

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

RECORD PACKET COPY

Filed: August 4, 2000
49th Day: September 22, 2000
180th Day: January 31, 2001
Staff: ALK-LB *ALK*
Staff Report: September 20, 2000
Hearing Date: October 10-13, 2000
Commission Action:

Item Wed 13f**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-00-264

APPLICANT: Keith Tobias

PROJECT LOCATION: 8811 N. Coast Highway, #62B El Morro Beach Trailer Park,
Crystal Cove State Park, County of Orange

PROJECT DESCRIPTION: To permanently authorize repairs made under Emergency Permit 5-00-149-G (including replacement of support pilings) and to make further repairs to the decking and pilings of an existing mobile home unit on a beachfront lot.

LOCAL APPROVALS RECEIVED: State Department of Parks and Recreation Notice of Exemption

SUBSTANTIVE FILE DOCUMENTS: Crystal Cove State Park Public Works Plan, 1982; Emergency Permit 5-00-149G (Tobias) and Coastal Development Permit 5-00-174 (El Morro Village).

SUMMARY OF STAFF RECOMMENDATION:

The project involves repairs to an existing mobile home on a beachfront lot located at El Morro Mobile Home Park in Crystal Cove State Park. Staff is recommending **APPROVAL** of the proposed project with special conditions requiring the recordation of an assumption-of-risk lease restriction and a no future seawall lease restriction. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events and high tide. As of the date of this staff report, the applicant has indicated acceptance of the proposed special conditions.

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve CDP No. 5-00-264 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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

II. 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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, damages, 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.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a lease restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The lease restriction shall include a legal description of the applicant's entire parcel. The lease restriction 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 lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. No Future Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-00-264 including, but not limited to, the mobile home, decks and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of themselves and all other successors and assigns, that the applicant shall remove the development authorized by this permit, including the mobile home unit, stairway and deck, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the applicant shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- C. Prior to issuance of Coastal Development Permit No. 5-00-264, the applicant shall execute and record a lease restriction in the a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The lease restriction shall include a legal description of the applicant's entire parcel. The lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Compliance with Lease

The applicant shall comply with all terms and conditions of the lease between the El Morro Village Mobile Home Park and the State Department of Parks and Recreation.

4. Term of Permit

This permit authorizes repairs to an existing mobile home unit to be occupied until December 31, 2004. If the applicant wishes to continue the placement of the mobile home unit on the site beyond that date, the applicant shall apply to the Commission for a permit amendment after a new lease has been obtained from the State Department of Parks and Recreation. If the applicant does not wish to, or is unable to, continue the placement of the mobile home unit on the site beyond December 31, 2004, the applicant shall apply to the Commission for a permit amendment to remove the unit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION, LOCATION AND BACKGROUND

The applicant is proposing to make repairs to an existing mobile home unit on a beachfront lot at the El Morro Mobile Home Park at Crystal Cove State Park, Orange County (Exhibits 1 & 2). This is a follow-up permit to Emergency Permit 5-00-149-G issued May 3, 2000 for the replacement of ten (10) existing galvanized metal pilings supporting the deck and stairway. The proposed project permanently authorizes the work performed under the emergency permit and allows additional repairs to be made to the existing mobile home unit. Repairs will include 1) replacement of all galvanized metal piling supporting the mobile home, deck and stairway and 2) replacement of rotted decking material with new in-kind material (Exhibit 3). The site is currently subject to wave attack.

Previous Commission Action at Subject Site

On May 3, 2000, the Executive Director issued Emergency Permit 5-00-149-G for the replacement of ten (10) existing galvanized metal pilings supporting the deck and stairway. The replacement pilings were to be the same material, same diameter (4 inch) and in the same location as the existing pilings. The pilings were to be connected with cross bracing to provide lateral support (Exhibit 4, Emergency Permit). Replacement of the pilings was approved in order to provide immediate protection of the existing mobile home unit. If the pilings supporting the deck and stairway were to fail, the existing mobile home would have collapsed forward onto the beach. The work performed under the emergency permit was considered the minimum amount necessary to protect the existing structure.

B. STANDARD OF REVIEW AND CONSISTENCY WITH THE CRYSTAL COVE PUBLIC WORKS PLAN (PWP)

Section 30605 of the Coastal Act provides, in pertinent part, that:

Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.

Section 30606 of the Coastal Act states:

Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university shall notify the Commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified Public Works Plan or Long Range Development Plan. No development shall take place within 60 working days after the notice.

Section 13359 of the Commission's Administrative Regulations states:

(b) The Commission shall...determine whether the proposed development is consistent with the certified public works plan...

The Crystal Cove Public Works Plan (PWP) was approved by the Commission with conditions on May 20, 1982. Conditions were met in August 26, 1982. The PWP includes the Crystal Cove State Park General Plan, the On-Site Maintenance Plan and the Crystal Cove State Park Historic District Plan. Section 30605 of the Coastal Act, cited above, establishes the standard of review. The first threshold question is whether the specific project is contained in the PWP. If it is, then the Commission's review is limited to the imposition of conditions. The Commission can not deny a project which it previously certified as part of the PWP; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the PWP. Therefore, the first question is whether this project is contained in the Certified Public Works Plan.

The Land Use and Facilities Element of the Certified PWP General Plan addresses the mobile home park as follows:

...the El Morro Mobile Home Park is located around the mouth of the Moro Creek. In lieu of relocation rights, the state has arranged 20-year leases for the current tenants. Removal of the mobile home park will occur after the leases expire...

After the mobile home park is removed, day-use activity areas and picnic facilities will be located along both sides of Moro Creek, in Moro Canyon.

The leases have been extended and are set to expire on December 31, 2004. Until such time, the existing mobile homes are an allowable use at the subject site. Consequently, the proposed project is consistent with the PWP.

The project is not being proposed by a public agency as specified by Section 30605, but is instead being proposed by a private entity—the owner of the mobile home unit at lot #62B. As such, the policies contained in the Crystal Cove Public Works Plan regarding public works do not apply to the current project. Therefore, the Commission must use the Coastal Act as the standard of review and the PWP as guidance where applicable.

C. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

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

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

Wave and Flooding Hazards

The subject site at El Morro Mobile Home Park is subject to wave attack on a regular basis. The beach does not adequately buffer the beachfront mobile homes from wave uprush during storm events and high tides (particularly during the winter months). Based on staff reconnaissance and acknowledgment by the applicant, waves often run up under the seaward decks of these units. Wave activity has caused much of the damage necessitating the current repairs to the pilings that support the deck and undercarriage of the mobile home. These circumstances present obvious potential for wave uprush damage and flooding to occur at the subject site in the future.

Therefore, the Commission finds that it is necessary to require the recordation of an assumption-of-risk lease/lease restriction (Special Condition No. 1). With this standard waiver of liability condition, the applicant is notified that the mobile home is located in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition ensures that future leaseholders will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for homes in other beachfront lots in Orange County since the 1982-83 El Nino storms. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and more recently 5-97-380 (Haskett) with assumption-of-risk lease restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk lease restrictions on construction of new beachfront homes throughout Seal Beach, whether on vacant lots or in conjunction with the demolition and replacement of an existing home. Examples include coastal development permits 5-99-423(Evans); 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

Future Protective Devices

Section 30253 of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if continued wave activity would affect the proposed development and necessitate construction of a shoreline protection device.

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent 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.

No shoreline protection device is currently proposed. In the current project, the applicant proposes to make repairs to an existing mobile home unit. The applicant recognizes that the site is subject to wave uprush activity, but sees no need for a seawall based on the temporary nature of the lease agreement. The applicant and other tenants of the El Morro Mobile Home Park are subject to lease agreements with the State Department of Parks and Recreation that is set to expire on December 31, 2004. Removal of the mobile home park will occur after the leases expire.

To ensure that the applicant acknowledges and accepts the prohibition of future protective devices, the Commission imposes Special Condition No. 2, which requires the applicant to record a lease restriction against the property placing the applicant and their successors in interest on notice that no protective devices shall be permitted to protect the proposed development and that the applicant waives, on behalf of itself and all successors and assigns, any rights to construct protective devices that may exist under Coastal Act Section 30235. In addition, the Commission imposes Special Conditions 3 and 4 to notify the applicant that all provisions of their lease with the State Department of Parks and Recreation remain in effect. As conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

D. PUBLIC ACCESS

Section 30212 of the Coastal Act states, in relevant part:

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

(2) adequate access exists nearby...

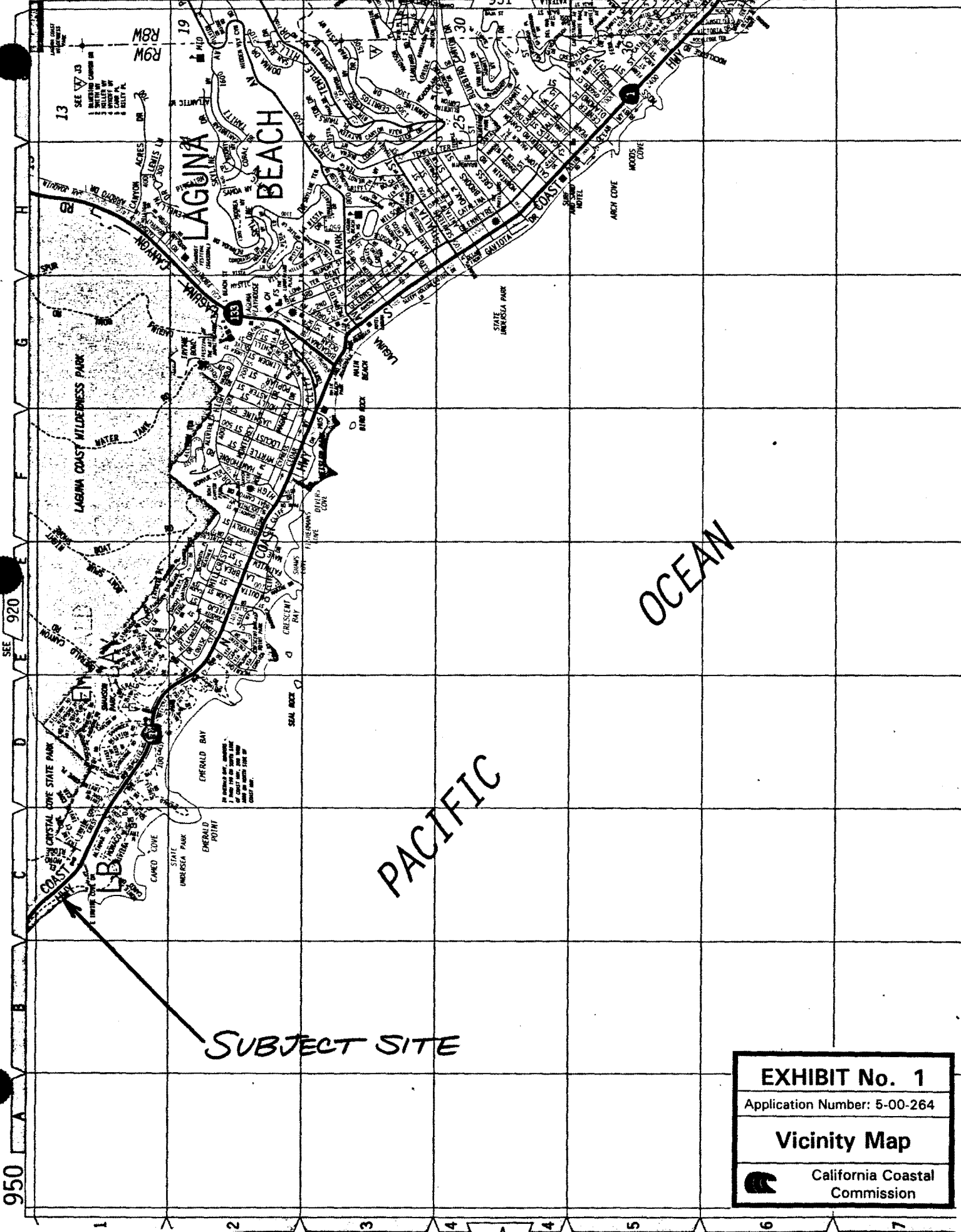
The subject site is a beachfront lot located between the nearest public roadway and the shoreline in Crystal Cove State Park in Laguna Beach. The beach seaward of the subject site is available for lateral public access. Vertical access to this beach is available approximately one half mile north of the subject site at Crystal Cove State Park. Therefore, the Commission

finds adequate access is available nearby and the proposed development is consistent with Section 30212 of the Coastal Act.


E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (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 project is located within an existing mobile home park. Development already exists on the subject site. In addition, the proposed development has been conditioned to mitigate potential adverse effects associated with development on a beachfront lot. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.



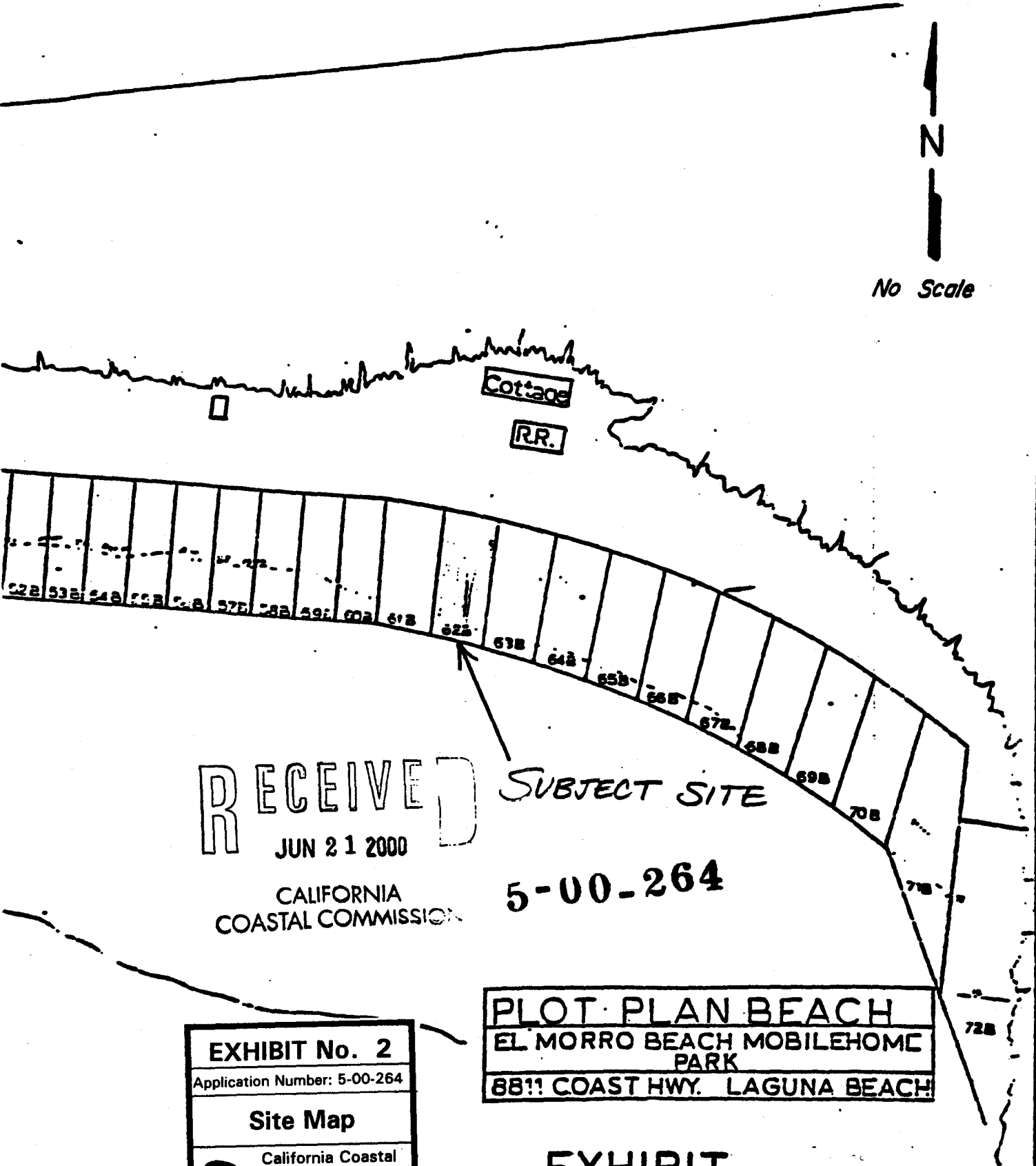
SUBJECT SITE

EXHIBIT No. 1
Application Number: 5-00-264
Vicinity Map
 California Coastal Commission

PART 4



No Scale




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JUN 21 2000

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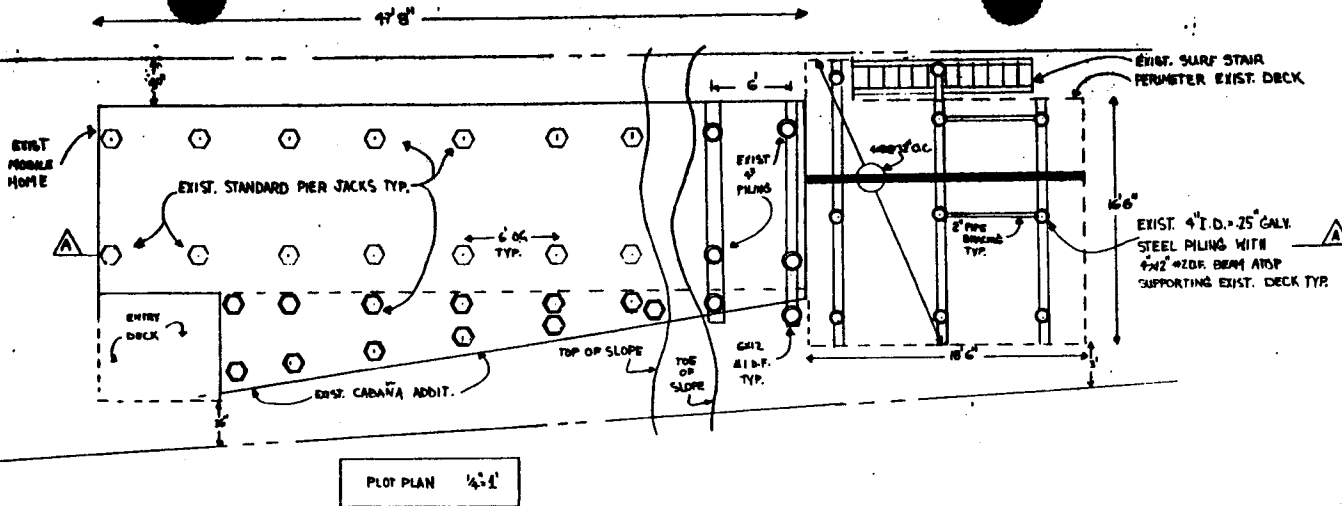
SUBJECT SITE

5-00-264

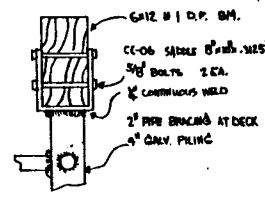
EXHIBIT No. 2
Application Number: 5-00-264
Site Map
 California Coastal Commission

PLOT PLAN BEACH
EL MORRO BEACH MOBILEHOME PARK
88!! COAST HWY. LAGUNA BEACH!

EXHIBIT

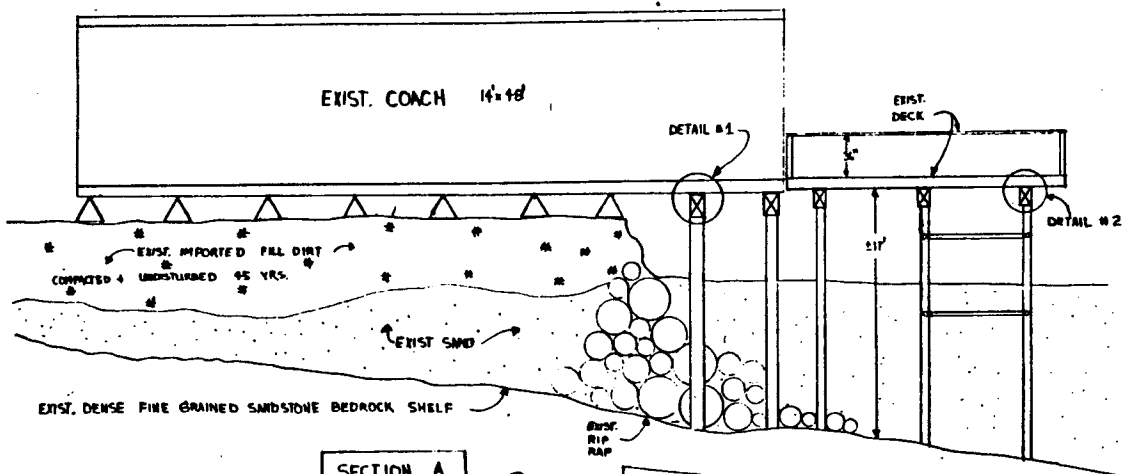
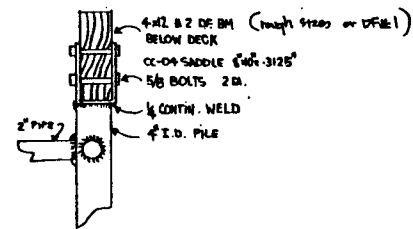


DETAIL #1 BELOW MOBILE HOME 1 1/2" : 1"



- NOTES**
1. REPLACEMENT PILES TO BE 4" I.D. x 25" GALVANIZED - DRIVEN TO REFUSAL BY WATER JETTING
 2. ALL WELDS TO BE CONTINUOUS W/ FULL PENETRATION
 3. 6x12 BEAMS TO BE #1 D.F. BELOW MOBILE HOME
 4. 4x12 BEAMS TO BE #2 D.F. (W/ actual 11x12 @ 1") BELOW DECK
 5. BEAM SPACING 6' O.C. AT M.H.
 6. BEAM SPACING 7' O.C. AT DECK
 7. ALL EXPOSED STEEL TO BE COATED WITH HENRY'S 203 AS POSSIBLE

DETAIL #2 BELOW DECK 1 1/2" : 1"



SECTION A 1/4" : 1"

CALIFORNIA COASTAL COMMISSION

RECEIVED JUN 21 2000

REPAIR OR REPLACEMENT IN KIND OF EXISTING ROTTEN DECK SUPPORTING PILES + GIRDERS FOR:
MR KEITH TOBIAS
 #62 B EL MORRO VILLAGE
 8811 N. COAST HWY.
 LAGUNA BEACH, CA. 92651

BY NORM JACKES 4/10/2000
 ALL DIMENSIONS APPROX.

APPROVED
 APR 07 2001



5-00-264

EXHIBIT No. 3
 Application Number: 5-00-264
Project Plans
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**EMERGENCY PERMIT****DATE: MAY 3, 2000****EMERGENCY PERMIT: 5-00-149-G****APPLICANT: Keith and Tracey Tobias****LOCATION: 8811 N. Coast Highway, #62B
El Morro Beach Trailer Park
Crystal Cove State Park**

EMERGENCY WORK PROPOSED: Replace ten (10) existing galvanized metal pilings supporting deck and stairway. Replacement pilings will be same material, same diameter (4 inch) and in same location as existing pilings. The pilings will be connected with cross bracing to provide lateral support.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of collapsed stairway and imminent collapse of deck requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the attached conditions.

Very Truly Yours,

Peter M. Douglas
Executive Director

By: Jeresa Henry
Title: District Manager

EXHIBIT No.
Application Number: 5-00-264
Emergency Permit
California Coastal Commission

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the permittee and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Development Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

For Emergency Shoreline Protection Projects:

7. If rock is used to construct the shoreline protective device, only clean, large rock shall be used. No fill materials or construction spoils shall be used. Applicant shall promptly remove without the aid of heavy machinery any rock that becomes dislodged and deposited on the beach.
8. Existing pilings and all debris shall be completely removed from the beach immediately upon completion of project.

Condition number four (4) indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal Development Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission office in Long Beach (562) 590-5071.

Enclosures: Acceptance Form
Coastal Permit Application Form

cc: Local Planning Department

5-00-149-G(Tobias)

