill existing eroded area to protect the new residence.

FILE DOCUMENTS: County of San Luis Obispo certified Local Coastal Program, Administrative Record for County permits D980050P and D980051V.

EXECUTIVE SUMMARY

The project is located on a blufftop lot on the seaward side of Pacific Avenue in the community of Cayucos in San Luis Obispo County (please see Exhibit 1). The project involves the demolition of an existing residence; the development of a 3,500 square foot single family dwelling; a variance from the planning area blufftop setback standard of 25 feet to approximately 2 feet from the existing bluff and approximately 15 feet from the top of the proposed reconstructed bluff; and a new riprap seawall. The 4,200 square foot site has a surface elevation comparable to that of adjoining lots. The present blufftop is approximately 20 feet in height and is defined by a "U" shaped gully in the center of the site, created as a result of uncontrolled runoff. A geotechnical report concludes that on the basis of a 2 inch per year retreat rate, a 75-year bluff retreat of 12.5 feet can be assumed. At the base of the bluff is a wide sandy beach with a few rock outcroppings. A riprap seawall protects the existing house to the south and a

concrete block seawall protects the house directly to the north. Many seawalls in the area were constructed during and following major storms in 1983. The legal status of these adjacent shoreline protective works (e.g., whether they pre-date the Coastal Act or have coastal development permits) as well as many others in Cayucos, is currently being researched.

On June 29, 1999, the San Luis Obispo County Planning Commission approved the coastal development permit and a variance for this project. Although the certified LCP does not allow shoreline protective devices for *new* development, the applicant claims that the approved seawall is necessary to prevent further undercutting of an existing block seawall that protects the neighboring residence to the north. The applicant has asserted that the existing seawall to the north is subject to undercutting wave action and accelerated erosion which may place the neighboring residence in danger; however, no data has been submitted to support this claim.

Staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal was filed. Staff recommends that the Commission then proceed immediately to a de novo hearing on the merits of the project. Finally, staff recommends that the Commission approve the project with conditions that require the project be redesigned to comply with the 25 foot setback required by the LCP, delete the rip-rap seawall, and incorporate appropriate drainage and erosion control measures. With these conditions, the proposed development will be consistent with the LCP and the public access and recreation policies of the Coastal Act.

STAFF REPORT CONTENTS

EXECUTIVE SUMMARY	1
I. SUMMARY OF APPELLANTS' CONTENTIONS	3
II. LOCAL GOVERNMENT ACTION	3
III. STANDARD OF REVIEW FOR APPEALS	4
IV. STAFF RECOMMENDATIONS	4
V. STANDARD CONDITIONS	5
VI. SPECIAL CONDITIONS	6
VII. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS	8
A. Project Location and Description	8
B. New Development, Blufftop Setback, and Seawalls	9
VIII. DE NOVO FINDINGS AND DECLARATIONS	11
1. New Development, Blufftop Setback, and Seawalls	11
2. Drainage	15
3. Public Coastal Access and Recreation	16
IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	18
XI. EXHIBITS	
Vicinity Maps	
Project Plans	
Appellants' Contentions	



County Resolutions/Findings/Conditions
Site Photos
Revetment Detail
Depiction of Maximum GSA

I. SUMMARY OF APPELLANTS' CONTENTIONS

(See Exhibit 3 for the full texts)

Appellants Commissioners Wan and Potter contend that the County violated the LCP in the following ways:

1. Cayucos Urban Communitywide Standard 2.a. of the Estero Area Plan requires a 25-foot minimum bluff setback unless a geologic report indicates that a *larger* setback is necessary, not a smaller setback as approved by the County.
2. Coastal Plan Policies 1, 4, and 6 for Hazards require that new development be set back from bluff tops a distance to withstand erosion for 75 years *without* the need for a shoreline protection structure, not setback minimally *and* with a shoreline protective structure as approved by the County.
3. The Coastal Zone Land Use Ordinance allows shoreline protective structures to protect *existing* structures, not a new house, and requires a blufftop setback that is the *larger* of a stringline setback or a geologic report-determined setback that would provide erosion protection for 75 years *without* a shoreline protective device.
4. The Coastal Zone Land Use Ordinance allows for the approval of a variance only when specific findings can be made that the variance does not constitute a grant of special privileges inconsistent with other properties in the vicinity. The variance granted by the County constitutes a special privilege because other new development in the area is, and has been, required to comply with the 25-foot setback requirement. Furthermore, the applicant would be able to comply with this setback requirement and still be able to construct a reasonably sized residence on the property. The variance is also inconsistent with the aforementioned LCP Policies because a seawall will be required to protect the new development.

II. LOCAL GOVERNMENT ACTION

On June 29, 1999, the San Luis Obispo County Planning Commission approved the coastal development permit and a variance for the demolition of an existing 900 square foot residence and the development of a 3,500 square foot single family dwelling with a reduced setback of approximately 2 feet (from 25 ft.) from the existing blufftop and approximately 15 feet from the top of a reconstructed bluff, and a riprap seawall. Please see Exhibit 4 for the complete text of the resolution and the County's findings and conditions.



III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, as is the case for this project.

IV. STAFF RECOMMENDATIONS

A. Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-99-50 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a NO vote. Passage of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.



RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-3-SLO-99-50* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. Staff Recommendation on Coastal Development Permit

MOTION: *I move that the Commission approve Coastal Development Permit No. A-3-SLO-99-50 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, will be in conformity with the certified Local Coastal Program of the County of San Luis Obispo and will be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

V. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.



3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VI. SPECIAL CONDITIONS

1. Scope of Permit

This permit authorizes, subject to the standard conditions above and the special conditions below, the demolition of the existing home and construction of a new residence without a seawall, rock armor, or other shoreline protective device. Except where in conflict with the revised project approved by this permit, and these conditions of approval, all conditions of San Luis Obispo County's approval of this project (attached as Exhibit 4) continue to apply.

2. Revised Plans

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit two copies of revised plans to the Executive Director for review and approval. The revised plans shall show the proposed house set back a minimum of 25 feet from the bluff edge and without a seawall, rock armor or other shoreline protection device.

3. Drainage/Erosion Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a plan for erosion and run-off control that has been approved by the County pursuant to local conditions of approval number 4 and 19, and incorporates the following provisions.



Where there are conflicts between the requirements of this condition and the County approval, the terms of this permit shall control.

- A. The erosion and run-off control plan shall demonstrate that:
- (1) During construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties, including the adjacent beach.
 - (2) The following temporary erosion control measures shall be used during construction as necessary and appropriate: sand bags, a desilting basin, and silt fences.
 - (3) The following permanent erosion control measures shall be installed: a drain to direct roof and front yard runoff to the street; no drainage shall be directed to the rear yard slope or bluff or beach area.
- B. The plan shall include, at a minimum, the following components:
- (1) A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed in order to direct drainage away from the bluff and beach.
 - (2) A site plan showing the location of all temporary erosion control measures.
 - (3) A schedule for installation and removal of the temporary erosion control measures.
 - (4) A site plan showing the type and location of all permanent erosion control measures, drainage features, and finished grades at two-foot contour intervals.
 - (5) A schedule for installation and maintenance of the permanent erosion control measures and drainage features.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Assumption of Risk/Shoreline Protection

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- (a) The applicant acknowledges and agrees that the site may be subject to hazards from waves, flooding, liquefaction, erosion, and wildfire.
- (b) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.



- (c) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- (d) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- (e) The applicant agrees that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.
- (f) The applicant shall not construct, now or in the future, any shoreline protective device(s) for the purpose of protecting the residential development approved pursuant to coastal development permit A-3-SLO-99-050 including, but not limited to, the residence, foundations, decks, or driveways in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives any rights to construct such devices that may exist under Public Resources Code Section 30235.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

VII. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

A. Project Location and Description

The site of the proposed project is a lot on the seaward side of Pacific Avenue in the community of Cayucos in San Luis Obispo County, about one and a half miles north of the City of Morro Bay (see Exhibit 1). The 4,200 square foot lot is about 40 feet wide, 117 feet long on the north side, and 110 feet long on the south side. The surface elevation of the lot is comparable to that of the adjoining lots. The present blufftop is approximately 20 feet in height and is defined by a "U" shaped gully in the center of the site, created as a result of uncontrolled runoff (please see Exhibit 5).



At the base of the bluff is a wide sandy beach with a few rock outcroppings. A riprap seawall protects the existing house to the south and a concrete block seawall protects the house directly to the north. As seen in Exhibit 5, shoreline protective devices line nearly the entire coastline surrounding the subject site. Many of these seawalls were constructed without the benefit of a coastal development permit in response to the large storms of 1983. Subsequently, many of the structures appear to have been permitted by the Commission, although the particular legal status of each structure is still being researched.

The geology report (Earth Systems Consultants, March 17, 1998) determined an average bluff retreat rate of 2 inches per year in the serpentine bedrock exposed in the bluff and 4 inches per year on the northern portion of the site, adjacent to the concrete block seawall. The report concludes that on the basis of a 2 inch per year retreat rate, a 75-year bluff retreat of 12.5 feet can be assumed. However, based on a 4 inch per year retreat rate, as noted for the northern portion of the bluff, a greater bluff retreat of 25 feet can be assumed. The variance granted by the Planning Commission allows for a setback reduction from the planning area standard of 25 feet to approximately 2 feet from the existing bluff and approximately 15 feet from the top of a "reconstructed" bluff.

The proposed seawall is a riprap structure keyed into the bedrock at the base of the bluff, extending a vertical distance of about 14 feet. As approved by the County, the proposed riprap will abut the seawall to the north and tie into the existing riprap revetment to the south. Please see Exhibit 6 for a cross-section of the proposed riprap revetment.

B. New Development, Blufftop Setback, and Seawalls

The appellants contend that the proposed new house with a reduced blufftop setback and a seawall is inconsistent with LCP requirements regarding minimum setback standards and the restriction of constructing shoreline structures to protect existing development.

1. Applicable LCP Policies:

Hazards Policy 1: New Development. *All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers.*



Hazards Policy 4: Limitations on the Construction of Shoreline Structures. *Construction of shoreline structures that would substantially alter existing landforms shall be limited to projects necessary for:*

- a. *Protection of existing development (new development must ensure stability without depending upon shoreline protection devices); . . .*

Hazards Policy 6: Bluff Setbacks. *New development or expansion of existing uses on bluffs shall be designed and set back adequately to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures which would require substantial alterations to the natural landforms along bluffs and cliffs . . .*

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.118: Blufftop Setbacks. . . . *The required setback shall be the larger of the two required by subsections a. and b. of this section.*

- a. *Stringline setback method: . . .*
 - (1) *A line between the most seaward portions of the structures on the adjacent lots; or*
 - (2) *where there is substantial variation of land form between adjacent lots, the average setback of structures on the adjoining lots shall be used.*
- b. *Bluff retreat setback method: New development or expansion of existing uses on bluffs shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protective structures that would in the opinion of the Planning Director require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist . . . that indicates that the bluff setback is adequate to allow for bluff erosion over the 75-year period . . .*

CZLUO Section 23.05.090: Shoreline Structures . . .

- a. *Where allowed: . . .*
 - (1) *Protection of existing coastal development . . .*

Cayucos Urban Area Communitywide Standard 2: Setbacks - Community.

- a. *Bluff setbacks. 25-Foot minimum unless a geologic report prepared by a registered civil engineer or other qualified professional indicates that a larger setback is necessary to withstand 75 years of bluff erosion.*



2. Analysis:

The County's approval would allow the proposed house to be as close as two feet from the existing bluff edge and approximately 15 feet from the proposed fill and reconstruction of the bluff, and would allow the construction of a proposed seawall to protect the *new* development. The riprap would cover the majority of the bluff face (approximately 14 feet in height) and be continuous across the face of the bluff from north to south, tying into the existing seawalls on either side. The riprap would extend onto the sandy beach at a minimum of five feet from the base of the bluff, covering an area of at least 200 square feet of sandy beach. The beach in this vicinity is owned by California State Parks and managed by the County of San Luis Obispo (see Access Findings below for more detail).

The LCP does not allow shoreline protective devices for new development. Seawalls are allowed to protect *existing* development only. Furthermore, all new structures are required to be set back from the bluff edge a sufficient distance so that they will not need any protection from bluff erosion, specifically for a minimum of 75 years. CZLUO Section 23.04.118 specifies that the setback shall be the *larger* of the stringline method or the bluff retreat method, in which a geologic report is used to determine the 75-year setback. Finally, Cayucos Urban Area Communitywide Standard 2, which is controlling in this case, specifically requires a *25-foot minimum setback* from the bluff edge unless a geologic report requires a *larger* setback. The geologic reports in this instance established an erosion rate of two inches per year along the southern portion of the bluff, and four inches per year along the northern portion, which equates to 12.5 to 25 feet over 75 years. Accordingly, the LCP standard for blufftop setback is clearly 25 feet, not two feet as approved by the County.

As approved by the County, this project is inconsistent with LCP Hazards Policies 1,4, and 6, CZLUO Sections 23.04.118 and 23.05.090 and Cayucos Urban area Communitywide Standard 2. Therefore a substantial issue is raised.

VIII. DE NOVO FINDINGS AND DECLARATIONS

1. New Development, Blufftop Setback, and Seawalls

The LCP's general policy is that new development be set back from ocean bluffs a distance that would provide for protection from erosion for a minimum of 75 years (LCP Hazards Policy 6). As discussed above, the San Luis Obispo County LCP, in the Estero Area Plan, specifically requires a *minimum* 25-foot setback from the bluff edge in this area of Cayucos. Setbacks are necessary to protect structures from erosion of the coastal bluff for the life of the structure. On a site that has a relatively low bluff (approximately 20 feet) as this site has, the required 25-foot setback also provides protection from the damaging effects of waves, generated by large storms that may overtop the bluff. In this case, the County approved a new house, a new seawall, and a variance to allow the house to be as close as two feet to the edge of the bluff. The applicant requested a variance to allow him to have his house at essentially the same distance back from



the bluff edge as his neighbors' houses while using the riprap seawall to provide a consistent and reasonable line of defense against erosion with adjacent seawalls. However, as discussed below, there is no basis for a variance and seawalls are not allowed by the LCP in this circumstance.

a. No Basis for a Variance

A variance can be approved only when the approving body makes five findings, as required by the Government Code. The five findings, as listed in Coastal Zone Land Use Ordinance Section 23.01.045 of the LCP, are as follows:

1. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situated; and
2. There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title [the Coastal Zone Land Use Ordinance] would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
3. The variance does not authorize a use that is not otherwise authorized in the land use category; and
4. The variance is consistent with the provisions of the Local Coastal Program; and
5. The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

The findings made by the County are paraphrased as follows. They can be read in their entirety in Exhibit 4.

1. No special grant of privileges inconsistent with limitations on other properties in the vicinity and land use category are authorized because single family dwellings are an allowed use in the residential single family land use category.
2. There are special circumstances that apply to the property. These are that the property is relatively small, a drainage swale has created an unnatural erosion cut through the bluff, and a non-uniform erosion pattern is noted due to the existence of seawalls on both sides of the subject site.
3. The variance does not authorize a use not otherwise authorized in the land use category because single family residences are allowed uses in the residential single family category.
4. The variance is consistent with the LCP.



5. The granting of the variance does not adversely affect public health or safety, is not detrimental to public welfare, nor injurious to nearby property or improvements because the project is subject to building codes.
6. The existing seawall to the north of the subject site has experienced accelerated erosion and corrective work is needed on the Railsback's property to maintain the adjacent seawall to the north, and protect the neighboring structure.
7. The property cannot be developed with a reasonable sized home, and overall livability is compromised, if set to the 25 foot setback from the top of bluff.

Finding number 1 and finding number 3 are based on single family residences being allowed uses in the residential single family land use category. While this is true, this is not a situation, for example, of a simple reduction of a rear yard setback so as to allow development of a house which otherwise could not be reasonably developed. The setback reduction here is a bluff top setback reduction made possible only because a seawall would be constructed along with the house. The variance is not necessary to be able to develop the parcel.

Finding number 2 appears to indicate that the drainage swale running through the parcel makes it necessary to reduce the bluff setback in order to develop the site and finding number 7 indicates that a reasonably sized home could not be constructed if it were set back to comply with the CZLUO. In contrast to these findings, the site could be developed with an adequately sized single family home if set to the 25-foot blufftop setback, as required. The proposed residence is 3,500 square feet, which is the maximum gross structural area allowed in this residential area. If set back to comply with the CZLUO, the applicant could construct a home of about 3,800 square feet on the site (in excess of about 300 square feet of the allowed GSA), consistent with design policies for the area, and without a seawall (please see Exhibit 7 for depiction).

Finding number 4 states that the variance is consistent with the LCP. A variance cannot be granted unless the approving body determines, by making the required findings, that the variance satisfies the criteria of the Government Code. Here, the Government Code requires a finding that the variance is consistent with the LCP. Clearly, the variance is not consistent with the LCP since the LCP does not allow seawalls with new residential development.

There is no substantiation in the record for finding number 5.

Finding number 6 is partially supported by statements made by Earth Systems Consultants in their June 10, 1999 summarization of the condition of the adjacent seawall; however, there is no substantiation for the necessity of the proposed seawall to protect the neighboring residence to the north. Neither property owners, to the north or south, have made application for a seawall on the Railsback site in order to protect their homes, no geotechnical data has been presented that demonstrates that either of the neighboring residences are threatened by accelerated erosion or failure of existing seawalls, and no alternatives to abate the assumed risk of seawall failure have



been submitted. Therefore, this finding made by the County does not substantiate that the proposed seawall is necessary to prevent imminent danger.

Summarizing, there is no basis for a variance that would allow the house to be built as close as two feet to the bluff edge. The existence of the drainage does not necessitate a variance to the required bluff setback so that a house can be built, the variance is clearly inconsistent with the LCP, no evidence exists which necessitates the proposed seawall to protect neighboring structures, and a reasonably sized home could be constructed on the site, in conformance with LCP standards.

b. Seawalls are not allowed For New Development

As discussed above, the San Luis Obispo County LCP allows shoreline structures only for existing development. It specifically prohibits new development that needs a shoreline structure in order to be developed and new development that includes a seawall (Hazards Policy 1 and Coastal Zone Land Use Ordinance Section 23.05.090). This project, which is new development, was approved with a shoreline protective device. This directly conflicts with the requirements of the LCP, and cannot be approved.

This site could be developed with an adequately sized single family home similar to those in the neighborhood. As approved by the County, the house would be approximately 3,500 square feet (2,930 square feet living area, 570 square feet garage), resulting in approximately 62 percent site coverage. If the house was set back the required 25 feet, it would still be possible to construct a home of about 3,800 square feet on this site (although only 3,500 of gross structural area is allowed by the LCP), consistent with design policies for the area and without a seawall. According to the erosion rates contained in the submitted geologic information, a setback of 25 feet will prevent the need for a seawall to be constructed over a 75 year period. Such a setback is necessary to achieve project compliance with Section 23.04.118b of the CZLUO, as well as Cayucos Urban Area Community Wide Standard 2a.

In support of the proposed shoreline structure and setback variance, one of the geotechnical reports prepared for the project states:

...the Mannett (neighbor to the north) property appears to require the seawall and associated backfill to provide support for the house, the loss of the wall could have catastrophic consequences.... The easterly end of the wall including the 'return' portion which extends back along the Railsback property line has severe damage and is being undermined by erosion.... As indicated, the existing seawall is critical to the support for the existing house. Loss of the seawall could pose an immediate threat to the house. The condition of the wall, particularly along the common property line with the Railsback property is considered critical at this time.



However, due to the fact that no specific evidence of imminent hazard at the subject site or neighboring property has been presented by the applicant, the above statement cannot be deemed conclusive.

Finally, while it is true that shoreline structures protect existing houses on both sides of the subject lot and on many of the other lots in the neighborhood, some of these may have been illegally constructed in response to the major winter storms of 1983. Commission files indicate that in excess of 20 seawalls were illegally constructed after the 1983 winter storms, although most of these appear to be located along Studio Drive at the south end of Cayucos. Further research is needed to establish the status of adjoining seawalls and other seawalls in the vicinity of the project. In other words, the status of the adjacent seawalls cannot, at this time, be considered one way or another in this appeal.

In addition, rather than approving seawalls for protection of structures on a lot-by-lot basis, a program should be developed to address legality of existing seawalls, cumulative effects of seawalls on coastal resources, and erosion and protection of structures along all of the Cayucos bluffs. The Commission recently acknowledged this need in a similar action in Cayucos (King A-3-SLO-98-074, approved with 25 foot setback), wherein the Commission prohibited the construction of a future shoreline device unless it was approved as part of a comprehensive, coordinated assessment of shoreline erosion and optimum design responses in the vicinity of the project. Since that time, though, the Commission has taken the approach recommended here, namely, the prohibition of any future shoreline protection devices for new development, which is clearly required by the San Luis Obispo County LCP. For example, the Commission recently approved a single family home in Capitola on a vacant lot between adjacent shoreline structures, and imposed the future seawall prohibition condition (A-3-CAP-99-023).

In conclusion, the LCP is very clear in requiring a 25-foot blufftop setback (or more) along the Cayucos waterfront. In this case, no more than 25 feet is needed for LCP conformance, because the 25 foot standard exceeds the minimum 12.5 foot erosion setback specified by the geotechnical data, and meets the potential erosion setback of 25 feet based on a maximum erosion rate of 4 inches per year, for this lot. Finally, and most importantly, through project redesign, the proposed residential use can be feasibly shifted landward a sufficient distance to both avoid the need for a seawall and to meet the LCP's 25 foot blufftop setback standard. As conditioned to require such redesign, the project will conform to the applicable LCP sections cited above.

2. Drainage

The applicant proposes to convey rainwater from downspouts in two collectors located at the north and south sides of the lot (see Exhibit 2 – Drainage Plan). Two area drains near the western end of the site are proposed to collect surface runoff, which will join the rainwater collectors in either side yard. As approved by the County, drainage would be directed to the blufftop side of the development.



Coastal Watershed Policy 10 of the LCP states:

Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses.

Coastal Hazards Policy 2 states:

New development shall ensure structural stability while not creating or contributing to erosion or geological instability.

Few details concerning the parameters of the drainage situation on this site are provided in the local record, including what effect, if any, there might be on adjoining properties. It is important that onsite drainage be directed away from the blufftop to minimize the potential for increased erosion of the bluff. It is also important that storm flows be directed to a storm drain or suitable watercourse where available. Condition 3, therefore, requires that the applicant submit a final drainage and erosion control plans to ensure that proper measures are taken to collect and direct rainwater and surface runoff to appropriate stormwater drains, without eroding adjoining properties, the bluff, or the beach.

3. Public Coastal Access and Recreation

Although none of the appellants stated any contention with the County's action relative to access, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

a. Applicable Policies:

Coastal Act Section 30210. *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*



Section 30212. *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby. . . .*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

LCP Shoreline Access Policy 2: New Development. *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development*

Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.420: Coastal Access Required. *Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section*

d. Type of Access Required:

(1) Vertical access:

(i) Within an urban or village area where no dedicated public access exists within one-quarter mile of the site

(3) Lateral Access Dedication. All new development shall provide a lateral access dedication of 25 feet of dry sandy beach

b. Analysis

Currently, there is adequate vertical access within one-quarter mile of the site. Improved accessways leading to the beach are located three lots to the south (about 120 feet) and six lots to the north (about 280 feet), so no vertical access is required to be provided by this project. Since the beach is owned by the Department of Parks and Recreation as part of Paso Robles Beach and operated by San Luis Obispo County, lateral access for the public is already guaranteed. Although the County conditioned the project to require the applicant to record an offer to dedicate lateral access, the Commission finds that a dedication of lateral access is not needed since the beach is publicly owned and operated. However, a revetment similar to the one proposed would cover approximately 200 square feet of beach. Surveys would establish whether or not such a revetment would be on State Parks property, thereby encroaching on existing public beach. If surveys determined that the shoreline structure were located on public property, an encroachment permit would be needed from State Parks. More important, mitigation for the impact of the project on sandy beach would be needed as well. Finally, because the site is a small residential lot in an area designated for residential use and developed with residences, commercial recreational activities would not be appropriate on this site. Therefore, the lot need not be reserved for public or commercial recreational use.



In any event, because the proposed shoreline structure is not allowable under the LCP, or necessary to avoid erosion hazards, any impacts to public access are avoidable. Therefore, as conditioned to prohibit the revetment, the project is consistent with Coastal Act Sections 30210, 30211, and 30212 regarding public access and with Coastal Act Section 30221 regarding public recreation.

IX. 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 effects which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA.

The County's action of this project included environmental review by means of a negative declaration approved by the Board of Supervisors on July 7, 1998. This report has examined a variety of issues in connection with the environmental impacts of this proposal.

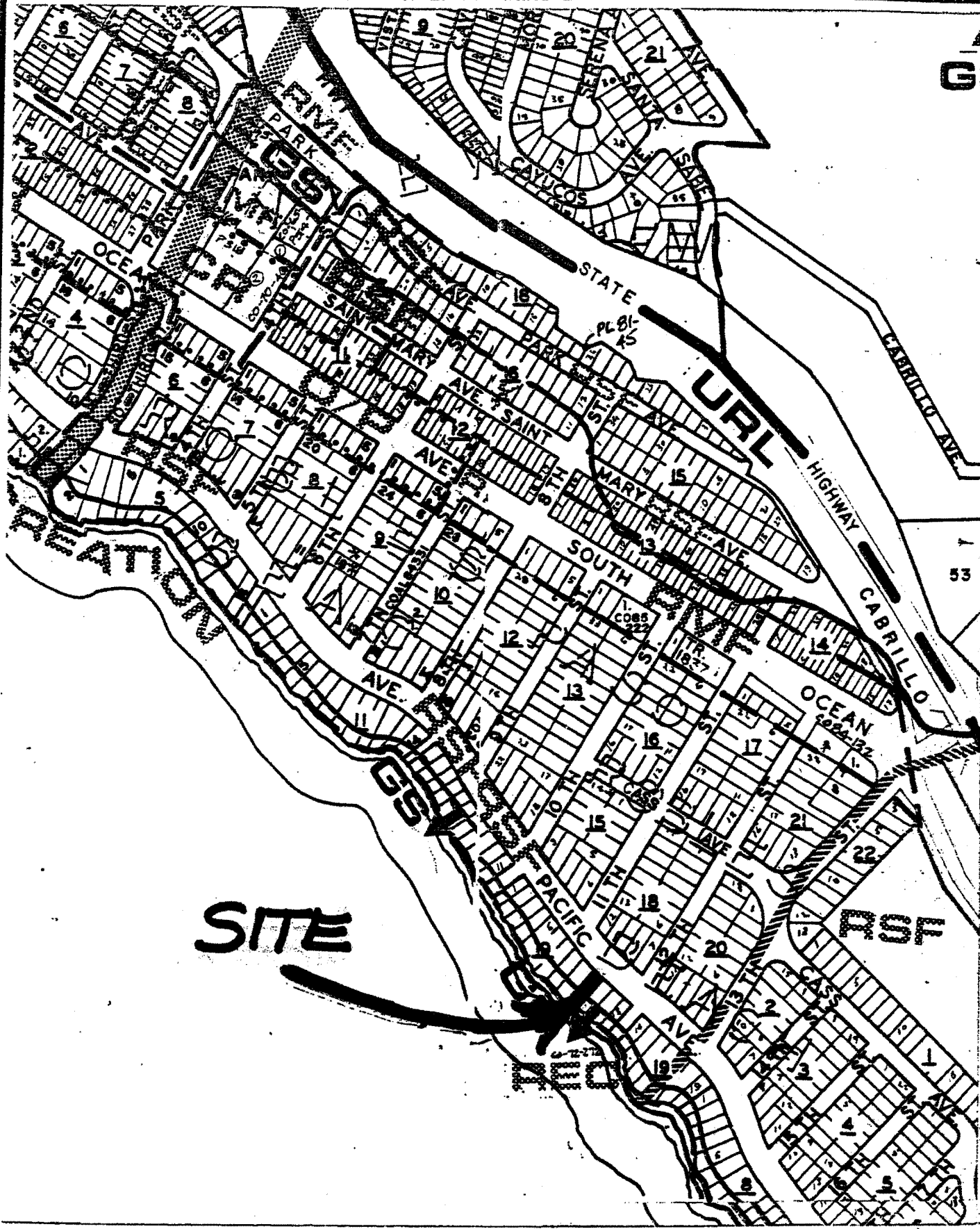
An alternative project design has been identified which would eliminate the need for a seawall and would better conform the project to the LCP's requirements for public view protection and small-scale design neighborhoods. This permit has been conditioned to require such alternative design. Accordingly, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse impacts on the environment within the meaning of CEQA.





Exhibit 1⁸⁴
(1 of 2)

A-3-SLD-99-060



PROJECT

RAILSBACK D980051V/D980050P



EXHIBIT

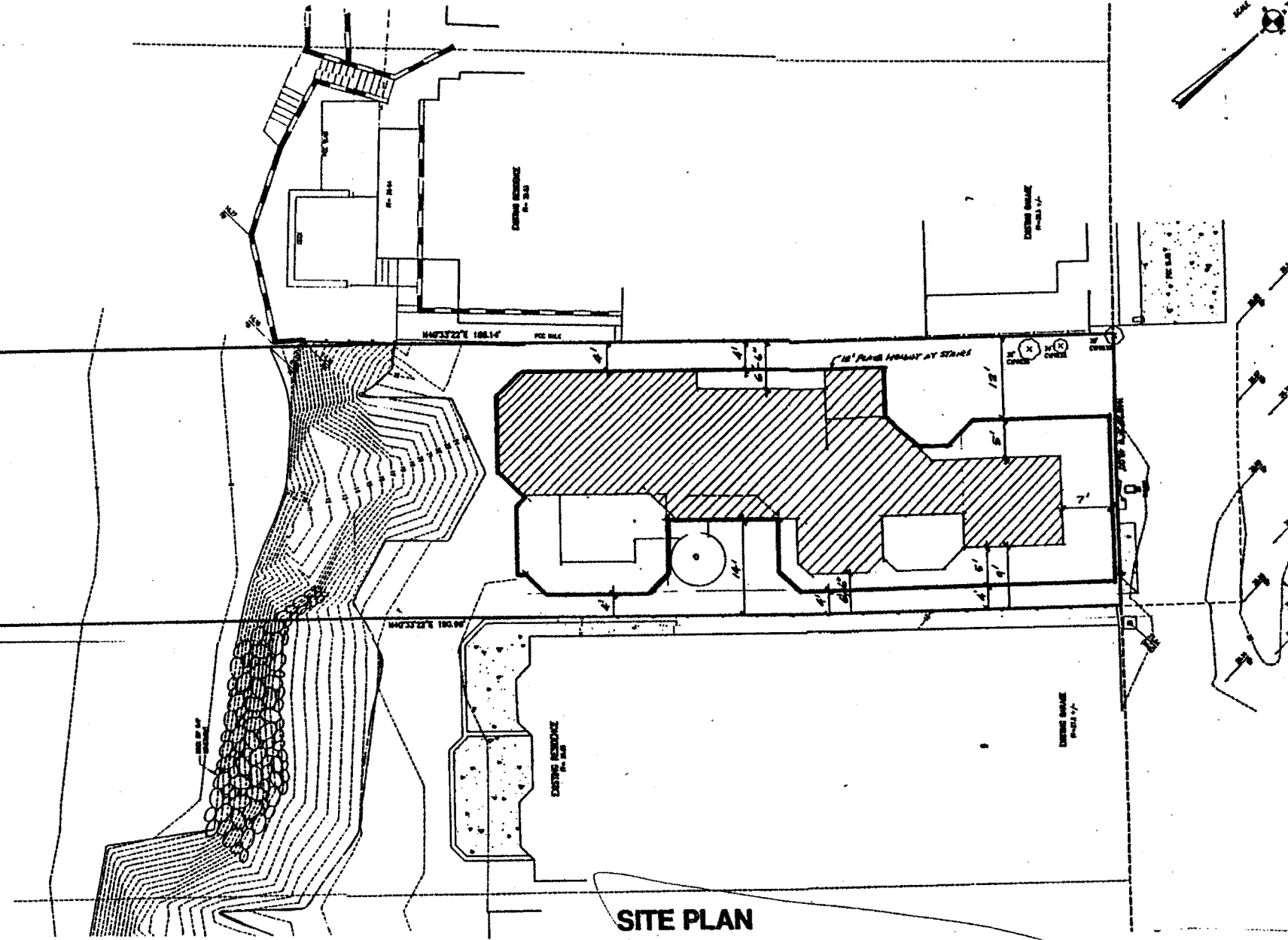
LOCATION

Exhibit 1
(2 of 2)

© JOHN M. PRIOR, ARCHITECT, 1999. The ideas, designs, artwork and arrangements expressed by the individual of collective words and drawings on this page are the property of the architect. Their use shall be restricted to the projects for which they were prepared. No part shall be copied, disclosed or others, or used in any other work, project or publication, without the written consent of John M. Prior, Architect.

PACIFIC OCEAN

Exhibit 2
(2 of 4)



SITE PLAN

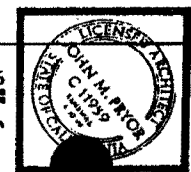
D980051 V



SHERMAN & MAUREEN
RAILSBACK
4110 FOREST HILL DRIVE
LA CANADA, CA 91011

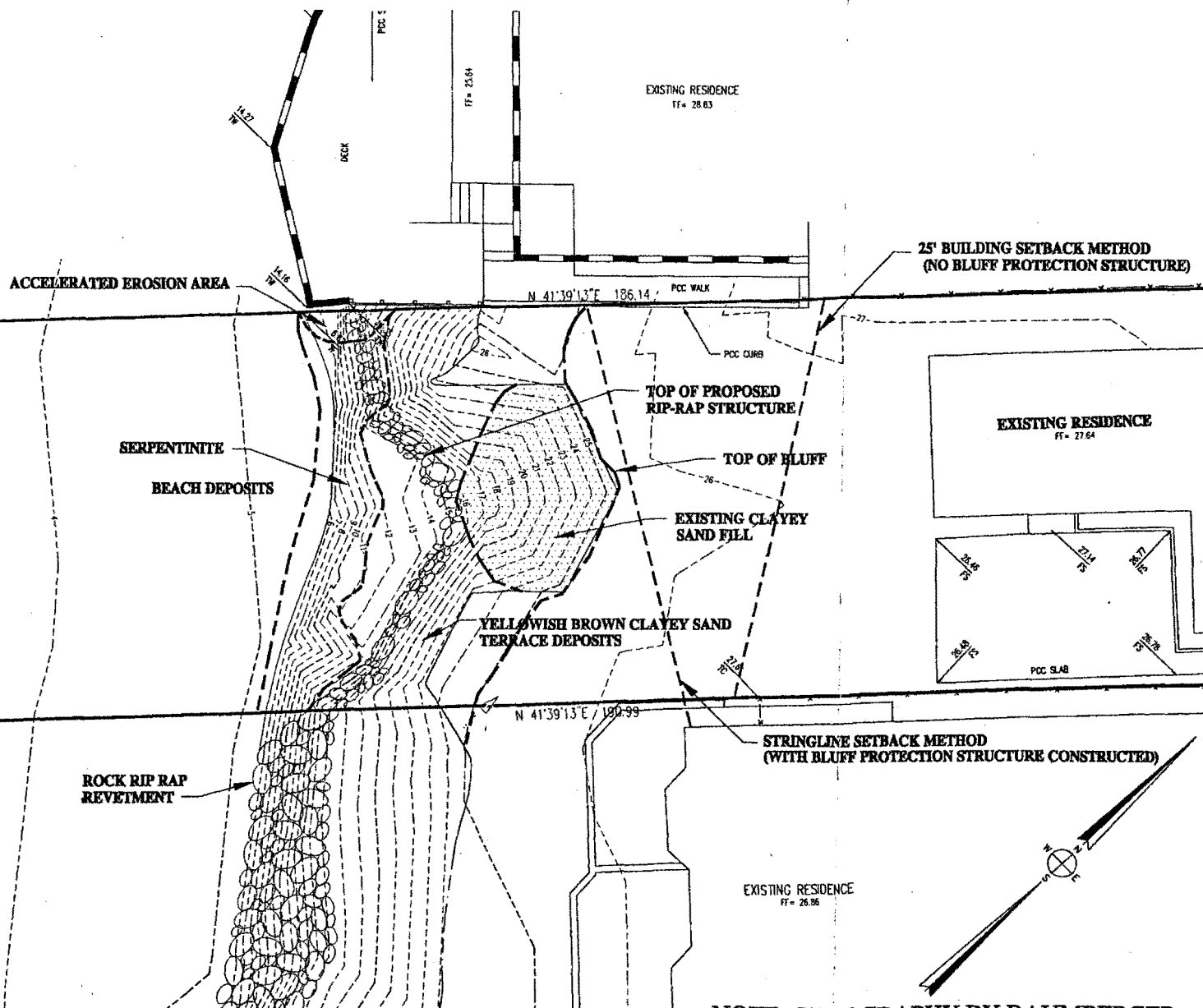
MINOR USE PERMIT/VARIANCE
BEACHFRONT RESIDENCE
1120 PACIFIC AVENUE, CARMICHAEL, CA 93906

P.O. BOX 746, SAN LUIS OBISPO, CA. 93406
John M. Pryor ARCHITECT
(805) 541-5130



PACIFIC OCEAN

Exhibit 2
(3 of 4)



TOPOGRAPHIC MAP

RAILSBACK PROPERTY
1120 Pacific Avenue
Cayucos, California



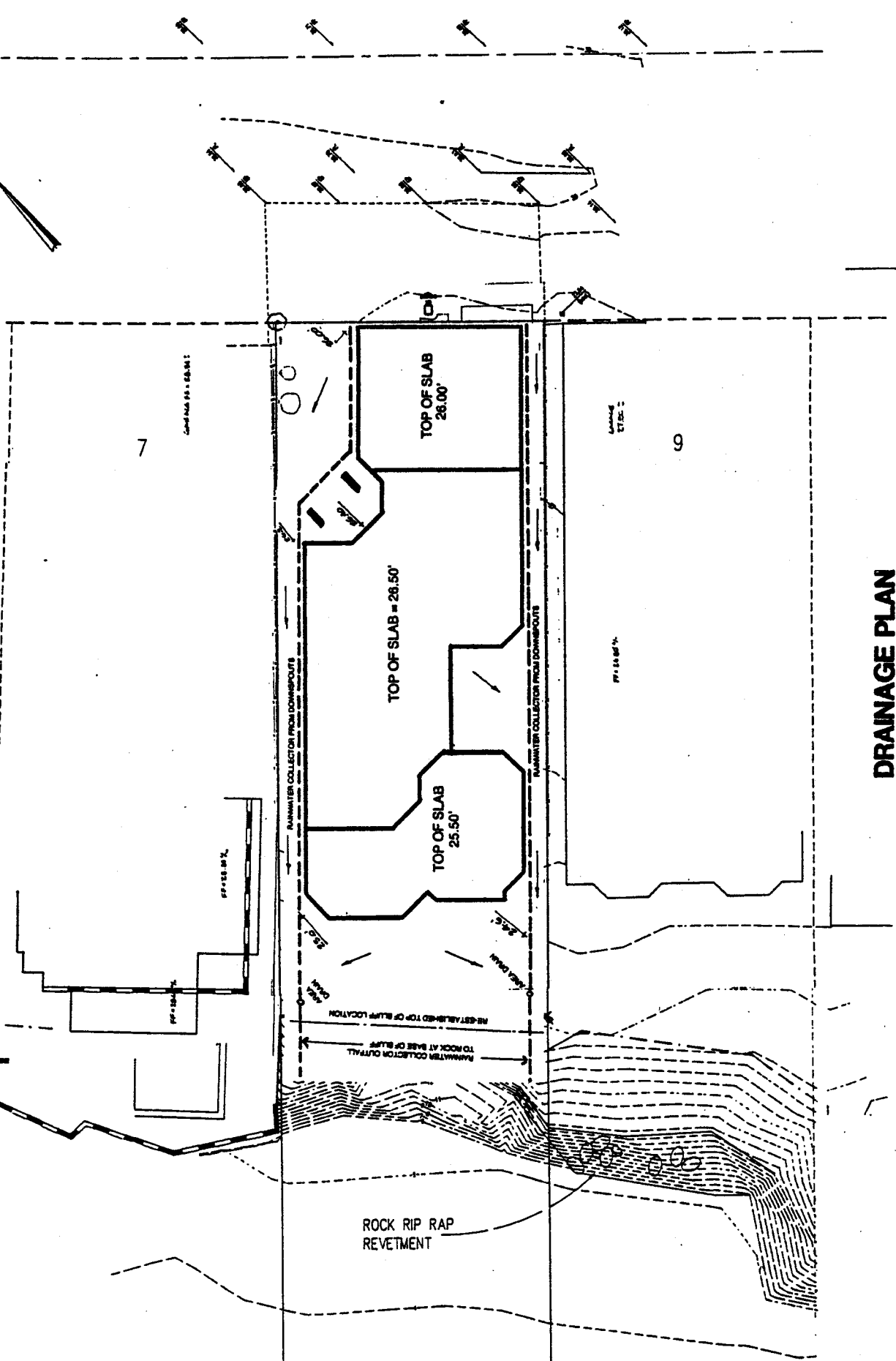
Earth Systems Consultants
Northern California
February 24, 1998

4378 Santa Fe Road, San Luis Obispo, CA 93401
(805) 544-3276 (805) 544-1786 FAX
NGG10858-01

NOTE: TOPOGRAPHY BY BAUMBERGER
NOT TO SCALE

EC

PACIFIC AVENUE



DRAINAGE PLAN

D980051 V

SHERMAN & MAUREEN
RAILSBACK
4110 FOREST HILL DRIVE
LA CANADA, CA 91011

MINOR USE PERMIT / VARIANCE
BEACHFRONT RESIDENCE
1120 PACIFIC AVENUE, CAYUCOS

JOHN M. PRYOR ARCHITECT
P.O. BOX 746, SAN LUIS OBISPO, CA. 93406
(805) 541-5130

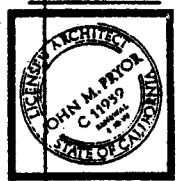


Exhibit 2
(4 of 4)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(931) 427-4863



REASONS FOR APPEAL: San Luis Obispo County Variance/Coastal Development Permit D980051V and Minor Use Permit/Coastal Development Permit 980050P (Railsback)

The San Luis Obispo County Planning Commission's approval of a new single family residence and seawall, with a Variance from bluff top setback requirements, is inconsistent with the following provisions of the San Luis Obispo certified Local Coastal Program, for the following reasons:

1. The Cayucos Urban Area Community-wide Standard 2.a. of the Estero Area Plan requires a 25-foot minimum bluff setback unless a geologic report indicates that a larger setback is necessary to withstand 75 years of bluff erosion. In this case, the project will be setback only 2 feet from the existing bluff top.
2. Coastal Plan Policies 1, 4, and 6 for Hazards require that new development ensure stability through means other than the construction of shoreline protection devices, and be setback from bluff tops a sufficient distance to withstand erosion for a period of 75 years without construction of shoreline protection structures. In this case, the stability of the new development is dependent upon the construction of a new shoreline protective device.
3. Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.118 establishes setback distances based on the larger of either the "stringline method" or the setback determined by a geologic report as being sufficient to withstand bluff erosion for a period of 75 years without a shoreline protection structure. In this case, the latter setback distance is greater and therefore the applicable standard. The project does not, however, comply with this standard because it is not setback sufficiently to avoid the need for a shoreline protective structure.
4. CZLUO Section 23.05.090 allows shoreline protective devices only where necessary to protect existing development, public beaches in danger from erosion, coastal dependent uses, or existing public roadway facilities to public beaches where no alternative route exists. In this case, a shoreline protective device is proposed to allow for new residential development rather than to protect an existing development.
5. CZLUO Sections 23.01.045 allows for the approval of a variance to CZLUO only when specific findings can be made, including that the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity, and that the variance is consistent with the LCP. In this case, the approval of a variance to setback requirements constitutes a grant a special privilege based on the fact that other new development in the area (i.e., the King residence, Coastal Development Permit A-3-SLO-98-074) have been required to comply with the 25 foot setback requirement. Furthermore, the applicant would be able to comply with this setback requirement and be able to construct a reasonably sized residence on the property. The variance is also inconsistent with the aforementioned LCP Policies because a seawall will be required to protect the new development.

Exhibit 3

PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, June 29, 1999

PRESENT: Commissioners Diane Hull, Doreen Liberto-Blanck, Cliff Smith, Chairman Pat Veasart

ABSENT: Commissioner Wayne Cooper

RESOLUTION NO. 99-51
RESOLUTION RELATIVE TO THE GRANTING
OF A MINOR USE PERMIT/COASTAL DEVELOPMENT PERMIT

WHEREAS, The County Planning Commission of the County of San Luis Obispo, State of California, did, on the 29th day of June, 1999, grant a Minor Use Permit/Coastal Development Permit to **SHERMAN AND MAUREEN RAILSBACK** for a Variance to bluff top setback requirements set by planning area standard from 25 feet to approximately 2 feet from the existing bluff and approximately 15 feet from the top of a reconstructed bluff and Coastal Development Permit/Minor Use Permit to demolish an existing approximately 900 square foot one-story, single family residence, construct a new approximately 3, 500 square foot two-story, single, family residence and construct a seawall to protect the new residence, in the Residential Single Family Land Use Category. The property is located in the county at 1120 Pacific Avenue, approximately 100 feet south of 11th Street, in the community of Cayucos, APN: 064-227-023, in the Estero Planning Area. County File Number: D980050P.

WHEREAS, The Planning Commission, after considering the facts relating to such application, approves this Permit subject to the Findings listed in Exhibit A.

WHEREAS, The Planning Commission, after considering the facts relating to said application, approves this permit subject to the Conditions listed in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 29th day of June, 1999, does hereby grant the aforesaid Permit No. D980050P.

Exhibit 4
(1 of 15)

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six months (6) or conditions have not been complied with, such Permit approval shall become void.

On motion of Commissioner Liberto-Blanck, seconded by Commissioner Hull, and on the following roll call vote, to-wit:

AYES: Commissioners Liberto-Blanck, Hull, Smith, Chairman Veasart

NOES: None

ABSENT: Commissioner Cooper

the foregoing resolution is hereby adopted.

/s/ Pat Veasart
Chairman of the Planning Commission

ATTEST:

/s/ Eleanor Porter
Secretary Pro Tem, Planning Commission

Exhibit 4
(2 of 15)

Exhibit A - Findings
Minor Use Permit/Coastal Development Permit
Railsback D980050P

- A. The proposed project or use is consistent with the Local Coastal Program and the Land Use Element of the general plan because it is a principally permitted use allowed by Table "O" of the Land Use Element and Local Coastal Plan.
- B. As conditioned, the proposed project or use satisfies all applicable provisions of this title.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the uses because the building code and setback requirement will insure that it will not be detrimental to health, safety or welfare.
- D. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because it is a single family residence located in an area with other single family residences.
- E. The proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because it is a single family residence located on Pacific Avenue, which is a local street capable of carrying the additional traffic generated by the project.
- F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because it will not inhibit access to coastal waters and recreation areas and because a lateral access dedication will be provided by the applicant, if the property extends seaward of the toe of the bluff, and a vertical access exists approximately 100 feet to the south of the site.
- G. On the basis of the Initial Study and all comments received there is no substantial evidence that the project will have a significant effect on the environment.

Exhibit 4
(3 of 15)

Exhibit B
Conditions
Railsback D980051V/D980050P

Approved Development

1. This approval authorizes the demolition of the existing single family residence at 1120 Pacific Avenue provided the necessary demolition permits are secured from the Building Division of the County Department of Planning and Building.
2. This approval authorizes the construction of a single family residence and seawall that is consistent with the following standards:

Design style - Generally consistent with the plans submitted with the project

Height - Not to exceed 15 feet measured from the midpoint of the centerline of the street.

Front (street) setback - Zero feet

Side setbacks - Four feet for the first story and an additional 2.5 feet for second story except that 30% of the upper story side wall may align with the lower floor wall provided it is within the rear two-thirds of the structure.

Rear setback (bluff) - Two feet

Total maximum gross floor area including garage - 3,500 square feet

Seawall to a maximum elevation of 14 feet above sea level and in accordance with the Geologic Bluff Study report dated March 17, 1998 prepared by Earth Systems Consultants.

Survey/Staking

3. **At least 10 days prior to issuance of construction permits**, the applicant shall provide a survey of the site and physically stake the rear bluff top setback, front corners of the lot, and the south and north side setbacks, and notify the Development Review Section so an inspection can be made to verify the building location. This verification is subject to annual review until the foundation is in place.

Erosion and Sedimentation Control

4. **Prior to issuance of construction permits**, the applicant shall submit to the Planning Division of the Department of Planning and Building and the County Engineering Department for review and approval a sedimentation and erosion control plan in compliance with Section 23.05.036 of the CZLUO.

Exhibit 4
(4 of 15)

Fire Safety

5. **Prior to issuance of a certificate of occupancy or final inspection, the applicant shall comply with the requirements of the Cayucos Fire Protection District.**

Coastal access

6. **Prior to issuance of a construction permit, the applicant shall execute and record an offer of dedication for public access along the shoreline. The offer of dedication shall provide for lateral access of twenty-five (25) feet of dry sandy beach along the shore to be available at all times during the year, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than twenty-five (25) feet. The offer shall be in a form acceptable to County Counsel, and shall be approved by the Planning Director and the Executive Director of the California Coastal Commission prior to the issuance of a construction permit.**

Consent of Owner

7. **Prior to issuance of construction permits, the applicant shall provide a signed and dated Consent of Owner form from the Department of Parks and Recreation for any work for the seawall or any other work proposed by the applicant located on State Parks' land.**

Seawall

8. **Prior to issuance of building permits, the applicant shall provide to the Development Review Division of the Department of Planning and Building engineered plans for the seawall to be constructed to the 14' elevation above sea level following the recommendations of the Geologic Bluff Study report date March 17, 1998 prepared by Earth Systems Consultants.**
9. **The applicant shall place the toe of the new seawall as close as feasible to the existing toe of bluff. Prior to issuance of building permits, the applicant shall provide a letter from the engineering geologist of record confirming that this has been accomplished.**
10. **All excess excavated material, if any, other than clean beach sand shall be removed from the beach prior to the next high tide following excavation. Such material shall be disposed of in either an approved fill location or a permitted landfill.**
11. **All equipment used for seawall construction shall be removed from the beach at the end of the working day. If high tides encroach into the construction area, such equipment shall also be removed from the wetted beach area during each tidal cycle.**
12. **No fueling or scheduled maintenance of equipment shall occur on the beach. Equipment shall be removed from the sandy beach for such activities.**

*Exhibit 4
(5 of 15)*

13. All equipment shall be inspected for leakage of petroleum products (e.g. gasoline, diesel fuel, hydraulic oil) or antifreeze on a daily basis. Equipment showing obvious signs of such leakage shall not be used on the beach.
14. All heavy equipment access-ways onto the beach, if any, shall be restored to pre-construction conditions prior to final inspection of the seawall. New or temporary equipment access-ways onto the beach may require additional review and permits.
15. Spillage of any petroleum product on the beach requires immediate notification of the proper authorities. In the event of a spill, notification shall be accomplished as follows:
 - a. During normal business, notify the County Division of Environmental Health at (805) 781-5544.
or,
During "off" hours, contact the San Luis Obispo County Sheriff at (805)781-4553 or (805) 781-4550 and request to be connected with the On-duty Hazardous Materials Coordinator at County Environmental Health.
 - b. Contact the State Department of Fish and Game, Office of Oil Spill Prevention and Response at (805) 772-1756 (24 hours).

If the spill presents an immediate or imminent hazard to life and/or safety, call 911.

Geologic Hazards

16. **During project construction/ground disturbing activities**, the applicant shall retain the engineering geologist of record and shall provide the engineering geologist's written certification of adequacy of the proposed site development for its intended use to the Department of Planning and Building.
17. **Prior to occupancy or final inspection, whichever occurs first**, the soil engineer and engineering geologist of record shall verify that construction is in compliance with the intent of the reports prepared by Earth Systems Consultants dated February 6 (residence) and February 28, 1995 (seawall). This verification shall be submitted to the Department of Planning and Building for review and approval.
18. **Prior to issuance of building permits**, the applicant shall submit to the Development Review Division of the Department of Planning and Building engineered foundation plans which follow the recommendations of the geotechnical report dated March 17, 1998, prepared by Earth Systems Consultants, or as updated to reflect project redesign.

Exhibit 4
(6 of 15)

Drainage

19. **Prior to issuance of a construction permit**, the applicant shall submit a complete drainage analysis to the Department of Planning and Building and the County Engineering Department for review and approval. Surface water collected on the site should be discharged beyond the bluff face and the proposed rip-rap structure and shall be buried to the maximum extent feasible to avoid unsightly piping.
20. The drainage structures as currently proposed may be inadequately sized to convey storm water flows, and therefore may require enlargement. If more space is required to accommodate drainage structures or other facilities, no additional excavation into the site will occur as compared to that which is depicted on the current plans.
21. **Prior to occupancy or final inspection, whichever occurs first**, the applicant shall demonstrate compliance with the following drainage control measures outlined in the March 17, 1998 report prepared by Earth Systems Consultants:
 - a) Install roof gutters and check to make sure they are working properly, and that the discharge is collected and directed off site in a non-erosive manner.
 - b) Promote the growth of a deep rooted drought resistant cover. Proper vegetation can be an effective agent in reducing surface erosion. The vegetation acts to cushion the direct impact of rainfall, and protects the soil from the erosive effects of runoff. If properly selected and maintained, vegetation can also enhance soil stability.
 - c) Construct a "V" ditch 3 to 4 feet from the top of the bluff to reduce surface water running over the top of the bluff.
22. **Prior to issuance of building permits**, the applicant shall enter into an drainage easement/agreement with the County Engineering Department to accept the water in the new location.

Water and Sewer

23. **Prior to issuance of building permits**, the applicant shall provide to the Development Review Division of the Department of Planning and Building updated water and sewer will serve letters.
24. **Prior to final inspection**, the applicant shall comply with all requirements of the Cayucos Sanitary District.

Exhibit 4
(70F15)

PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, June 29, 1999

PRESENT: Commissioners Diane Hull, Doreen Liberto-Blanck, Cliff Smith, Chairman Pat Veasart

ABSENT: Commissioner Wayne Cooper

RESOLUTION NO. 99-50
RESOLUTION RELATIVE TO THE APPROVAL OF A
VARIANCE/COASTAL DEVELOPMENT PERMIT

WHEREAS, The County Planning Commission of the County of San Luis Obispo, State of California, did on the 29th day of June, 1999, grant a Variance/Coastal Development Permit to **SHERMAN AND MAUREEN RAILSBACK** for a Variance to bluff top setback requirements set by planning area standard from 25 feet to approximately 2 feet from the existing bluff and approximately 15 feet from the top of a reconstructed bluff and a Coastal Development Permit/Minor Use Permit to demolish an existing approximately 900 square foot one-story, single family residence, construct a new approximately 3,500 square foot two-story, single family residence and construct a seawall to protect the new residence, in the Residential Single Family Land Use Category. The property is located in the county at 1120 Pacific Avenue, approximately 100 feet south of 11th Street, in the community of Cayucos, APN: 064-227-023, in the Estero Planning Area. County File Number: D980051V.

WHEREAS, The Planning Commission, after considering the facts relating to such application, approves this Permit subject to the Findings listed in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 29th day of June, 1999, does hereby grant the aforesaid Permit No. D980051V.

Exhibit 4
(8 of 15)

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six months (6) or conditions have not been complied with, such Permit approval shall become void.

On motion of Commissioner Liberto-Blanck, seconded by Commissioner Hull, and on the following roll call vote, to-wit:

AYES: Commissioners Liberto-Blanck, Hull, Smith, Chairman Veessart

NOES: None

ABSENT: Commissioner Cooper

the foregoing resolution is hereby adopted. .

/s/ Pat Veessart

Chairman of the Planning Commission

ATTEST:

/s/ Eleanor Porter

Secretary Pro Tem, Planning Commission

Exhibit 4
(9 of 15)

Exhibit A - Findings
Variance/Coastal Development Permit
Railsback D980051V

- A. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated because it is consistent with other development in the neighborhood. Single family dwellings are an allowed use in the residential single family land use category.
- B. There are special circumstances applicable to the property, including size, shape, topography, location, and surroundings and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other properties in the vicinity and in the same land use category such as:
 - a) the property is relatively small, with the setback from the bluff further restricting the buildable area, and
 - b) a drainage swale has created an unnatural erosion cut through the bluff at the center of the property and the top of bluff, and
 - c) with seawalls to each side of this property, a non-uniform erosion pattern is noted and in fact specifically jeopardizes the adjacent structure to the north if no matching in-fill seawall is placed on the Railsback property.
- C. The variance does not authorize a use that is not otherwise authorized in the land use category because single family residences are allowed uses in the residential single family category.
- D. The variance is consistent with the provisions of the Local Coastal Program because:
 - a) The LCP and Land Use Element are satisfied in the variance approval because the Variance process and criteria for approval are well defined in the LCP as legitimate means of allowing a property owner use of their property.
 - b) Per the LCP, CZLUO Section 23.01.045, subsection a)1): "a variance is a land use permit".
 - c) Hazards Policies 1, 4 is not violated with this proposal because this shoreline protection device DOES NOT "alter landforms or natural shoreline processes".
 - d) Hazards Policy 6 is not violated with this proposal because the recommendations of the Geologist for 75 year erosion setback are met with the proposed design, AND is implemented pursuant to Section 23.04.118 of the SLO CZLUO via the Variance approval process and conditions more generally contained and addressed in Section 23.01.045 of the SLO CZLUO.

- E. Because this project is consistent with existing neighborhood development and conditions, the granting of this variance will not have any adverse affect on public health, safety or be materially detrimental to public welfare, and will not be injurious to nearby property or improvements.
- a) GeoSolutions notes that the safety and welfare of the neighboring property are threatened.
- b) This waiver of setback is consistent with the Estero Local Coastal Program, Coastal Policies and Coastal Zone Land Use Ordinance provisions.
- c) Specifically, Coastal Zone Land Use Ordinance Section 23.01.045 d) ii) indicates that findings supporting approval and granting of a variance may be based upon site conditions related to "shape, topography, location or surroundings and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity...".
- d) The shape and topography of this property are not natural. The accelerated bluff erosion around the existing ridged seawall design and the surface erosion of the bluff forming an unnatural erosion swale are due to the fact that this property specifically has NOT been upgraded with a bluff protection structure for the neighboring seawall nor for the concentrated erosion due to area development.
- e) The location of this property within a developed area necessitates that it reflect the same level of protection provided to adjacent area properties IN ORDER TO PROVIDE THEM WITH EQUAL PROTECTION, as evidenced by the Geosolutions report of seawall failure due to lack of protective device on this property.

As to Seawall

- F. The existing neighborhood rock outcroppings and numerous seawalls form a natural landform as a "line of defense" against wave induced erosion along the bluff as have been created through a history of pre-Coastal Commission, Coastal Commission and San Luis Obispo County's Local Coastal Plan approvals for bluff protection devices.
- G. Both the GeoSolutions and the EarthSystems reports cite that accelerated erosion has occurred at the point of wave action undercutting of the existing seawall to the north and it is in need of corrective work on the Railsback's property to maintain the natural landform and protect the adjacent seawall and residential structure from immanent failure.

As to a waiver of 25 foot building setback from the top of the natural bluff:

- H. The existing neighborhood residence structures form a precise "line of development" created through a history of pre-Coastal Commission, Coastal Commission and San Luis Obispo County's Local Coastal Plan approvals for the development of neighborhood homes.
- I. The proposed replacement structure and site improvements are a natural upgrading of existing development consistent with and similar to that which has occurred on long-existing neighboring throughout its history.
- J. EarthSystems Soils and Goetechnical report cites that the surface drainage erosion swale on this property is a manmade landform and not a natural landform. The uncontrolled surface drainage erosion swale is not due to natural processes of wave erosion.
- K. The use of the stringline setback and 75 year erosion rate from natural top of bluff as per the geologists report more closely matches the setbacks of the existing development than an arbitrary 25 foot setback for which no need is demonstrated, and for which the County Variance approval finds to be consistent with the level of development of neighboring properties.
- L. The blufftop properties form a distinct and unique subsection of the local Small Scale Neighborhood and are identified as such in the LCP. The property rights enjoyed by every other single family residence along this special section of blufftop properties would be denied to this property development upgrade if the variance were not approved. Such standards of development in this area include rights to light and air that can occur only with the use of a mix of structure and open yard space, and of one story, two story or split level designs.
- M. This property cannot be developed with a reasonable home size and configuration with light and air and yard spaces and options for second story structure if set to the 25 foot setback from top of bluff, and well behind that of existing homes in the area which make much use of either/or courtyards, street yards, generous side yards, entry alcoves and landscape elements.
- N. The existing homes in the area are developed up to and beyond the 3500 sf max GSA allowed in the LCP, yet the development of a home on the Railsback property meeting the 25 ft setback would not achieve half of that sf footage and as a result the livability of the home relative to others with more numerous bedrooms, and more sizable living spaces and garages within the neighborhood. The livability is compromised by the diminutive scale of such a home of reduced area.

- O. With the 25 foot setback, the home design could not take advantage of natural land fall to meet the 15 foot maximum height limit by means of split level entry to two story ocean side, and therefore would be limited to a one level structure, and thereby also to a severely limited GSA and livability would be seriously compromised relative to any other existing homes along the blufftop area.
- P. Although there are lots in Cayucos which do not have a sloping topography which allows for the development of two story structures within and beneath the maximum 15 lot building height, the vast majority of blufftop properties in Cayucos in general, and within this neighborhood and most specifically, on this and adjacent sites do have the feature of a 3 to 6 foot slope away from the street and toward the bluff which allows for the numerous two story approvals of recent County approval history and those of past pre-County Coastal Commission approvals.
- Q. To enforce the ordinance strictly by the most conservative setback would be unnecessarily punitive and restrictive of Mr. Railsback's property rights, and would be an exception to the rights enjoyed by the neighboring properties.
- R. The following statements are found to be true and are made a part of the commissions findings.

1) Earth Systems Consultants
Clarification of the Natural
June 15, 1999

"The head of the drainage swale is an unnatural or man-made landform that was formed due to uncontrolled surface water runoff flowing over the top of the bluff face, and therefore, does not represent the natural bluff top."

and

"As the building setback is measured from a natural bluff top line, as shown in the attached Topographic Map (revised), the required 75 year erosion rate is satisfied with the 12.5 foot setback and the proposed replacement residence structure is not dependent on the construction of the recommended seawall structure for support or protection."

2) Earth Systems Consultants
Addendum to Geologic Bluff Study Report
April 9, 1999

"The fill soils exposed in the face and along the top of the bluff are uncompacted and have a potential for instability."

Exhibit 4
(13 of 15)

and

"To improve the stability of the bluff and to prevent surface water from flowing over the top of the bluff, the fill soils should be removed and replaced with engineered compacted fill."

3) Earth Systems Consultants
Geologic Bluff Study
March 17, 1998

"Requirements as outlined in the State of California Coastal Commission "Statewide Interpretive Guideline", adopted May 5, 1981; "Seawalls -Follow-up on Policy Discussion", dated April 25 1991, by the Department of Planning and Building, San Luis Obispo County, and the County of San Luis Obispo Coastal Zone Land Use Ordinance were <also> considered during the preparation of this report."

"Uncontrolled surface runoff is responsible for eroding the "U" shaped gully in the center of the bluff, see Photographs 1, 2, and 3."

and

"The northern part of the bluff at the subject site is actively retreating at a slightly above normal rate compared with the adjacent bluff areas. This is due to the presence of the bluff protection structure that is present on the north property boundary."

" To reduce the bluff retreat rate to a comparable rate with the adjacent bluffs, particularly at the north end of the property, a bluff protective structure is recommended. It is recommended that the protective structure extend across the entire property and tie into the existing bluff protection structures."

and

"Based on site observations, the stability of the existing fill slope wedge on the upper part of the bluff may be subject to failure as a result of loose fill slope soils and an unsupported riprap rock slope facing. Therefore, we recommend that the fill slope soils be removed and replaced with compacted fill."

4) GeoSolutions, Inc.
Review of Adjacent Existing Seawall
June 10, 1999

"As the Mannett property appears to require the seawall and associated backfill to provide support for the house, the loss of the wall could have catastrophic consequences."
and,

Exhibit 4
(14 of 15)

"The easterly end of the wall including the 'return' portion which extends back along the Railsback property line has severe damage and is being undermined by erosion."

and

"During periods of high tide and heavy surf, serious damage to the wall could occur including its complete destruction."

and

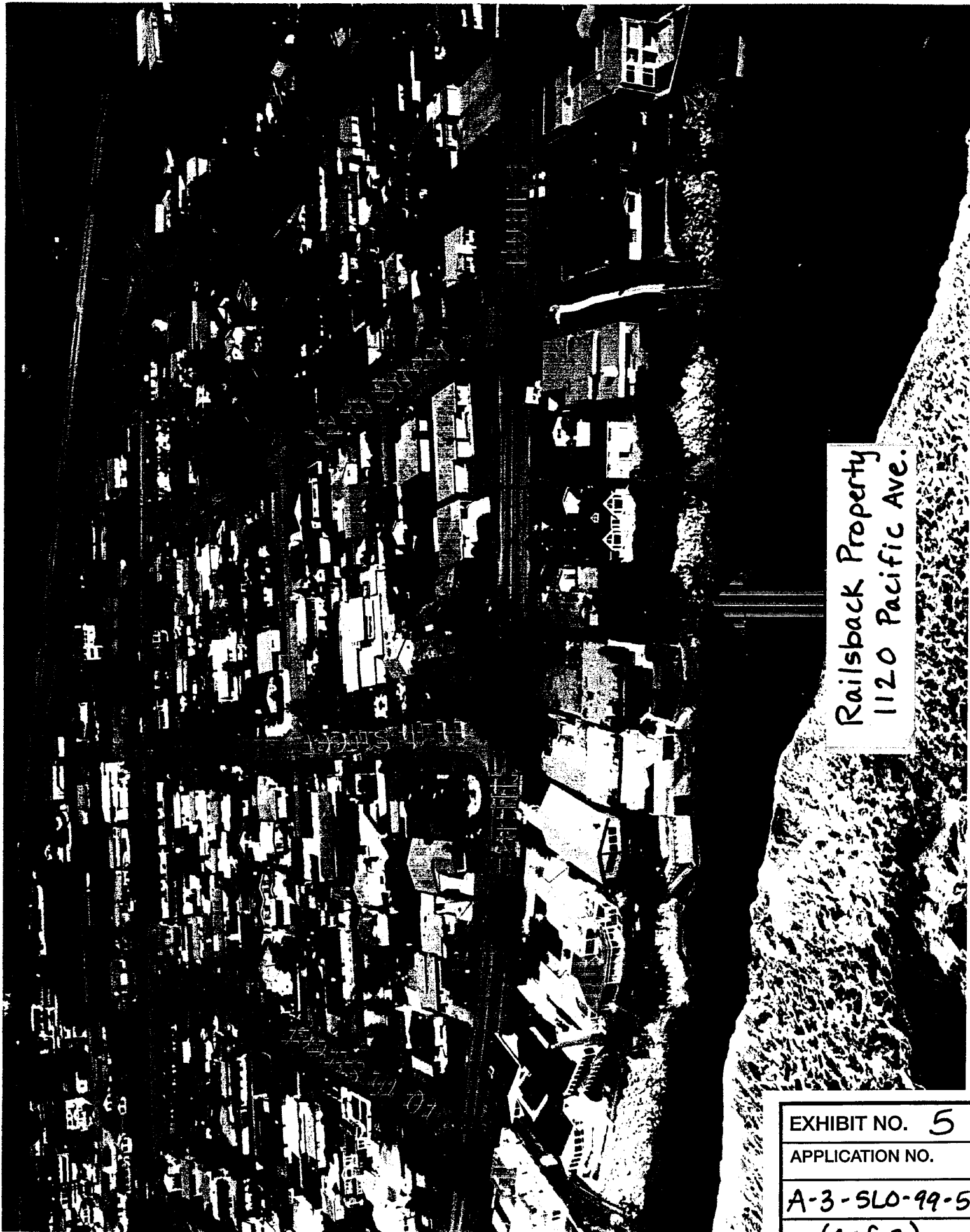
"The placement of riprap stone as per the recommendations of the referenced Geologic Bluff Study should mitigate this condition."

and

"As indicated, the existing seawall is critical to the support of the existing house. Loss of the seawall could pose an immediate threat to the house. The condition of the wall, particularly along the common property line with the Railsback property is considered critical at this time."

and

"Proper placement of the stone will provide the necessary long-term support for the backfill along the property line."



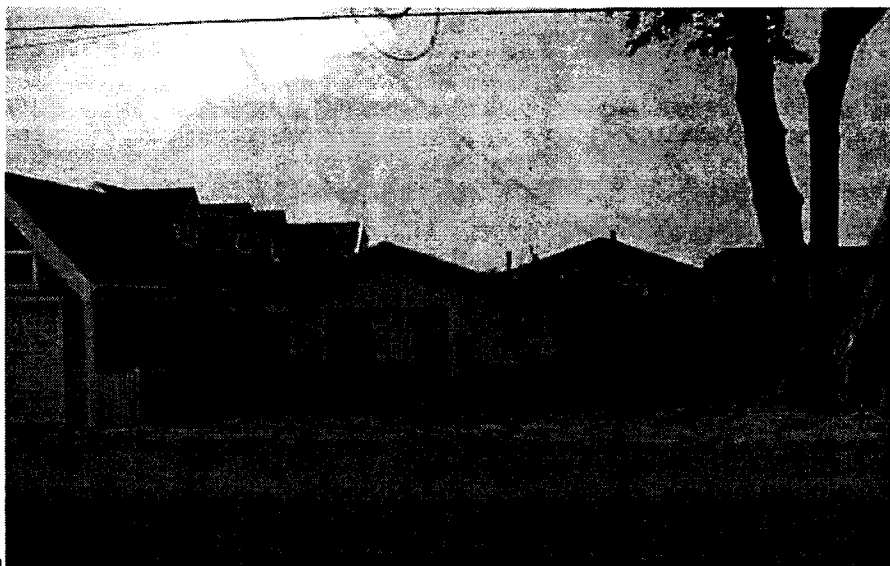
Railsback Property
1120 Pacific Ave.

EXHIBIT NO. 5

APPLICATION NO.

A-3-SLO-99-50

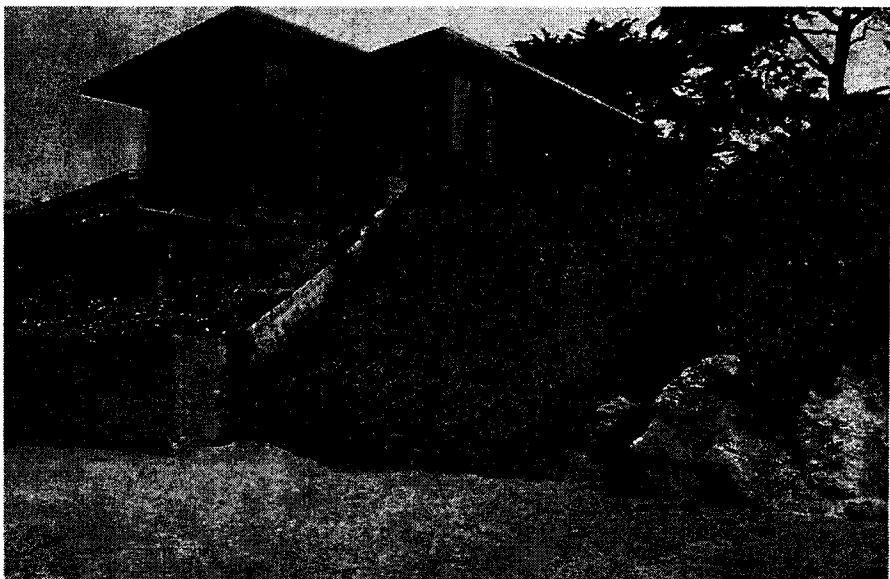
(1 of 3)



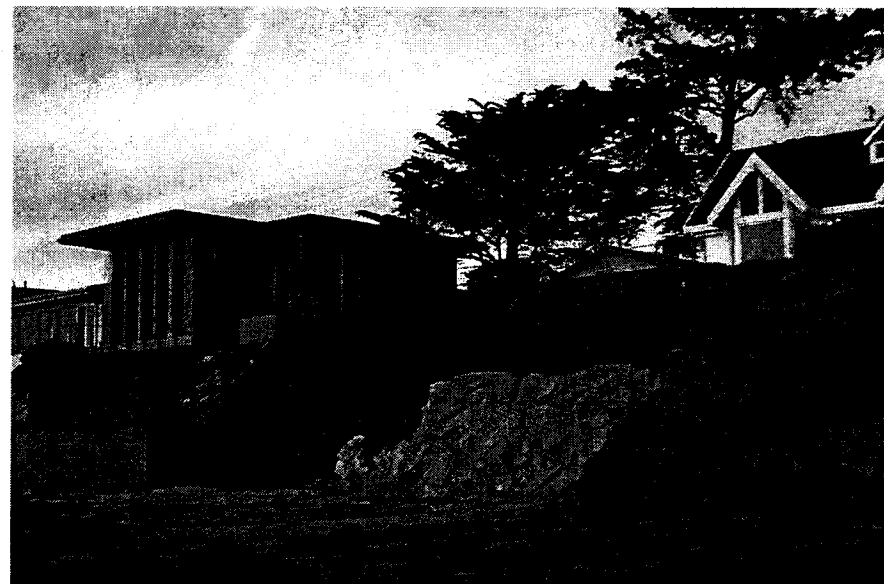
Railsback Property (from Pacific Avenue)



Railsback Bluff Face



Profile of Bluff Face



Profile of Bluff Face

Exhibit 5
(2 of 3)



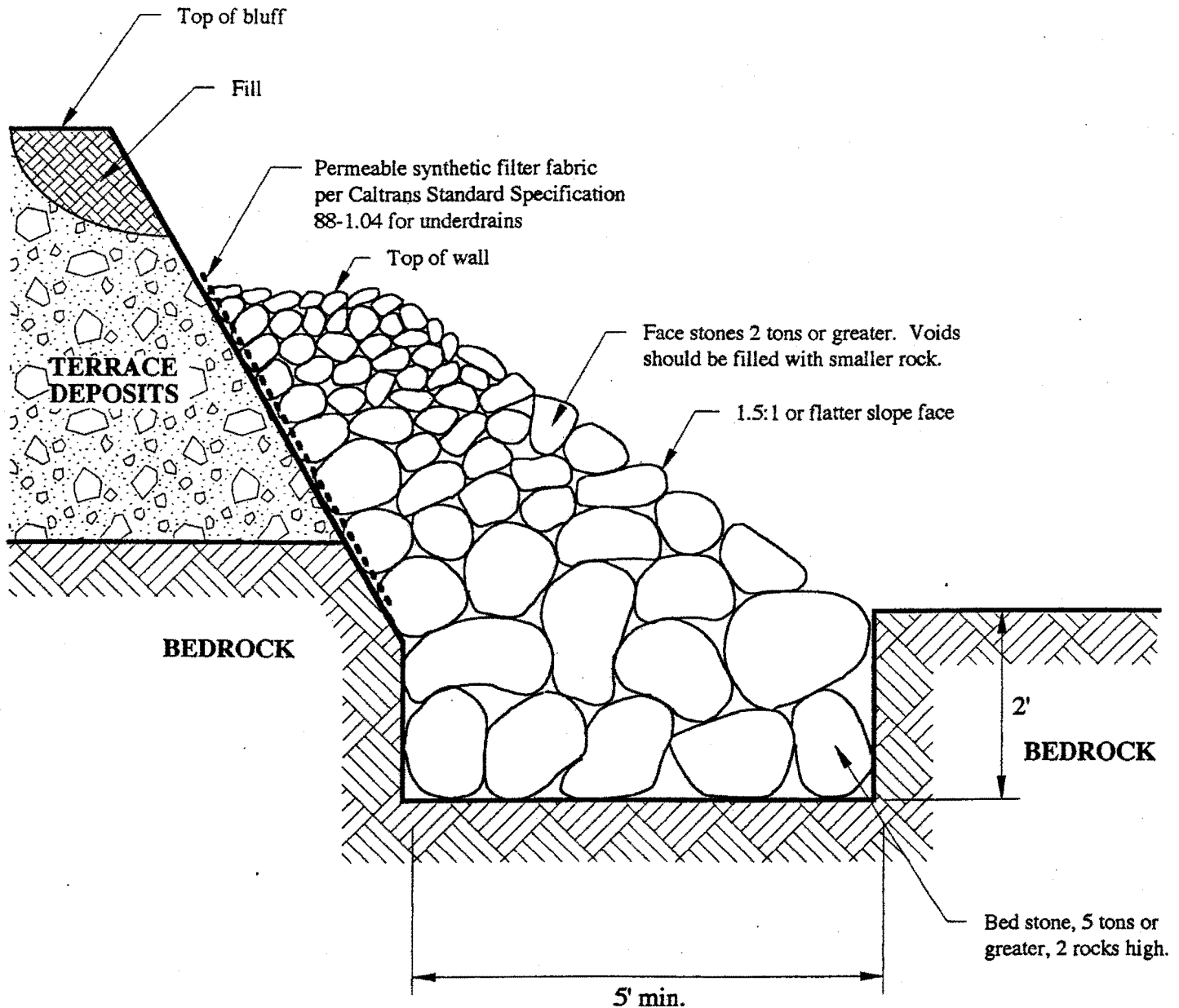
Railsback and Surrounding Properties

Exhibit 5
(3 of 3)

REVETMENT DETAIL

RAILSBACK RESIDENCE

1120 Pacific Avenue
Cayucos, California



NOTE: ALL ROCK TO BE SET BY CALTRANS METHOD A PLACEMENT

**Schematic Only
Not to Scale**



Earth Systems Consultants

Northern California

March 18, 1998

4378 Santa Fe Road, San Luis Obispo, CA 93401

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

NGS10858-01

Exhibit 6
EC

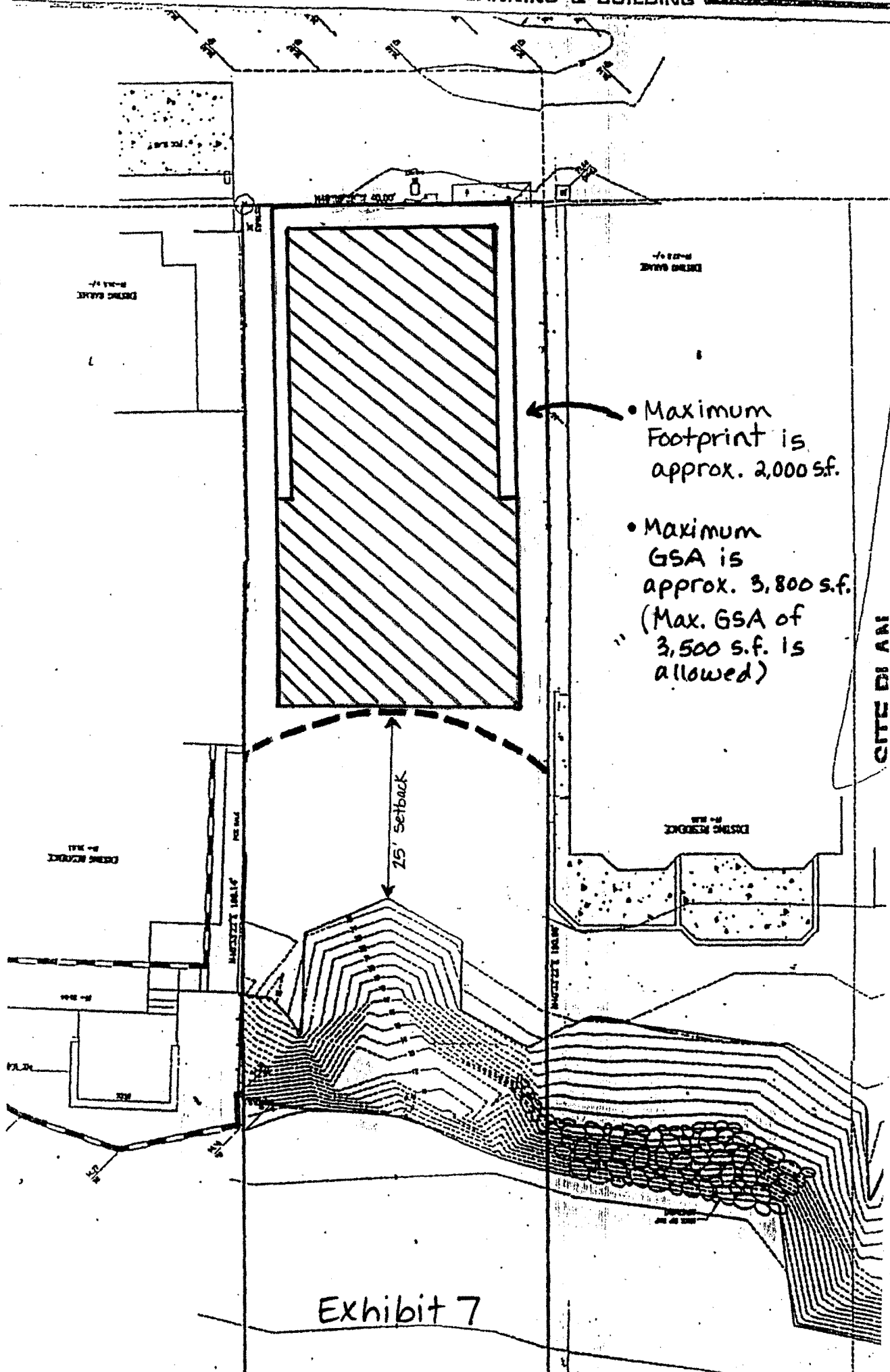


Exhibit 7

