

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT:
SUBSTANTIAL ISSUE DETERMINATION
AND DE NOVO REVIEW**

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: Approved with conditions, 2/5/99

APPEAL NO.: **A-3-SLO-99-019**

APPLICANT: **La Playa San Simeon Homeowners Assn., Attn: Barbara Passmore**

APPELLANTS: Commissioners Tuttle and Nava

PROJECT LOCATION: 9221 through 9227, 9229, 9231 Balboa Avenue (west side of Balboa Avenue - North Coast Planning Area), San Simeon (San Luis Obispo County) (APN(s) 013-403-06, 013-403-12, 013-403-24)

DESCRIPTION: Construction of bluff protection structure to protect three existing condominium structures, requiring access to the beach for the construction; removal and replacement of existing stairway to the beach.

FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal Program; Final Local Action Notice 3-SLO-99-018 and attached materials; geologic bluff studies: Earth Systems Consultants, March 19, 1998; Pacific Geoscience, Inc., October 3, 1986. Coastal Commission permit files 4-84-284, 4-86-236, 4-85-175, 418-28, 42-2, 125-29.

EXECUTIVE SUMMARY

The applicant proposes to construct a bluff protective structure to protect three existing condominiums on blufftop lots located on the west side of Balboa Avenue in the community of San Simeon, San Luis Obispo County (North Coast Planning Area).

The project involves the placement of rip-rap along the bluff face, extending from the existing stairway located at 9227 Balboa (as a matter of clarification, 9221 through 9227 Balboa will be referred to as 9227 Balboa throughout the remainder of this report) to the northern portion of 9231 Balboa, where the proposed rock will tie in with the existing rock located seaward of the San Simeon Acres Community Services District wastewater treatment plant. The proposed revetment will be approximately 120 feet in length, with a minimum width of 5 feet to a maximum width of 10 feet seaward of the toe of the bluff, covering approximately 960 square feet of a lateral public accessway accepted by the County of San Luis Obispo.

Staff is recommending that the Commission determine that the appeal raises a **substantial issue**, take jurisdiction over the appeal, and **deny** the Coastal Development Permit for the project, because it is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) regarding the construction of shoreline protective devices for existing structures.

Although the LCP allows for the construction of such devices when necessary to protect existing development, insufficient evidence has been provided to conclude that the existing condominiums are threatened by undercutting wave action or erosion. The closest existing condominium building is set back approximately 13 feet from the top of the bluff. Based on the submitted geotechnical report, the bluff retreat rate is estimated to be 5 to 6 inches per year. Thus, the existing condominiums will not be literally undermined by erosion for at least an additional 26 to 31 years, and are not considered to be in imminent danger.

Secondly, the revetment as submitted does not mitigate for its impacts to coastal resources. In particular, the revetment directly encroaches on a portion of the beach previously dedicated for public access, it interferes with lateral access, and it is visually incompatible with the surrounding bluff landform. Also, alternatives to the proposed revetment have not been thoroughly explored. Were a shoreline structure found to be necessary and approved by the Commission, it is possible that an alternative protective device would be more appropriate in this area.

It should also be noted that both 9227 and 9229 Balboa have recorded deed restrictions on those parcels, pursuant to coastal development permits originally issued for development of the two condominium structures, which require the property owner to assume the risk of storm wave runup and shoreline erosion associated with a blufftop parcel. Moreover, the property owners of 9227 Balboa are subject to an additional recorded deed restriction, which states that the construction of a seawall based solely on an evaluation of the need to protect an existing structure is precluded.



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I. SUMMARY OF APPELLANTS' CONTENTIONS

Please see Exhibit C for the full texts of the appeals.

The appellants contend that the approval of the project is inconsistent with San Luis Obispo County LCP Hazards Policy 4 and Section 23.05.090 of the Coastal Zone Land Use Ordinance (CZLUO). This contention points out that insufficient evidence has been provided to demonstrate that the rock revetment is necessary to protect the existing condominiums, public



beaches, recreation areas, coastal dependent uses, or public roadway facilities. Based on the estimated erosion rate for the project and existing blufftop setbacks, the condominiums would not be undermined by erosion for approximately 26 to 54 years. Furthermore, deed restrictions were placed on assessor's parcel numbers 013-403-006 and 013-403-012, pursuant to Coastal Development Permits (CDP) 4-86-236 and 418-28, respectively, in which the property owners assumed the risks associated with shoreline erosion. Approval of CDP 4-86-236 was based in part on a geotechnical report that indicated an erosion rate of 4 inches per year, estimated a life span for the structure of 75 years, and concluded that shoreline protective devices would not be necessary in the foreseeable future.

Similarly, the appeals contend that the siting of the shoreline structure would interfere with public access and recreation by covering up a significant area of the beach, and would be placed on top of an existing lateral access easement traversing at least two of the subject parcels. No mitigation has been proposed for the loss of this public access and alternative structures that would avoid or minimize impacts to coastal access have not been adequately considered.

Finally, the appeals contend that no analysis or finding has been made regarding the proposed revetment's impact on sand retained by the structure that would otherwise supply sand to the littoral cell.

II. LOCAL GOVERNMENT ACTION

The County of San Luis Obispo's Administrative Hearing Officer conditionally approved the project as D970319P on February 5, 1999. The conditions of the Administrative Hearing Officer's approval are attached to this report as Exhibit D.

III. STANDARD OF REVIEW FOR APPEALS

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. Since this project is located between the first public road and the sea, such a finding is required.



IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeals have been filed, because the County has approved the project in a manner that is inconsistent with the certified Local Coastal Program.

MOTION: I move that the Commission determine that Appeal No. A-3-SLO-99-019 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. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. 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-99-019 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.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

A. Project Location and Description

The La Playa Homeowner's Association proposes to construct a rock revetment to protect the three existing blufftop condominium developments. The project is located on the seaward side of Balboa Avenue, in the community of San Simeon, San Luis Obispo County (9227 Balboa (APN 013-403-12) is a one-story, four-unit development, and 9229 Balboa (APN 013-403-006) and 9231 Balboa (APN 013-403-024) are two-story, five-unit condominiums). Location maps are attached as Exhibit A.

The applicant is proposing to place rip-rap along the bluff face, extending from the existing stairway located at 9227 Balboa (APN 013-403-12) to the northern portion of 9231 Balboa (APN 013-403-24), where the proposed rock will tie in with the existing rock located seaward of the San Simeon Acres Community Services District wastewater treatment plant (Project plans are attached as Exhibit B). The proposed revetment will be approximately 120 feet in length, with a minimum width of 5 feet to a maximum width of 10 feet seaward of the toe of the bluff (according to



submitted project plans, the majority of the revetment will be located a distance of approximately 8 to 9 feet seaward of the toe of the bluff).

The existing stairway located between 9229 and 9231 Balboa will be removed during construction activities and reconstructed to extend past the proposed revetment. In addition, an improved temporary accessway for construction equipment is proposed from Cliff Avenue, approximately 600 feet north of the project site, in order to perform the necessary work on the beach. The beach in this area is characterized by low bluffs, approximately 16 feet in height, which are mostly unarmored, except for an existing rip-rap revetment located along the bluff face, north of the project site, in front of the wastewater treatment plant.

B. Conformance with LCP Standards

The appellants contend that the approved rip-rap revetment is inconsistent with the following LCP requirements regarding construction of shoreline protective devices for existing development.

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...;*
- b. public beaches and recreation areas in danger of erosion;*
- c. existing public roadway facilities to public beaches and recreation areas where no alternative routes are feasible.*

...Where shoreline structures are necessary to serve the above, siting shall not preclude public access to and along the shore and shall be sited to minimize the visual impacts, erosive impacts on adjacent, unprotected property, encroachment onto the beach and to provide public overlooks where feasible and safe. The area seaward of the protective devices shall be dedicated for lateral public access.

CZLUO Section 23.05.090 – Shoreline Structures.

c. Required Findings. In order to approve a land use permit for a shoreline structure, the...applicable review body shall first find that that the structure is designed and sited to:

- (1) Eliminate or mitigate adverse impacts on the local shoreline sand supply as determined by a registered civil engineer or other qualified professional; and*
- (2) Not preclude public access to and along the coast where an accessway is consistent with provisions of section 23.04.420; and*
- (3) Be visually compatible with adjacent structures and natural features to the maximum extent feasible; and*
- (4) Minimize erosion impacts on adjacent properties that may be caused by the structure; and...*



- (6) *That non-structural methods of protection (artificial sand nourishment or replacement) have been proven to be impractical or infeasible.*

The appeals raise a substantial issue because, as approved by the County, the project appears to be inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) regarding the construction of shoreline protective devices for existing structures. Although the LCP allows for the construction of such devices when necessary to protect existing development, insufficient evidence has been provided to conclude that the existing condominiums are threatened by undercutting wave action or erosion.

The closest existing condominium building is set back approximately 13 feet from the top of the bluff. Based on the most recent geotechnical report (Earth Systems Consultants, March 19, 1998), the bluff retreat rate is estimated to be 5 to 6 inches per year. Thus, the existing condominiums will not be literally undermined by erosion for at least an additional 26 to 31 years. Even with the consideration of a buffer to account for possible slumping or bluff collapse, it appears the structures would not be in danger for at least another 8 to 10 years, and therefore, are not considered to be in imminent danger. For this reason, the project does not meet the requirements of LCP policies regarding the construction of shoreline structures, due to a lack of sufficient evidence that concludes that the existing structures are in danger. Thus, a substantial issue is raised. This issue is addressed in more detail in the de novo findings of this report.

C. Interference with Public Access and Recreation

The appellants contend that the proposed revetment would interfere with public access and recreation by covering up a significant area of the beach, and would be placed on top of an existing lateral access easement traversing at least two of the subject parcels.

Pursuant to conditions of previously issued coastal development permits, all three property owners were required to make an irrevocable offer to dedicate lateral easements to a public agency, or private association approved by the county, willing to accept responsibility for maintenance of the accessways and any liability resulting from public use of the accessways. San Luis Obispo County has since accepted those offers to dedicate public lateral access, and if approved, the proposed revetment would cover a significant portion of useable beach in this area (approximately 960 square feet). The effect of covering this beach area with the proposed revetment would be to remove a portion of the beach from public use. At higher tides, the impact on public use of this area of the beach would be exacerbated given that tidal influence foreshortens the beach at these times. Another effect would be to further limit the public's ability to gain access both up and down the coast laterally along this stretch of beach, particularly at higher tides. Furthermore, the rocks that make up rip-rap revetments can tend to migrate onto the beach and present a public access and public safety impediment. Thus, a substantial issue is raised regarding consistency with LCP Hazards Policy 4 and CZLUO Section 23.05.090 c(2).



D. Impacts on Sand Supply

The appellants contend that no analysis or finding has been made regarding the proposed rip-rap revetment's impact on sand retained by the shoreline structure that would otherwise supply sand to the littoral cell. The submitted geotechnical report (ESC) states:

The proposed structure should not affect the southerly transportation of the shoreline sand. This is due to the revetment being located about 8 feet above mean high tide (see Cross Section A-A') [attached as Exhibit A – Site Map]. The longshore sand transportation occurs at less than 50 feet out from the bluff, as indicated by the minimal deposit of sand on the beach at the site (less than 2 feet).

Although the above assertion addresses the longshore transport of sand, insufficient evidence has been provided to conclude that the proposed revetment would not 1) change the beach profile and reduce the area located seaward of the ordinary high water mark; 2) interfere with bluff erosion that supplies sand to nourish the beach; and 3) cause greater erosion on adjacent beaches. Based on the lack of this critical information for sand supply analysis, the appeals raise a substantial issue regarding conformity with CZLUO Section 23.05.090 c(2) and (4).

E. Other

In addition to the issues raised above, both 9227 and 9229 Balboa (APNs 013-403-012 and 013-403-006, respectively) have recorded deed restrictions on those parcels, pursuant to coastal development permits originally issued for construction of the two condominium structures. These restrictions require the property owner to assume the risk of storm wave runup and shoreline erosion associated with a blufftop parcel; therefore, it can be concluded that the current project applicants were made aware of the potential risks associated with the property, prior to their purchase (9231 Balboa (APN 013-403-024) does not have such a deed restriction). Furthermore, the property owners of 9227 Balboa are subject to an additional recorded deed restriction which states that the construction of a seawall based solely on an evaluation of the need to protect an existing structure is precluded. This issue is also addressed in more detail in the de novo findings of this report.

VI. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, **deny** the coastal development permit required for the proposed subdivision.

MOTION: I move that the Commission approve Coastal Development Permit No. A-3-SLO-99-019 for the development proposed by the applicant.



STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the San Luis Obispo County certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

VII. DE NOVO FINDINGS AND DECLARATIONS***A. Conformance with LCP Standards*****1. Applicable LCP Policies and Standards**

As discussed in the substantial issue findings, the project is inconsistent with LCP Hazards Policy 4 and CZLUO Section 23.05.090. Hazards Policy 4 addresses the requirements necessary to site a shoreline structure and the limitations of its impacts to public access, visual resources, erosion of adjacent property, and encroachment onto the beach. CZLUO Section 23.05.090 further asserts that a finding must be made that shoreline structures are "visually compatible with adjacent structures and natural features," and "that non-structural methods of protection (artificial sand nourishment or replacement) have been proven to be impractical or infeasible." Further analysis of these requirements are discussed below.

2. Analysis

San Luis Obispo County LCP Hazards Policy 4 limits the construction of shoreline structures to those *necessary* to protect existing development, beaches and recreation areas in danger of erosion, or for the protection of existing public roadway facilities to public beaches and recreation areas where no alternative routes are feasible. In this case, the applicant has requested that the rip-rap revetment be constructed to protect the three existing condominium developments.

To conclusively show that the condominiums are in danger from erosion, there would need to be an *imminent* threat to these structures. While each case is evaluated based upon its own merits, the Commission has generally interpreted "imminent" to mean that a structure would be imperiled in the next two or three storm cycles (generally, the next few years). The Commission must always consider the specifics of each individual project, but has found that accessory structures (patios,



decks, stairways, etc.) are not required to be protected, or can be protected from erosion by relocation or other means that do not require shoreline armoring. In this case, the closest primary structure proposed for protection (the 9229 Balboa condominium building) is set back approximately 13 feet from the top of the bluff.

The applicant has submitted a geotechnical report that documents the geologic structure and recent history of the bluffs in the project area (Earth Systems Consultants, March 19, 1998). Bluff retreat rates can be difficult to accurately predict. In this case, the most recent bluff retreat rate was estimated from the total amount of bluff lost since 1957 (measured from a Caltrans air photograph) and averaging that amount over the 41-year period. This study, in conjunction with consideration of present soil composition, slope angle, and potential for slumping, resulted in an average bluff retreat rate of 5 to 6 inches per year. The geotechnical report states in relevant part:

The results of two measurements indicated that there was approximately 16 feet of bluff retreat between 1957 and 1998, or an average bluff retreat rate of almost 5 inches per year. It was also concluded that the fill soils would retreat at a slightly faster rate of 6 inches per year due to their loose, uncompacted condition.

Based on this retreat rate, the existing condominiums will not be literally undermined by erosion for at least an additional 26 to 31 years, and therefore, are not considered to be in imminent danger.

The applicant's civil engineer submitted a letter, dated December 29, 1999 (attached as Exhibit L), subsequent to the geotechnical report, which asserts the following:

We have determined, based on a record development plan and recent field measurements, that there has been approximately 13 feet of bluff erosion since 1989, a short term bluff retreat rate in excess of over one foot per year.

No supporting data has been submitted to support this claim, which contradicts the original geotechnical report, that the bluff has experienced a short-term increase in retreat rate. In addition, as concluded in the substantial issue findings, given a buffer to account for potential slumping and bluff collapse, it appears the structures would not be in danger for at least another 8 to 10 years.

Secondly, CZLUO Section 23.05.090 c(3) states that shoreline structures shall be sited to be visually compatible with the surrounding structures and natural features. With the exception of the existing rip-rap, put in place to prevent further undermining of an existing San Simeon Community Services District waterline/sewerline support structure (the status of the original coastal development permit for this rock is unknown at this time; however, additional rip-rap was approved by the County in 1995 pursuant to an emergency permit) and a few wooden access stairways, the surrounding bluff face is free of protective structures and appears as a natural, unaltered marine terrace (please see photos attached as Exhibit E). Much of the blufftop south of the project site is undeveloped, and any new development will be sited an appropriate distance from the bluff edge to prevent a need for shoreline protective devices. Thus, it can be assumed that the area will remain in a relatively unaltered state, and therefore, the construction of a shoreline structure, at least as



currently proposed, would not be visually compatible with the natural features of the area. This issue is further discussed in the Visual Resources section of this report.

Finally, CZLUO Section 23.05.090 also requires that findings be made, prior to considering a shoreline structure such as a rock revetment or seawall, that any non-structural methods of protection have been explored and proven to be impractical or infeasible. Insufficient evidence has been provided to indicate that the requirements of Subsection c(6) have been satisfied. In the geotechnical report, various alternatives for protective devices are suggested, with an indication that rip-rap is the most suitable shoreline structure; however, no discussion of non-structural methods of protection is included. In addition, insufficient evidence has been provided to show that alternatives, such as an upper bluff retaining wall, sand replenishment program, and other drainage and maintenance programs on the blufftop itself have been explored and deemed infeasible. (There is some indication in the geotechnical report that bluff slumping is due to spring water). Therefore, even if the case were made that a structure was at risk, it is premature for the applicant to conclude that the preferred alternative is a rip-rap revetment lacking an in-depth analysis of impacts, potential mitigations and potential design alternatives. Thus, as approved by the County, this project is inconsistent with CZLUO Section 23.05.090.

The request for a coastal development permit for the project, as submitted and approved by the County, should be denied based on its inconsistencies with LCP requirements and the applicants lack of consideration of alternatives to the proposed shoreline structure.

B. Visual Resources

The San Luis Obispo County LCP addresses the need to protect the scenic and visual qualities of the coast. Applicable policies are discussed below.

1. Applicable LCP Policies

Visual and Scenic Resources Policy 1: Protection of Visual and Scenic Resources. *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, and in visually degraded areas restored where feasible.*

Visual and Scenic Resources Policy 2: Site Selection for New Development. *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas....*

Visual and Scenic Resources Policy 10: Development on Beaches and Sand Dunes. *Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g. beach erosion control structures)....*



2. Analysis

The proposed rip-rap revetment has potential to adversely impact the scenic and visual qualities of the area. Impacts on the public viewshed have not been adequately addressed through exploration of alternative revetment designs, the project has not been designed to minimize the alteration of natural landforms, and it is not visually compatible with the character of the surrounding area. Commission experience in other Central Coast communities has shown that it is possible to minimize the visual impacts associated with rock revetments through landscape 'caps' and sand camouflaging. For example, in Carmel, 35-foot tall rock revetments are essentially invisible to the public eye because they have been constructed with landscaping elements which drape over the top of the rocks and sand which is piled up at the base of the structures. Regular maintenance, particularly following storm events, keeps these revetments camouflaged and the visual impacts are essentially eliminated. Although the proposed revetment is somewhat smaller in size than the example given, it is possible that alternative revetment designs, if done with consideration for impacts to visual resources and natural landforms, may be more appropriate in the area.

Visual Resource Policy 10 prohibits new development on beaches, except for facilities required for the health and safety of the public. Insufficient evidence has been provided to conclude that the proposed revetment is necessary to protect the public from coastal hazards related to bluff erosion, and therefore, the project does not meet the requirements of this policy.

In conclusion, based on the intent of these policies to protect the unique and attractive features of the landscape, preserve views to and along the ocean, and protect the health and safety of the public, in conjunction with the previous analysis of the project's inconsistency with CZLUO Section 23.05.090, the project is inconsistent with Visual Resource Policies 1, 2, and 10 of the LCP.

C. Public Coastal Access and Recreation Impacts

The project is located between the first public road and the sea. As such, the project must be consistent not only with the certified LCP but also the access and recreation policies of the Coastal Act. Sections 30210 through 30214 of the Coastal Act state that maximum access and recreation opportunities to be provided, consistent with, among other things, public safety, the protection of coastal resources, and the need to prevent overcrowding. Coastal Act Sections 30210 and 30211 specifically protect the public's right of access to the blufftop and sandy beach in front of the condominiums.

1. Applicable Coastal Act and LCP Policies and Standards

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.

Coastal Act 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.*

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 . . .*

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 . . .*

In addition, the following Coastal Act Policy regarding the protection of recreational uses of the beach also applies in this case.

Coastal Act 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.*

2. Analysis

When two of the condominiums (9227 and 9229 Balboa) were originally permitted, and when 9231 Balboa converted from an apartment building to a condominium, the property owners were required to make an irrevocable offer to dedicate a lateral easement for public access and passive recreational uses running the entire width of the property, from the mean high tide line to the toe of the bluff (please see Exhibit F and G for two of the three deed restrictions). San Luis Obispo County has since accepted those offers to dedicate public lateral access. If approved, the proposed revetment would cover approximately 960 square feet (120 feet in length multiplied by an average of 8 feet in width) of useable beach. The effect of covering this beach area with the proposed revetment would be to remove a portion of the beach from public use. At higher tides, the impact on public use of this area of the beach would be exacerbated given that tidal influence foreshortens the beach at these times. Another effect would be to further limit the public's ability to gain access both up and down the coast laterally along this stretch of beach, particularly at higher tides. Furthermore, the rocks that make up rip-rap revetments can tend to migrate onto the beach and present a public access and public safety impediment.

These adverse public access impacts would contradict Coastal Act Sections 30210, 30211, and 30221, which protect such recreational areas and the public's right of access thereto. Furthermore,



in addition to the direct loss of useable recreational beach area, the introduction of the proposed revetment would tend to have a number of effects on the dynamic shoreline system and the public's beach use interest. First, the revetment would lead to a progressive loss of sand as shore material is not available to nourish the sand supply system. Second, and particularly in combination with the loss of sand generating materials, the proposed revetment would fix the back beach location. The effect on public use is that the useable beach space narrows; eventually this beach area between the revetment and the water would be expected to disappear. Third, changes in the shoreline profile, particularly changes in the slope of the profile which result from a reduced berm width, alter the useable beach area restricted for public access. A beach that rests either temporarily or permanently at a steeper angle than under normal conditions will have less horizontal distance available for the public to use. This reduces the actual area in which the public can pass on property restricted for public access. Fourth, the proposed revetment would cumulatively affect public access by causing accelerated and increased erosion on the adjacent beaches. This effect may not become clear until such devices are constructed individually along a shoreline. Fifth, since the proposed revetment is not sited so far landward that it would only be acted upon during severe storm events, beach scour, particularly during the winter season, will be accelerated because there is less beach area to dissipate the wave's energy. This will act to exacerbate the narrowing of the useable beach space available for public access. As such, even if the proposed revetment were consistent to this point with the County's LCP, the Commission finds that the proposed revetment is inconsistent with the beach access and recreational use policies of Coastal Act Sections 30210, 30211, and 30221, LCP Shoreline Access Policy 2 and CZLUO Section 23.04.420.

D. Other

Permit History/Deed Restrictions

All three parcels have a coastal development permit history. In particular, each was reviewed for consistency with Coastal Act Section 30253, which 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.

It should also be noted that both 9227 and 9229 Balboa (APNs 013-403-012 and 013-403-006, respectively) have recorded deed restrictions on the property, pursuant to a condition of the coastal development permits originally issued for the construction of the two condominium structures. These restrictions require the property owners to assume the risk of storm wave runup and shoreline erosion associated with a blufftop parcel. The content of the deed restrictions are discussed below.



Coastal development permit 4-86-236 was issued to Midland Pacific Building Corporation in 1986, for a two-story, 5-unit condominium development on parcel number 013-403-006 (formerly 013-031-030), noted as Lot B (9229 Balboa) on the project site plan. The previous geological analysis of this site was reported (Pacific Geoscience, Inc., October 3, 1986) and summarized in the Commission staff report prepared at that time (an excerpt of the staff report is attached as Exhibit J). The recorded deed restriction for this parcel includes an assumption of risk, attached as Exhibit H, which states in relevant part:

...The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that they understand that the site may be subject to extraordinary hazards from the storm wave runoff and associated shoreline erosion and they assumed the liability from such hazards; and unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards....

Coastal development permit 418-28 was issued to Robert and Carol Sessa in 1980, for a one-story, 4-unit condominium development on parcel number 013-403-012 (formerly 013-036-065), noted as Lot C (9227 Balboa) on the project site plan. The previous geological analysis of this site was reported and summarized in the Commission staff report prepared at that time (an excerpt of the staff report is attached as Exhibit K). The recorded deed restriction for this parcel, attached as Exhibit I, includes an assumption of risk, similar to the restriction noted above, and a limitation on future requests for a seawall, which states in relevant part:

...The [applicant] agrees that...(d) any future requests for a seawall or protective devices will not be evaluated upon the necessity of saving the structure, but shall be evaluated on a balance of the Coastal Act Policies and by so doing shall minimize impacts on policy areas including, but not limited to, public access, scenic quality and natural landforms...

Coastal development permit 125-29 was issued to J.A. & R.M. Stinson in 1977 to construct a two-story, 5-unit apartment building on parcel number 013-403-024 (formerly 013-031-029), noted as Lot A on project plans. Although this parcel does not have a similar deed restriction as those stated above, coastal development permit 4-84-284, issued for the conversion of the apartment building to condominium purposes, was conditioned to require the property owner to make an irrevocable offer to dedicate both lateral and vertical public access easements to a public agency or private organization approved by the Executive Director of the Coastal Commission. The status of the offer to dedicate vertical access is unknown at the time of this writing.

Blufftop setbacks are established for the purpose of locating development out of harms way, without the need for a shoreline protective device, for the life of the structure, typically estimated at 75 years. Oftentimes, the distances of these setbacks meet or exceed conclusions made in geologic reports. When two of the condominium buildings (9227 and 9229 Balboa) were originally



constructed, they were set back 25 feet from the bluff edge, pursuant to conclusions made in geologic studies for the sites and surrounding area (erosion rates of 3-6 in/yr and 4 in/yr, respectively). With these setbacks, the structures were, in theory, setback for at least 75 years.

Project Alternatives

Although the proposed revetment is not recommended for approval at this time, should a shoreline structure be deemed necessary and allowable to protect the structures in the future, the applicant should provide sufficient evidence that project alternatives have been explored.

The proposed rip-rap revetment has the potential to adversely impact the scenic and visual qualities of the area, encroach on public access easements, interfere with bluff erosion, and possibly cause greater erosion on adjacent beaches. For these reasons, in addition to the requirement of CZLUO Section 23.05.090 to consider non-structural methods of protection, the applicant should consider alternatives to the proposed rip-rap revetment. In the event that a shoreline structure is deemed necessary in the future, further consideration of alternatives may include, but not be limited to, drilled caissons and tie-backs, concrete, masonry, wooden or crib walls, upper bluff retaining walls, or a reduction in size of the rip-rap revetment. However, exploration of non-structural methods such as sand nourishment or replacement is also strongly recommended. In addition to exploring structural alternatives, the applicant should also evaluate the impact of various colors and textures of materials on the surrounding bluff and beach environment.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 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 that would substantially lessen any significant adverse effect that the project may have on the environment.

San Luis Obispo County certified a Negative Declaration for the project on December 25, 1998. However, as detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that were not effectively addressed by the certified Negative Declaration. In particular, there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment. As a result, approval of the project will have a significant adverse affect on the environment within the meaning of the California Environmental Quality Act.



A-3-SLO-99-019

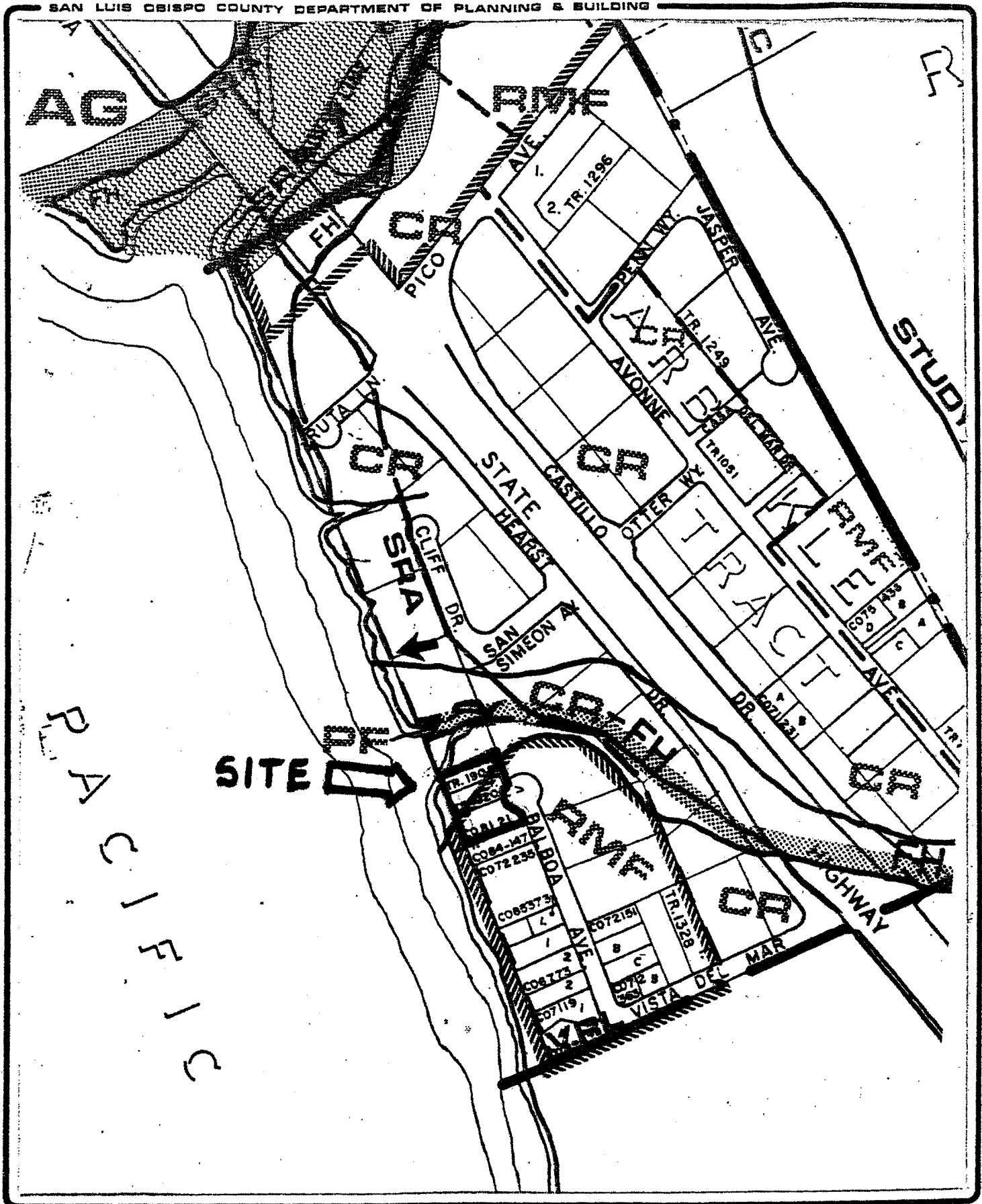
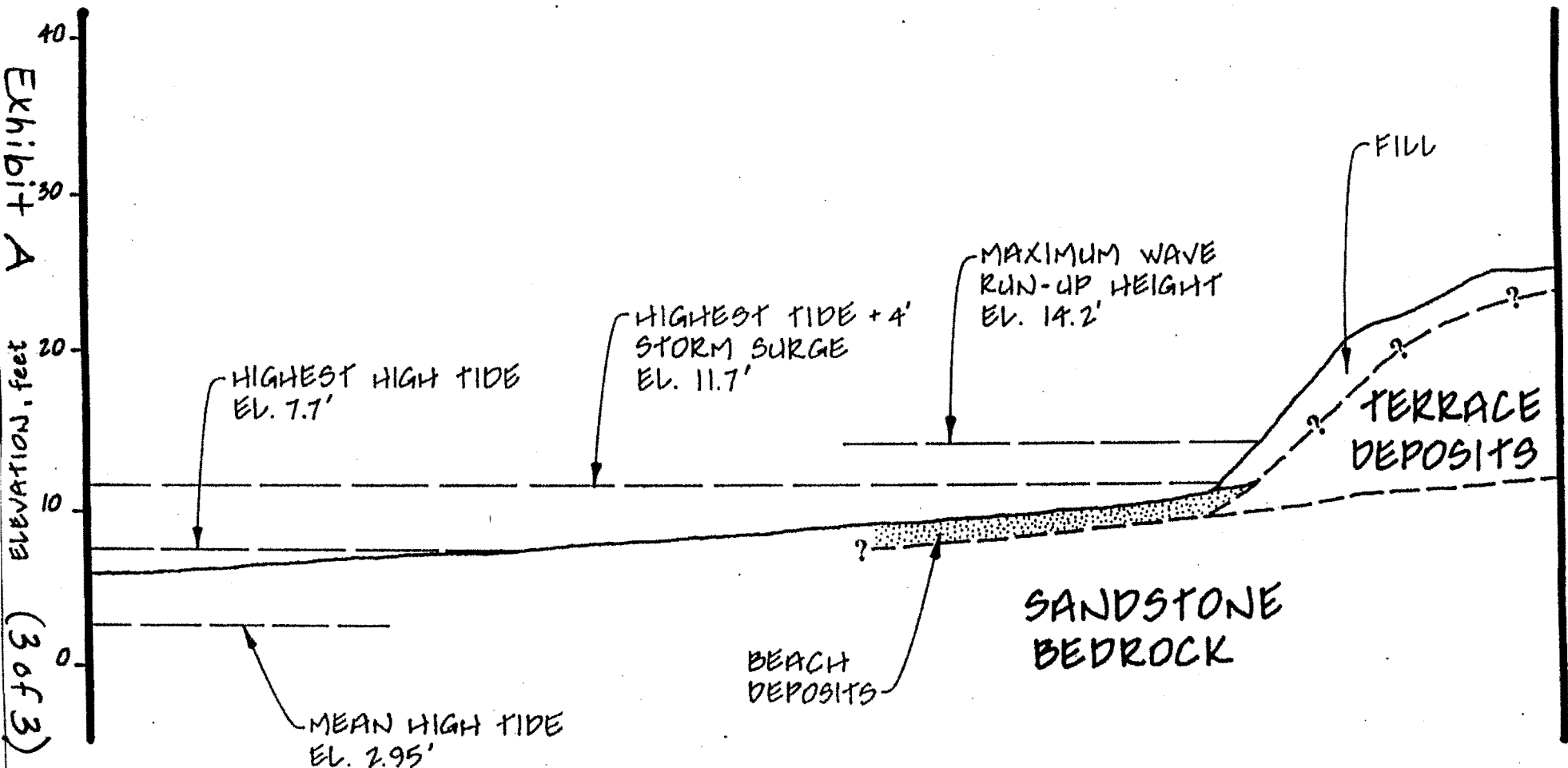


Exhibit A (2 of 3)
Vicinity Map

SECTION A-A'

EXISTING MULTI-FAMILY DUPLEXES

9213, 9227, 9229, & 9231 Balboa Avenue
San Simeon, California



Earth Systems Consultants

Northern California

March 13, 1998

4378 Santa Fe Road, San Luis Obispo, CA 93401

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

NGG10834-01

EC

[illegible]

- ① REMOVE EXISTING WOODEN STAIRWAY, COMPLETELY REPLACEMENT WOODEN STAIRWAY, BEARING TO EXISTING WOODEN DECK TO REMAIN.
- ② PROTECT EXISTING WOODEN STAIRWAY TO REMAIN
- ③ EXISTING EXISTING FLOOR PLACE BRICKS TO FACE OF NEW POOL ASIDE W/ 4" MIN. CORROBATED POLYETHYLENE LINER FOR ASIDE W/ 4" MIN.
- ④ REMOVE EXISTING OF BRICKS WITH NEW 1/2" HIGH MASONRY POLYETHYLENE BACKED INTERIOR WALL FOR POOL ASIDE W/ 4" MIN. SILENT LIGATION TO BE ON FIRM SUBGRADE, APPROVED BY DESIGN ENGINEER.
- ⑤ CONNECT DRAINAGE ROOF DOWN SPENT DRAINING TO EXISTING UNDERGROUND DRAINAGE SYSTEM WITH PREPAREDATION ASIDE W/ 4" MIN.

THE COUNTY ENGINEER GEOLGIST'S REPRESENTATIVE SHALL APPROVE AND OBTAIN THE FOLLOWING CONSTRUCTION OPERATIONS:

- A. PRIOR TO PLACEMENT OF THE FIRST COURSE OF SOIL, THE USE OF THE INSTRUMENT SHALL BE APPROVED FOR VERIFICATION OF ANTIPODAS PLACEMENT.
- B. SUBSEQUENT INSPECTIONS MAY BE REQUIRED DEPENDENT UPON SOIL CONDITIONS ENCOUNTERED.
- C. THE LOCATION AND EXTENT OF THE EARTH BEAM AND TRENCH SOAK SHALL BE APPROVED PRIOR TO THE INSTALLATION OF PIPE OR SOAK PILL MATERIAL.

2. A PLAN BEFORE SUBMITTING CONSTRUCTION OPERATIONS AND APPROVAL SHALL BE PROVIDED BY THE COUNTY ENGINEER GEOLGIST AND SUBMITTED TO THE S.A. COUNTY FIELD INSPECTOR PRIOR TO FINAL INSPECTION.

3. SECOND INSPECTION SHALL BE PROVIDED BY THE PROJECT CIVIL ENGINEER, WITH THE ASSISTANCE OF THE CONSTRUCTION CONTRACTOR, AND PROVIDED TO THE COUNTY ENGINEER GEOLGIST FOR REVIEW.

- A. EXACT LOCATION AND EXTENT OF EXISTING IRRIGATION LINES (INCLUDING EXISTING DRAINAGE INFILTRATION LATERAL) AND IRRIGATION RIGGS.
- B. REMOVE ALL EXISTING BUILT UP FACE STRUCTURES IN AREA TO RECEIVE ROCK BENCH PROTECTION PRIOR TO INSTALLATION OF NEW ROCK AND FILTER FILLING.
- C. DETERMINE EXISTING BUILT UP FACE AREA VS. REMAINING "TOLERANCE" BE FORECAST ON BANK RADIATION (ARCHITECTURE) USE PLAN. THE TOLERANCE (1 FEET) IS TO BE MAINTAINED TO BE FULLY INSTALLED PLANNING REMOVE BUILT UP TOP OVERLAY ON SURFACE RIGGS.
- D. CONTRACTOR SHALL INSTALL AN APPROVED BACKFILL DEVICE ON THE LANDSCAPE IRRIGATION SUPPLY IN ACCORDANCE WITH THE PLANNING OF THE IRRIGATION SYSTEM. THE SYSTEM IS NOT CURRENTLY OPERATING ON THE EXISTING DESIGN.

EXISTING BLOCK WALL
EXISTING FENCE
EXISTING EDGE OF PAVEMENT
EXISTING STORM DRAIN DRAINAGE INLET
EXISTING ROOF DRAIN
EXISTING SEWER CLEANOUT
SLUMP
EXISTING CONTOUR

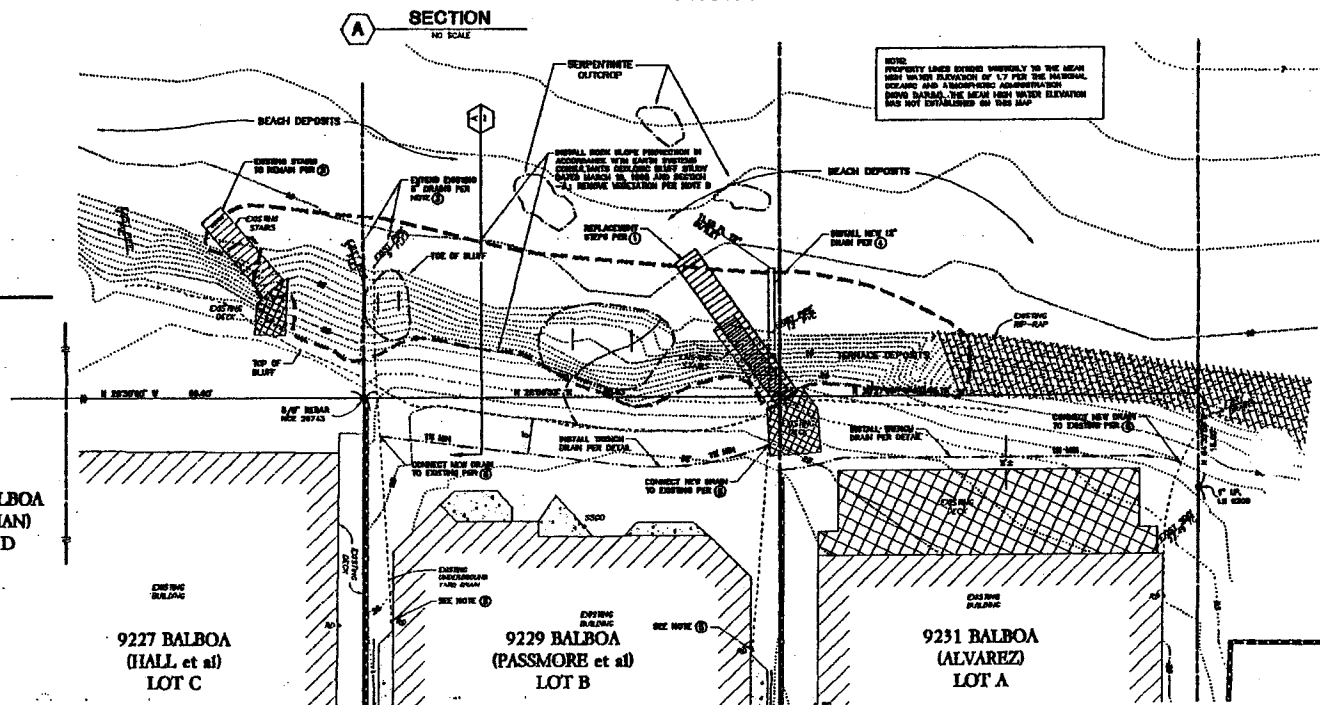
THE ELEVATIONS FOR THIS TOPOGRAPHIC MAP ARE BASED ON THE BRASS DISC STAMPED "U-230" AT THE SOUTHERLY END OF THE BRIDGE ON HIGHWAY 1 ACROSS PICO CREEK.
ELEVATION = 62.95 (MVD 28)

THE TBM IS ON THE TOP OF THE 5/8" REBAR AT THE CENTER OF THE CUL-DE-SAC OF BALBOA AVENUE.
ELEVATION = 34.10

THE BOUNDARY INFORMATION SHOWN HEREON
IS BASED ON RECORD DATA PER 18/MB/77,
14/MB/85, 32/PM/18 AND 39/PM/84.

COO, ENGINEER: STEVEN A. STANSTON, PEX 26741
c/o NORTH COAST ENGINEERING.

ENGINEERING GEOLOGIST: RICHARD T. GORMAN
c/o EARTH SYSTEMS CONSULTANTS.



APN 013-403-024

REGISTERED PROFESSIONAL ENGINEER
STEVEN J. SILVESTRO
28743
Exp. 3/31/00
CIVIL
STATE OF CALIFORNIA

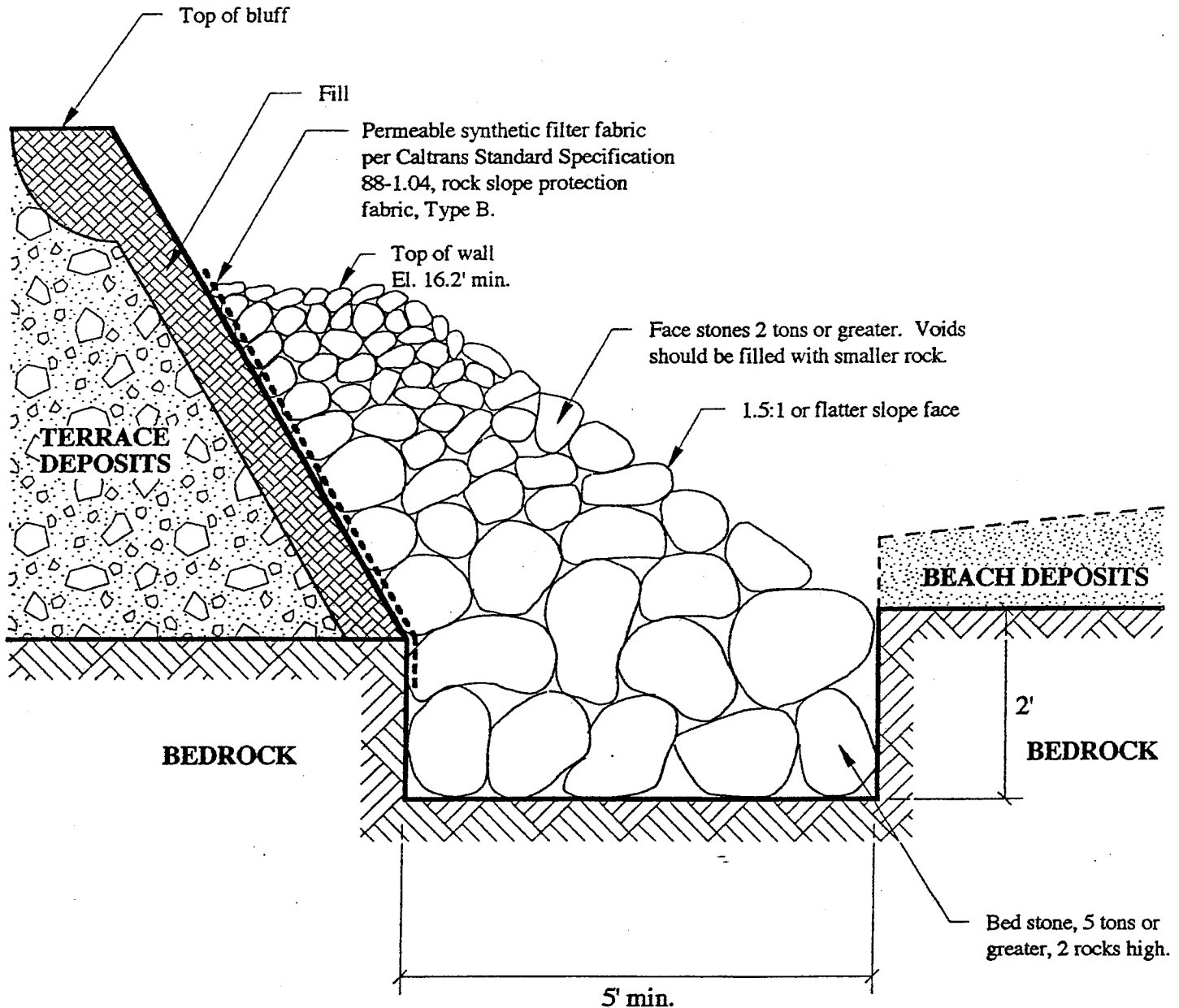
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Exhibit B (1 of 2)

REVETMENT DETAIL

EXISTING MULTI-FAMILY DUPLEXES

Sites 9213, 9227, 9229 & 9231 Balboa Avenue
San Simeon, California



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

**Schematic Only
Not to Scale**

Exhibit B (2 of 2)



Earth Systems Consultants

Northern California

March 18, 1998

4378 Santa Fe Road, San Luis Obispo, CA 93401

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

EC

NGS10834-01

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Andrea E. Tuttle
Signature of Appellant(s) or
Authorized Agent

Date 3/9/99

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

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

Exhibit C (1 of 3)
Appellants' Contentions

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

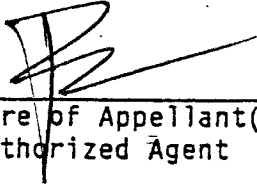
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 3/1/99

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

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date

Exhibit C (2 of 3)

Reasons for Appeal

1. San Luis Obispo County LCP Hazards Policy 4 and CZLUO 23.05.090(a) limit construction of shoreline structures to projects necessary for protection of existing development; public beaches and recreation areas in danger of erosion; coastal dependent uses; and existing public roadway facilities to public beaches and recreation areas where no alternative routes are available. Insufficient evidence has been provided to demonstrate that the rock revetment is necessary to protect the existing condominium development; nor is the revetment needed to protect public beaches, recreation areas, coastal dependent uses, or public roadway facilities. The geological report for the project states that the erosion rate for the project is 6 inches per year. Setbacks between the bluff and existing structures appear to range between 13 feet and more than 27 feet. Thus, based on the estimated erosion rate, the existing structures would not be undermined by erosion for approximately 26 to 54 years. Furthermore, as required by Coastal Development Permit 4-86-236 authorizing construction of one of the structures proposed to be protected by the revetment, a deed restriction was recorded under which the property owner assumed the risks associated with shoreline erosion. Approval of this permit was based in part on a geotechnical report that indicated an erosion rate of 4 inches per year, estimated a life span for the structure of 75 years, and concluded that shoreline protective devices would not be necessary in the foreseeable future.
2. SLO County LCP Hazards Policy 4 and CZLUO 23.050.090(c) require that the design and siting of shoreline structures not preclude public access to and along the shoreline. Coastal Act Section 30212 prohibits development from interfering with the public's right of access to the sea, including the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Coastal Act Section 30220 and 30221 protect coastal and oceanfront land for recreational use. The proposed revetment would interfere with public access and recreation by covering up a significant area of beach. It would also be placed on top of an existing lateral access easement that traverses at least one of the parcels at issue. No mitigation has been provided for the loss of this public access. In addition, alternative structures that would avoid or minimize impacts to coastal access have not been adequately considered.
3. SLO County LCP Hazards Policy 4 and CZLUO 23.050.090(c) require that shoreline structure projects eliminate or mitigate adverse impacts on local shoreline sand supply. No analysis or finding has been made concerning the proposed revetments impact on sand that would be retained by the structure that would otherwise supply sand to the littoral cell.

Exhibit C
(3 of 3)

EXHIBIT B
Conditions of Approval - D970319P

Approved Development

1. This approval authorizes the installation of a riprap bluff protection structure, minor grading and temporary beach access for construction equipment.

Site Development

2. Site development shall be consistent with the approved site plan and elevations. All work shall be done consistent with Earth Systems Consultants Geologic Bluff Study dated March 19, 1998, as well as specific conditions of this permit approval.
3. The applicant shall place the toe of the new seawall as close as feasible to the existing toe of bluff. In no case shall the end of the seawall encroach more than 10 feet seaward beyond the existing seawall located on the northernmost lot of La Playa and the adjacent lot to the north.
4. **Prior to issuance of a construction permit**, the applicant shall submit a sample of rock material to be used for bluff protection or a letter from a geologist verifying the similarity of the rocks to be used with the existing rocks. If possible, rocks used for bluff protection construction shall be of similar geologic type and appearance as the existing rocks within the bluff face and in the immediate area.

Archaeology

5. In the event archaeological resources are unearthed or discovered during any construction activities, the following standards apply:
 - a. Construction activities shall cease, and the Environmental Coordinator and Planning Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may be accomplished in accordance with state and federal law.
 - b. In the event archaeological resources are found to include human remains, or in any other case where human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department and Environmental Coordinator so that proper disposition may be accomplished.

Bluff Setback Landscaping Material

6. Any landscaping material placed within the 25 foot bluff top setback shall be drought tolerant and not require the use of irrigation or watering with the exception of natural rainfall.

Exhibit D (1 of 3)
County's Conditions

Public Access

7. **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, as well as room for any improvements required by Coastal Zone Land Use Ordinance Section 23.04.420 - Coastal Access. 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.
8. **Prior to final inspection**, the northern set of stairs proposed for replacement may be reconstructed if accessible for public access or other public access is provided.

Grading

9. 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.

Miscellaneous

10. 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.
11. **Prior to commencement of work**, the applicant shall obtain an encroachment permit (if applicable) from the County Engineering Department for all work to be done in or around the street right-of-way of either Vista Del Mar, Balboa Avenue, or Pico Avenue. In no case shall rock materials be allowed to be unloaded and stored on the pavement of any of those streets. Also, no equipment shall be staged or stored on these streets and tracked equipment shall not be allowed on the pavement if it will result in damages to the pavement.
12. If the public right-of-way is used to access the bluff top, the applicant shall be responsible for the protection of existing culverts within the right-of-way. If the culverts are damaged as a result of the applicant's project, the applicant shall have the sole responsibility to repair/replace the culverts to the satisfaction of the County Engineer.
13. No fueling or scheduled maintenance of equipment shall occur on the beach. Equipment shall be removed from the sandy beach for such activities.
14. 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

Exhibit D
(2 of 3)

beach.

15. **Prior to final inspection of the seawall**, all heavy equipment access-ways onto the beach, if any, shall be restored to pre-construction conditions. The applicant is aware that construction of new or temporary equipment access-ways onto the beach may require additional review and permits.
16. The applicant is aware that 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. 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.

17. All work shall be done with the review and approval of the project registered engineering geologist and project civil engineer. The registered engineering geologist shall, at a minimum, inspect the keyway prior to placing of rip-rap, and inspect the general placement of the filter-fabric. The project civil engineer shall at a minimum establish the mean high tide line prior to commencement of construction, and provide construction observation services adequate to assure that the construction generally conforms to project specifications.
18. The applicant is aware that drainage structures to prevent surface runoff from flowing over the bluff face in an erosive manner must be maintained as originally installed, and that periodic inspections of the seawall should be made by a qualified individual (e.g. registered engineering geologist, registered civil engineer), particularly following periods of extreme wave action. Such inspections should be made during periods of very low tides during the winter months when the beach profile is lowest.

Exhibit D
(3 of 3)

9231 Balboa 9229 Balboa 9227 Balboa 9213 Balboa



Project Area



Approximate Location of Proposed Rock Reveurement

Exhibit
E - Site Photos



Project Area

Undeveloped
Blufftop



Project Area (in front of 9229 Balboa)

9227 Balboa
APN 013-403-012

DOC. NO. 3121
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL

JAN 22 1981

WILLIAM E. ZIMARIK
COUNTY RECORDER
TIME 12:10 PM.

Return Original to and
Recorded Requested by:
STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION
631 Howard Street, 4th Floor
San Francisco, CA 94105

IRREVOCABLE OFFER TO DEDICATE

- I. WHEREAS, ROBERT S. SESSA and CAROL A. SESSA, husband and wife, as joint tenants, are the record owners, hereinafter referred to as "owners", of the real property located at Route 1, Box 140 A-D, San Simeon, San Luis Obispo County, California, legally described as particularly set forth in attached Exhibit A hereby incorporated by reference, and hereinafter referred to as the "subject property"; and
- II. WHEREAS, the California Coastal Commission, South Central Coast Regional Commission, hereinafter referred to as "the Commission", is acting on behalf of the People of the State of California; and
- III. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and
- IV. WHEREAS, pursuant to the California Coastal Act of 1976, the owners applied to the Commission for a coastal development permit for four (4) condominiums on the subject property; and
- V. WHEREAS, a coastal development permit no. 418-28 was granted on November 21, 1980, by the Commission in accordance with the provisions of the Staff Recommendation and Findings, Exhibit B, attached hereto and hereby incorporated by reference, subject to the following condition:

The applicant shall record an irrevocable offer to dedicate to a public agency or to a private association approved by the Regional Commission an easement for public access and passive recreational use running from the mean high tide line to the toe of the bluff. Such easement shall be free of prior liens or encumbrances except

Exhibit E (1 of 5)

tax liens. The offer shall be made in a manner and form approved in writing by the Executive Director. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner.

VI. WHEREAS, the subject property is a parcel located between the first public road and the shoreline; and

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

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Section 30210 through 30212 of the California Coastal Act of 1976 and that therefore in the absence of such a condition, a permit could not have been granted;

NOW THEREFORE, in consideration of the granting of permit no. 418-28 to the owners by the Commission, the owners hereby offer to dedicate to the People of California an easement in perpetuity for the purposes of an easement for public access and passive recreational use running from the mean high tide line to the toe of the bluff, located on the subject property running from the mean high tide line to the toe of the bluff, and as specifically set forth in attached Exhibit C, hereby incorporated by reference.

This offer of dedication shall be irrevocable for the period of twenty one (21) years, measured forward from the date of recordation, and


Exhibit F
(2 of 5)

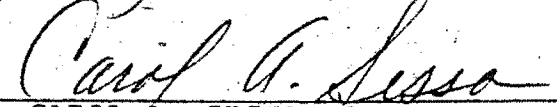
shall be binding upon the owners, their heirs, assigns, or successors in interest to the subject property described above. The People of the State of California shall accept this offer through the County of San Luis Obispo, the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs, and assigns.

Executed on this 23 day of December, 1980, in the City of Riverside, County of Riverside.

DATED: December 23, 1980


ROBERT S. SESSA, Owner


CAROL A. SESSA, Owner

STATE OF CALIFORNIA

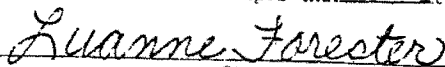
COUNTY OF RIVERSIDE } SS.

On December 23, 1980 before me, the undersigned, a Notary Public in and for said County and State, personally appeared

ROBERT S. SESSA and

CAROL A. SESSA

_____, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.


Signature of Notary

FOR NOTARY SEAL OR STAMP



OFFICIAL SEAL
LUANNE FORESTER
NOTARY PUBLIC - CALIFORNIA
NOTARY BOND FILED IN
RIVERSIDE COUNTY
My Commission Expires October 20, 1981

Exhibit F (3 of 5)

This is to certify that the offer of dedication set forth above dated December 23, 1980, and signed by ROBERT S. SESSA AND CAROL A. SESSA, owners, is hereby acknowledged by the under signed officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 418-28 on November 21, 1980, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

DATED: December 30, 1980

Cynthia K Long

CYNTHIA K LONG LEGAL COUNSEL
California Coastal Commission

STATE OF CALIFORNIA

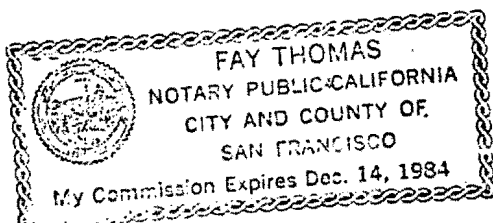
COUNTY OF SAN FRANCISCO

On DECEMBER 30, 1980, before the undersigned, a Notary Public in and for said State, personally appeared CYNTHIA K LONG,

known to me to be the LEGAL COUNSEL

of the California Coastal Commission and known to me to be the person who executed the within instrument on behalf of said Commission, and acknowledged to me that such Commission executed the same.

Witness my hand and official seal.



Fay Thomas
Notary Public

Exhibit F
-4- (4 of 5)

VOL 2300 PAGE 402

EXHIBIT A

Real property in the County of San Luis Obispo, State of California,
described as:

Parcel B of Parcel Map CO-74-204, in the County of San Luis Obispo,
State of California, according to map recorded in Book 16, Page 88
of Parcel Maps, in the Office of the County Recorder of Said County.

Exhibit F
(5 of 5)

Recording Requested by and
When Recorded, Mail to:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

DOC. NO. **18414**
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL.

MAR 18 1987

3/18/87 1585 3

27.0
19.0
41.0

9229 Balboa
APN 013-403-006

FRANCIS M. COONEY
County Clerk Recorder
TIME 1:40 PM

**IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT
AND
DECLARATION OF RESTRICTIONS**

THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this 3rd day of February, 1987, by Kevin McGurty, Dennis Moresco and Leo Michaud (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real property located in the County of San Luis Obispo, State of California, and described in the attached Exhibit A (hereinafter referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (which code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to as the "Act") creates the California Coastal Commission, (hereinafter referred to as the "Commission") and requires that any coastal development permit approved by the Commission must be consistent with the policies of the Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, pursuant to the Act, Grantor applied to the California coastal commission for a permit to undertake development as defined in the Act within the Coastal zone of San Luis Obispo County (hereinafter the "Permit"); and

Exhibit G
(1 of 8)

2065 844

V. WHEREAS, a coastal development permit (Permit No. 4-86-236) was granted on November 12, 1986, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit B and hereby incorporated by reference, subject to the following condition:

LATERAL ACCESS PRIOR TO TRANSMITTAL OF THE PERMIT, the landowner shall execute and record a document, in a form and content acceptable to the executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the toe of the bluff. The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the state of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

VI. WHEREAS, the subject property is a parcel located between the first public road and the shoreline; and

Exhibit G
(2 of 8)

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

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Section 30210 through 30212 of the California Coastal Act of 1976 and the Local Coastal Program as defined in Public Resources Code Section 30108.6 and that therefore in the absence of such a condition, a permit could not have been granted;

IX. — WHEREAS, it is intended that this offer is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII, Section 8 of the California Constitution and that said offer, when accepted, shall thereby qualify as an enforceable restriction under the provision of the California Revenue and Taxation Code, Section 402.1;

NOW THEREFORE, in consideration of the granting of Permit No. 4-86-236 to Grantor by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of Public Access and passing recreational use along shoreline located on the subject property such easement shall be along entire width of property and from the mean high tide line to the toe of the bluff and as specifically set forth by attached Exhibit C hereby incorporated by reference.

Exhibit G
(3 of 8)

1. BENEFIT AND BURDEN. This offer shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

2. DECLARATION OF RESTRICTIONS. This offer of dedication shall not be used or construed to allow anyone, prior to acceptance of this offer, to interfere with any rights of public access through use which may exist on the Property.

3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the opening of the accessway, the Grantee, in consultation with the Grantor, may record additional reasonable terms, conditions, and limitations on the use of the subject property in order to assure that this Offer for public access is effectuated.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this Offer shall be binding upon and inure to the benefit of the successors and assigns of both the Grantor and the Grantee, whether voluntary or involuntary.

Exhibit G
(4 of 8)

6. TERM. This irrevocable offer of dedication shall be binding for a period of 21 years starting from the date of recordation. Upon recordation of an acceptance of this Offer by the Grantee, this Offer and terms, conditions, and restrictions shall have the effect of a grant of access easement in gross and perpetuity that shall run with the land and be binding on the parties, heirs, assigns, and successors. The People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

Acceptance of this Offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate. Executed on this 3rd day of February 1987, at San Luis Obispo, California.

SIGNED:


Kevin W. McGurty


Dennis Moresco

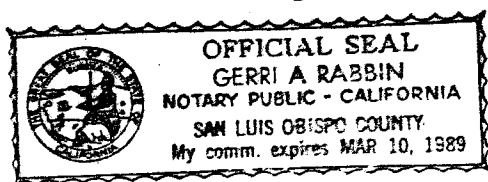

Leo Michaud

Exhibit G
(5 of 8)

2065... 848

State of California, County of San Luis Obispo, ss

On this 3rd day of February, in the year 1987, before me Gerri A. Rabbín, a Notary Public, personally appeared Kevin W. McGurty, Dennis Moresco and Leo Michaud, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.



Gerri A. Rabbín
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

This is to certify that the Offer to Dedicate set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the action of the Commission when it granted Coastal Development Permit No. 4-86-236 on November 12, 1986, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: February 17, 1987

John Bowers

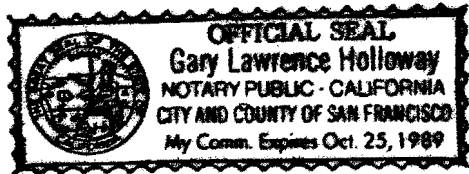
John Bowers, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Francisco)

On 17 February 1987, before me the undersigned Notary Public, personally appeared John Bowers, personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the Staff Counsel and authorized representative to

Exhibit G
(6 of 8)

the California Coastal Commission executed it.



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

Exhibit G
(7 of 8)

EXHIBIT A

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE ARBUCKLE TRACT, BEING IN LOT A OF RANCHO SAN SIMEON, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, BEING PARCEL C OF MAP NO. CO-74-204, RECORDED FEBRUARY 13, 1975 IN BOOK 16, PAGE 88 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(END OF DESCRIPTION)

Exhibit G
(8 of 8)

Recording Requested by and
When Recorded, Mail to:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105
Attention: Legal Department

MAR 18 1987

FRANCIS M. COONEY
County Clerk Recorder
TIME 1:40 PM

9229 Balboa

APN 013-403-006

DEED RESTRICTION

I. WHEREAS, KEVIN W. MCGURTY, DENNIS MORESCO and LEO MICHAUD, hereinafter collectively referred to as Owner, is the record owner of the following real property: That portion of the Arbuckle Tract, being in Lot A of Rancho San Simeon, County of San Luis Obispo, State of California being Parcel C of Map No. CO-74-204, recorded February 3, 1975, in Book 16, Page 88 of Parcel Maps in the Office of County Recorder, herein referred to as the subject property; and

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

III. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (herein referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the California Coastal Commission for a coastal development permit for the development of the subject property described above; and

V. WHEREAS, coastal development permit No. 4-86-236 was granted on November 12, 1986, by the California Coastal Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit "A" and herein incorporated by reference; and

VI. WHEREAS, coastal development permit No. 4-86-236 was subject to the terms and conditions including but not limited to the following conditions:

Exhibit H
(1 of 5)

Assumption of Risk. PRIOR TO TRANSMITTAL OF THE PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from the storm wave runup and associated shoreline erosion and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

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

VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable and shall constitute enforceable restrictions; and

IX. WHEREAS, Owner has elected to comply with the conditions imposed by Permit No. 4-86-236 so as to enable Owner to undertake the development authorized by the permit.

Exhibit H
(2 of 5)

NOW, THEREFORE, in consideration of the granting of Permit No. 4-86-236 to the Owner by the California Coastal Commission, the Owner hereby irrevocably covenants with the California Coastal Commission that there be and hereby is created the following restrictions on the use and enjoyment of said subject property, to be attached to and become a part of the deed to the property. The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that they understand that the site may be subject to extraordinary hazards from the storm wave runup and associated shoreline erosion and they assumed the liability from such hazards and unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

If any provisions of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective and during the period that the development authorized by said permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by Owner to be a covenant running with the land, and shall bind Owner and all his/her assigns or successors in interest.

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

Exhibit H (3 of 5)

DATED: FEBRUARY 3rd, 1987

SIGNED: *Kevin W. McGurty*

Kevin W. McGurty

Dennis Moresco
Dennis Moresco

Leo Michaud
Leo Michaud

State of California, County of San Luis Obispo, ss

On this 3rd day of Feb., in the year 1987, before me Gerri A. Rabbin, a Notary Public, personally appeared Kevin W. McGurty, Dennis Moresco and Leo Michaud, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.



Gerri A. Rabbin
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal commission pursuant to authority conferred by the California Commission pursuant to authority conferred by the California Coastal Commission when granted Coastal Development Permit No. 4-86-236 on November 12, 1986, and the

Exhibit H
(4 of 5)

California Coastal Commission consents to recordation thereof by its duly authorized officer.

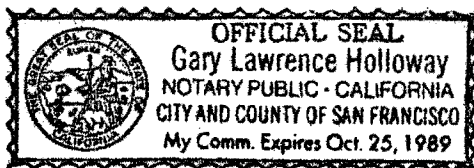
Dated: February 17, 1987

John Bowers

John Bowers, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Francisco)

On 17 February 1987, before me the undersigned Notary Public, personally appeared John Bowers, personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the Staff Counsel and authorized representative to the California Coastal Commission executed it.



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

Exhibit H
(5 of 5)

RECEIVED

JAN 19 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Recording requested by
STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION
631 Howard Street, Fourth Floor
San Francisco, CA 94105

DOC. NO. 3122
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CAL

JAN 22 1981

WILLIAM E. ZIMARIK
COUNTY RECORDER
TIME 12:10 P.M.

DEED RESTRICTION

9227 Balboa
APN 013-403-012

I. WHEREAS, ROBERT S. SESSA and CAROL A. SESSA, hereinafter referred to as Owner, is the record owner of the real property described as

Parcel B of Parcel Map CO-74-204, in the County of San Luis Obispo, State of California, according to map recorded in Book 16, page 88 of Parcel Maps, in the Office of the County Recorder of said county,

hereinafter referred to as the subject property, and

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

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

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the California Coastal Commission for a coastal development permit for construction of a single family residence on the subject property described above, and

V. WHEREAS, a coastal development permit No. 418-28 was granted on November 21, 1980, by the California Coastal Commission based on the findings adopted by the California Coastal Commission attached in Exhibit B and hereby incorporated by reference; and

VI. WHEREAS, coastal development Permit No. 418-28 was

Exhibit I
(1 of 8)

subject to terms and conditions including but not limited to the following condition

Prior to the issuance of a coastal development permit, the applicant shall submit to the Executive Director, a deed restriction for recording, free of prior liens except tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall provide (a) that the applicants understand that the site is subject to extraordinary hazard from waves during storms, from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms and landslides. The deed restriction shall further provide:

(d) Acknowledgement that any future requests for a seawall or protective devices will not be evaluated upon the necessity of saving the structure, but shall be evaluated on a balance of the Coastal Act Policies and by so doing shall minimize impacts on policy areas including, but not limited to, public access, scenic quality and natural landforms;

(e) Acknowledgement that any addition to the permitted structure or the construction of a non-attached structure which would be located between the existing structure and the top of the bluff shall require a valid Coastal Development Permit. *EXHIBIT "B"*

VII. WHEREAS, the subject property is a parcel located between the first public road and the shoreline; and

VIII. WHEREAS, under the policies of Section 30253 of the California Coastal Act of 1976, new development shall assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability or destruction of the side or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along the bluff or cliff; and

IX. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of Section 30253 and that a permit could not therefore have been granted;

NOW THEREFORE, in consideration of the granting of Permit No. 418-28 to the Owner by the California Coastal Commission, the Owner hereby irrevocably covenants with the California Coastal Commission

Exhibit I
(2 of 8)

that there be, and hereby is, created the following restrictions on the use and enjoyment of said subject property, to be attached to and become a part of the deed to the property:

The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that:

(a) the applicants understand that the site is subject to extraordinary hazard from waves during storms, from erosion and from landslides and the applicants assume the liability from those hazards;

(b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards;

(c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms and landslides;

(d) any future requests for a seawall or protective devices will not be evaluated upon the necessity of saving the structure,

but shall be evaluated on a balance of the Coastal Act Policies and by so doing shall minimize impacts on policy areas including, but not limited to, public access, scenic quality and natural landforms; and

(e) any addition to the permitted structure or the construction of a non-attached structure which would be located between the existing structure and the top of the bluff shall require a valid Coastal Development Permit.

Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit, or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by Owner to be a covenant running with the land, and shall

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

SS.

On December 23, 1980 before me, the undersigned, a Notary Public in and for said County and State, personally appeared

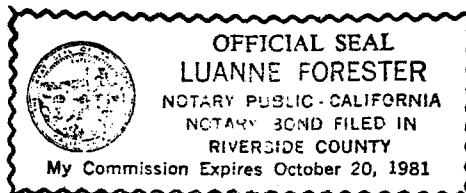
ROBERT S. SESSA and
CAROL A. SESSA

_____, known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

Luanne Forester

Signature of Notary

FOR NOTARY SEAL OR STAMP



Assessor's Parcel No. _____

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Exhibit I (4 of 8)

VOL 2300 PAGE 418

but shall be evaluated on a balance of the Coastal Act Policies and by so doing shall minimize impacts on policy areas including, but not limited to, public access, scenic quality and natural landforms; and

(e) any addition to the permitted structure or the construction of a non-attached structure which would be located between the existing structure and the top of the bluff shall require a valid Coastal Development Permit.

Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit, or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by Owner to be a covenant running with the land, and shall bind Owner and all his/her assigns or successors in interest.

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

Dated: December 23, 1980


ROBERT S. SESSA, Owner

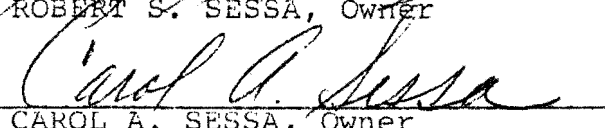

CAROL A. SESSA, Owner

Exhibit I
(5 of 8)

This is to certify that the deed restriction set forth above dated December 23, 1980, and signed by ROBERT S. SESSA and CAROL A. SESSA, owners, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 418-28 on November 21, 1980, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

DATED: December 30 1980

Cynthia K Long
CYNTHIA K LONG LEGAL COUNSEL
California Coastal Commission

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On December 7, 1980, before the undersigned, a Notary Public in and for said State, personally appeared Cynthia K Long, Legal Counsel - known to me to be the Authorized Representative of the California Coastal Commission and known to me to be the person who executed the within instrument on behalf of said Commission, and acknowledged to me that such Commission executed the same.

Witness my hand and official seal.

Jan Thomas
Notary Public

Exhibit I
(6 of 8)

EXHIBIT "B"

(RETYPE FOR CLARITY ONLY)

Prior to the issuance of a coastal development permit, the applicant shall submit to the Executive Director, a deed restriction for recording, free of prior liens except tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall provide (a) that the applicants understand that the site is subject to extraordinary hazard from waves during storms, from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the even of storms and landslides. The deed restriction shall further provide:

(d) Acknowledgement that any future requests for a seawall or protective devices will not be evaluated upon the necessity of saving the structure, but shall be evaluated on a balance of the Coastal Act Policies and by so doing shall minimize impacts on policy areas including, but not limited to, public access, scenic quality and natural landforms;

(e) Acknowledgement that any addition to the permitted structure or the construction of a non-attached structure which would be located

EXHIBIT "B" (CONT.)

between the existing structure and the top of the bluff shall require a valid Coastal Development Permit.

1976 Coastal Acts, the Commission concludes that all new development projects between the first public roadway and the shoreline cause a sufficient burden on public access to warrant the imposition of access conditions as a condition to development, subject only to the exceptions specified by the Legislature.

As discussed above, the shoreline area of the applicant's site has been historically used by the public, therefore, these rights must be protected. The Commission therefore finds that, with the addition of a condition requiring the dedication of the shoreline (sandy beach areas) of the subject site, this project can be found consistent with Coastal Act policies concerning public access.

3. Geologic Stability

Sections 30253(1) and (2) of the Coastal Act require that:

New development shall:

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

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

As the project site is an ocean-fronting bluff top parcel, a geologic evaluation of the site was undertaken in accordance with the Commission's Interpretive Guidelines. This evaluation was carried out by a geotechnical research and engineering consultant for the applicant. Anticipated conditions resulting from future geologic processes were presented. Bluff retreat and erosion, as well as drainage were specifically addressed.

The applicant's geotechnical consultant indicates that the subject parcel experiences an average bluff retreat of 4 inches per year. It is anticipated that the landward bluff retreat will occur in a manner that retains the near vertical profile of the bluff. The assumed retreat rate is a long term average that reflects periods of erosional quiescence interrupted by storms of sufficient magnitude to actively erode the bluff. With the assumed 4 inch per year retreat rate for the bluff, the proposed 25 ft. blufftop development setback would yield a life span for the structure of 75 years. The consultant concludes that bluff protection devices ie. rip rap, seawalls, etc. will not be necessary in the foreseeable future. The consultant does recommend that all project runoff be collected and discharged in a non-erosive manner onto the beach well away from the toe of the bluff. As conditioned, final engineered drainage plans will be required. Given the proximity of the proposed project to the eroding coastal bluff, the applicant, as conditioned, will have to record a waiver of liability, or show evidence of similar waiver for conformity with Section 30253.

Staff Report for 9229 Balboa
Exhibit J

The project site is relatively flat, but slopes slightly to the west toward the ocean. There is no major vegetation on the project site, i.e., grasses only. Access to the property will be via Balboa Avenue. The project site itself is 13,600 square feet. However, the entire property extends past the bluff to the mean high tide, the total being 21,450 or .49 acres. The property is zoned R-3, which is defined as a Medium Density Residential district requiring a 6,000 square foot minimum parcel size for the first two units. Additional units require an additional 1,600 square feet each. The 4 unit project meets the minimum area requirements specified under the zoning district. (San Luis Obispo County Planning Department Subdivision Review Staff Report; May 7, 1980).

2. Surrounding Area

The proposed project is located in San Simeon Acres on the westside and the north end of Balboa Avenue. San Simeon Acres is a small commercial village developed primarily to serve the tourist/recreation users in the North Coast of San Luis Obispo County, with a special attraction given it is the closest area to seek accommodations for the estimated more than 850,000 annual visitors to Hearst San Simeon Historical Monument. Due to the location of State Highway One, this area is visible both for travelers north and south bound on that public highway. The character of the surrounding area is a mixture of moderate density residential and resort commercial. Residential uses are mostly apartments and condominiums with some single family units in the area. Near Highway One, there are a number of motels, restaurants and shops. (San Luis Obispo County Planning Department Subdivision Review Report; May 7, 1980). Lots to the immediate north and south of the project site are vacant, however, the San Simeon Sewer Treatment Plant is at the north end of Balboa Avenue. There is a single family residence two lots to the south and a two story triplex to the east across Balboa Avenue and condominiums to the east and south.

3. Geologic Stability

Public Resources Code Section 30253(1), (2) states that:

"New development shall (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; and (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."

In accordance with the Statewide Interpretive Guidelines on Geologic Stability of Blufftop Development, the applicant submitted a geology report dated February, 1980 with letters of addendum dated August 6, 1980 and August 13, 1980. The original report states that "the marine terrace in this area is characterized by calcite cemented brown sandstone and conglomerate..." site is underlain by approximately ten(10) feet to twelve (12) feet of orangish brown, silty, fine to coarse grained sand with layers of pebble and cobbles, Pleistocene age, marine terrace deposit...and along the cliff face is a loosely dumped fill material... of undetermined source... limited to the bluff edge and... inland approximately five(5) feet to seven (7) feet. This is a brown clay, fine to coarse sand with cobbles and... is of dubious character, containing vegetation, tires, concrete, asphalt, still and large chunks of wood... from cliff outcrops it was observed that fill was placed on beach sand, with no indication of engineering control. This material would be inadequate for bearing soils in its present condition."

Staff Report for 9227 Balboa
Exhibit K
(1 of 2)

The August 6, 1980 letter specifically discusses the blufftop as it relates to annual retreat rate. The normal rate of retreat for this area is three(3) inches per year. However, due to the character of the five to seven(5-7) feet of fill on the front of the natural, the retreat rate for this portion of the bluff is six(6) inches per year. These figures are based on the premise that surface drainage be strictly controlled and that footpaths not be placed down on the top of the bluff.

The primary setback recommendation is as follows:

	FILL	IN-PLACE		TOTAL
Time	10-14 years	61 - 65 years	=	75 years
Rate	6"/year	3'/year		
Retreat	5' - 7'	16.5-15.5	=	22' to 23'

"Accordingly, a safe setback distance would be a minimum of twenty-three (23) feet from the bluff edge. This assumes surface drainage is controlled and diverted out of the bluff area by non-erosion drains. Also, alternate means should be provided for foot traffic now using the bluff, either by wood or concrete steps. If these recommendations are used with respect to setbacks and slope protection, adequate protection for a structure's lifetime of 75 years should than be applicable."

The beach in this area is utilized extensively by the public who both seek day/overnight services in San Simeon Acres. In the past, the Commission has approved three projects along the westside of Balboa Avenue, permits #125-29, #145-22 and #404-06. In all cases, the projects were proposed or conditioned to provide a twenty-five(25) foot or greater setback from the top of the bluff to any portion of the proposed structure.

The proposed project is located twenty-five(25) feet from the top of the bluff, however, seven(7) feet of deck extends into this setback. Given the unusual circumstances of this blufftop; i.e., 5-7 feet of fill with an expected retreat rate of six(6) inches per year and an expected retreat rate of three(3) inches per year of the original bluff; and the Commission actions sited above, it is appropriate that all portions of the proposed project be setback a minimum of twenty-five(25) feet from the top of the bluff.

The proposed project, as conditioned, can be found consistent with Public Resources Code Section 30253(1) and (2).

4. Scenic and Visual Resources/Cummulative Impacts
Public Resources Code Section 30251 states:

"The scenic and visual qualities of coastal areas shall be protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas."

Public Resources Code Section 30253(5) states:

"New development shall...(5) where appropriate, protect special communities and special neighborhoods which, because of their unique characteristics, are worthy of special protection."

Exhibit K
(2 of 2)



NORTH COAST ENGINEERING, INC.

Civil Engineering • Land Surveying • Project Development

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JAN 03 2000

December 29, 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
725 Front St., Ste. 300
Santa Cruz, CA 95060

Attention Mr. Steve Monowitz

Subject: Coastal Commission Appeal of La Playa San Simeon Homeowner's
Association Bluff Protection Structure at 9227, 9229 & 9231 Balboa Avenue,
San Simeon, San Luis Obispo County (Your Appeal No. A-3-SLO-99-019)

Dear Steve:

A brief description of the background of the project is in order to convey to you how we arrived at the current position of the project's development.

1. We had a preapplication meeting at the site with the San Luis Obispo County staff planner & environmental specialist in June 1998. During that meeting, the County staff requested us to provide a complete application package for simultaneous review by the Coastal Commission staff to assure your input and consideration throughout the application process.
2. The project Geological Bluff Study evaluated alternative protective structures and concluded the use of rock rap rap was the optimum technical solution for the six reasons stated in the March 19, 1998 report.
3. We submitted the Coastal Commission's copy of the application package to San Luis Obispo County Planning, as directed by them, with our June 21, 1998 application package.
4. We provided a complete copy of the application package to you via our November 30, 1998 letter, after becoming aware that the County had not provided you with detailed project information.
5. Steve Guiney's letter of December 24, 1998 provided a broad range of information on the project, but did not indicate whether a permit would be required for this project.

Correspondence from Applicant's Engineer
Exhibit L
(1 of 9)

Mr. Steve Monowitz
December 29, 1999
Page 2

6. Our letter of January 14, 1999 provided a copy of a recorded deed restriction and record Coastal Staff report to assist in your continued review of the project.

It is our intent to provide a **consolidated, reasonable and compatible structure to protect the residences of ten(10) families** on three lots while **maintaining the visual compatibility and with minimal disruption to the area's natural resources**. There is **existing bluff protection rip rap** on more than half of the northern project property lot, as well as on the San Simeon Acres Community Services District property adjoining the project to the north. For these reasons, the extent and form of the project was developed , evaluated and approved and permitted by the County.

We have determined, based on a record development plan and recent field measurements, that there has been approximately 13 feet of bluff erosion since 1989, a short term bluff retreat rate in excess of over one foot per year. The residents of these properties are extremely concerned about protecting their property before significant additional property is lost and/or excessive remediation costs are required. **The property owners and geotechnical engineer believe the best solution is the extension of the existing rock rip rap as approved by San Luis Obispo County.**

Attached is an item by item detailed response to your "Reasons for Appeal", addressing each issue. Additionally, in response to the Coastal Commissions's appeal concerns, there are two less desirable alternatives which the property owners may consider acceptable.

Alternative 1 - Reduced Length of Bluff Protection

The first Alternative is the elimination of rock rip rap on the northern project property(Lot A, 9231 Balboa-Alvarez) where the residence is the furthest from the bluff top. This alternative would leave a gap in the rock rip rap between the north property line of lot B(9229 Balboa-Passmore et al) and the existing rock on Lot A(9231 Balboa-Alvarez). This alternative would leave a section of about 30' on the south face of lot A unprotected, eventually requiring additional infill rock to protect that property. The lateral extent of the rock fill on the beach (a maximum of 10' from the toe of the bluff seaward) necessary to provide reasonable protective structural stability would remain as shown on the County approved plan.

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Alternative 2 - Retaining Wall

The second Alternative is the installation of a concrete retaining wall on the southern portion of the project area in place of the rock rip rap structure. Attached is a preliminary Retaining Wall Alternative plan and illustrative sections (Alignments A [Hall] & B [Passmore]) showing this concept, including features addressing the issues outlined in your March 19, 1999 appeal. The extent of the project has been reduced to only include 9227(Lot C) & 9229 (Lot B) Balboa Avenue. We have also included in the attached summary responses to your "Reasons for Appeal" discussion regarding components of this alternative retaining wall for the bluff protection. Please note that rock revetment will still be needed at both ends of the retaining wall as shown on the plan to transition the protection from the rigid wall to the existing bluff face.

We wish to work with your staff to arrive at a reasonably acceptable design approach which can be favorably recommended to your Commission. Please review the attached and advise of your comments. Finalization and formalization of the revised plan depend upon your review comments.

Thank you for your assistance.

Sincerely,


Dean R. Benedix, R.C.E.
Project Civil Engineer

Attachments

cc: Barbara Passmore (w/attachments)
Diana Hall (w/attachments)
Richard Alvarez (w/attachments)

DRB/tas

Exhibit L
(3 of 9)

Response to Coastal Commission "Reasons for Appeal"

1. A. "San Luis Obispo County LCP Hazards Policy 4 and CZLUO 23.05.090(a) limit construction of shoreline structures to projects necessary for protection of existing development..."

Response: The San Luis Obispo County Minor Use Permit approval of February 5, 1999 included the approved findings shown on Exhibit A (copy attached) which document consistency with the LCP Hazards Policy and CZLUO Title 23. These findings include the following:

- 1) "A. As conditioned the proposed project is consistent with the Local Coastal Program and the Land Use Element of the general plan...and are allowed by Table "O" of the Land Use Ordinance and Local Coastal Plan provided they ;are needed to protect existing structures such as the condominiums within 20 feet of the bluff. The use is consistent with all other elements of the general plan."
 - "B. As conditioned, the project or use satisfies all applicable provisions of Title 23 of the San Luis Obispo County Code."
 - "F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act..."
 - "K. 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."
- B. "Insufficient evidence has been presented to demonstrate that the rock revetment is necessary to protect the existing condominium development...the existing structures would not be undermined by erosion for approximately 26 to 54 years."

Response: Construction of a satisfactory bluff protection structure is required now to provide protection to the existing homes during construction and enable construction to be reasonably accomplished. The statement indicating that 26 to 54 years is remaining indicates that there is neither a) consideration given for the bearing pressure of the structure upon the marine terrace bluff which requires an angular bluff face to support the condominiums, nor 2) consideration for the construction process involved in preparing for and installing a bluff protection structure.

You have indicated that the Commission may consider/prefer the installation of a vertical (concrete) wall because it would not reduce the area of public access on the beach. Construction of a vertical wall which would not reduce the extent of existing public beach access requires that the wall be installed conceptually as shown on the attached cross section (Alignment) sketches. The sketches show a 1:1 slope line extending from the bottom of the condominium structure footings, representing the potential limit of the building bearing pressure zone. The limits of temporary construction for the installation of a vertical concrete retaining wall are shown on each alignment. Alignments A & B show the footing corner excavation at or intruding into the 5' safety setback pressure bearing zone. It should also be noted that two bluff face "slumps" have occurred along this bluff face at these locations as located and documented in the Earth Systems Consultants Geologic Bluff Study. The Alignment A sketch shows that temporary excavation for the installation of the conceptual wall catches existing grade at 6' from the face of the existing residences. The Alignment B section catches existing grade at 9' from the face of the existing structure. Delaying installation of a bluff protection structure will result in extreme construction cost inflation because more expensive structural construction methods may need to be employed the closer the erosion gets to the structures.

- C. " Furthermore, as required by the Coastal Development Permit 4-86-236 authorizing construction of one of the structures proposed to be protected by the revetment, a deed restriction was recorded under which the property owner assumed the risks associated with shoreline erosion. "

Response: There is no contention that the owners bear these risks, or are attempting to transferring the risks elsewhere. In assuming these risks, it is prudent and reasonable that the property owner take all necessary measures required to protect their property based on the eroding bluff face. There are no stated deed restrictions addressing bluff protection in the permit.

- 2.A. "SLO County LCP Hazards Policy 4 and CZLUO 23.050.090 require that the design and siting of shoreline structures not preclude public access to and along the shoreline."

Response: The proposed and County approved revetment design does not preclude public access to and along the shoreline because:

- 1) There is currently over 100' horizontally from the toe of bluff to the mean high tide. The County condition for public lateral access is from the toe of the bluff to the mean high tide, or 25' minimum, whichever ever is less. The Coastal permit required lateral access along the entire width of the property from the toe of the bluff to the mean high tide.

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- 2) The existing vertical coastal access is along the north side of Lot A(9231 Balboa). This access way is currently completely accessible, including traversable steps down the bluff face to the beach. No disturbance to this access is included in the project.

- B. "The proposed revetment would interfere with public access and recreation by covering up a significant area of beach."

Response: It is proposed that a concrete retaining wall be installed to eliminate any net "take " of public access, and provide additional beach area at the toe of the bluff.

- C. "In addition, alternative structures that would avoid or minimize impact to coastal access have not been adequately considered."

Response: During the design development stages of the project, consideration was given to alternative structures. Extensive alternative analysis was not formally documented due to the County's unfavorable position on other possible alternatives. Consistent with San Luis Obispo County policies, we prepared an acceptable and reasonable design, approved by San Luis Obispo County.

- 3.A. "No analysis or finding has been made concerning the proposed revetments impact on sand that would be retained by the structure that would otherwise supply sand to the littoral cell."

Response: Discussions with Earth Systems Consultants indicates that the amount of sand lost is minuscule. We can, if you wish, provide further technical analysis to quantify an amount and propose replenishment mitigations.

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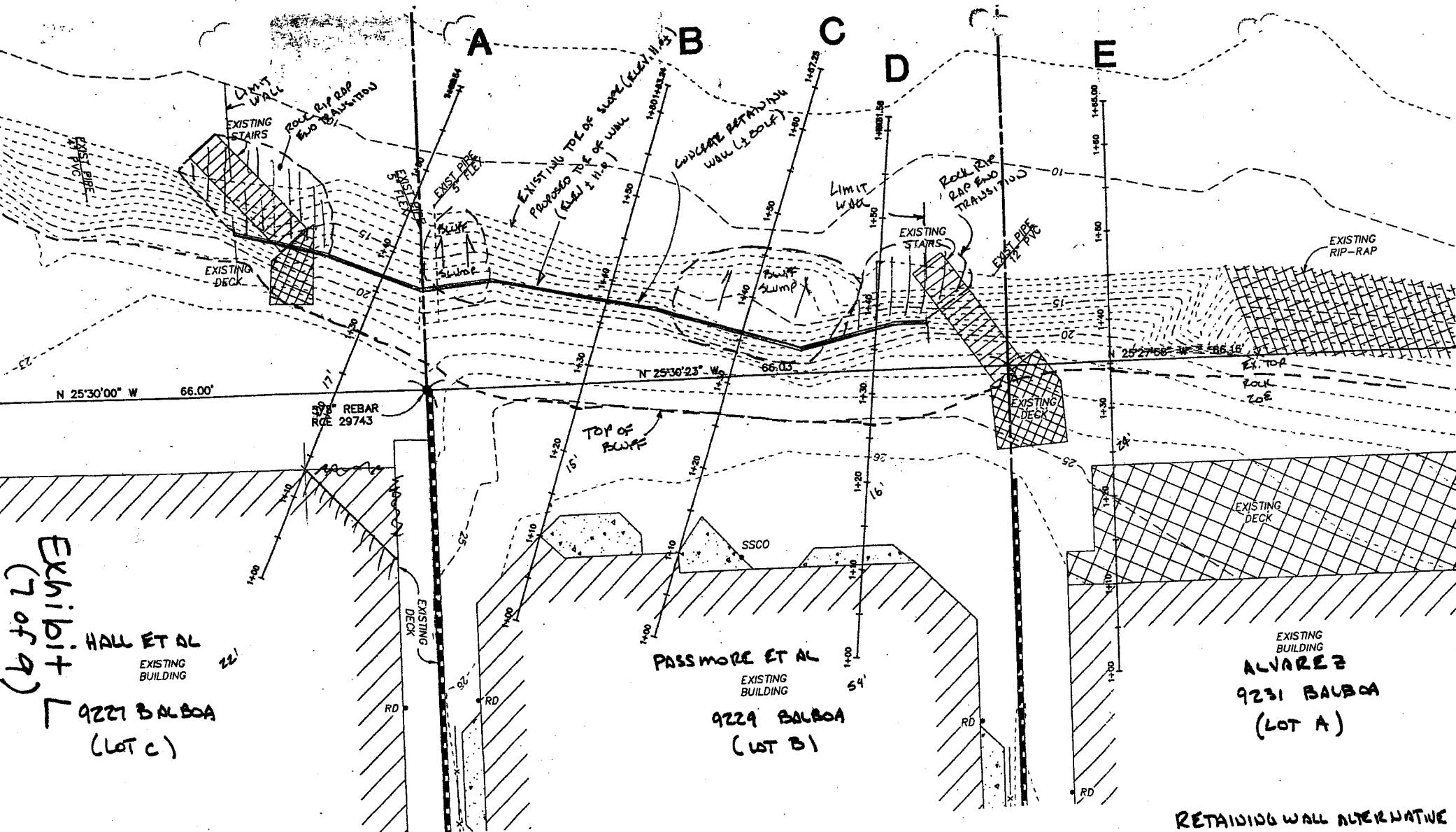
HALL ET AL
EXISTING BUILDING
9227 BALBOA
(LOT C)

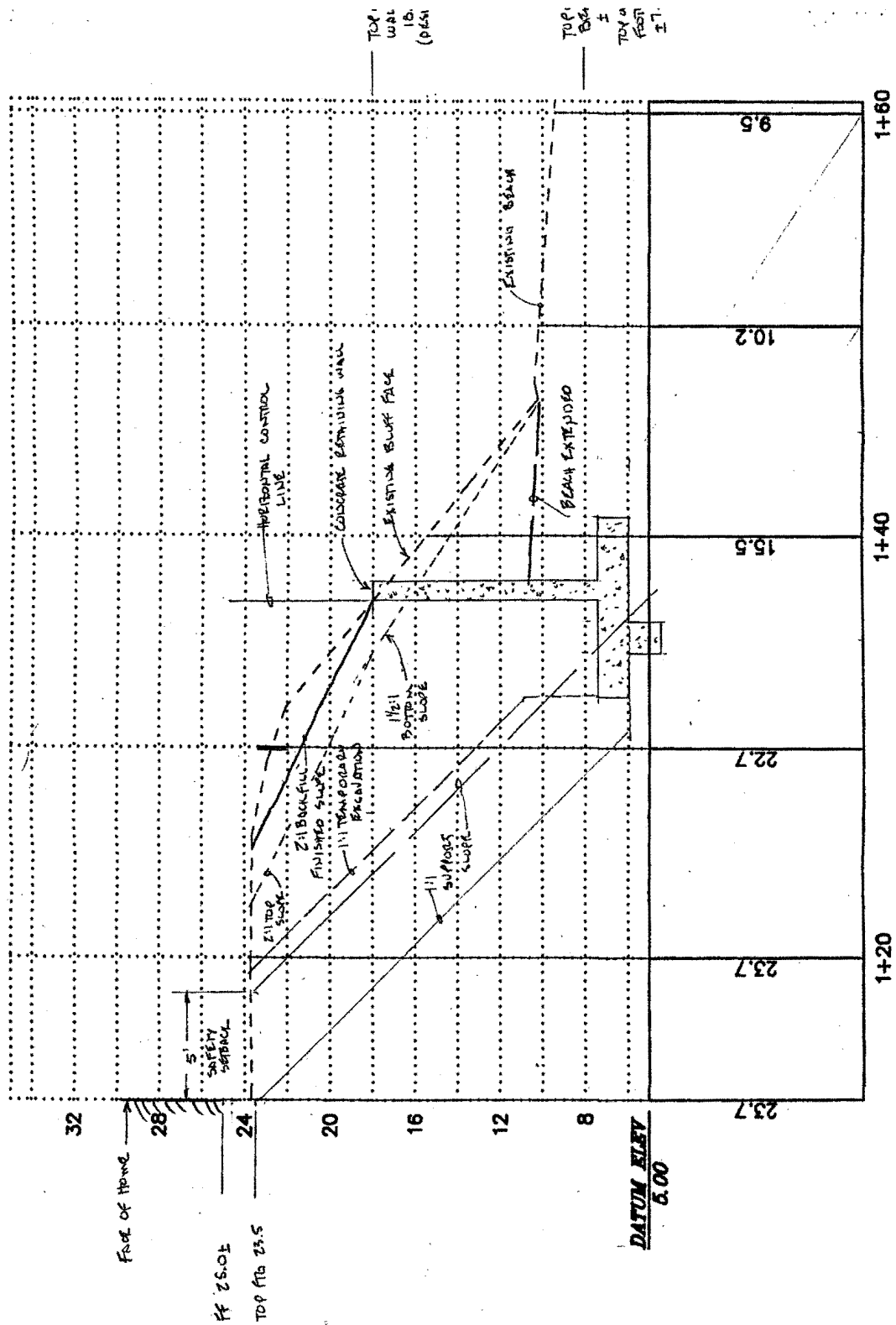
PASSMORE ET AL
EXISTING BUILDING
9229 BALBOA
(LOT B)

EXISTING BUILDING
ALVAREZ
9231 BALBOA
(LOT A)

RETAINING WALL ALTERNATIVE
9227 + 9229 BALBOA AVE
SAN SIMON, CA

8.31.99
1"=10'
92172 D.B.

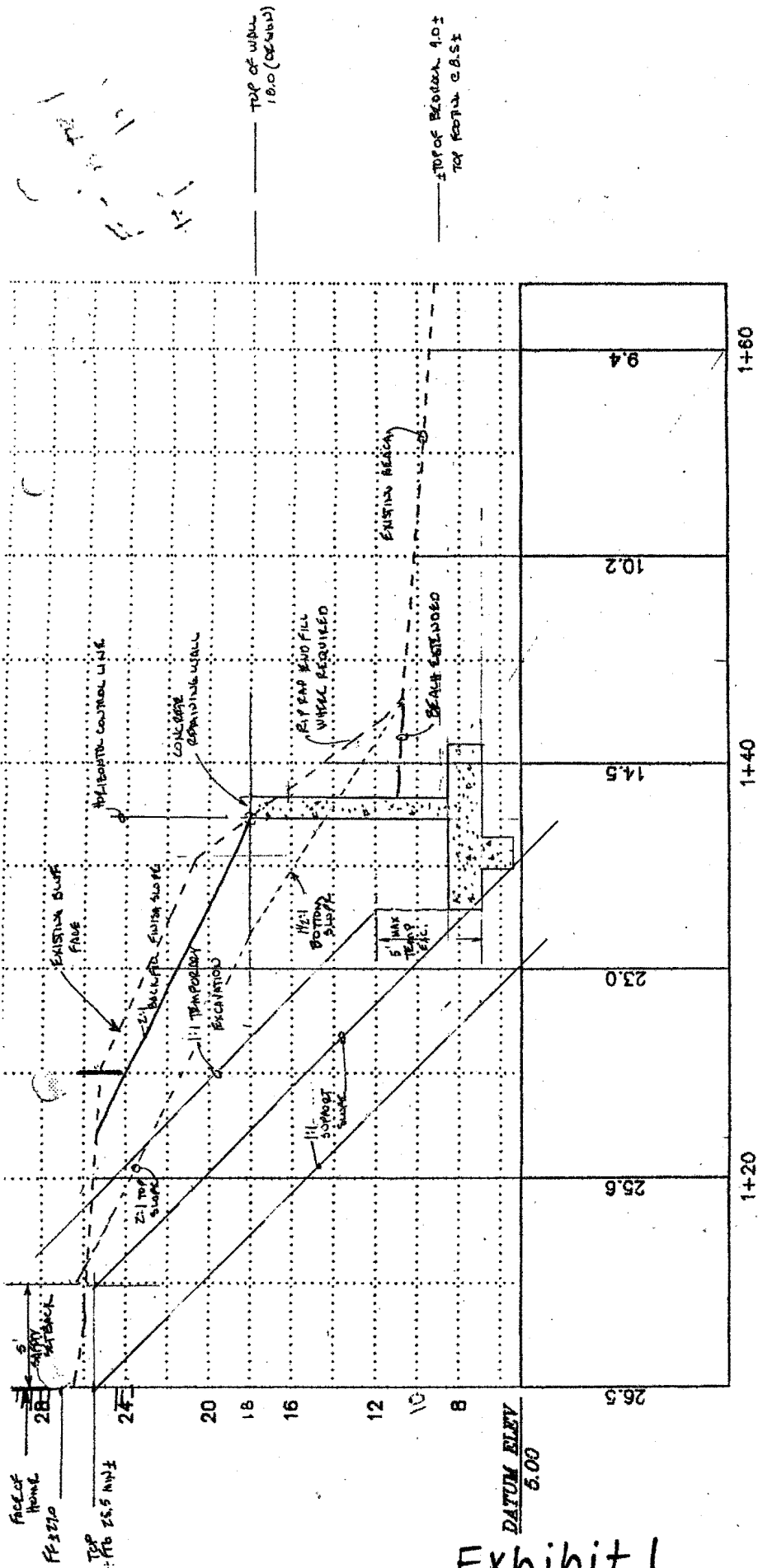




ALIGNMENT A (HALL)

1"=5'

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ALIGNMENT B (PASSMORE)

1"=5'

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