

CALIFORNIA COASTAL COMMISSION

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Staff: RS - SF
Staff Report: February 29, 2000
Hearing Date: March 16, 2000

STAFF RECOMMENDATION
FOR
RESTORATION AND CEASE and DESIST ORDERS

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4 & 5

STAFF NOTE: *This staff report contains the findings, motions and Orders for two items on the agenda. The proposed Orders would be applicable to one owner and property.*

RESTORATION ORDER: CCC-00-RO-01

CEASE AND DESIST ORDER: CCC-00-CD-04

RELATED VIOLATION FILES: V-3-96-03 a and b

PROPERTY LOCATION: 2757 Shell Beach Road,
Pismo Beach, San Luis Obispo County
APN 010-041-044¹ (Exhibit # 1)

**LOCATION AND DESCRIPTION
OF PROPERTY :**

The property consists of approximately 6.19 acres, situated seaward of Shell Beach Road. A sliver of the parcel lies landward of Shell Beach Road. Highway 101 is located east of the parcel. There is a steep arroyo to the north of the property, to the south is a vacant parcel, and to the west is the Pacific Ocean. Cliffs Hotel and restaurant is located on top of an approximately 75 foot high bluff. At the base of the bluff is a narrow stretch of pocket beach, which is part of Shell Beach. At the northern property line, a stairway along the edge of the steep arroyo provides vertical access to the beach from Shell Beach Road on top of the bluff. The area offshore of the northern portion of the subject property is the site of a well-known reef-based surfing break, commonly known as "Reefs Right." It is also known as "Palisades" or "The Cliffs." "Finger Jetty," another surf break, is located offshore near the southern property boundary.

PROPERTY OWNER: La Noria IMS, LLC

AGENTS/REPRESENTATIVES: David Watson
Director of Planning and Project Development
King Ventures
290 Pismo Street

¹ At the time of issuance of CDP 4-83-490 the subject property consisted of four parcels: APN 010-041-026, 29, 30 and 34. On May 22, 1984 the City of Pismo Beach approved coastal development permits 10-CP-84 and 2-SD-84, thereby merging the four parcels into one. See footnote 2 and 7

San Luis Obispo, CA 93401

Frederick Glick, Esq.
1315 Santa Rosa Street,
San Luis Obispo, CA 93402

VIOLATION DESCRIPTION: La Noria IMS, LLC², continues to maintain the below described development activities in violation of the Coastal Act, CDP 4-83-490 (hereinafter, "Permit") (Exhibit #2) and Commission action on CDP amendment application No. 4-83-390-A1:

- A. **Unpermitted and denied development.** A 435 ft. long and 18 to 35 ft. high rock revetment.
- B. **Unpermitted development.** Installation or placement of: 1) Sewage holding tank (approx. 9'-6" below grade, 32'-6" long, 7'-6" wide and 8' deep); 2) Lift station; 3) Gravity sewer collection line; 4) Three de-watering wells with underground electrical connection; 5) Sump pump and pit with underground electrical connection; 6) Blufftop concrete path/swale with a black anodized chain link fence; 7) Storm drain drop inlet; 8) blufftop landscaping; and 9) Irrigation system.
- C. **Development in violation of permit** Construction of authorized development accompanied by failure to: 1) provide at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; 2) place a sign marking the entrance to the public beach access parking on Shell Beach Road; 3) place an official coastal access sign marking the vertical accessway; and 4) mark each parking stall individually stating "Public Beach Access Parking Only."

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 4-83-490
Coastal Development Permit Application No. 4-83-490-A1

I. SUMMARY

The subject violation consists of development activities that are inconsistent with the permit requirements of the Coastal Act as well as with the terms and conditions of coastal development permit (CDP) 4-83-490.

The current owner has been unwilling to undertake measures proposed by Commission staff to resolve this Coastal Act violation and restore the property to a condition that is consistent with CDP 4-83-490 and with the Coastal Act. As a result, staff sent a letter notifying La Noria IMS, LLC of staff's intent to commence a proceeding for the Commission to issue Restoration and Cease and Desist Orders pursuant to sections 30810 and 30811 of the Coastal Act to resolve the subject violation.

The proposed Restoration Order would require La Noria IMS, LLC to apply to the Commission and the City of Pismo Beach³ for a coastal development permit authorizing removal of the rock revetment and restoration of the beach portion of the site. The proposed Cease and Desist Order would require La Noria IMS, LLC to: (a) refrain from engaging in any further development at the property in violation of the

² The original permittees and violators were Stephen Cox and Joseph Wade. On April 4, 1989, Tokyo Masuiwaya Corporation acquired the property and, in June, 1999, sold the property to La Noria IMS, LLC.

³ The City of Pismo Beach's Local Coastal Program (LCP) was certified on January 11, 1984 and it assumed permit-issuing authority on April 13, 1984. The unpermitted rock revetment straddles the coastal development permit jurisdictions of the City of Pismo Beach and the Commission.

issued Permit and the Coastal Act; (b) provide evidence of compliance with conditions of approval of CDP 4-83-490; (c) apply to the Coastal Commission and the City of Pismo Beach to retain or apply only to the City to remove the holding tank and lift station; and either (d) comply with the terms and conditions of approval of CDP 4-83-490-A1; or (e) apply to the City of Pismo Beach for a coastal development permit authorizing removal of the unpermitted development and restoration of the site.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are outlined in Sections 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 9, respectively. The hearing procedures are similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist or Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, at any time before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence according to the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any question proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by two majority votes (one for the Restoration Order and the other for the Cease and Desist Order), of those present and voting, whether to issue the respective Orders, either in the form recommended by staff or as amended by the Commission. The two motions, per staff recommendation or as amended by the Commission, as the case may be, if approved by a majority of the Commission, would result in issuance of the orders.

III. MOTIONS

Restoration Order: Staff recommends adoption of the following motion:

I move that the Commission issue Restoration Order No. CCC-00-RO-01 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the restoration order set forth in section IV of this report.

Cease and Desist Order: Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-00-CD-04 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the Cease and Desist Order set forth in section V of this report.

IV. PROPOSED FINDINGS

Staff recommends that the Commission adopt the following findings in support of both actions:

A. BACKGROUND

On October 13, 1983, the Coastal Commission approved CDP # 4-83-90 (**Exhibit #2**) for the construction of a four story, 170 unit motel and 251 seat restaurant on the subject property. The Commission imposed several conditions to make the project consistent with the Coastal Act. Special condition 1a required the owner to deed restrict for lateral public access a 100-foot setback from the bluff top along the entire ocean front portion of the property and the entire beach area located below the blufftop, fronting the subject property. Part of special condition 3 required the owner to deed restrict the same 100-foot public access easement area setback from the bluff top along the entire ocean front portion of the property as a geologic hazard setback easement. Both conditions also stated that the only development permitted in the 100-foot setback area would be pathways and stairways for public access. Special condition 1c of the Permit also required: 1) provision of at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; 2) placement of an "official coastal access sign" marking the entrance to the public beach access parking on Shell Beach Road; and 3) marking each parking stall individually with the words "Public Beach Access Parking Only." The former owners, Wade Construction Company Inc. and Windmark Corporation, recorded the subject deed restrictions on March 19, 1984. However, the original permittees did not comply with the other cited public access requirement of CDP No. 4-83-90.

On April 4, 1989, Tokyo Masuiwaya Corporation acquired the property (**Exhibit #3**).

On May 28, 1996, the Planning Commission of the City of Pismo Beach approved Tokyo Masuiwaya Corporation's coastal development permit application No. 96-080 for the construction of a bluff protection device to protect a sewage holding tank and modification to the existing private drainage system to minimize further erosion on the bluff. On June 11, 1996, Philip Teresi of the Surfrider Foundation, San Luis Bay Chapter, appealed the Planning Commission's decision to the City Council. On August 6, 1996, the Pismo Beach City Council adopted Resolution No. R-96-60 denying the appeal and upholding the Planning Commission's decision to approve the proposed blufftop protective device. On September 4, 1996, Marc Kent and Surfrider Foundation appealed the City Council's decision to the Commission.

On or about September 1, 1996, while processing the appeal, Commission staff discovered that the subject sewage holding tank and associated development located within the deed restricted bluff top setback area had been installed without benefit of a coastal development permit from the Commission or the City, in conflict with the conditional requirements of CDP No. 4-83-490. On December 12, 1996, the Coastal Commission heard appeal No. A-3-PSB-96-100 for the construction of a bluff protection device and denied the permit request, finding that the development approved by the City was inconsistent with the LCP and other resource protection policies contained in the Coastal Act.

On March 14, 1997, Commission staff sent a notice of violation (**Exhibit #4**) to Tokyo Masuiwaya Corporation stating that a sewage holding tank and associated developments for the hotel and restaurant were placed in violation of CDP No. 4-83-490.

On August 28, 1997, the City of Pismo Beach issued Emergency Permit No. 97-238-001 (**Exhibit 5**) to Tokyo Masuiwaya Corporation for the construction of "cliff protection and drainage repair emergency work." On the same day the City of Pismo Beach issued Emergency Permit No. 97-238-001-2 (**Exhibit**

Cliffs Hotel

Restoration Order No. CCC-00-RO-01 and Cease and Desist Order No. CCC-00-CD-04

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5) for "cliff top drainage, flat work, de-watering wells with pumps, sump pit with pump and associated electrical wiring and hook up."

On or about September 3, 1997, the owner commenced work authorized by the City issued emergency permits. On September 4, 1997, Dennis Delzeit, Public Services Director of the City of Pismo Beach, presented a report (**Exhibit 5**), as required by section 17.124.071 D of the LCP, to the Mayor and City Council. The report explained the nature of the emergency work involved in the bluff protection project for the Cliffs Hotel property.

On April 21, 1998, the Pismo Beach City Council approved regular coastal development permit No. 97-130 as a follow-up permit to both of the emergency permits issued by the City on August 28, 1997.

On May 5, 1998, the Surfrider Foundation, Bruce McFarlan, Coastal Commissioners Rusty Arieas and Pedro Nava appealed the City Council's action on permit No. 97-130 to the Commission.

On November 5, 1998, the Coastal Commission heard the de novo portion of appeal No. A-3-PSB-98-049 for the construction of a rock revetment approximately 435 feet long, 18 to 30 feet high, three de-watering wells, a sump pump, an emergency generator at the sewage lift station, a bluff top concrete swale (to intercept surface water flow and divert it into a storm drain system), an irrigation system with moisture sensing controls, and bluff top landscaping. The Commission denied on appeal No. A-3-PSB-98-049, finding that the City's approval directly conflicts with the Commission's original approval of Cliff's Hotel in 1983. The Commission's denial was also based on the finding that the revetment is inconsistent with LCP policies concerning erosion risks, feasible alternatives (a no project alternative is feasible) and the mitigation of public access, sand supply, visual resources and other coastal resource impacts.

At the same hearing the Commission also considered an amendment to coastal development permit 4-83-490-A1 proposed by Tokyo Masuiwaya Corporation. The project proposed for amendment was same as the project considered in the appeal. With respect to the proposed permit amendment, the Commission denied the rock revetment portion and approved, subject to conditions, the remainder of the project proposed in CDP amendment 4-83-490-A1. The permit amendment was not issued because the past and current owners of the property have not satisfied prior-to-issuance conditions of approval.

On February 3, 1999, the Commission heard and denied requests for reconsideration filed by Tokyo Masuiwaya Corporation of its decisions in A-3-PSB-98-049 and 4-83-490-A1.

On April 5, 1999, Tokyo Masuiwaya Corporation filed in the Superior Court of San Luis Obispo County a petition for "writ of mandate" and complaint for "declaratory relief" against the Coastal Commission Case No. CV 981125⁴. The petition's "prayer for relief" requests the court to direct the Commission to set aside its actions/decisions on appeal No. A-3-PSB-98-049 and approve a permit to allow the rock revetment to remain. The petition also requests the court to direct the Commission to set aside its actions/decisions on CDP 4-83-490-A1 and take no further action on the application.

In June, 1999, Tokyo Masuiwaya Corporation sold the property to La Noria IMS, LLC.

⁴ Aside from the filing, no action has been taken on the filed petition. On or about February 18, 2000 La Noria, IMS LLC notified the Attorney General's Office that, Frederick Glick⁴ had substituted as counsel for La Noria in the litigation.

B. VIOLATION DESCRIPTION

La Noria IMS, LLC, as successor in interest to the original violators,⁵ continues to maintain the below described development activities in violation of both the permit requirements of the Coastal Act as well as the terms and conditions of coastal development permit No. 4-83-490 (**Exhibit #2**) and in conflict with Commission denial/approval action on CDP amendment application No. 4-83-490-A1⁶:

- a. **Unpermitted and denied development.** In violation of section 30600 of the Coastal Act, special conditions 1a and 3 of CDP No. 4-83-490, construction within a deed restricted beach area reserved for public access, of a 435 ft. long and 18 to 35 ft. high rock revetment. The Commission denied the rock revetment portion of CDP amendment application No. 4-83-490-A1.
- b. **Unpermitted development.** In violation of section 30600 of the Coastal Act and standard condition 3 and special conditions 1a and 3 of CDP No. 4-83-490, placement within a deed restricted 100 ft. bluff setback for geologic hazard and for lateral public access, of: 1) a sewage holding tank (approx. 9'-6" below grade, 32'-6" long, 7'-6" wide and 8' deep); 2) a lift station; 3) a gravity sewer collection line; 4) three de-watering wells with underground electrical connection; 5) a sump pump and pit with underground electrical connection; 6) a blufftop concrete path/swale with a black anodized chain link fence; 7) a storm drain drop inlet; 8) landscaping in the form of a lawn and non-native plants; and 9) an irrigation system.
- c. **Development in violation of permit** In violation of special condition 1a and c of CDP No. 4-83-490, construction of authorized development accompanied by failure to: 1) provide at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; 2) place a sign marking the entrance to the public beach access parking on Shell Beach Road; 3) place an official coastal access sign marking the vertical accessway; and 4) mark each parking stall individually stating "Public Beach Access Parking Only."

Conditions of CDP 4-83-490 relevant to the violation

On October 13, 1983, the Commission granted to the original applicants CDP 4-83-490. The permittees proceeded to construct the project authorized thereby. However, the following conditions of the permit are relevant to this proceeding:

Special condition 1c, of the Permit required, in relevant part, the provision of at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road, and placement of a sign marking the entrance to the public beach access parking on Shell Beach Road and each parking stall individually marked "Public Beach Access Parking Only."

Special condition 1a, of the Permit required the execution and recordation of a deed restriction for public lateral and vertical access. On March 19, 1984, the owners recorded the deed restriction (**Exhibit #6**) at the San Luis Obispo County Clerk-Recorder's office as Document No. 13533, volume 2576, pages 97-107 and Document No. 13540⁷, volume 2576, pages 137-145. The

⁵ The original permittees and violators were Stephen Cox and Joseph Wade. On April 4, 1989, Tokyo Masuiwaya Corporation acquired the property and sold the property to La Noria IMS, LLC in June 1999.

⁶ The amended permit has not been issued because prior-to-issuance conditions of approval have not been satisfied. If this circumstance persists the amended permit will expire on November 5, 2000.

⁷ Please note that there were four parcels when the original project was permitted and therefore four deed restrictions were recorded. On the date of recordation of the deed restrictions (**Exhibit #6**) (Document No. 13532, 13533, 13539

deed restriction, in relevant part states, "...the only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that ... would impede public access shall not be undertaken within the accessway area."

Special condition 3, of the Permit required the execution and recordation of a deed restriction (**Exhibit #6**) for the geologic hazard setback and waiver of liability. On March 19, 1984, the owners recorded the deed restriction at the San Luis Obispo County Clerk-Recorder's office as Document No. 13532, volume 2576, pages 89-96 and Document No. 13539⁸, volume 2576, pages 129-136. The deed restriction, in relevant part, states "... (a) that no development other than pathways and stairways shall occur within the 100 foot setback line..."

Conditions of CDP Amendment Application 4-83-490-A1 relevant to the violation

The Commission has not yet issued CDP No. 4-83-490-A1 because La Noria, IMS, LLC has not satisfied the prior-to-issuance conditions. On November 5, 1998 the Commission approved in part and denied in part CDP amendment application No. 4-83-490-A1. La Noria IMS, LLC has not complied with the following prior-to-issuance conditions:

1. Approved Project. As shown on the Applicant's submitted plans and as modified by the conditions below, this Coastal Development Permit Amendment authorizes only: the installation of three de-watering wells with underground electrical connection; a sump pump and pit with underground electrical connection; a blufftop concrete path/swale with black anodized chain link fence no higher than four feet; a storm drain drop inlet; an irrigation system with moisture sensing controls; an impermeable geomembrane under any turf areas consistent with the landscape irrigation control recommendation of the *Geologic Bluff Study* by Earth Systems Consultants dated January 30, 1996; drought and salt tolerant native blufftop landscaping; and the existing storm drain location. This approval does not include construction of the rock rip-rap revetment. Any other development will require a separate coastal permit or a separate amendment to Coastal Development Permit 4-83-490.

2. Facility Relocation Plan. WITHIN 60 DAYS OF THE COMMISSION'S ACTION ON THIS PERMIT AMENDMENT REQUEST, the permittee shall submit to the Executive Director for review and approval a plan for progressively relocating and/or removing all development authorized by this permit amendment under Special Condition 1 commensurate with actual or expected shoreline erosion in advance of the retreat of the bluff. For each type of facility, the plan shall: identify the existing location; specify (in terms of remaining distance from the bluff edge) when the removal or relocation shall occur; where (on the site plan) the new facility location will be; and how the old facility components will be disposed of or preferably reused. The plan may provide for more than one relocation event for any particular facility. However, facilities shall be removed or relocated prior to the time when such removal or relocation would destabilize the bluff or exacerbate bluff retreat. It is recognized that while certain essential facilities may from time to time need to be relocated landward, they must unavoidably remain located seaward of the permitted hotel and restaurant buildings in order to function (e.g., the blufftop lateral access path

and 13540), the owners of the subject parcel were L R Wilkerson Interests, Inc.. The original permittees Stephen Cox and Joseph Wade had contracted with Wilkerson Interests Inc. to buy the adjoining parcels on which the deed restriction was applicable. Also see footnote 1 and 5.

⁸ See footnote No. 6.

and the bluff sediment de-watering system); accordingly, the plan shall also specify the maximum feasible landward alignment for each of these essential facilities. The plan shall specify that no man-made materials or excavation spoils will be allowed to fall over the bluff edge, and any man-made materials which do find their way over the edge will be immediately retrieved. PRIOR TO INSTALLATION OF ANY RELOCATED FACILITY, specific construction plans shall be submitted for review and approval by the Executive Director; such plans shall be submitted with evidence of review and approval by the City of Pismo Beach. If, upon review of any construction plans so submitted, the Executive Director determines that an amendment to Coastal Development Permit 4-83-490 is necessary to authorize the development described by the submitted plans, the permittee shall submit an amendment request upon notification of this determination.

3. Blufftop Landscape and Irrigation Plan. WITHIN 60 DAYS OF THE COMMISSION'S ACTION ON THIS PERMIT AMENDMENT REQUEST, the permittee shall submit to the Executive Director for review and approval a landscape and irrigation plan prepared by a licensed landscape architect or resource specialist. The plan shall include: (a) planting of drought and salt tolerant native species (consistent with bluff vegetation indigenous to the Pismo Beach area) in the blufftop area seaward of the hotel and restaurant, except that the plan *may* include the installation of turf in any area inland of the approved path/swale if this turf area is equipped with an impermeable geomembrane consistent with the landscape irrigation control recommendation of the *Geologic Bluff Study* by Earth Systems Consultants dated January 30, 1996; any turf areas so established inland of the approved path shall revert to drought and salt tolerant native species should the path be relocated inland in accordance with the requirements of Special Condition 2 of this approval so as to always maintain drought and salt tolerant native species seaward of the on-site path/swale; (b) identification of the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features; no permanent irrigation system shall be permitted seaward of the approved path; (c) application of geotextiles or other appropriate measures for short-term slope stabilization to minimize erosion while plants become established and shall identify measures to be implemented and the materials necessary to accomplish this short-term stabilization; (d) written acknowledgement by a licensed engineer that the proposed landscape and irrigation plans, including the amount of water to be delivered to the bluff surface, have been reviewed and found acceptable to ensure slope stability; (e) written commitment by the Applicant that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape and erosion control requirements; and (f) a written acknowledgement that the requirements of this condition will remain in force throughout the life of the project. All landscaping and irrigation described in the landscape and irrigation plan shall be installed within 30 days of the removal of the revetment and in no case later than June 30, 1999.

C. ATTEMPTS AT ADMINISTRATIVE RESOLUTION

Commission staff had numerous discussions with prospective buyers of the subject property from February 1999, when the Commission denied Tokyo Masuiwaya's reconsideration request of CDP No. 4-83-490A1, until June 1999, when the present owner, La Noria IMS, LLC, acquired the property. At the time of purchase, La Noria IMS, LLC, was fully aware that the property contained the cited unpermitted development, that the Commission had denied a permit amendment request for the permanent placement of the riprap revetment, and that the Commission wanted the denied development removed and the site restored to its pre-violation condition. Prior to the purchase as well as at a meeting held on August 27, 1999, Commission staff informed David Watson, agent of La Noria IMS, LLC, of the status of the

violations. La Noria IMS, LLC expressed a desire to work with Commission staff to resolve the violation administratively. Resolution efforts continued until November 1999.

Commission staff and Watson have had numerous discussions, and exchanged correspondence and telephone calls with respect to the resolution of the violation. By letter to staff dated June 22, 1999 (Exhibit #7), Watson confirmed the change in ownership of the subject property and the desire of the new owners "to work cooperatively ... to develop an appropriate plan for compliance as soon as practical."

By letter dated July 8, 1999 (Exhibit #8), Commission staff reminded Watson of the Commission's denial of the amendment application to retain the rock revetment. Commission staff also asked La Noria IMS, LLC to submit no later than November 1, 1999, a coastal development permit application for its removal to avoid formal Coastal Act enforcement action. In the same letter Commission staff reiterated the property's regulatory history and referred to the possibility of enforcement action if necessary to bring the site into conformance with the Commission's permit actions.

On August 27, 1999, Commission staff met with David Watson and John King of King Ventures, as agents for La Noria IMS, LLC, and discussed the components and status of the violations. Commission staff reiterated that the rock revetment and all unpermitted development should be removed and the site restored. Additionally, Commission staff asked that, before November 1, 1999, La Noria comply with the conditions of approval of the original Permit and subsequent amendment, to avoid formal enforcement action.

By letter dated October 6, 1999 (Exhibit #9), Watson argued that development approved as part of the November '98 amendment request was "permitted" and the removal of the sewage holding tank would cause blufftop instability. In the same letter Watson asserted that the holding tank is not a contributing factor to bluff erosion, rather wave action and beach scour are. However, he stated that the use of the holding tank has been discontinued and suggested abandonment-in-place to resolve the matter now with removal as a future option. On the matter of the sewer lift station, Watson stated in the letter that it was vital to the entire site and, as it was not identified as a factor contributing to bluff erosion, Commission staff should recognize it as a permitted structure. He stated, in the same letter,

In exchange, we would acknowledge that the station is a "permitted structure that is not subject to shoreline protective devices." In other words, we would covenant that the lift station would not be viewed as "existing development otherwise subject to protection under the Coastal Act and Pismo Beach LCP," and therefore could not be the subject of future applications for protective structures. This would essentially require the property owners to relocate or remove the lift station in the future if erosion ever encroaches within a safe distance of the facility.

With respect to the previously required public beach access parking spaces and other access improvements, Watson stated that they would *stencil them immediately... we would paint "Public Parking/Daylight Hours" at the driveway end of the 19 spaces you have noted as required.*

With regards to the rock revetment, Watson acknowledged in his letter that it *did impact some 5,000 SF of beach area.* He proposed the following:

- *We would prepare and submit a new application for City action, with and the Commission review for consistency with your earlier permit action and to bring finality to outstanding issues at their level. (In-lieu of an assignment of the old permit);*
- *The rip-rap placement would be modified (cleaned up) to reduce the footprint of the rock presently covering the beach areas immediately seaward of the placement;*

- *The beach would be re-established in the areas of the removed rip-rap (we estimate at least 3,000 SF of beach can be reclaimed in this fashion);*
- *The upper rip-rap zone (generally above wave action areas) would be planted with appropriate bluff face and seaside plant materials (designed for added stabilization effect as well);*
- *You would acknowledge that the original permits and deed restrictions should not be interpreted as precluding future consideration of legitimate shoreline protective structures, consistent with the Pismo Beach LCP, and subject to City permitting above the mean high tide line.*

Finally, in the same letter, Watson proposed an annual monitoring program of their remedial action, continued shoreline erosion and wave action conditions.

By letter to Watson dated November 4, 1999 (**Exhibit #10**), Commission staff reiterated that the denied rock revetment should be removed in its entirety consistent with the Commission's denial of the revetment in November 1998. Commission staff clarified that blufftop development approved as part of the November, 1998, amendment action cannot be considered as permitted development because conditions of approval had not been satisfied. Commission staff suggested fulfillment of the prior-to-issuance conditions of approval so that a permit can be issued and the blufftop development considered permitted. With regard to the unpermitted structures located in the bluff setback area which had not been subject to Commission permit action, (i.e., the sewage holding tank and lift station) Commission staff requested the submittal of an application for retention or removal of these structures. Commission staff also stated that no geotechnical analyses or studies had been submitted to address the issue of retention versus removal of the holding tank. Commission staff asserted that the abandoned holding tank could be removed at the same time as the revetment. With respect to public beach access parking, Commission staff stated that Special Condition 1c of the Permit required each parking stall to be marked "Public Beach Access Parking Only," not *Public Parking/Daylight Hours*. Commission staff also reminded Watson that Special Condition 1a of the Permit required an official coastal access sign marking the vertical accessway.

To avoid formal enforcement action, Commission staff stated that it would be necessary for La Noria, LLC, to comply with the following on or before December 15, 1999:

- Submit evidence of condition compliance with CDP 4-83-490 in regards to Public Access Parking and Signage.*
- Submit an application to the Coastal Commission to remove the rock riprap revetment and restore the bluff and beach to its pre-violation status.*
- Comply with Special Conditions 2 and 3 of CDP amendment 4-83-490-A1 so that the amended permit can be issued.*
- Submit an application to the Coastal Commission for authorization to either retain or remove all unpermitted development in the blufftop setback area.*

Any application for a coastal development permit action must be complete and include all necessary attachments as noted in the application form and in this letter, including, but not limited to, detailed plans showing all development which was performed without a coastal development permit and proposed removal and restoration plans. Competent geotechnical

analysis of any project(s) must be provided. The application must also include a request to amend the geologic setback deed restrictions to allow for retention of the development.

By letter to staff dated December 9, 1999 (**Exhibit #11**), Watson stated that La Noria could not meet the deadline of December 15, 1999, but would promptly make applications to the City. Watson stated that any application to the Commission with regards to the riprap would be "fruitless" because Commission staff did not support his proposals. He stated that the pending litigation would address the matter. Watson stated that *the parking spaces have been striped "Public Parking Daylight Hours" consistent with the 1983 permit.* With regards to the coastal access sign, Watson asserted that the 1983 permit did not require its placement and that such signage was originally installed at the site many years ago and subsequently removed by a souvenir seeker. He further stated that such removal did not "*diminish*" their *continuing compliance with the permit condition.* With regards to the sewage holding tank and lift station, Watson conveyed La Noria's willingness to submit an application for the retention and relocation of the facilities.

On December 17, 1999, Commission staff telephoned Watson to clarify issues that were not addressed in Watson's December 9, 1999, letter. In his letter, Watson had not suggested any time frame for compliance with his or Commission staff's settlement proposals and he had not addressed compliance with conditions of approval of the November, 1998, amendment request. Additionally, Watson had also incorrectly characterized issues relating to public beach access parking and the coastal access sign. In his conversation with Commission staff Watson stated the following:

1. *King Venture, on behalf of La Noria IMS, LLC, was in discussion with the City of Pismo Beach to apply and obtain a permit to remove and relocate to a location outside the geologic set back area the unpermitted sewer lift station and sewer holding tank. The permit would be obtained before the end of 1999.*
2. *La Noria IMS, LLC, intended to implement the removal and relocation of the unpermitted sewer lift station and sewer holding tank structures before June 2000.*
3. *King Ventures, on behalf of La Noria IMS, LLC, would contact the Commission's Santa Cruz office and comply with the conditions of CDP Amendment 4-83-490-A1 (hereinafter, "1998 approval/denial") before the end of 1999.*
4. *La Noria IMS, LLC, would like to retain the unpermitted gravity sewer collection line parallel to the bluff at the same location and would apply to the Coastal Commission for a CDP for this sewer collection line after accomplishing 1, 2 and 3.*
5. *Due to existing litigation with respect to the rock revetment, the Coastal Commission can contact Frederick Glick, attorney for King Ventures / La Noria LLC.*

Staff at the City of Pismo Beach Planning, Building and Engineering Department has informed Commission staff that, as of the date of this report, no application had been submitted or filed by King Ventures for the authorization of the development outlined in items 1 and 2 above. In addition, King Ventures has not, as of the date of this report, complied with the conditions of the November 1998, amendment action, as promised in item 3 above.

On January 31, 2000, Commission staff sent to Watson and Glick, via certified mail, a Notice of Intent to commence Restoration and Cease and Desist Order proceedings (**Exhibit #12**) along with a Statement of Defense form. The Notice required the Statement of Defense form to be completed and returned no later

than February 21, 2000. On February 1, 2000, the same documents were sent to Watson and Glick via facsimile. Receipt of the facsimile was confirmed by the "transmission result reports" (Exhibit #12) received on February 1, 2000. Receipt of the facsimile on February 1, 2000, at King Ventures, was also confirmed by telephone. Receipt of the certified letter was confirmed by the signature on the "return receipt" (Exhibit #12), which Commission staff received on February 7, 2000. As of the date of this staff report, Commission staff has not received a completed Statement of Defense form from either King Ventures or Glick.

By letter dated February 18, 2000 (Exhibit #13), Watson, in an effort to comply with special conditions imposed in the November, 1998, amendment approval, delivered to staff as-built plans depicting the development the Commission in its action had approved. Watson stated that a sign identifying the "Public Beach Access Parking" has been installed at Shell Beach Road. With regards to parking, Watson stated that, weather permitting, they *will make a second attempt to comply by re-striping the public spaces to read: 'Public Beach Access Parking Only,'* and will try and complete this re-striping by the end of February, 2000. With regards to the coastal access sign, Watson requested Commission staff's advice as to how he could acquire one.

The submittal of as-built plans satisfied only a portion of the requirements of Special Condition 2 of CDP amendment application No. 4-83-490A1 (See pages 7 and 8 of this report). There are other requirements such as the specification of time of removal and relocation of the facilities, new location of the facilities, method of disposal/reuse of the old facility, maximum feasible landward alignment for each of the facilities, etc. that need to be depicted on the plans. Until such time when all components of the conditions of approval are satisfied the amended permit cannot be issued. The conditions also required the submittal of an engineering plan for the removal of the rock revetment, a facility relocation plan for blufftop development placed within the geologic/public access setback area and a blufftop landscape and irrigation plan along with written acknowledgments from a licensed engineer and the owner.

As of the date of this staff report La Noria IMS, LLC has failed to resolve the violations listed on page 6 of this report.

D. RESOURCE IMPACTS

There are three major public access and recreation areas associated with the subject property. First is the lateral access area present along the top of the bluff. Second is the pocket beach located at the base of the bluff, which is partially covered with rock, and the associated beach and intertidal areas extending along the parcel as well as both up-coast and down-coast. Third, the Reefs Right surfing area is located offshore to the northwest of the subject property and members of the public maintain that the rock revetment has adversely impacted water-oriented recreational activities.

Bluff top area: The lateral bluff-top area is protected for public access by the property's deed restrictions and currently ranges from 78 feet to 130 feet wide. One of the purposes of the City's certified LCP access policies is to provide for continuous lateral access along this section of the coast; the Cliffs Hotel represents one segment of this trail. It should be noted that this lateral trail does not exist to the north of the Cliffs parcel as a steep arroyo remains to be bridged. The trail also does not exist to the south as the parcel remains vacant adjacent to the Cliffs Hotel property and is blocked off by a chain link fence extending from Shell Beach Road to the bluff edge.

Beach Area: The pocket beach in front of the Cliffs is part of a larger beach that is accessed by a stairway located along the northern property line of the Cliffs Hotel which extends from Shell Beach

Road to the beach along the edge of a steep arroyo. This stairway was required as a condition of the Commission's original approval of the Cliffs Hotel in 1983. The rock revetment covers approximately 4,900 square feet of recreational beach area available at the base of the bluffs in front of the Cliffs Hotel. The beach area stretching to the north from the base of the stairway (and thus directly north of the Cliffs Hotel site) is a much used, broad sandy beach backed by high bluffs similar to the Cliffs site. South of the stairway, the beach area narrows and access is gained to the pocket beach in front of the Cliffs over a rocky promontory which limits access southward at high tides. Based on the Commission's original approval of the hotel, this beach area fronting the Cliffs Hotel has been deed restricted for public access use. Another rocky promontory, which also limits access at high tides, is located at about the southern Cliffs property line. Past this point there is another sandy pocket beach and some further rocky areas which are accessed by a path which connects inland from Shell Beach Road through Spyglass Point City Park. In general, most beach goers frequent the beaches north of the Cliffs property while the rocky areas and pocket beaches located along the Cliffs site and southward are primarily visited by surfers and other visitors looking for the privacy of the pocket beaches or those interested in exploring the rocky intertidal areas.

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

For many years the public has extensively used this entire stretch of coast, including the beach area in front of the Cliffs Hotel. Commission staff site visits have confirmed this heavy use to exist even on weekdays. As the Commission previously found in the original Cliffs Hotel staff report (4-83-490), "[t]he site has historically been extensively used for public access including access...to and along the beach and rocky areas." In short, the beach area and available lateral and vertical public accessways constitute a significant public access resource and visitor-destination point much used by local residents and visitors.

Staff Note: *Except as noted otherwise, in brackets, the following section titled, "How would the proposed [existing] project impact coastal resources?" is a verbatim excerpt from the resource impact findings (pages 24-45) adopted by the Commission in its action on CDP amendment application No. 4-83-490-A1.*

4. How Would The ... [Existing] Project Impact Coastal Resources?

As has been described above [pages 6-23 of adopted findings CDP 4-83-490-A1], the Cliffs Hotel and restaurant structures are not currently in danger from erosion and a hard protective device is not required. As such, the [existing] revetment does not meet the first two tests of LCP Policy S-6, and it is inconsistent with LCP Zoning Section 17.078.060(4) and CEQA Section 21080.5(d)(2)(A). But even if the revetment did satisfy these requirements, the impacts associated with the [existing] revetment, as well as any proposed mitigation for these impacts would need to be analyzed for consistency with the LCP. As discussed below, such analysis provides further reasons why the [existing] revetment is inconsistent with the LCP – and the Coastal Act.

4a. Sand Supply Impacts

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

17.078.060(4)(c): Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must...eliminate or mitigate any adverse impacts on shoreline sand supply.

17.078.060(6)(a): Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve Coastal dependent uses and that may alter natural shoreline processes shall not be permitted unless the City has determined that when designed and sited, the project will eliminate or mitigate impacts on local shoreline sand supply.

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

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

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

designed to protect. (In Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography))

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

Fixing the Back Beach

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

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

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

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

The earlier finding analyzing the erosion danger at the Cliffs Hotel site presents site-specific data establishing that the subject parcel is located on a recessional or eroding shoreline (see finding beginning on page 13 [of the adopted findings for CDP 4-83-490-A1]). The retreat rate for the ...[existing] revetment area has been estimated by the consulting engineering geotechnical firm to be 4-feet per year. In short, the beach at the Cliffs Hotel would gradually migrate landward if left to its own natural devices.

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

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

As discussed in the access finding below beginning on page 21, it is important to recognize that the beach lost in this case is a public beach because it has been deed restricted for public access. Further, any beach that would be created as the bluff retreats inland naturally would likewise be considered public as the deed restrictions extend seaward from the Cliffs Hotel structures themselves. This loss of public access must also be mitigated. However, before discussing these access concerns, it is important for the purposes of the required impact mitigation under Coastal Act and LCP requirements to be able to quantify the sand supply impact. In previous decisions, the Commission has used a scientific methodology for this purpose, developed in part out of its experience with shoreline structure impacts in the San Diego Region (see *Report on In-Lieu Fee Beach Sand Mitigation Program*, January 1997; also CDP 6-93-131 (Richards)). Using this methodology, the actual long-term loss of this public beach due to fixing the back beach is equal to the long-term erosion multiplied by the width of property which has been fixed by a resistant shoreline protective device:

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

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

Page 1 of Exhibit 14 [of the adopted findings for CDP 4-83-490-A1] generally illustrates this calculation. Since the actual amount of long-term erosion cannot be predicted precisely, erosion is approximated by the long-term average annual erosion rate times the number of years that the back beach or bluff will be fixed. The width of the property which would be fixed can be determined from the ...[existing] project design (approximately 435 linear feet of shoreline according to the ...plans). The erosion rate has been estimated at 4-feet per year by the Applicant's geotechnical consultant. Although the projected lifetime of the ...[existing] revetment structure has not been determined in this case, if the structure were in place it would result in an annual long term loss of beach at the site due to fixing the back beach location as follows:

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

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

In this case, the Commission has not been able to establish an actual conversion factor for the Pismo Beach vicinity. However, if a 1.0 conversion factor is used (i.e., the low end of the spectrum of values typically assumed by coastal engineers), a conservative estimate of the cubic yard equivalent of 1,740

square feet per year can be calculated. For the Cliffs Hotel site, this translates into a direct sand supply impact due to fixing the back beach location of 1,740 cubic yards per year.

Retention of Potential Beach Material

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

A seawall, gunite facing or revetment also will probably prevent some of the material above it from becoming beach material; however, some upper bluff retreat may continue unless the shoreline protective device extends the entire height of the bluff. Page 2 of Exhibit 14 [of the adopted findings of CDP 4-83-490-A1] shows several possible configurations of the bluff face, with a protective structure. The solid line shows the likely future bluff face location with shoreline protection and the dotted line shows the likely future bluff location without shoreline protection. The volume of total material which would have gone into the littoral system over the lifetime of the shoreline protective device would be the volume of material between the solid line and the dotted line, along the width of protected property.

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

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

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

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

There may be some reduction in the coastal sand supply due to the presence of the bluff revetment

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

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

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

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

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

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

Encroachment on the Beach

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

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

$$A_e = W \times E$$

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

Scour/End Effects

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

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

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

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

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

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

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

Level, Engineering Implications (National Academy Press, 1987) which provides:

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

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

Interruption of Onshore and Longshore Processes

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

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

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

Sand Supply Conclusion

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

Erosion of the bluff does not significantly contribute to sand development because of the high clay and silt content of the soil. Fine particles are generally deposited further out to sea. The vast majority of beach sand is washed down from creeks and rivers, therefore the effect of the revetment in slowing the rate of bluff erosion would not be expected to alter sand quantities significantly at the cove. (emphasis added)

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

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

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

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

4b. Access & Recreational Impacts

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

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

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

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

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

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

17.078.060(4)(b): Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must provide for lateral beach access.

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

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

4b(1). Blufftop Access Impacts

As earlier discussed in the finding beginning on page 13 [of the adopted findings of CDP 4-83-490-A1], the lateral blufftop area at the top of the bluff (as protected for public access by the property's deed restrictions) currently ranges from 78 feet to 130 feet wide. The Applicant proposes to reconstruct the pathway through this blufftop access area which provides developed access from the north of the Cliffs property to the south. **With or without the ...[existing] revetment, this lateral access area will be maintained with the ...[existing] project as conditioned.** This is important because one purpose of the City's access setback policy is to provide for continuous lateral access along this section of the coast; the Cliffs Hotel represents one segment of this trail. It should be noted this lateral trail does not exist to the north of the Cliffs parcel as a steep arroyo remains to be bridged (though beach access is provided by stairway) and does not exist to the south as the parcel remains vacant adjacent to the Cliffs Hotel property and is blocked off by a chain link fence extending from Shell Beach Road to the bluff edge.

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

4b(2). Beach Access Impacts

If approved, the [existing] revetment cover[s] approximately 4,900 square feet of recreational beach area at the base of the bluffs in front of the Cliffs Hotel (see Exhibits 3, 6 & 7 [of the adopted findings of CDP 4-83-490-A1]). This pocket beach in front of the Cliffs is part of a larger beach that is accessed by a stairway along the northern property line of the Cliffs Hotel which extends from Shell Beach Road to the beach along the edge of a steep arroyo. This stairway was required as a condition of the Commission's original approval of the Cliffs Hotel in 1983.

The beach area stretching to the north from the stairway (and thus directly north of the Cliffs Hotel site) is

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

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

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

These adverse public access impacts would contradict Coastal Act Sections 30210, 30211, and 30240 which protect this recreational area and the public's right of access thereto. In addition, as discussed in the finding beginning of page 13 [of the adopted findings for CDP 4-83-490-A1], the property is specifically deed restricted to protect this public access. This deed restriction applies to the bluff and beach seaward of the Cliffs Hotel and states, in applicable part:

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

The Applicant previously has been informed that, in the opinion of the Executive Director, the [existing] revetment does impede public access by covering 3,000 to 4,000 square feet of beach area (plans submitted show this to be closer to 4,900 square feet) heretofore used for public recreational purposes (see Exhibit 12 [of adopted findings for CDP 4-83-490-A1]). As a result, the revetment is specifically not an allowed structural improvement based on the property's deed restrictions.

Furthermore, as noted above in the discussion of sand supply impacts, in addition to the direct loss of useable recreational beach area, the introduction of the [existing] revetment would have a number of effects on the dynamic shoreline system and the public's beach use interests. First, the revetment would lead to a progressive loss of sand as shore material is not available to nourish the sand supply system. Second, and particularly in combination with the loss of sand generating materials, the ...[existing]

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 ...[existing] 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 ...[existing] revetment is not sited so far landward that it would only be acted upon during severe storm events, beach scour, particularly during the winter season, will be accelerated because there is less beach area to dissipate the wave's energy. This will act to exacerbate the narrowing of the useable beach space available for public access.

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

Public Trust Issues

In addition to publicly owned recreational beach parks, the public has ownership and use rights in the lands of the State seaward of the mean high tide line as it exists from time to time (public trust lands) and may also have rights landward of the mean high tide line through historic public use (public prescriptive rights). As mentioned above, in the case of the Cliffs Hotel, the beach area is also deed restricted for public access uses only (see Exhibits 8 – 11 [of the adopted findings for CDP 4-83-490-A1] for the full text of these recorded documents).

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

Where development is ...[or existing] that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is known as the ordinary high water mark. (Civil Code, § 830.) In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of a sandy beach whose profile changes as a result of wave action, the location at

which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

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

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

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

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

The Commission also must consider whether a project affects any public right to use shorelands that exists independently of the public's ownership of tidelands. In addition to a development proposal's impact on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law; (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

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

concern.

In this case, the public has been granted the right of access through the Commission's original approval of the Cliffs Hotel in 1983; this right is described in the deed restrictions required as a condition of approval (see Exhibits 8 – 11 [of the adopted findings for CDP 4-83-490-A1]). Nonetheless, as discussed above in terms of sand supply impacts, there is evidence that the [existing] revetment will be subject to wave uprush which may result in some potential adverse individual and cumulative impacts on sand supply, beach profile, and ultimately, public access as a result of fixing the back beach location, retention of beach material, localized beach scour, coverage of sandy beach area, and interruption of the alongshore and onshore sand transport process.

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

Beach Access Impacts Conclusion

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

4b(3). Surfing Access Impacts

The third major category of access and recreation that would potentially be affected by the [existing] project is surfing access. The area offshore of the northern portion of the Cliffs Hotel property is the site of a well known reef-based surfing break most commonly referred to as "Reefs Right" (or alternatively as "Palisades" or "The Cliffs"). This surfing area is actively used by locals as well as visitors to the area and consists of a break that allows for surfing both to the left and to the right (in relation to the shore). Reefs Right is a year round surfing attraction which generally is best at mid to low tides. During winter swell conditions, it can be difficult to paddle out to the break and surfers have been known to be dropped offshore by boats to gain access to the surf. A second surf break, commonly known as "Finger Jetty," is located offshore near the southern property boundary of the Cliffs Hotel property. While less used, Finger Jetty may also be impacted by the ...[existing] project (see site plan, Exhibit 3 [of adopted findings for CDP 4-83-490-A1])

Not only are these surfing areas protected by Coastal Act Sections 30210, 30211, and 30240 (as

previously cited above), but this surfing access is additionally protected by Coastal Act Section 30220:

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

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

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

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

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

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

4b(4). Access and Recreation Conclusion

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

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

4c. Visual Impacts

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

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

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

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

***17.096.020(1):** All uses, developments and alterations of land included within this Overlay Zone shall not result elevation of land or construction of any improvement which would significantly block, alter or impair major views, vistas, viewsheds or major coastal landforms from designated*

scenic highways, public lands and waters or viewpoints in such a way as to materially and irrevocably alter the quality of the view.

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

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

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

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

The [existing] drainage and de-watering elements should not have an adverse visual impact. In fact, Commission staff have been to the site and assessed the visual impacts of the pathway/swale and the landscaping and found them to be visually unobtrusive. The ...[existing] revetment, however, has introduced an unnatural pile of rocks into an otherwise natural shoreline vista. The Negative Declaration determined that there were not any significant visual impacts "[b]ecause the revetment is only visible from the immediate cove in which it is placed and because the orientation of beach users is oceanward." The City further found that "[t]he rock revetment is not visually incompatible with the bluff." However, this pile of dark rocks is *not* compatible with the soft brown marine terrace and lower sandstone and shale bedrock. Furthermore, the revetment adversely impacts views: from the beach while traversing the site laterally; from the beach when making use of the remainder portion of the pocket beach; from the water for surfers accessing Reefs Right and Finger Jetty; and from the water for recreational and commercial boaters offshore.

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

There are direct impacts on the public viewshed due to the [existing] revetment. The revetment has not been designed to protect views, has not been designed to minimize the alteration of natural landforms, is not visually compatible with the character of the surrounding area, and is not designed in any way that is sensitive to the need to prevent significant scenic degradation of a publicly used recreational area. As such, and even if the ...[existing] revetment had been shown to be necessary and consistent point with the Coastal Act and the LCP for allowing shoreline structures, the Commission finds that the ...[existing] revetment is inconsistent with the visual resource policies of LCP Policy S-6, and LCP

Zoning Sections 17.078.060(4)(c), 17.096.020(1) and 17.096.020(4).

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

4d. Structural Stability Impacts

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

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

The City of Pismo Beach LCP bluff erosion/instability section also references Coastal Act Section 30253 which mirrors LCP Policy S-3 in this regard. Coastal Act Section 30253 provides, in applicable part:

30253: *New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

As discussed earlier in this staff report [adopted findings for CDP 4-83-490-A1], the ...[existing] drainage and dewatering elements, as conditioned, will act to reduce potential future threats consistent with LCP Policy S-3. However, while the whole purpose of the revetment portion of the project is to ensure stability of the bluff at this location, there are a couple of stability issues with the revetment. First, the ...[existing] revetment has not been keyed into the underlying bedrock, but rather the rocks have simply been placed on top of the sandy beach. As the beach profile changes and scouring takes place, and as regular wave attack takes its toll, an un-keyed structure is liable to "float" around somewhat on the sand. As a result, an un-keyed revetment is more liable to shift and undulate than would be a keyed structure. Likewise, individual rocks are more likely to migrate out onto the beach or into the intertidal area, sometimes migrating just under the sand, where these rocks can become a public access impediment and a public safety hazard. Second, even though un-keyed (and, to a lesser degree, keyed) rock revetments have these known maintenance problems, such as the ...[existing] revetment, the project does not include any regular maintenance program. Such a program could not only detect areas of subsidence and upsurge, but could also identify measures for retrieving wayward boulders. Commission experience is that standard practice is to monitor and maintain these structures at least once per year.

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

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

Without a keyway, and without a maintenance program designed both to retrieve migrating rocks and to re-evaluate (and re-engineer as necessary) the structure at least one time per year following the winter storm season, the ...[existing] revetment has not been designed to minimize risks and has not been designed to assure stability and structural integrity. **As such, and even if the ...[existing] revetment had been shown to be necessary and consistent with the Coastal Act and the LCP for allowing shoreline structures, the Commission finds that the ...[existing] revetment is inconsistent with the structural stability policies of LCP Policy S-3.**

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

4e. Natural Landform Impacts

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

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

17.078.060(4)(a): Seawalls shall not be permitted, unless the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must respect natural landforms.

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

30253(2): New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

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

The negative declaration states that "although the rock is not natural the appearance is naturalistic." The City further found that "[t]he rock revetment is not visually incompatible with the bluff." However, the fact that rocks are "natural" in the sense that they come from the ground, does not make the pile of rocks natural. In fact, the pile of rock is decidedly unnatural and does not respect the natural bluff landform. As such, and even if the ...[existing] revetment had been shown to be necessary and consistent with the Coastal Act and the LCP for allowing shoreline structures, the Commission finds that the ...[existing] revetment is inconsistent with the natural landform policies of LCP Policy S-6 and LCP Zoning Section 17.078.060(4)(a).

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

4f. Coastal Resource Impacts Conclusion

Even if the ...[existing] revetment had been shown to be necessary and consistent with the Coastal Act and the LCP for allowing shoreline structures (which it has not), the above findings have demonstrated that the revetment would result in significant and measurable impacts to sand supply, public access, visual resources, structural stability, and natural landforms. The project as ...[existing], and as conditioned by the City, does not contain any mitigation for these impacts. **As such, the Commission finds that the ...[existing] revetment is inconsistent with the above-detailed Coastal Act and LCP policies and requirements and is denied.**

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

and the natural landform), and if these impacts were properly mitigated, a vertical wall would be the preferred shoreline protective alternative at the Cliffs Hotel site.

Hence, the Commission found in its denial action that the impacts caused by the revetment are not only immediate but also continuing as long as it remains in place. Thus, the Commission finds, consistent with section 30811 of the Act, that the constructed revetment is unpermitted, is inconsistent with Chapter 3 policies of the Coastal Act, and is causing ongoing resource impact.

E. STAFF ALLEGATIONS

The staff alleges the following:

- 1) La Noria IMS, LLC is the owner of the property located at 2757 Shell Beach Road, Pismo Beach, San Luis Obispo County, APN 010-041-044.
- 2) La Noria IMS, LLC continues to maintain development, as defined by Coastal Act §30106, at the subject property, which is unpermitted and denied.
- 3) La Noria IMS, LLC continues to maintain within the deed restricted beach area for public access, denied development consisting of a rock revetment 435 feet long and 18 to 35 feet high.
- 4) La Noria IMS, LLC continues to maintain unpermitted development, within the deed restricted 100 ft. bluff setback for geologic hazard and access easement, consisting of: a) a sewage holding tank (approx. 9'-6" below grade, 32'-6" long 7'-6" wide and 8' deep); b) lift station; c) gravity sewer collection line; d) three de-watering wells with underground electrical connection; e) a sump pump and pit with underground electrical connection; f) a blufftop concrete path/swale with black anodized chain link fence; g) a storm drain drop inlet; h) blufftop landscaping; and i) irrigation system.
- 5) La Noria IMS, LLC has failed to: a) provide at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; b) place a sign marking the entrance to the public beach access parking on Shell Beach Road; c) place an official coastal access sign marking the vertical accessway; and d) mark each parking stall individually stating "Public Beach Access Parking Only."
- 5) The development activities of La Noria IMS LLC constitute an ongoing violation of the terms and conditions of a Commission issued permit (CDP 4-83-490) and thereby the Coastal Act. In order to resolve this Coastal Act violation, La Noria IMS, LLC must: (a) refrain from engaging in any further development at the property in violation of the issued Permit and the Coastal Act; (b) provide evidence of compliance with conditions of approval of CDP 4-83-490; (c) apply to the Coastal Commission and the City of Pismo Beach to retain or apply only to the City to remove the holding tank and lift station; and either (d) comply with the terms and conditions of approval of CDP 4-83-490-A1; or (e) apply to the City of Pismo Beach for a coastal development permit authorizing removal of the unpermitted development and restoration of the site.

F. ADDITIONAL FINDINGS TO SUPPORT THE ISSUANCE OF CEASE AND DESIST AND RESTORATION ORDERS

Unpermitted violation: As more fully described in the findings adopted by the Commission for its 1) approval of CDP 4-83-490, 2) finding of substantial issue of A-3-PSB-98-049 and 3) denial/approval of CDP amendment application 4-83-490-A1, incorporated herein by reference, La Noria IMS, LLC continues to maintain development activities, as described in page 6, section A, titled "Background" and in section B, titled "Violation Description" of these findings without the benefit of a CDP in violation of section 30600 of the Coastal Act.

G. ADDITIONAL FINDINGS TO SUPPORT THE ISSUANCE OF A RESTORATION ORDER

Inconsistency with the Coastal Act: As more fully described in the findings adopted by the Commission for its: 1) approval of CDP 4-83-490, 2) finding of substantial issue of A-3-PSB-98-049 and 3) denial/approval of CDP amendment application 4-83-490-A1, incorporated herein by reference, the unpermitted rock revetment that La Noria IMS, LLC continues to maintain on the property is inconsistent with Sections 30210-30214, 30220 and 30240(b) of the Coastal Act and with Pismo Beach LCP Policy S-6 and Zoning Section 17.078.060, .

Continuing Resource Damage: Section D, titled, "Resource Impacts" on pages 12-23 of this report describes the various impacts to coastal resources due to the unpermitted and denied rock revetment. The Commission finds that these impacts are causing ongoing resource damage to coastal resources in the following respects: 1) elimination and/or reduction of access, 2) recreation, 3) surfing access, 4) direct and indirect impacts to tidelands, 5) bluff-top retreat, sand supply impacts, 6) fixing of the back beach, 7) retention of potential beach material, 8) encroachment on the beach, 9) scour/end effects and 10) interruption of onshore and longshore processes.

H. ALLEGED VIOLATOR'S STATEMENT OF DEFENSE FORM

On January 31, 2000, Commission staff sent to Watson and Glick, via certified mail, a Notice of Intent to commence Restoration and Cease and Desist Order proceedings (**Exhibit #12**) along with a Statement of Defense form. The Notice required the Statement of Defense form to be completed and returned no later than February 21, 2000. On February 1, 2000 the same documents were sent to Watson and Glick via facsimile. Receipt of the facsimile was confirmed by the "transmission result reports" (**Exhibit #12**) received on February 1, 2000. Receipt of the facsimile on February 1, 2000 at King Ventures, was also confirmed by telephone. Receipt of the certified letter was confirmed by the signature on the "return receipt" (**Exhibit #12**), which Commission staff received on February 7, 2000. As of the date of this staff report, Commission staff has not received a completed Statement of Defense form from either King Ventures or from Glick.

As of the date of this report, and without excuse, La Noria IMS, LLC has not responded to staff's allegations as set forth in January 31, 2000 Notice of Intent to commence Cease and Desist Order proceedings. Furthermore, La Noria IMS, LLC never requested an extension of the time limit for submittal of the statement of defense form. (See Cal. Code of Regs., tit. 14, §13181(b) [where Executive

Director "may at his or her discretion extend the time limit ... upon receipt within the time limit of a written request for such extension and a written demonstration of good cause"].)

The mandatory completion of the statement of defense has significant bearing to its purpose. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ["When administrative machinery exists for the resolution of differences ... such administrative procedures are [to be] fully utilized and exhausted"].) La Noria IMS, LLC has failed to avail itself of the opportunity afforded by the Statement of Defense form to inform the Commission which defenses it wishes the Commission to consider before making its decision on whether or not to issue a cease and desist order.⁹ The Commission should not be forced to guess which defenses La Noria IMS, LLC wants the Commission to consider. Section 13181(a) is specifically designed to serve this function of clarifying issues to be considered by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d. 24, 37 ["it was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing, ... The rule is required ... to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play"].)

V. RESTORATION ORDER

Staff recommends that the Commission issue the following Restoration Order:

Pursuant to its authority under Public Resources Code §30811, the California Coastal Commission hereby orders La Noria IMS, LLC, its members, managers, officers, employees, and agents, and any persons acting in concert with the foregoing to fully comply with the following:

- 1) Within 45 days of the issuance of this order, or within such additional time as the Executive Director may for good cause grant, submit to the City of Pismo Beach and to the Commission for their review and approval, an application that satisfies the standards for completeness of both the City and the Commission for a coastal development permit to remove the rock revetment and restore the beach and bluff areas to their pre-violation conditions. The applications shall include, but not necessarily be limited to, the following elements:
 - a. a geo-technical evaluation of the revetment removal;
 - b. a plan for restoring the violation site to its pre-violation status. Such plan shall include (at a minimum) identification of: all dates and times when the removal/restoration activities would take place; all equipment to be used; and all staging areas;

⁹ The Statement of Defense Form which is sent with the Notice of Intent to commence Restoration Order or Cease and Desist Order proceedings, has six sections of information that La Noria IMS, LLC should have provided to the Coastal Commission : 1) Facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; 2) Facts or allegations contained in the cease and desist order or notice of intent that are denied by the respondent; 3) Facts or allegations contained in the cease and desist order or notice of intent of which the respondent has no personal knowledge; 4) Other facts which may exonerate or mitigate the respondent's possible responsibility or otherwise explain the respondent's relationship to the possible violation; 5) Any other information, statement, etc. that respondent desires to offer or make; and 6) Documents, exhibits, declarations under penalty of perjury or other materials that the respondent wants to have attached to the form.

- c. a study that addresses factors including, but not limited to, impacts of removal and restoration methods of the site on sand supply, surfing dynamics (including wave dynamics and exit/entry impacts), beach access (including lateral beach access), natural landforms, native vegetation and visual compatibility.
- 2) Within 45 days of the date of Commission action on the application for removal of the revetment and restoration of the site, or within such additional time as the Executive Director may for good cause grant, the rock revetment shall be removed in its entirety and restoration completed.

IDENTIFICATION OF THE PROPERTY

The property that is the subject of this restoration order is described as follows:

2757 Shell Beach Road, Pismo Beach, San Luis Obispo County, APN 010-041-044

DESCRIPTION OF UNPERMITTED DEVELOPMENT AND IN VIOLATION OF CDP 4-83-490

A 435-foot long, 18 to 35 feet high rock revetment located within a beach and bluff area deed restricted for public access.

TERM OF THE ORDER

This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission at the March 16, 2000 hearing, as set forth in the document entitled "Adopted findings for Restoration Order No. CCC-00-RO-01".

COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

APPEAL

Pursuant to Public Resources Code section 30803(b), any person or entity against whom/which this order is issued may file a petition with the Superior Court for a stay of this order.

VI. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following Cease and Desist Order:

Pursuant to its authority under Public Resources Code §30810, the California Coastal Commission hereby orders La Noria IMS, LLC, its members, managers, officers, employees, and agents, and any persons acting in concert with the foregoing, to fully comply with the following:

- 1) Refrain from engaging in any development activity in violation of CDP 4-83-490; and
- 2) Within 45 days of the issuance of this order, or within such additional time as the Executive Director may for good cause grant, bring development on the subject property into full compliance with the terms and conditions of CDP 4-83-490, which require the following: a) provision of at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; b) placement of a sign marking the entrance to the public beach access parking on Shell Beach Road; c) placement of an official coastal access sign marking the vertical accessway; and d) designation of each parking stall with the notation "Public Beach Access Parking Only;" and
- 3) Within 45 days of the issuance of this order, or within such additional time as the Executive Director may for good cause grant, submit to the Commission and the City of Pismo Beach (in the case of an application for a permit to retain) or to the City (in the case of an application for a permit to remove) for their review and approval an application that satisfies the standards for completeness of both the City and the Commission, or of the City, as the case may be, for a coastal development permit to either retain within or remove from the deed restricted 100 ft. bluff setback for geologic hazard and access easement unpermitted development consisting of: a) a sewage holding tank (approx. 9'-6" below grade, 32'-6" long 7'-6" wide and 8' deep) and b) a lift station; and
- 4) Within 45 days of the issuance of this order, or within such additional time as the Executive Director may for good cause grant, either:
 - a. Fully comply with the terms and conditions of CDP 4-83-490-A1; or
 - b. Submit to the City of Pismo Beach for its review and approval an application that satisfies the standards for completeness of the City for a coastal development permit to remove unpermitted development, within the deed restricted 100 ft. bluff setback for geologic hazard and access easement, consisting of: 1) gravity sewer collection line; 2) three de-watering wells with underground electrical connection; 3) a sump pump and pit with underground electrical connection; 4) a blufftop concrete path/swale with black anodized chain link fence; 5) a storm drain drop inlet; 6) blufftop landscaping; and 7) irrigation system. The application shall include, but not necessarily be limited to, the following elements:
 - i. Identification of all development, including non-native and non-drought resistant plant materials, present in the blufftop area and a detailed description of how each individual element shall be removed, disposed of, and the affected area restored to its pre-unpermitted development condition;
 - ii. Performance standards to ensure that no man-made materials or excavation spoils shall be allowed to fall over the bluff edge, and adequate response mechanisms to ensure that any man-made materials which do find their way over the edge will be immediately retrieved;

- iii. A competent geo-technical evaluation of the removal plan that addresses factors including, but not limited to, impacts of removal and restoration methods of the site on sand supply, surfing dynamics (including wave dynamics and exit/entry impacts), beach access (including lateral beach access), natural landforms, native vegetation and visual compatibility; and
- iv. Identification of: all dates and times when the removal/restoration activities would take place; all equipment to be used; and all staging areas.

Within 45 days of the date of Commission action on the application to remove the unpermitted developments pursuant to 4) b., or within such additional time as the Executive Director may for good cause grant, the unpermitted developments shall be removed in its entirety and restoration completed.

IDENTIFICATION OF THE PROPERTY

The property that is the subject of this restoration order is described as follows:

2757 Shell Beach Road, Pismo Beach, San Luis Obispo County, APN 010-041-044

DESCRIPTION OF UNPERMITTED DEVELOPMENT

Installation or placement of: a) Sewage holding tank (approx. 9'-6" below grade, 32'-6" long 7'-6" wide and 8' deep); b) Lift station; c) Gravity sewer collection line; d) Three de-watering wells with underground electrical connection; e) Sump pump and pit with underground electrical connection; f) Blufftop concrete path/swale with black anodized chain link fence; g) Storm drain drop inlet; h) blufftop landscaping; and i) Irrigation system, all within the 100 ft. bluff setback area deed restricted for geologic hazard and public access.

DESCRIPTION OF ACTIVITY IN VIOLATION OF CDP 4-83-490

Failure to: a) provide at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road; b) place a sign marking the entrance to the public beach access parking on Shell Beach Road; c) place an official coastal access sign marking the vertical accessway; and d) mark each parking stall individually stating "Public Beach Access Parking Only."

TERM OF THE ORDER

This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission at the March 16, 2000 hearing, as set forth in the document entitled "Adopted findings for Restoration Order No. CCC-00-CD-04".

COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

APPEAL

Pursuant to Public Resources Code section 30803(b), any person or entity against whom/which this order is issued may file a petition with the Superior Court for a stay of this order.

EXHIBITS

Copies of:

1. Site Map and Location.
2. CDP 4-83-490.
3. Title document.
4. Notice of Violation dated March 14, 1997.
5. City issued emergency permits and the City's Public Services Director's report dated September 4, 1997.
6. Deed Restrictions.
7. Letter dated June 22, 1999 from Watson to Commission staff.
8. Letter dated July 8, 1999 from Commission staff to Watson.
9. Letter dated October 6, 1999 from Watson to Commission staff.
10. Letter dated November 4, 1999 from Commission staff to Watson.
11. Letter dated December 9, 1999 from Watson to Commission staff.
12. Notice of Intent to commence Restoration and Cease and Desist Order proceedings, facsimile transmission report and certified mail return receipts.
13. Letter dated February 18, 1999 from Watson to Commission staff.

SUBJECT PROPERTY INFORMATION

1) Property: 2757 SHELL BEACH RD, PISMO BEACH CA 93449-1602 C011

APN:	010-041-044	Use:	MOTEL
County:	SAN LUIS OBISPO, CA	Tax Rate Area:	4-013
Census:	117.00	Total Value:	\$14,000,000
Map Pg:		Prop Tax:	\$212,474.60
New Pg:	693-F6	Land Value:	\$2,600,000
Phone:		Delinq Tax Yr:	
Owner:	TOKYO MASUIWAYA CAL CORP A CAL CORP	Imprv Value:	\$11,400,000
		Assd Yr:	1997
		% Improved:	81%

Mail: TOSHIAKI SASAKI PRESIDENT 2757 SHELL BEACH RD; SHELL 93449-1602

SALES INFORMATION

LAST SALE

PRIOR SALE

Transfer Date:
Sale Price/Type:
Document #:
Document Type:
1st TD/Type:
Finance:
Junior TD's:
Lender:

Seller:
Title Company:
Transfer Info:

IMPROVEMENTS

Bldg/Liv Area:

Units:

Bldgs:

Stories:

\$/SF:

Yrblt/Eff:

Total Rms:

Bedrms:

Baths(F/H):

Fireplace:

Pool:

Bsmt Area:

Construct:

Flooring:

Air Cond:

Heat Type:

Quality:

Condition:

Style:

Other Rooms: DEN;FAMILY
ROOM;DINING
ROOM;ENCLOSED
PORCH;BONUS
ROOM;LANAI;ATTIC;FLO

SITE INFORMATION

Improve Type:	Lot Size:
Zoning: R4	Lot Area:
County Use: 374	Parking:
Bldg Class:	Park Spaces:
Flood Panel:	Site Influence:

Phys Chars:

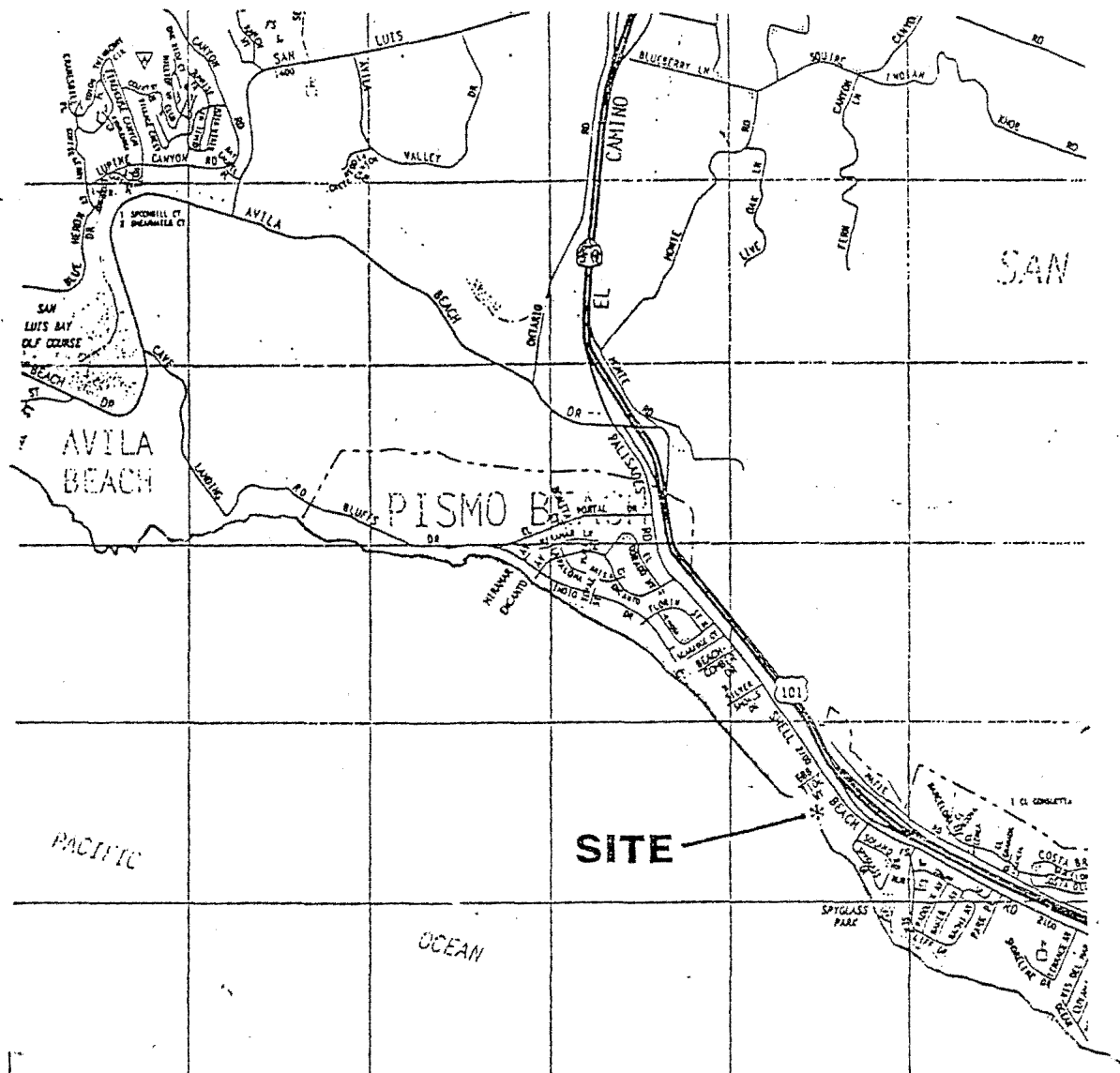
Legal: CY PB PM 35/77 PTN

Comments:

VICINITY MAP

CLIFFS RESORT HOTEL

Shell Beach, California

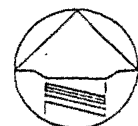


Earth Systems Consultants

Northern California

January 7, 1996

RG



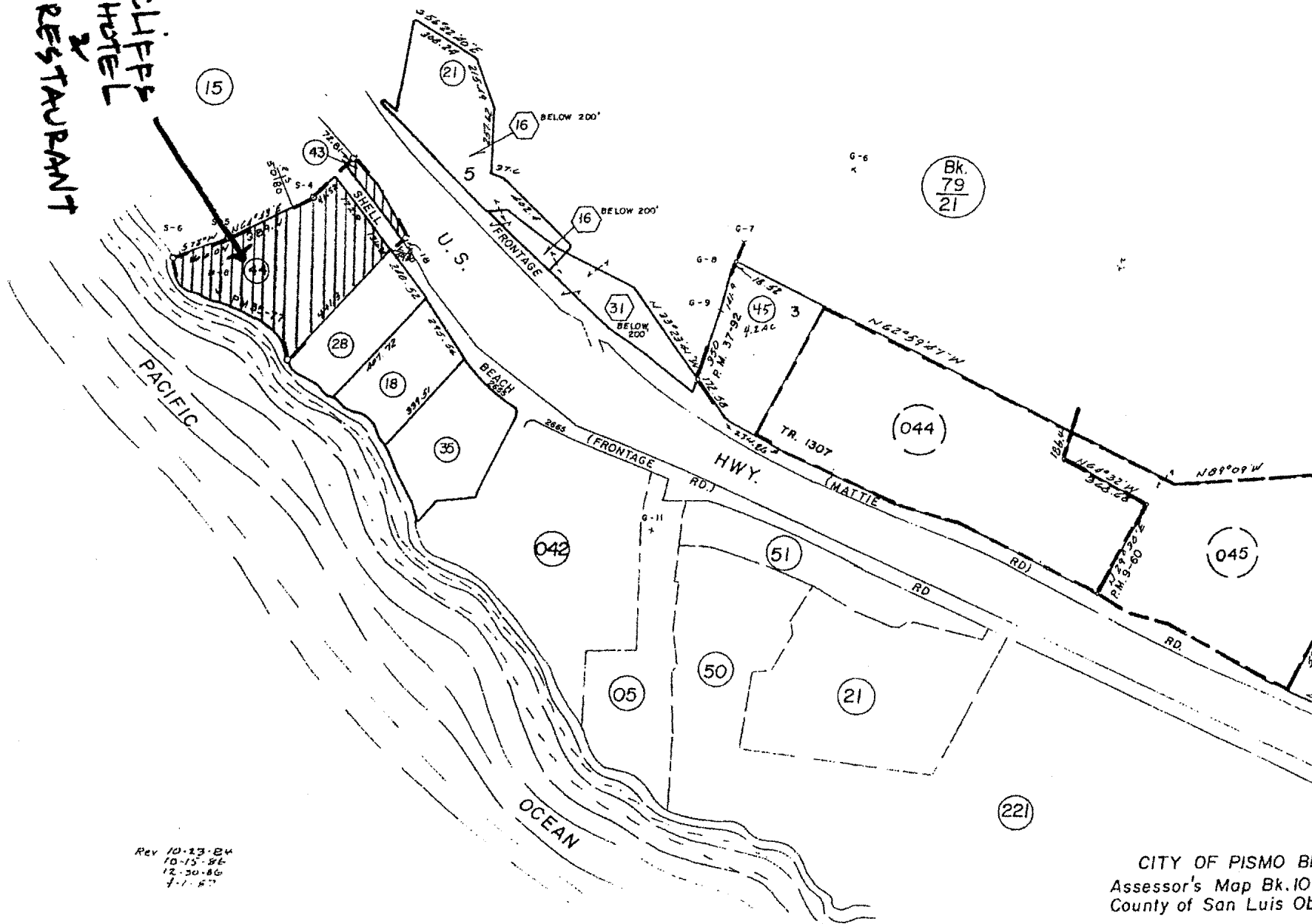
NOT TO SCALE

Pacific Geoscience Division

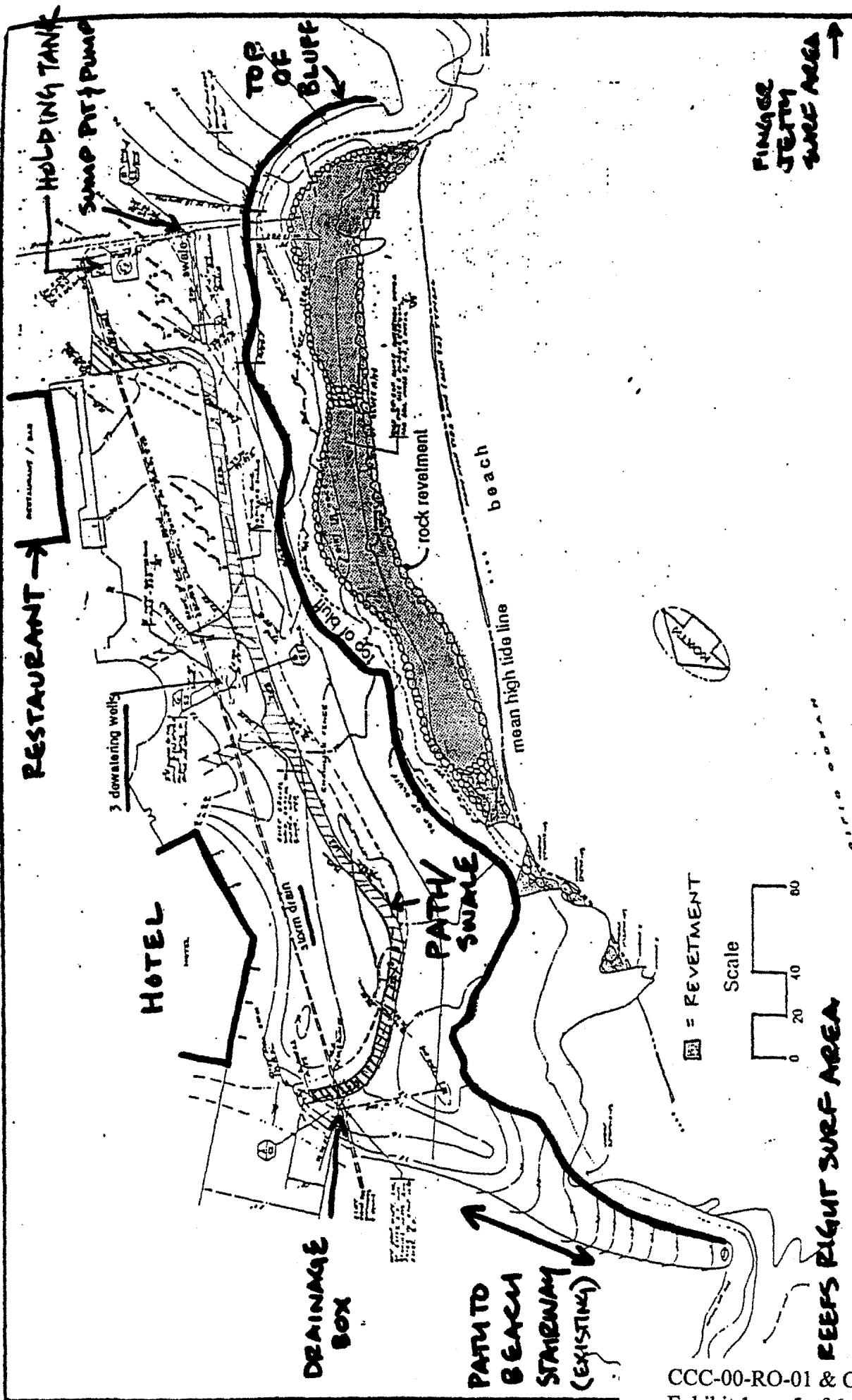
4378 Santa Fe Road, San Luis Obispo, CA 93401

NGG-7457-05

CLIFFS
HOTEL
RESTAURANT



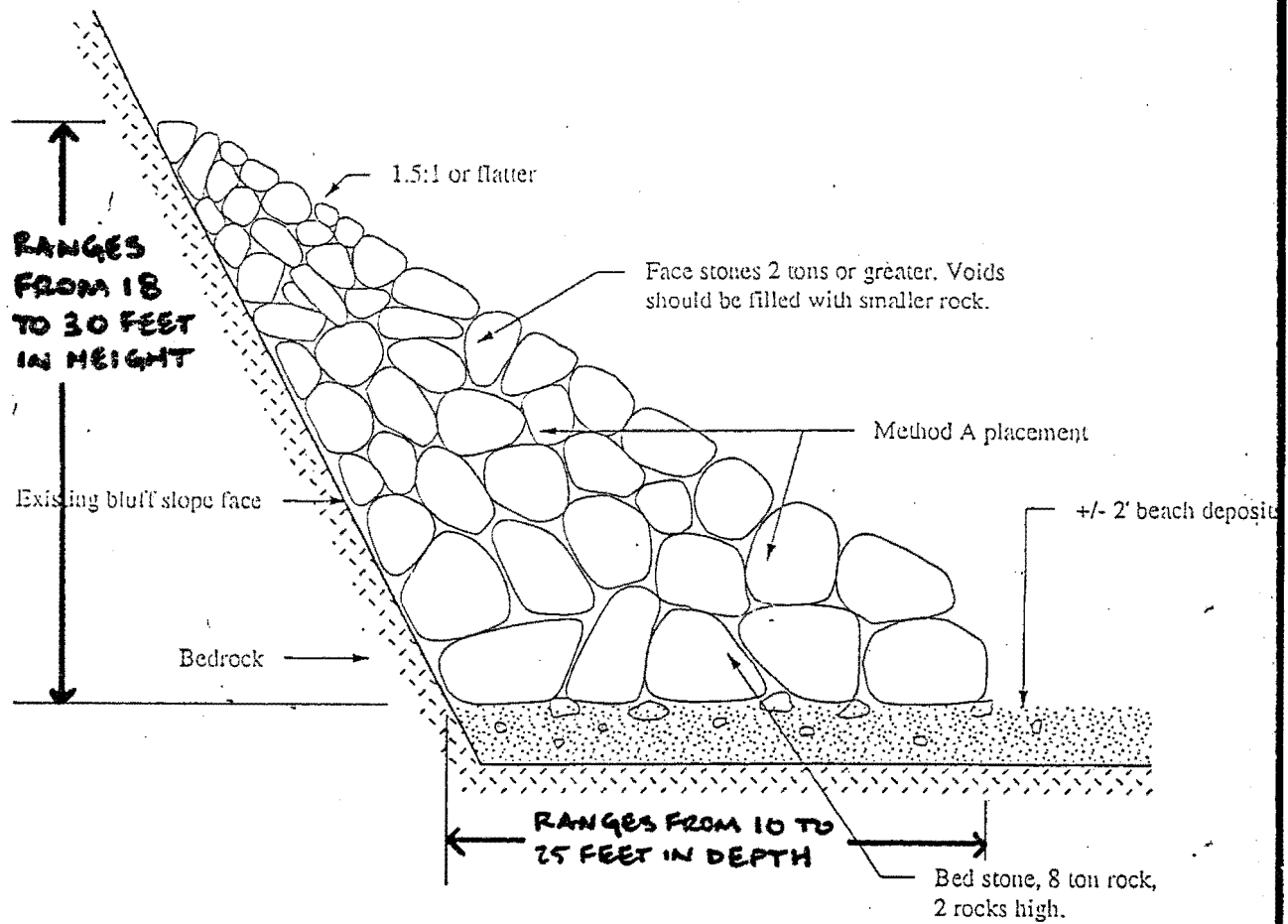
CITY OF PISMO BE
Assessor's Map Bk. 10-
County of San Luis Obi



ROCK SLOPE PROTECTIVE STRUCTURE DETAIL

CLIFFS RESORT HOTEL

Shell Beach, California



NOT TO SCALE



Earth Systems Consultants

Northern California

August 6, 1997

4378 Santa Fe Road, San Luis Obispo, CA 93401

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

NGG07457-05

LR

GENERAL REVENEMENT CROSS SECTION 01

CCC-00-RO-01 & CCC-00CD-04
Exhibit 1 6 of 6

California Coastal Commission
SOUTH CENTRAL COAST DISTRICT
735 State Street, (805) 963-6871
Balboa Building, Suite 612
Santa Barbara, CA 93101

George Deukmejian, Governor
George Deukmejian, Governor

COASTAL DEVELOPMENT PERMIT

No. 4-83-490

Page 1 of 5

On October 13, 1983, the California Coastal Commission granted to


STEPHEN D. COX AND H. JOSEPH WADE

this permit for the development described below, subject to the attached Standard and Special conditions.

PROJECT: Construct a four (4) story, 170 unit motel and 251 seat restaurant and conference room, with related sized parking resources.

SITE: North Spyglass planning area on Shell Beach Road, between the road and the Pacific Ocean. Site is between Spyglass Drive and Pendleton Lane south of an unnamed Arroyo.
Pismo Beach, County of San Luis Obispo
(APN: 10-041-26, 29, 30 and 34)

Issued on behalf of the California Coastal Commission by


MICHAEL L. FISCHER
Executive Director
and

**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS
AND UNTIL A COPY OF THE PERMIT WITH THE
SIGNED ACKNOWLEDGEMENT HAS BEEN RE-
TURNED TO THE COMMISSION OFFICE.**


James M. Ryerson
District Director

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour-advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

SEE ATTACHED

SPECIAL CONDITIONS:

Prior to the transmittal of the coastal development permit, the applicant shall submit to the Executive Director for his review and approval, revised project plans and documents providing for the following:

1. Public Access Along the Blufftop and Beach and From the Road to the Beach

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

The deed restriction shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The deed restriction shall bind any successor and assigns in interest of the applicant or landowner.

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

- b. Design and Construction of Accessways. The applicant shall construct the accessway improvements described in Condition 1a above. The applicant shall submit specific plans for the improvement and construction of all accessways, including the path and stairway down to the beach, specifying design and materials which will maintain the natural, rustic appearance of the accessways. The plans shall specifically provide means for connecting the access paths on the subject property to any accessways that may be created on adjacent properties, and the applicant, by accepting the terms and conditions of the permit, shall agree to connect these accessways at the earliest possible time.

SPECIAL CONDITIONS, continued

- c. Removal of the Proposed Public Parking Area from the Environmentally Sensitive Arroyo. Revised plans for parking and internal circulation showing no development within the Arroyo at the north boundary of the site and showing the location of at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road. The parking spaces shall be separated and distinguished from the parking areas supporting the hotel and shall be designed to facilitate public use of the accessways and to discourage use by hotel patrons during the daylight hours. A sign marking the entrance to the public beach access parking area shall be placed on Shell Beach Road and each parking stall shall be individually marked "Public Beach Access Parking Only".
- d. Prescriptive Rights. The applicant shall, by accepting the terms and conditions of the permit, agree that the issuance of this permit and completion of the authorized development shall not prejudice any subsequent assertion of a public right, e.g., prescriptive rights, public trust, etc.

2. Lower Cost Visitor Serving Facilities - Food Take Out

Revised plans for the restaurant facility showing construction of a low cost food takeout facility open to the bluff top accessway providing for walk-up service for both hotel patrons and the general public using the accessway.

3. Geologic Hazard Setback and Waiver of Liability

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

4. Archaeological Resources

Evidence that there will be no excavation in the parking lot areas that could impact archaeological site SLO-839, and submission of a specific archaeological mitigation program, as recommended in the Archaeological Report [Gibson, May 5, 1983] to be carried out prior to and concurrent with excavation for construction of the proposed hotel and restaurant.

The program shall specifically provide that a professional archaeologist shall be present during all excavation that will take place in the hotel and restaurant area of the project site and that, should significant archaeological materials be discovered during construction on the project site, work activity which could destroy the discovered materials shall be temporarily suspended until mitigation measures are completed. Any mitigation plan shall be subject to prior approval by the Executive Director

5. Visual Resources

All utility lines shall be undergrounded and no free standing pole advertising signs shall be permitted.

California Coastal Commission
SOUTH CENTRAL COAST DISTRICT
735 State Street, (805) 963-6871
Belboa Building, Suite 616
Santa Barbara, CA 93101

FILED:	08-08-83
49TH DAY:	Waived
180TH DAY:	02-04-84
STAFF:	J. Liebste
STAFF REPORT:	09-27-83
HEARING DATE:	10/12-14/8

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

APPLICATION NUMBER: 4-83-490

APPLICANTS: Stephen D. Cox and H. Joseph Wade

PROJECT: Construct a four (4) story, 170 unit motel and 251 seat restaurant and conference rooms, with related sized parking resources.

Lot Area:	6.19 ac	(2,696,360 sq.ft.)
Building Coverage:	32,356	sq.ft.
Pavement Coverage:	79,300	sq.ft.
Landscape Coverage:	92,000	sq.ft.
Unimproved:	66,061	sq.ft.
Parking Spaces:	245	
Ht Abv Fin Grade:	35	feet
Zoning:	Planned Residential, Proposed R-4 (Visitor Comm.)	
Plan Designation:	Resort Commercial	

SITE: North Spyglass planning area on Shell Beach Road, between the road and the Pacific Ocean. Site is between Spyglass Drive and Fendleton Lane south of an unnamed Arroyo
Pismo Beach, County of San Luis Obispo
(APN: 10-041-26, 29, 30 and 34)

PRELIMINARY CALENDAR: Hearing & Vote

SUMMARY:

The project is for a resort hotel on a coastal bluff in the northern part of Pismo Beach. As conditioned, the permit resolves issues of coastal access, impacts on an environmentally sensitive Arroyo habitat, the provision of lower cost visitor-serving facilities, the avoidance of blufftop geologic hazards, and the protection of archaeological resources.

9/30/83

SUBSTANTIVE FILE DOCUMENTS:

1. City of Pismo Beach Land Use Plan
2. Geology Report by Pacific Geoscience, dated May 2, 1983 and June 8, 1983
3. Archaeological Investigation and Report by Robert O. Gibson dated May 5, 1983
4. Coastal development permit #4-83-57, Seacrest Enterprises
5. Vegetation and Wildlife Study of the Arroyo north of Spyglass Drive, Elder & Elder Ltd. and Dr. M. Hanson, 1983.

I. PRELIMINARY STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

Approval With Conditions

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

II. CONDITIONS

STANDARD CONDITIONS: (See Exhibit A)

SPECIAL CONDITIONS:

This project, as conditioned, will raise no substantial coastal issues and will be in conformity with the Coastal Act of 1976.

Prior to the transmittal of the coastal development permit, the applicant shall submit to the Executive Director for his review and approval, revised project plans and documents providing for the following:

1. Public Access Along the Blufftop and Beach and From the Road to the Beach

- a. Deed Restriction. An executed and recorded document, in a form and content approved by the Executive Director of the Coastal Commission for lateral and vertical access. The document shall include legal descriptions of both the applicant's entire parcel and the public access areas: the lateral accessway shall be for the area within the 100 foot setback line on the blufftop as shown in Exhibit 1 and the entire beach area seaward of the motel structures; the vertical accessway shall extend the length of the property from Shell Beach Road to the bluff top lateral access easement and continue down over the existing pathway to the shoreline as shown in Exhibit 1. The accessway shall be clearly marked by an official

coastal access sign. The only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that in the opinion of the Executive Director would impede public access shall not be undertaken within the accessway areas.

The deed restriction shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The deed restriction shall bind any successor and assigns in interest of the applicant or landowner.

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

- b. Design and Construction of Accessways. The applicant shall construct the accessway improvements described in Condition 1a above. The applicant shall submit specific plans for the improvement and construction of all accessways, including the path and stairway down to the beach, specifying design and materials which will maintain the natural, rustic appearance of the accessways. The plans shall specifically provide means for connecting the access paths on the subject property to any accessways that may be created on adjacent properties, and the applicant, by accepting the terms and conditions of the permit, shall agree to connect these accessways at the earliest possible time.
- c. Removal of the Proposed Public Parking Area from the Environmentally Sensitive Arroyo. Revised plans for parking and internal circulation showing no development within the Arroyo at the north boundary of the site and showing the location of at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road. The parking spaces shall be separated and distinguished from the parking areas supporting the hotel and shall be designed to facilitate public use of the accessways and to discourage use by hotel patrons during the daylight hours. A sign marking the entrance to the public beach access parking area shall be placed on Shell Beach Road and each parking stall shall be individually marked "Public Beach Access Parking Only".
- d. Prescriptive Rights. The applicant shall, by accepting the terms and conditions of the permit, agree that the issuance of this permit and completion of the authorized development shall not prejudice any subsequent assertion of a public right, e.g., prescriptive rights, public trust, etc.

2. Lower Cost Visitor Serving Facilities - Food Take Out

Revised plans for the restaurant facility showing construction of a low cost food takeout facility open to the bluff top accessway providing for walk-up service for both hotel patrons and the general public using the accessway.

3. Geologic Hazard Setback and Waiver of Liability

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

4. Archaeological Resources

Evidence that there will be no excavation in the parking lot areas that could impact archaeological site SIC-839, and submission of a specific archaeological mitigation program, as recommended in the Archaeological Report [Gibson, May 5, 1983] to be carried out prior to and concurrent with excavation for construction of the proposed hotel and restaurant.

The program shall specifically provide that a professional archaeologist shall be present during all excavation that will take place in the hotel and restaurant area of the project site and that, should significant archaeological materials be discovered during construction on the project site, work activity which could destroy the discovered materials shall be temporarily suspended until mitigation measures are completed. Any mitigation plan shall be subject to prior approval by the Executive Director

5. Visual Resources

All utility lines shall be undergrounded and no free standing pole advertising signs shall be permitted.

III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. Project Description

The proposed project includes a 4-story, 170 unit motel and a separate building containing a 251 seat restaurant and small conference rooms.

The two building are of differing architectural style but share common building materials and colors, and are connected by a courtyard and terrace area containing a pool and small amphitheater (Exhibits 2-6). The project as proposed includes 245 parking spaces, of which 114 are in tandem sets (for valet parking). Employee and some of the valet parking is located across Shell Beach Road from the main building area. (Exhibit 1).

The project site is a 6.19 acre irregularly shaped area, comprised of four separate assessors parcels, two seaward of Shell Beach Road and two shallow parcels landward of Shell Beach Road. The surrounding area north of the property is essentially undeveloped, zoned Planned Residential and anticipated for residential development. The vacant area south of the site is currently designated Planned Residential, but is proposed in the LUP to be R-4 and developed for future motel. The freeway is east of the property and the Pacific Ocean is west of the property.

The design and location of the project raise the following issues relative to the Coastal Act and the City's Certified LUP: provision of public coastal access (PRC Section 30212 and 30212.5) and recreation and visitor-serving facilities (PRC Section 30213 and 30221) protection of environmentally sensitive habitat areas (Section 30240), avoidance of hazards (Section 30253), and protection of archaeological, cultural resources (Section 30244) and scenic and visual resources (Section 30251).

2. Public Access, Recreation and Visitor-Serving Facilities

PRC Section 30211 provides that:

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

PRC Section 30212(a) provides that:

"(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

PRC Section 30212.5 provides that:

"Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area."

PRC Section 30213 provides, in part, that:

"Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Development providing public recreational opportunities are preferred."

PRC Section 30221 provides that:

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

Requirements of the City's LUP:

The Access Component of the LUP provides clear policy language for the provision of public access opportunities within the coastal zone of the City of Pismo Beach. Those general policies are as follows:

POLICY R-10: For all developments between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory. In coastal areas, where the bluffs exceed five feet in height, all dry sandy beach and intertidal and subtidal areas from the toe of the bluff shall be dedicated to the City or the State Department of Parks and Recreation, whichever is most applicable. Where no sandy beach lateral access is available, lateral access shall be provided at or near the bluff top and shall be no less than 25 feet wide. Existing single-family lots on the bluff are exempted from requirements of dedication of the blufftop area.

POLICY R-12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where protection of fragile coastal resources or adequate public access exists nearby.

POLICY R-12a: Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

POLICY R-13: Parking shall be provided in conjunction with vertical and lateral accessways wherever necessary to ensure the use of the accessway and consistent with site constraints. The number of spaces should be determined by the Planning Department and should be based on safety considerations, carrying capacity of the beach or view potential, whichever is applicable, and past use of the area in question. Dedication shall be required for such parking. (Note: Dedication of "fee simple" spaces is prohibited, however, other methods of dedication may be appropriate. Further definition will be included within the Zoning Ordinance phase of the Local Coastal Program/General Plan).

POLICY R-14: Standard sign design should be developed to assist the public in locating and recognizing major access points.

(Page IV-25 Recreation and Access Element; City of Pismo Beach General Plan/Local Coastal Program).

The City has also adopted specific policies for the North Spyglass area:

[E.3.b.] As a condition of development, an irrevocable offer to dedicate in fee simple, grant in perpetuity an easement, or record a deed restriction, over a strip of land along the top edge of the bluff sufficient to include a 50 foot wide lateral public access and recreational area plus a 100 year bluff setback shall be made to or recorded with an appropriate public agency. Such offer shall run for 25 years and shall be for the purpose of providing beach access and passive recreational opportunities along the coastal bluffs for the general public and visitors to the planning area.

[E.3.d.] As a condition of development, an irrevocable offer to dedicate in fee simple grant in perpetuity an easement, or record a deed restriction, for vertical public access a minimum of 10 feet wide running from Shell Beach Road to the lateral accessway along the bluff shall be required. This accessway shall be located on the western-most parcel of the planning area. However, this accessway shall not be located within the Arroyo at the western end of the planning area, except that the terminus of the accessway which leads to the beach may be located in the mouth of the Arroyo. Structures adjacent to this accessway shall be located and sited so as to not impose upon the "open space" nature of the accessway. As a condition of development, the vertical accessway described above shall be developed with a pedestrian path and landscaping. A minimum 15 foot structural set-back shall be maintained from the Arroyo, unless a geologic report prepared by a qualified registered geologist indicates need for a larger set-back.

[E.3.e.] As a condition of development a minimum of 65 public parking spaces shall be developed within the buildable portions of the planning area. The parking spaces shall be equitably distributed over the subject parcels of the South Palisades and North Spyglass planning area, and may be located adjacent to either side of Shell Beach Road. Parking on the landward side of Shell Beach Road shall be limited to the Cal Trans right-of-way. Such public parking shall be required in addition to the commercial parking requirements contained in the City's certified Local Coastal Plan. Additionally, adequate signing notifying the public of the public parking opportunities and identifying the location of the accessway shall be provided.

The project site is located on the marine terrace and coastal bluff in the North Spyglass and Shell Beach area in the City of Pismo Beach. The area is presently lightly developed and is proposed for visitor-serving uses and some residential development. The beach area below the bluff within the project vicinity varies from a rocky area at the mouth of the Arroyo to pocket beaches beneath the steep cliffs of the immediate project area to a broader sandy beach to the north.

Provision of adequate vertical and lateral public access and parking for access is an important coastal resource issue for the project area. The site has historically been extensively used for public access including

access along the bluff and down the Arroyo on a well established path to and along the beach and rocky areas. The blufftop area is consistently used as a parking area to support this access. Staff observations have found anywhere from 10 to 40 cars parked on the site on typical weekends and holidays. The City's Land Use Plan policy E.3.e. (above) set a framework for development of public parking facilities within the South Palisades and North Spyglass planning area. This policy required that parking spaces be "equitably distributed" over the subject parcels in this area. In interpreting this provision the Commission must weigh heavily the pattern of historical use in order to be consistent with the requirement of PRC 30211 that "Development shall not interface with the public's right of access to the sea where acquired through use..." The plans as submitted provided for 19 public beach access parking spaces located in the Arroyo. Condition 1c maintains this number of spaces, but requires they be located outside the Arroyo. In view of the necessity to continue to provide for the historical level of public use, this number of public access spaces is an equitable distribution.

The Commission finds that PRC Sections 30211, 30212(a), 30212.5 and 30213 and the City's LUP require the provision of vertical and lateral access with supporting parking and visitor-serving facilities to maximize access to and along the shore in this area. The applicant has agreed to Conditions 1 and 2 to meet these requirements by providing for an accessway to and along the blufftop and beach, public beach parking and a food take-out facility designed to serve users of the blufftop accessway and beach. The development of these access and recreation facilities is particularly important as the appreciable present recreational use of the site will substantially intensify with the development of the Shell Beach area over the next few years. The provision for connecting this project's accessways into others that will be developed in the area forwards the Coastal Act's objective of enhancing access and recreational opportunities where particularly suitable oceanfront recreational resources exist.

Condition 1 also implements the provisions of the approved Land Use Plan. The lateral accessway shown on the submitted plans meets the requirements of Policy E.3.d., and the Executive Director's review of the specific plans for the accessway will be guided by this policy. With regard to public parking, the plans as submitted proposed 19 public beach access parking spaces to meet the requirements of the Coastal Act and Policy E.3.e. and Condition 1c maintains this necessary level of parking, while providing for a location outside the Arroyo environmentally sensitive habitat area.

3. Environmentally Sensitive Habitat Area

Public Resources Code Section 30240 states:

"(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would with the continuance of such habitat areas."

A riparian area consisting of a relatively deep, well vegetated Arroyo of approximately 1½ acres total area lies at the northern boundary of the project site. The Arroyo is separated into two parts: a small greatly disturbed section between Highway 1 and Shell Beach Road which has been mostly channelized, and a much larger section between Shell Beach and the outlet to the sea. According to the "Vegetation and Wildlife Study of the Arroyo" prepared for the applicants by Elder & Elder Ltd and Dr. Michael Hanson:

"The section of the Arroyo between Shell Beach and the Ocean varies from a relatively open riparian area, due to the drainage swale, to an Oak tree covered riparian area to a rocky wind swept area as it approaches the Pacific Ocean. All these areas have steep banks leading to a drainage course at the base"

This section includes an outstanding grove of mature specimen trees as well a healthy riparian plant assemblage. The Arroyo carries an intermittent stream which originates in the hills on the east side of Highway One.

The Commission in permit decisions and its Guidelines for wetlands (Feb. 4, 1981) has consistently considered riparian areas to be environmentally sensitive habitat areas "because of the especially valuable role of these habitat areas in maintaining the natural ecological functioning ...and because these areas are easily degraded by human developments" the Arroyo is an environmentally sensitive habitat area within the meaning of PRC Section 30240(a).

The wildlife study (pg. 3, Elder & Elder Ltd. and Hanson, 1983) attests to the Arroyo's habitat value:

"The Arroyo's configuration has created a microclimate that has made it a valuable asset to the total site in terms of vegetation and wildlife. The area closest to the road has the most prolific variety of wildlife even though it does not support major vegetation. It is relatively open and has many species of vegetation compared to the other areas... it has been determined that the general needs of the resident species of animals of the Arroyo are by in large contained within the Arroyo itself."

Section 30240(a) requires that only uses dependent on habitat values be allowed in such habitat areas. The parking area proposed in the plan as submitted is not such a use and cannot be permitted within the Arroyo. Consistent with the Coastal Act, Condition 1c brings the development into conformity with the Act.

Requirements of the City's LUP

The LUP approved by the Commission for Pismo Beach reinforces the conditions and findings of this permit. The City's policies for

Environmentally Sensitive Habitat require protection for areas such as the Arroyo present on this site.

D1. Within the coastal zone of Pismo Beach, all wetlands and riparian areas shall be designated environmentally sensitive habitat.

D5. Development within streams shall be limited to necessary water supply projects; flood control projects necessary to protect existing development, and where no other feasible method of flood protection is possible, or where the primary purpose of the project is the improvement of fish and wildlife habitat. Additionally, all permitted development which substantially alters a water course shall incorporate the best mitigation measure feasible to minimize the adverse environmental impacts of such development.

By its approval of policy D1., the Commission determined the riparian Arroyo area to be an environmentally sensitive habitat. Policy D.5. limits the uses allowed within streams. The proposed parking area would be within the stream area of the Arroyo and would be inconsistent with that policy. Condition 1.c. is necessary to make the project consistent with this policy.

4. Geologic Setback and Waiver of Liability

PRC Section 30253 (1 & 2) provides 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."

In addition Pismo Beach's LUP policy E.3.a provides:

"All private development shall be setback from the top edge of the bluff a distance sufficient to include a 50 foot wide lateral public access and recreational area plus a 100 year bluff retreat setback. The 100 year bluff retreat setback shall be determined through a site specific geological study conducted by a qualified registered geologist, but in no case shall the geologic setback be less than 50 feet from the top edge of the bluff."

The proposed project is located on a blufftop 6.19 acre parcel overlooking the Pacific Ocean. In accordance with the Statewide Interpretive Guidelines for Geologic Stability of Blufftop Development, the applicants submitted Geology Reports related to the project site and the proposed development (Pacific Geoscience, June 8 and May 2, 1983).

The submitted report describes the geologic features and resources of the subject site, including the seismic and stability conditions, erosion characteristics, and other significant features in order to assess the feasibility and desirability of the proposed project. The consulting geologist believes that the planned construction will neither create nor contribute significantly to erosion, geologic instability or the destruction of the site or the surrounding area.

The site is a marine terrace, bounded on the north by an Arroyo and on the west by Shell Beach Road and Highway 101. The site consists of approximately 40-50 feet of silty and sandy clay terrace deposits resting on a bed of sandstone. The bluff face at the site rises approximately 75 feet above sea level. The geologic report reviews previous studies of the site and concludes that "a recession rate of 3 inches per year is applicable for the site." This recession rate, however, is a generalized average over a period of time. Rather than progressing uniformly at a steady pace, the process of bluff erosion in this area typically occurs through episodic failures of the bluff. The geologic report yields evidence of this condition. In evaluating the effect of the 1982-1983 winter storm season, two points surveyed and marked in various previous years were located again in 1983. While 1983 measurements from the first marker to the bluff appeared to show "no significant alteration from conditions observed in 1980", there were indications of ± 1 foot of retreat between measurements made in 1979 and 1980. And while the second marker was approximately at the same distance from the bluff in 1983 as it was in 1980, the edge of the cliff "beginning at a point 12 to 18 inches west of the marker, had dropped about a foot," indicating a possibility that a section of the bluff approximately five feet wide face could shear off. This is an indication of how the bluff within the entire site may retreat. For this reason the City required the minimum 50 foot geologic setback as specified by the approved LUP. The 100 foot setback proposed in the plans as submitted, incorporates the 50 feet of lateral access area required by the approved LUP policy E.3.a. above, and an area of an additional 50 feet of geologic setback which according to the geologic reports should be sufficient to protect that accessway from erosion for 100 years. Condition 3 provides for the establishment of this setback and for a waiver of liability.

The Commission finds that the proposed project, as conditioned, is consistent with PRC Section 30243(1 & 2) and will assure stability and structural integrity and neither create or significantly contribute to erosion, geologic instability, or destruction of the site or surrounding area, nor require the construction of bluff or cliff protective devices (seawalls, etc.)

5. Archaeology

PRC Section 30244 provides that:

"Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required."

The applicants submitted an archaeological report, conducted by Archaeologist Robert Gibson, for the project site. The purposes of the report was to determine the extent of archaeological resources, if any, on the site and to recommend adequate mitigation measures for the protection of the archaeological resources, should resources be found.

The site does indeed encompass the recorded archaeological site SLO-839, representing an occupation that appears to date back more than 1,000 years (Gibson, 1983, p. 10). The archaeological report concludes:

"Based on a series of previous surface and subsurface examinations conducted since 1978 at SLO-839, the archaeological site should be regarded as basically intact, although it has suffered some impact from agricultural activities, construction of Shell Beach Road and construction of Highway 101 and recent dirt roads across the site and constant visits by amateur relic collectors. The cultural deposit appears to contain two basic areas, the first represented by shellfish remains, stone tools, burnt rock, etc., probably representing the actual house living areas of the inhabitants of this site. There is an adjacent area to the shell area that is defined by the presence of stone debitage (by-products of stone tool manufacturing) and is generally located adjacent to but closer to the ocean bluff from the shell deposit. SLO-839 should be regarded as a significant cultural deposit containing important information about a small chapter in the over 9,000 year culture history of Native Americans in San Luis Obispo County... Still present within this site is a delicate pattern of various activities representing the internal organization and use of this area by ancestors of the modern day Chumash people."

The density area of cultural deposits is predominantly within the area planned for parking. The archaeological report recommends that there be no excavation of this area. This recommendation was incorporated into the project as submitted. The report recommends archaeological mitigation program for the area proposed to be excavated for construction of the hotel and restaurant facilities. Condition 4 incorporates these recommendations, bringing the project into consistency with PRC 30244.

This condition is also consistent with Pismo Beach LUP Program CR-4:

PROGRAM CR-4: Prior to issuance of a zoning clearance or development permit, a surface survey of the project site shall be conducted by a qualified archaeologist recognized by the State Historic Preservation Office in areas designated on the Archaeological and Historic Resources Sensitivity map (Figure DE-1) as potentially containing archaeological resources or other undesignated sites which may contain archaeological or historical resources. Specific recommendations prepared by the archaeologist shall be incorporated into the final project approval to the extent feasible and appropriate.

6. Scenic and Visual Resources

Public Resources Code Section 30251 states:

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

The proposed project is located between the ocean and the first two public roads paralleling the ocean. Both Highway 101 and Shell Beach Road, a frontage road to Highway 101, are located immediately inland of the project and each of these roadways provides the traveler with a visual and scenic corridor of panoramic coastal views. The project site slopes gradually down to the west away from Shell Beach Road. An assemblage of large trees to the north of the Arroyo would screen a portion of the proposed hotel from the view of southbound travelers on Highway 1. The proposed project design incorporates a view corridor between the hotel and restaurant structures to frame a view of the hills of the Point San Luis area for travelers from the south on both Shell Beach Road and Highway 1. The Arroyo on the north and the parking area on the south part of the site also afford view corridors. (Exhibit 7) A visual test, utilizing tethered balloons to represent building heights was conducted on the site. The test was requested by Commission staff to determine whether or not the placement and height of the proposed buildings preserved the significant visual elements of ocean and landform presently viewable through the site. This test revealed that part of the ocean surface and the entire sweep of the Nipomo Dunes shoreline would be visible over the top of the hotel building for travelers on Highway 101 until their vehicles arrived at a point on the Highway adjacent, to the site itself. The significant visual elements seen through the site from the U.S. 101 corridor are preserved. The visual degradation of views presently seen from Shell Beach Road is greater than that of the views from U.S. 101, however, significant elements of view are preserved even from Shell Beach Road. Condition 5 provides that existing utility lines fronting on the site be undergrounded to offset the visual impact of the new structures, and that no free standing advertising pole signs (excepting the standard coastal access sign) be erected. As conditioned, the project is consistent with the Coastal Act.

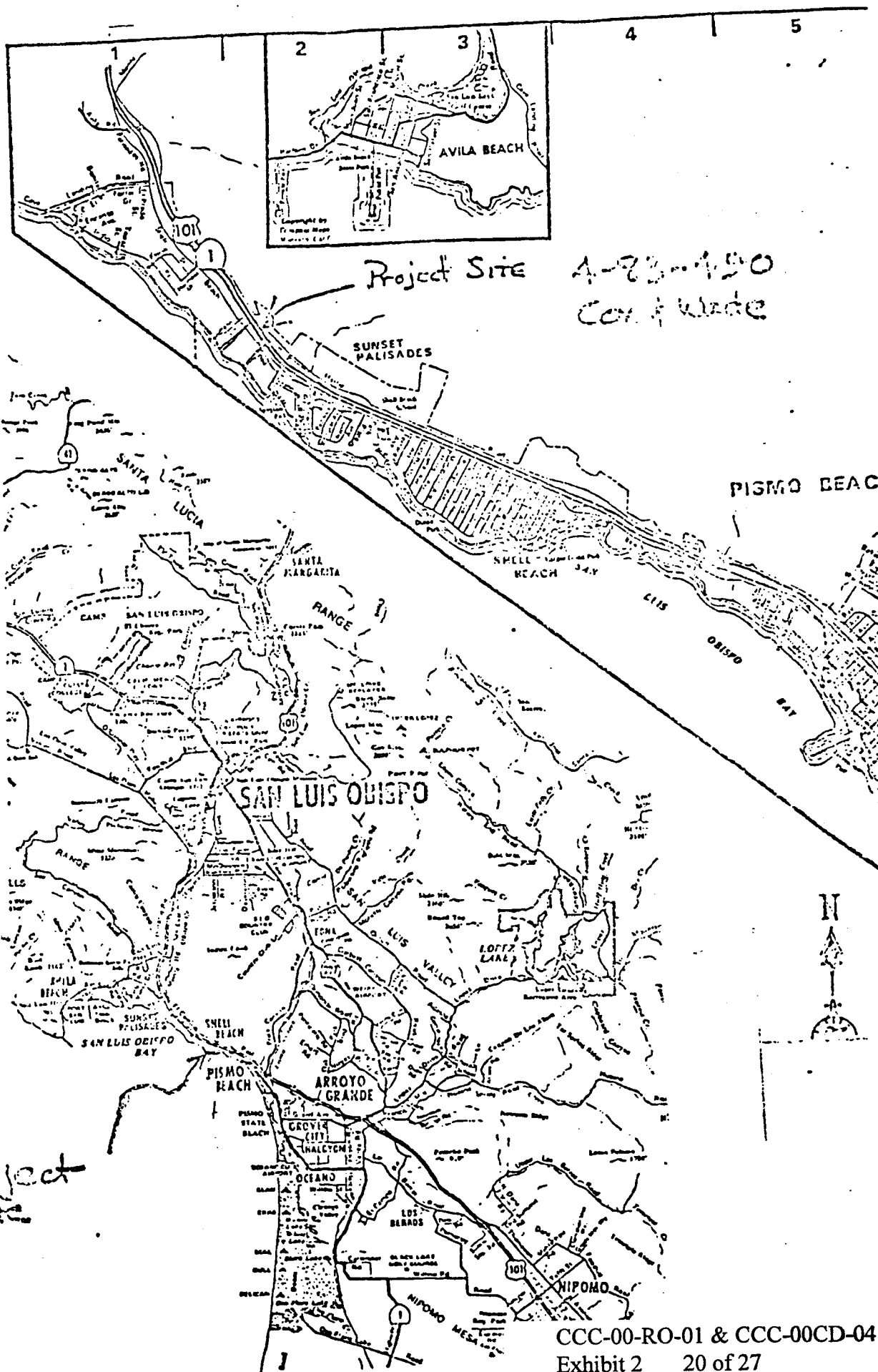
The project is also consistent with the City's LUP which provides as follows:

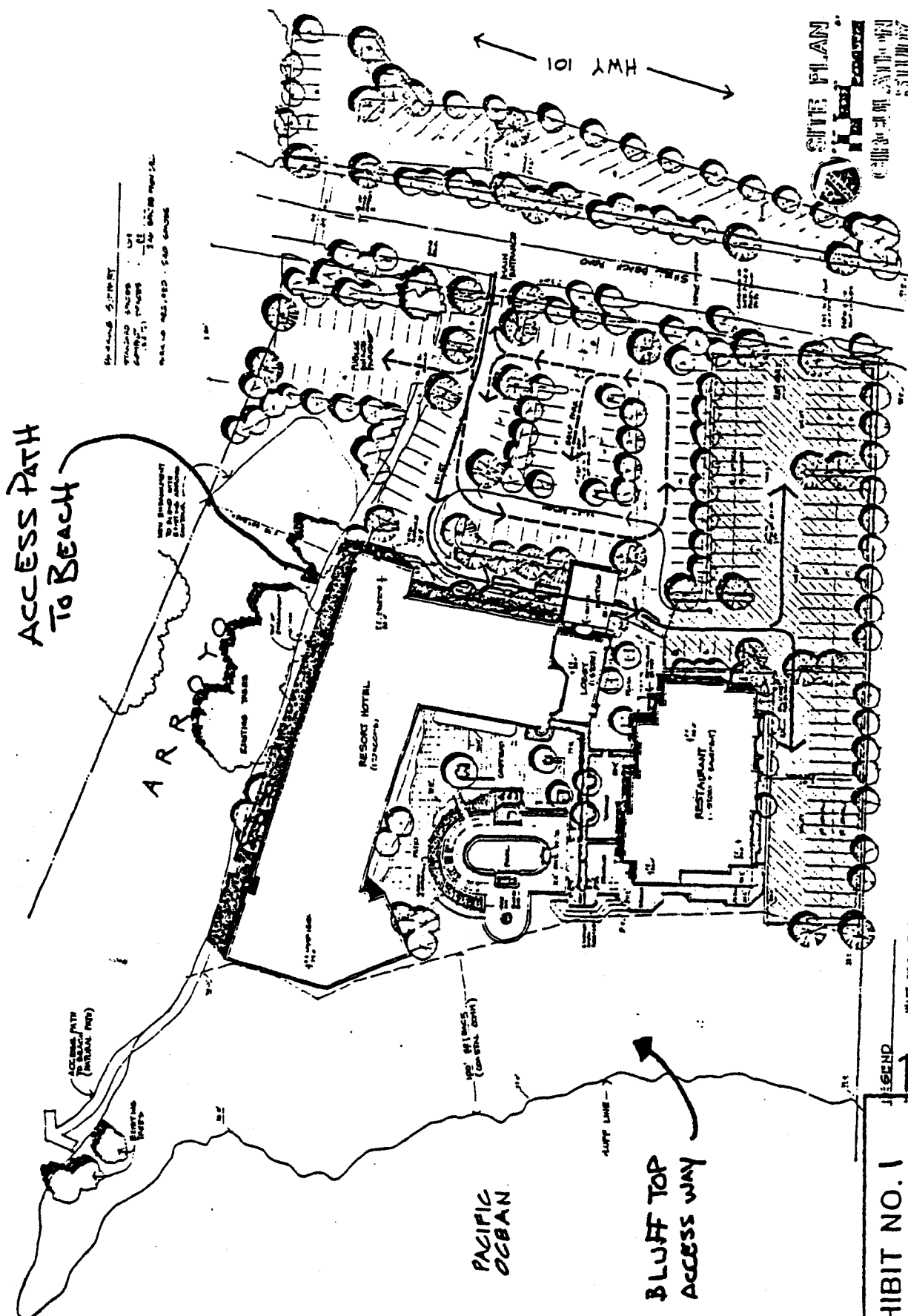
POLICY VR-2: The City wishes to safeguard existing scenic values.

PROGRAM VR-4: Any new development along designated scenic highways should not significantly obscure, detract nor diminish the quality of scenic views.

PROGRAM SPEC-2: Development shall not substantially block ocean views from U.S. Highway 101. Corridor views shall be provided within any proposed development complex.

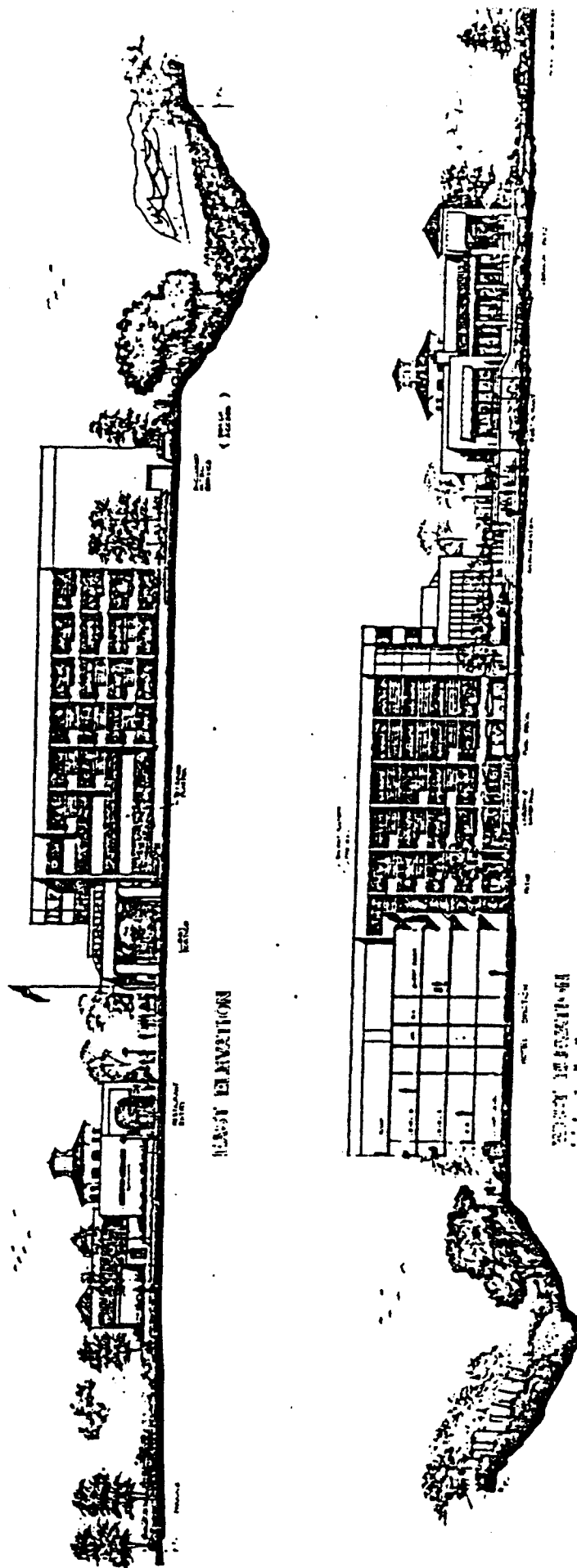
JL/rt





RESORT HOTEL & RESTAURANT PISMO BEACH, CALIFORNIA

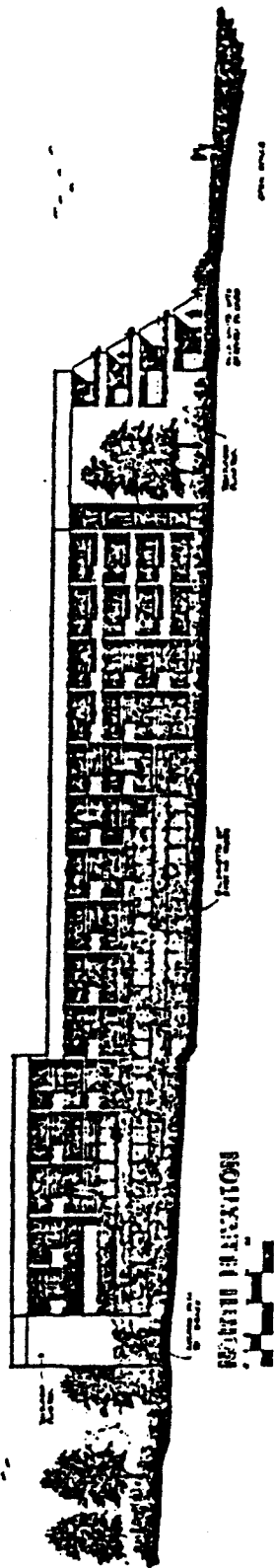
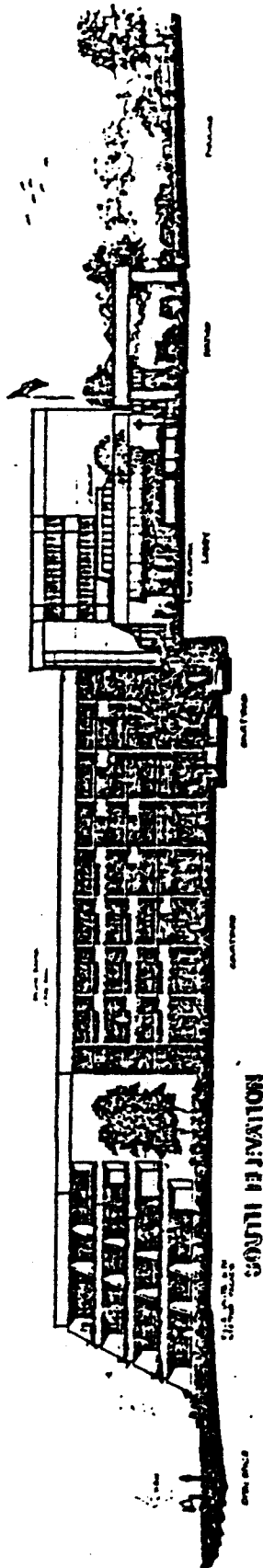
EXHIBIT NO. 1
APPLICATION NO. 4-83-490
Accessways
California Coastal Commission




INTERIOR ELEVATION, 3rd FLOOR, 1980
 (SEE PLAN)

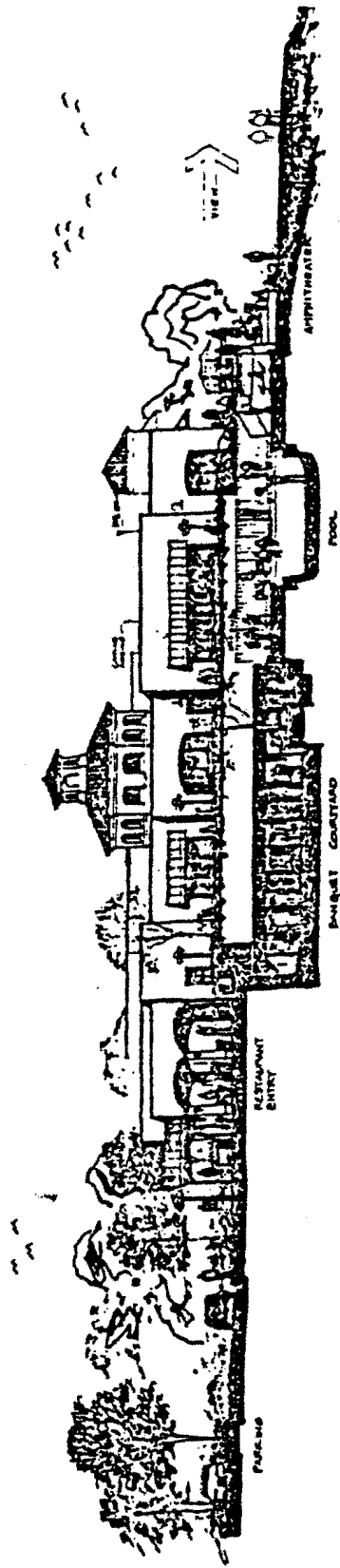
8

EXHIBIT NO. 2
APPLICATION NO. 4-83-190
ELEVATIONS
CCC California Coastal Commission

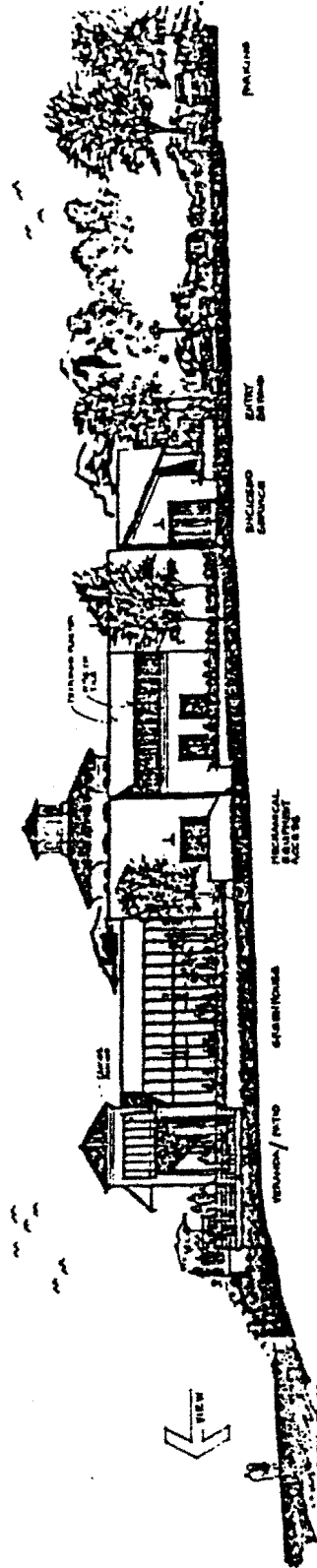


RESORT HOTEL & RESTAURANT
PISMO BEACH, CALIFORNIA

EXHIBIT NO. 3
APPLICATION NO. 4-83-190 CONTINUED
ELEVATIONS




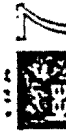
NORTH ELEVATION

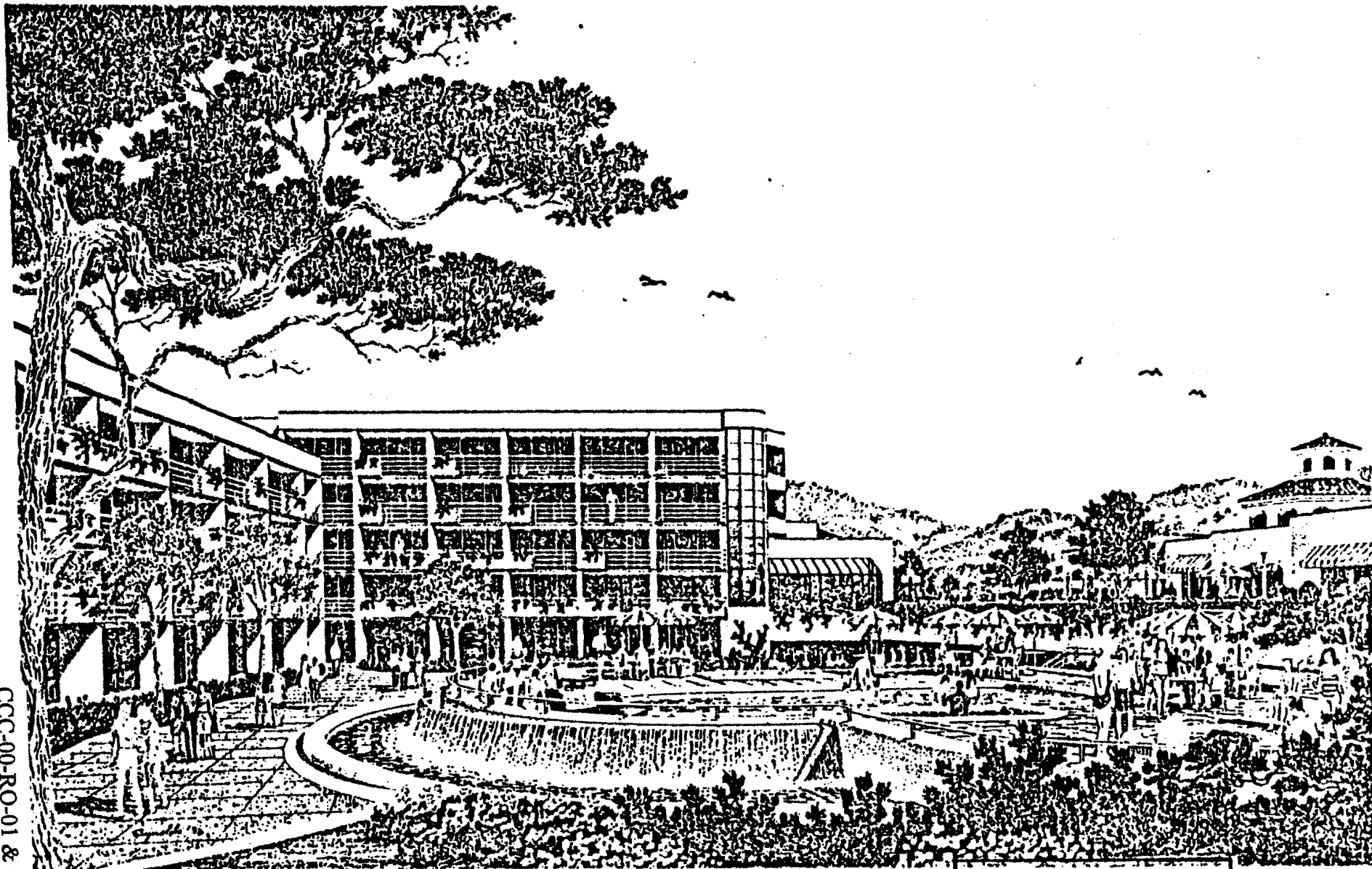


SOUTH ELEVATION

EXHIBIT NO. 4
APPLICATION NO. A-83-490 CORNWALL
ELEVATIONS
California Coastal Commission


RESORT HOTEL & RESTAURANT
PISMO BEACH, CALIFORNIA
FOR SOUTH BEACH HOTEL



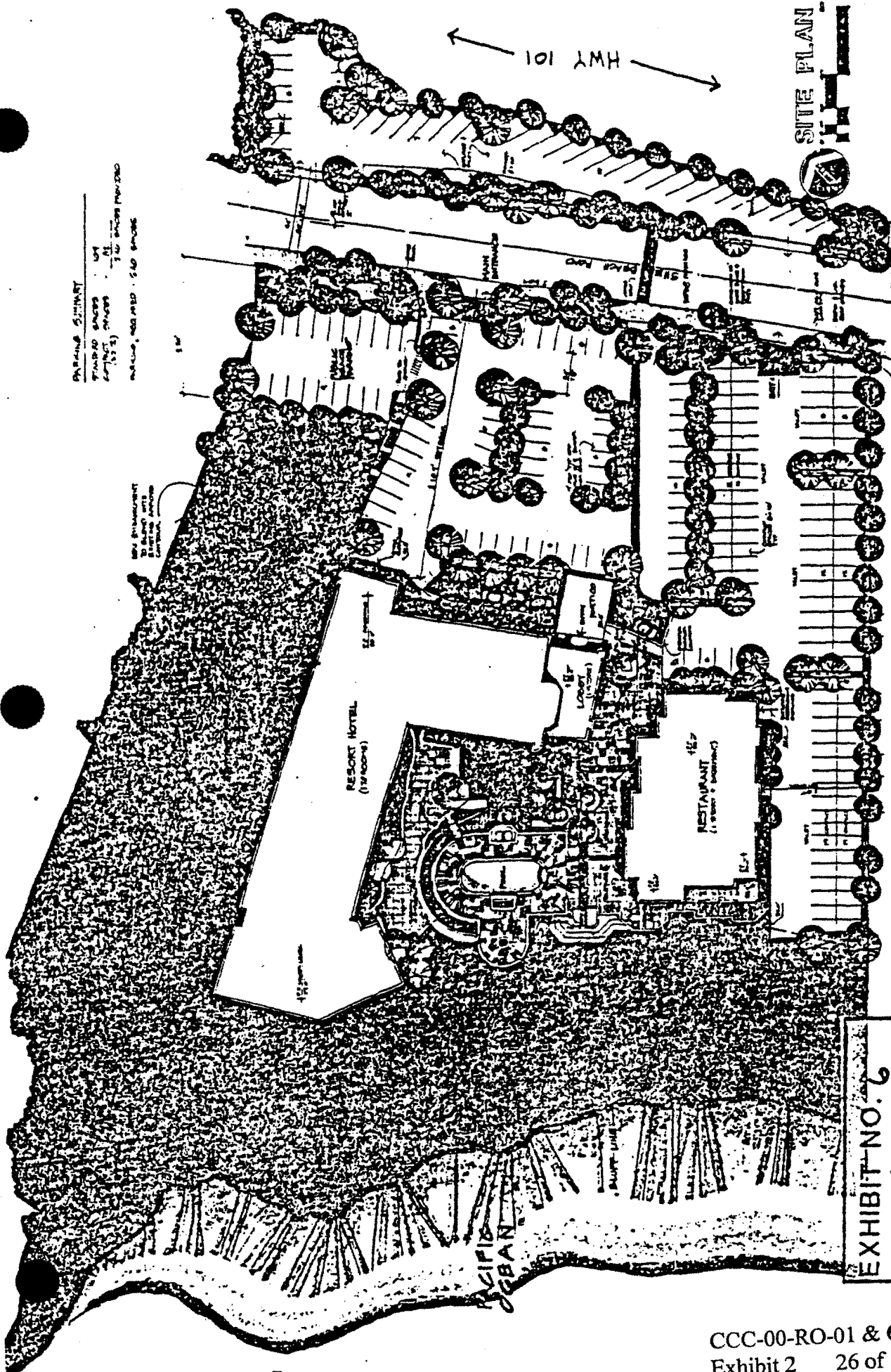


CCC-00-RO-01 & CCC-00CD-04
Exhibit 2 25 of 27

RESORT HOTEL AND RESTAURANT **PISMO BEACH, CALIFORNIA** **FOR: SUNRISE MOTOR HOTELS**

EXHIBIT NO. 5
APPLICATION NO. 4-83-490 Cox+Wade
RENDERING
 California Coastal Commission

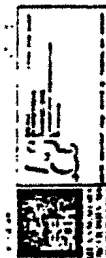
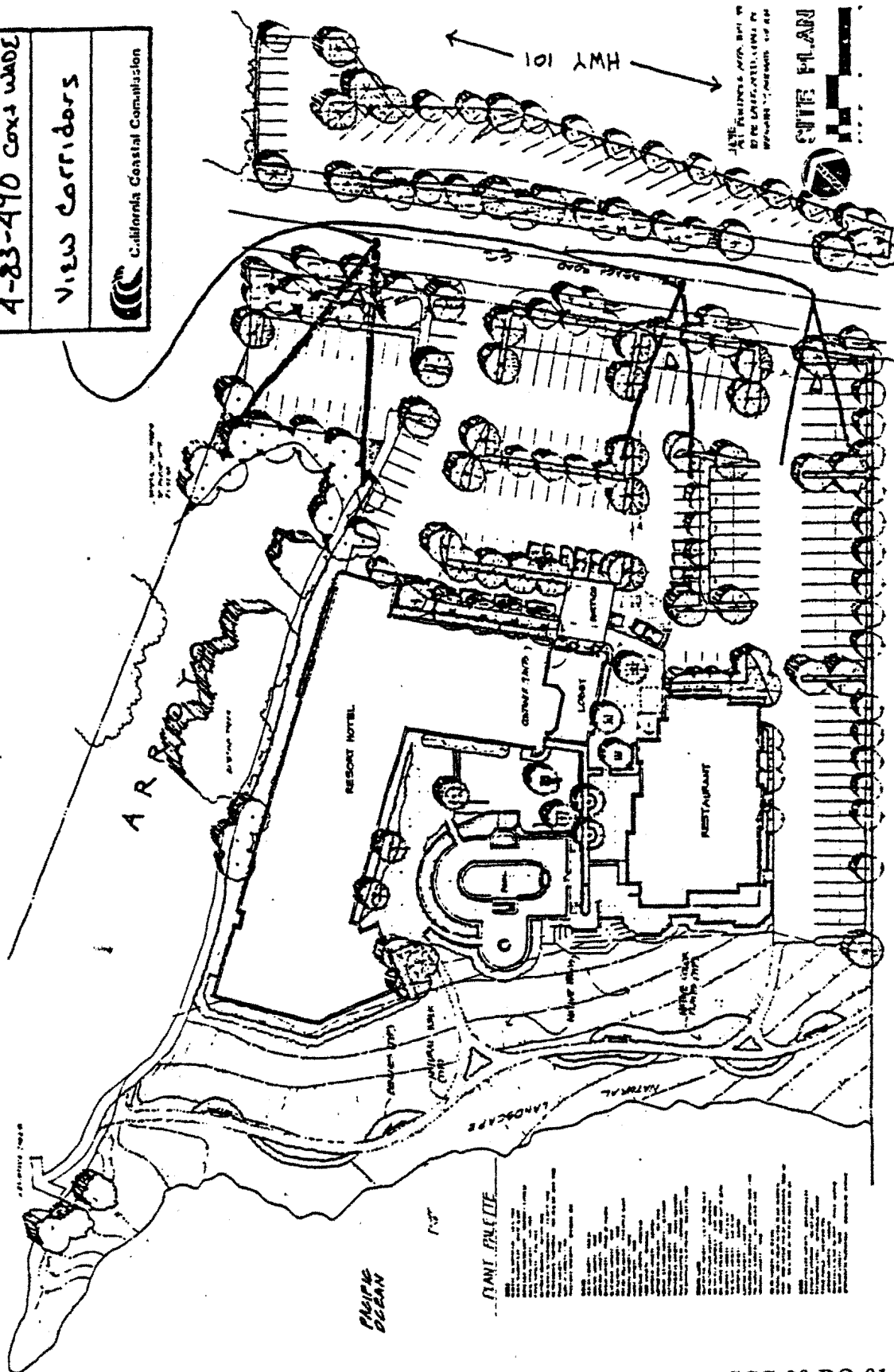




RESORT HOTEL & RESTAURANT PISMO BEACH, CALIFORNIA

EXHIBIT NO. 2
APPLICATION NO. A-83-490 CONTWADE
SITE PLAN
California Coastal Commission

EXHIBIT NO. 7
APPLICATION NO. 4-83-490 CORNS WADE
View corridors
California Coastal Commission



CONCEPTUAL LANDSCAPE PLAN
RESORT HOTEL & RESTAURANT
PISMO BEACH, CALIFORNIA

RECORDING REQUESTED BY
Cuesta Title Guaranty Co.
AND WHEN RECORDED MAIL TO

ARGUE PEARSON HARRISON & MYERS
801 South Flower Street, Ste. 500
Los Angeles, CA 90017-4699
Attn: Louis W. Myers, Esq.

MAIL TAX STATEMENTS TO

Name W Johnston
Street 629 Kettner Blvd.
City & State San Diego, Ca. 92101

DOC. NO. 19986
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CA

APR 04 1989

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

TAXED	FEE PAID	EXEMPT	OUT OF STATE
<i>h</i>			

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CAT. NO. W400878
TO 1971 CA (8-26)

Corporation Grant Deed

THIS FORM FURNISHED BY TICOR TITLE INSURERS

APN: 010-041-013
010-041-013
010-152-026

①

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ 18150.00

(XX) computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area: (XX) City of Pismo Beach, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SHELL BEACH HOTEL CORPORATION

a corporation organized under the laws of the State of California

hereby GRANTS

to TOKYO MASUIWAYA CALIFORNIA CORPORATION, a California corporation

the following described real property in the
County of San Luis Obispo

, State of California:

SEE EXHIBIT "A" ATTACHED HERETO.

In-Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its CFO and Vice Pres. President and Vice President Secretary thereunto duly authorized.

Dated: March 28, 1989

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } SS

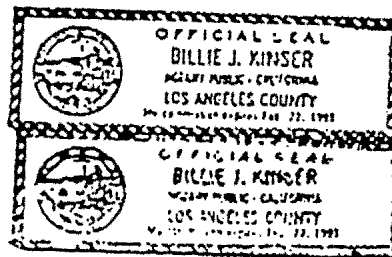
On MARCH 29, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared FRANK P. OLER personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the CFO and Vice Pres. President, and ROBERT W. BRINCKER personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the VICE PRESIDENT of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors. WITNESS my hand and official seal.

Signature Billie J. Kinsler -

SHELL BEACH HOTEL CORPORATION,
a California corporation

By FRANK P. OLER CFO and Vice President

By ROBERT W. BRINCKER VICE PRESIDENT



(This space for official notarial seal)

Title Order No. 40653 Escrow or Loan No. _____

VOL 3292 PAGE 884

CCC-00-RO-01 & CCC-00CD-04
Exhibit 3 1 of 2

FIRST AMERICAN TITLE

Customer Service

(805) 543-8600

JAN 4 19

EXHIBIT "A"

PARCEL 1:

THOSE PORTIONS OF LOTS 4 AND 5 OF THE SUBDIVISIONS OF THE RANCHO EL PISMO AND SAN MIGUELITO, IN THE CITY OF PISMO BEACH, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP PB 84-123, RECORDED SEPTEMBER 28, 1984 IN BOOK 35 AT PAGE 77 OF PARCEL MAPS.

PARCEL 2:

THAT PORTION OF LOT 4 OF THE SUBDIVISION OF RANCHOS EL PISMO AND SAN MIGUELITO IN THE CITY OF PISMO BEACH, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF THE SUBDIVISION OF SAID RANCHOS FILED FOR RECORD APRIL 30, 1886, IN BOOK A AT PAGE 157 OF MAPS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND CONVEYED BY THE STATE OF CALIFORNIA TO PENDLETON ENTERPRISES, BY DIRECTOR'S DEED RECORDED MAY 13, 1965, IN VOLUME 1350 OF OFFICIAL RECORDS, AT PAGE 124, RECORDS OF SAID COUNTY; THENCE (1), ALONG THE SOUTHEASTERLY LINE OF LAST SAID PARCEL, SOUTH 62 DEGREES 12' 58" WEST, 107.22 FEET; THENCE (2), SOUTH 33 DEGREES 20' 25" EAST, 394.11 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 2, 1963 IN VOLUME 1233 OF OFFICIAL RECORDS, AT PAGE 419, RECORDS OF SAID COUNTY; THENCE (3), ALONG LAST SAID LINE, AND ITS NORTHEASTERLY PROLONGATION NORTH 61 DEGREES 55' 40" EAST, 105.15 FEET, TO A POINT ON THE NORTHEASTERLY LINE OF THE SOUTHWESTERLY 30 FEET OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY QUITCLAIM DEED RECORDED FEBRUARY 4, 1965 IN VOLUME 1336 OF OFFICIAL RECORDS, AT PAGE 269, RECORDS OF SAID COUNTY; THENCE (4), NORTHWESTERLY ALONG LAST SAID LINE 393.38 FEET, TO THE POINT OF BEGINNING.

BEARINGS AND DISTANCES USED HEREIN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 5; MULTIPLY DISTANCES CALLED BY 1.0000592 TO OBTAIN GROUND LEVEL DISTANCES.

EXCEPTING FROM PORTIONS OF SAID LAND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT OF SURFACE OR SUBSURFACE ENTRY TO A DEPTH OF 100 FEET, AS RESERVED IN DEED FROM PENDLETON ENTERPRISES, A PARTNERSHIP RECORDED OCTOBER 15, 1963 IN BOOK 1265, PAGE 279 OF OFFICIAL RECORDS AND IN DEED FROM SAMUEL B. POSEY ET UX RECORDED APRIL 2, 1963 IN BOOK 1233, PAGE 419 OF OFFICIAL RECORDS.



CALIFORNIA COASTAL COMMISSION

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

27-4863

NG IMPAIRED: (415) 904-5200

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

CERTIFIED AND
REGULAR MAIL

March 14, 1997

Toshiaki Sasaki
President
Tokyo Masuiwaya California Corporation
c/o The Colonial Inn
910 Prospect Street
La Jolla CA 92037

PROPERTY LOCATION: The Cliffs Hotel, 5757 Shell Beach Road, Pismo Beach

VIOLATION FILE NO.: V-3-96-03

Dear Mr. Sasaki:

On December 12, 1996, the Coastal Commission heard an appeal of a permit approved by the City of Pismo Beach for the construction of a rip-rap seawall and associated drainage improvements at the above referenced property. At that meeting, the Commission denied the permit. The Commission also found that the sewage holding tank for the hotel and restaurant was placed in a location that is in violation of the conditions of a previous Coastal Commission coastal development permit which allowed the construction of the hotel and restaurant.

Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Section 30820(b) states that a person who knowingly and intentionally undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

On March 29, 1984, coastal development permit number 4-83-490, for the construction of a four (4) story, 170 unit motel and 251 seat restaurant and conference room, with parking, became effective. The Special Conditions provided, among other things, recordation of deed restrictions regarding public access and geologic hazards.

The public access condition stated *...the lateral accessway shall be for the area within the 100 feet setback line on the blufftop....The only construction or development permitted within the easements is the construction of a walkway and stairway. Grading, landscaping or other structural development that in the opinion of the Executive Director would impede public access shall not be undertaken within the accessway areas.*

CCC-00-RO-01 & CCC-00CD-04
Exhibit 4 1 of 3

The geologic hazards condition stated that *The deed restriction shall provide (a) that no development other than pathways and stairways shall occur within the 100 foot setback line shown in Exhibit 1; (b) that the applicants understand that the site is subject to extraordinary hazard from erosion and from bluff retreat and that applicant assume the liability from these hazards; (c) the applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (d) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion or landslides.*

Standard Condition number seven stated that *These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.*

In most cases, violations involving unpermitted development may be resolved by completing an application for a coastal development permit for either the removal of the unpermitted development or for the authorization of development "after-the-fact."


An after-the-fact permit would entail amending coastal development permit 4-83-490 to remove the prohibition of development in the bluff setback area and allow for the holding tank to be located there. In this case, because the sewage holding tank is located in an area where development was specifically prohibited because of, among other things, extraordinary geologic hazards and because such an amendment would lessen the intended effect of the permit, it is doubtful that the Executive Director would accept an application for an amendment.

Application for a coastal development permit to remove the holding tank and relocate it elsewhere on the property would be made to the City of Pismo Beach since the area landward of the mean high tide line is in the City's permit jurisdiction. If the City issued a permit for relocating the tank landward of the bluff setback, such a permit would be appealable to the Commission. However, Coastal Commission staff are supportive of the concept of relocating the tank landward of the bluff setback.

Please submit, by April 18, 1997, a written response detailing how you intend to resolve this violation, which should include a timeline for submittal of a coastal development permit application.

If you have any questions, or wish to discuss this matter further, please contact staff analyst Steven Guiney at (408) 427-4863. Thank you for your anticipated cooperation.

Sincerely,

for 
Lee Otter
District Chief Planner

c: Dennis Delzeit, City of Pismo Beach Public Services Dept.
Fred Schott, Project Engineer
Diane Landry, Staff Legal Counsel
Nancy Cave, Statewide Enforcement Coordinator

is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
*Toshiaki Sasaki, President
 Tokyo Masuiwaya California Corp.
 c/o The Colonial Inn
 910 Prospect Street
 La Jolla, CA 92037*

4a. Article Number
P 438 382 939

4b. Service Type

<input type="checkbox"/> Registered	<input type="checkbox"/> Insured
<input checked="" type="checkbox"/> Certified	<input type="checkbox"/> COD
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Return Receipt for Merchandise

7. Date of Delivery
MAR 1 1997

5. Signature (Addressee)
[Signature]

8. Signature (Agent)
[Signature]

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 ☆ U.S.G.P.O. 1992-307-530 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

PS Form 3800, June 1985

☆ U.S.G.P.O. 1988-234-555

Postmark or Date <i>3/14/97</i>	TOTAL Postage and Fees <i>\$2.52</i>	Return Receipt showing to whom Date, and Address of Delivery	Return Receipt showing to whom and Date Delivered <i>1.10</i>	Restricted Delivery Fee	Special Delivery Fee	Certified Fee <i>1.10</i>	Postage <i>32</i>	P.O. State and ZIP Code <i>La Jolla, CA 92037</i>	Street and No. <i>c/o The Colonial Inn 910 Prospect Street</i>	Sent to <i>Toshiaki Sasaki, Pres.</i>
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RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

P 438 382 939

UNITED STATES POSTAL SERVICE

RECEIVED
 Official Business
 MAR 24 1997

CALIFORNIA
 COASTAL COMMISSION



PENALTY FOR PRIVATE
 USE TO AVOID PAYMENT
 OF POSTAGE, \$300



Print your name, address and ZIP Code here

CALIFORNIA COASTAL COMMISSION
 CENTRAL COAST DISTRICT OFFICE
 725 FRONT ST., SUITE 300
 SANTA CRUZ, CA 95060

SG

Building Address: 2757 SHAL BEACH ROAD
Parcel Map: PARCEL MAP 8984-123
THE CURRS HOTEL
Mailing Address: _____
City: _____ Zip: _____ Tel: _____
Contractor: JOHN MADONNA CONSTRUCTION
Address: P.O. Box 5310
San Luis Obispo, CA 93403
City Lic. No. 543-7751
Pw: set
City Lic. No. 544-1216
San Luis Obispo, CA 93401
City Lic. No. 56-1387
Proposed Construction: CURR TOP DRAINAGE, FLAT WORK,
DEWATERING WALLS w/ PUMPS, SURF
FIT w/ PUMP & ASSOCIATED ELECT-
RICAL WIRING & HOSE UP
No. of Stories: _____ No. of Units: _____
New ☒ Add ☐ Alter ☐ Repair ☒ Demolition ☐

No. Stories: 2 Type Const: NA Occ. Group: NA
Occ. Load: NA No. Dw. Units: NA Use Permit Req: NA Dev. Rev. Req: NA
No. Bedrooms: NA Lot Size: NA APN: 010-041-01
Approved Planning: YES Approved P.W.: YES Approved Fire: NA Verified Health Appr.: NA
Special Conditions: ALL ELECTRICAL WORK IS INCLUDED IN THIS PERMIT
VALUATION: \$ 44,000
FEES: P/C Deposit: 317.30 Man Check: 488.15 Building: 188.15 Water Meter: _____ Pub. Fed/Server Exp: _____ Res Dept. Hood: _____ Res Dept. Alarm: _____ Impact New/Old: _____ Area: _____ Type: _____ Water Improvements: _____ Fourth St. Bridge: _____ Circulation: _____ Vicar: _____ General Gov: _____ Other: _____ Account # _____
Receipts: _____
Processed By: JH School Fee Paid: Verified: NR TOTAL: \$ 805.45
Receipt No. 56241 Validation: Jack K Date: 2/25/97

DIVISION OF INDUSTRIAL SAFETY PERMIT CERTIFICATION

Industrial Health and Safety Code requires a Division of Industrial Safety Permit as a prerequisite to permits issuance unless the applicant signs one of the certificates below to certify that no excavation 3 feet or more feet in depth, into which a person is required to descend will be made in connection with work authorized by this permit, and that no structure, scaffolding, framework, or demolition or dismantling thereof will be more than 30 feet high.
As owner-builder I will not employ anyone to do work which would require a permit from the Division of Industrial Safety, as noted above unless such person has a permit from this division.

Department of Industrial Relations: Phone (805) 454-4381, Address: 1655 Moss Verde Suite 150, Ventura, CA 93003

HAZARDOUS MATERIALS QUESTIONNAIRE

Health and Safety Code Section 1927.3, and Assembly Bill 3103 requires that the permit applicant provide certain information to the Building Department before a permit is issued.
Demolition Permit: Before a demolition permit is issued for any building or structure, a copy/receipt of advance notification by the local environmental protection agency may be required by the Building Department.

1. As applicant, I declare that advance notification is not applicable to this project, per Section 1927.3 HSC.
2. A permit issued by the local air quality district may be required with certain types of occupancies, if the applicant has any of the following conditions (see also District Permit category listing):

- | | | |
|-----|----|---|
| Yes | No | 1. Does your facility use any internal combustion engines greater than 20-HP? |
| Yes | No | 2. Does your facility involve mixing, blending, or processing any solvents, adhesives, paints, or coatings? |
| Yes | No | 3. Does your facility refine any liquids or solids? |
| Yes | No | 4. Does your facility have any combustion equipment rated greater than 2,000,000 BTU/HHR? |
| Yes | No | 5. Does your facility handle or store solvents or motor fuels? |
| Yes | No | 6. Does your facility create dust or smoke? |
| Yes | No | 7. Do you use any chemical process? |
| Yes | No | 8. Are you a dry cleaner, restaurant with charbroiler, body shop, gas station, printer, or print center? |
| Yes | No | 9. Is the subject building located within one thousand feet of any school? |

If you have answered "Yes" to any question, contact the San Luis Obispo Air Pollution Control District at 2116 Sierra Way, San Luis Obispo, Phone (805) 781-4247.

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractor's License Law for the following reason (Sec. 7031.3, Business and Professions Code): Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.3 by any applicant for a permit (subject to the applicant) is a civil penalty of not more than five hundred dollars (\$500).

I, as owner of the property, or my employee with wages as their sole compensation, will do the work, and the entire contract is not intended or offered for sale (Sec. 7044, Business and Professions Code). The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.

I, as owner of the property, am individually contracting with licensed contractors to complete the project (Sec. 7044, Business and Professions Code). The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) formed pursuant to the Contractors License Law.

I am exempt under Sec. _____ B. & P.C. for the reason: _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury that I am not a contractor as defined in the Contractors License Law.

I, as owner of the property, am not a contractor as defined in the Contractors License Law, and I am not employing any workers on the project. I am not a contractor as defined in the Contractors License Law, and I am not employing any workers on the project.

I have read and understand the Contractors License Law, and I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

Contractor: C.A.H.

Policy Number: WCC 144733611

(This section need not be completed if the permit is for one hundred dollars (\$100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of the State of California, and I shall not become subject to the workers' compensation laws of the State of California, and I shall not become subject to the workers' compensation laws of the State of California, and I shall not become subject to the workers' compensation laws of the State of California.

Date: 2-22-97

Applicant: _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT THE OWNER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000) AND UP TO THE COST OF COOPERATION, AND DAMAGES PROVIDED FOR IN SECTION 122 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the portion of the work for which this permit is issued (Sec. 31797, Civ. C.).

Lender's Name: _____

Lender's Address: _____

I hereby affirm that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-maintained property for inspection purposes.

Signature of Applicant or Agent: _____

Date: _____

For your file



City of Pismo Beach
760 Mattie Road
Pismo Beach, CA 93449
(805) 773-4657 Fax: (805) 773-7006

Post-It® Fax Note 7571		Date 9/5/97	Page 2
To Steve Guiney	From Dennis Delzeit		
Co. Coastal Commission	Co. City of Pismo		
Phone #	Phone # 805-773-4656		
Fax # 408-427-4277	Fax #		

September 4, 1997

TO: Mayor and City Council

FROM: Dennis Delzeit
Public Services Director

RE: Issuance Of An Emergency Permit For Bluff Protection
To The Cliffs Resort Hotel

In accordance with City Ordinance No. O-95-14, this is a report to the City Council explaining the nature of the emergency and the work involved in the bluff protection to the Cliffs Resort Hotel.

Emergency Building Permit No. 97-238-001-2 was issued on August 28, 1997. The work includes the placement of large rip rap boulders at the toe of the bluff adjacent to the Cliffs Hotel Resort. The largest rocks are in the 3 ton category. Additional work will include the placement of de-watering wells at the top of the bluff and the installation of an emergency generator at the existing private sewage lift station which serves the Cliffs Hotel.

Approximately a year ago a similar, but different, project was approved by the City staff, Planning Commission and City Council but was appealed to the California Coastal Commission. The appeal was upheld. Since that time, additional research information has been developed and a different project has been submitted to the City. The additional geotechnical investigation includes a latest technology approach utilizing radar imaging. The additional geotechnical information identified the urgency of taking remedial action. In layman's terms, there is no hard rock to prevent the inevitable ocean erosion to occur. Previously, there existed bituminous sandstone which provided some protection. However, it has eroded and has exposed softer shale material to wave action. Under normal surf and tide conditions, this does not present a problem. However, during the stormy seasons, high tides combined with high surf can rapidly erode this soft material.

Situations have occurred along the public access grass area at the top of the bluff which have endangered life and property. During last winter's storm, a portion of the walkway, along with the protective chain link fencing, suddenly fell into the ocean. Shortly afterward, the walkway protective and fencing were relocated and replaced. Once again, another chunk of bluff fell into the ocean, approximately 75' below. In addition to the loss of fencing and walkway area, the two situations described could have resulted in serious injury or loss of life, if people were present on the walkway at the time these chunks of the bluff fell to the beach below. Presently there is a "snow fence" to help keep people from the edge of the vertical bluff face.

The City was very careful in its evaluation of the proposed shoreline protection. The evaluation included quality assurance peer review. A total of six licensed engineers and/or geologists reviewed the technical material. In addition, a very detailed field review was made by the Public Services Director/City Engineer along with Coastal Commission Planner and Engineer, as well as the Geotechnical Engineer who provided the radar imaging.

One aspect of the project that has been questioned is the alleged overwatering of the grass area at the bluff top. The Cliffs Hotel has moisture sensors in this area and the irrigation system will not come on unless the moisture content of the soil reaches a certain level. The water conditions, based upon geotechnical investigation, have identified the source of the water to be from ground water, which is prevalent to a large extent of the Shell Beach area.

Another aspect of the project is the evaluation of the "least environmentally damaging" alternatives. The placement of large rip rap boulders is less environmentally damaging than the construction of a concrete seawall. Currently, there is accessibility for the placement of this large rock with a crane which has a very high lifting capacity and a large boom. If no immediate protection is provided to the toe of the bluff, it is certain that the relentless ocean will eventually erode the bluff to where there is not sufficient space for a crane to be able to place the rock. The eventual solution would then be a concrete seawall which would be more environmentally damaging than the rock revetment.

The El Nino has created predictions that there will be increased frequency and intensity of ocean storms this winter season. The processing of a conventional permit through the City staff and Planning Commission would take approximately 3-4 months. By that time, there is the high likelihood that erosion may have taken place preventing the placement of rock riprap protection. Also, delay of the project would expose the general public to the risk of additional exposure to injury and possibly death through use of the walkway at the top of the bluff. If the erosion is severe enough, it could even expose hotel occupants to risk. While I hasten to point out that there is no certainty of the aforementioned consequences, prudence dictates that we take heed to experts in the field of engineering, geology and meteorology.

The California Coastal Commission staff has provided the City with a letter stating this project is different from the one denied by the Coastal Commission last year.

I would be pleased to provide additional information if requested.

DD:jy

cc: M. Fuson, City Manager
Senator Jack O'Connell
(Attention: Tara Getty)
D. Hunt, City Attorney
S. Guiney, California Coastal Commission
F. Schott
Manager of the Cliffs Hotel
Phil Terese, Pres. Surfriders Foundation
M. Cardona, Building Official
File

RECORDING REQUESTED BY
SAFECO TITLE INSURANCE COMPANY

3/19/84 9018 6

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

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

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

DEED RESTRICTION

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

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

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

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

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Exhibit 6 1 of 36

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

Geologic Hazard Setback and Waiver of Liability

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

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

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

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

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

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

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

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

DATED: February 15, 1984.

Windmark Corporation

SIGNED: By: _____

STEPHEN D. COX, President

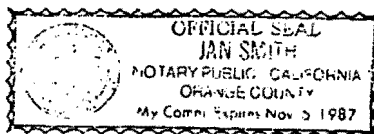
Wade Construction Company, Inc.

SIGNED: By: _____

H. JOSEPH WADE, President

STATE OF CALIFORNIA,)
) ss.
COUNTY OF ORANGE)

On this 15th day of February, in the year 1984, before me the undersigned, a Notary Public in and for said County and State, personally appeared Stephen D. Cox, an individual, personally known to me or proved to be on the basis of satisfactory evidence to be the President of Windmark Corporation, and H. Joseph Wade, an individual personally known to me or proved to me on the basis of satisfactory evidence to be the President of Wade Construction Company, Inc. and acknowledged that the respective corporations executed the attached instrument.



Jan Smith
(Notary Signature Line)

-4-

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 4 of 36

EXHIBIT A

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

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

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

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

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

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

EXHIBIT B

November 30, 1983 ✓
E1092 ✓

(Pismo 4)

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

Area 1:

Lateral Public Access Easement (100' Park Dedication)

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

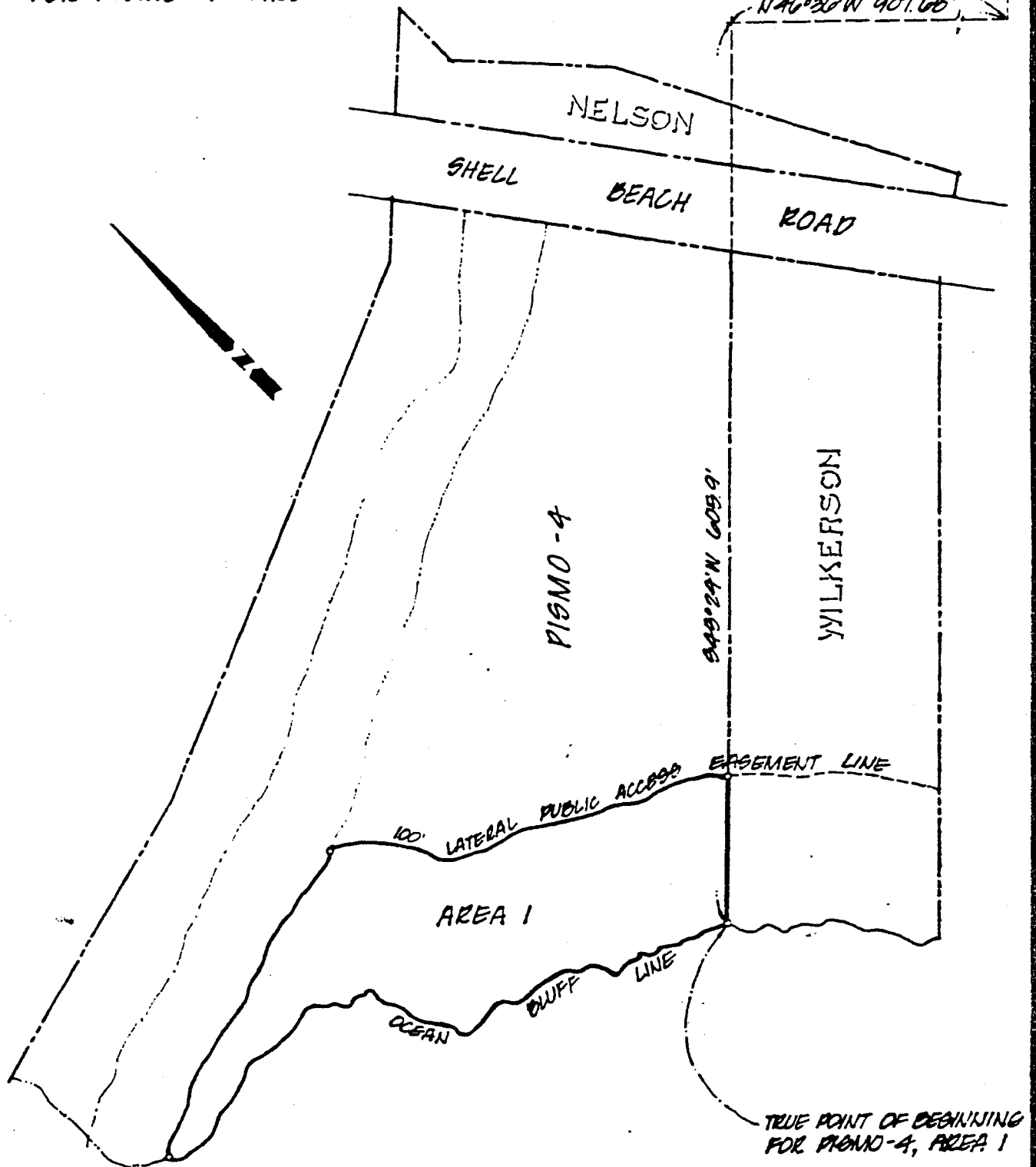
with a line 100 feet distant from and parallel with said top of the existing ocean bluffline; Thence, Southeasterly and parallel with said existing top of ocean bluffline to the intersection with said Southeasterly boundary line of said property conveyed by said deed recorded in Book 2505 at Page 371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

GEOLOGICAL SETBACK FOR PISMO-4: AREA 1

POINT OF BEGINNING

S 43° 24' N 40.00'

N 46° 30' W 907.00'



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Exhibit 6 8 of 36

END OF DOCUMENT

VOL 2576 PAGE 96

RECORDING REQUESTED BY

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

3/19/84 9019 6² 14.0
DOC. NO. 13533 12.0
OFFICIAL RECORDS
SAN LUIS OBISPO CO., CA

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

DEED RESTRICTION

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

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

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

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

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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 9 of 36

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

The deed restriction shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The deed restriction shall bind any successor and assigns in interest of the Applicant or landowner.

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

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

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

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

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

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

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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 11 of 36

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

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

DATED: February 15, 1984

Windmark Corporation

Signed By: [Signature]

STEPHEN D. COX, President

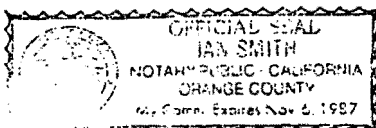
Wade Construction Company, Inc.

Signed By: [Signature]

H. JOSEPH WADE, President

STATE OF CALIFORNIA,)
) ss.
COUNTY OF ORANGE)

On this 15th day of February, in the year 1984, before me JAN SMITH, a Notary Public in and for said County and State, personally appeared Stephen D. Cox, an individual who is personally known to me or proved to me on the basis of satisfactory evidence to be the President of Windmark Corporation and H. Joseph Wade, an individual who is personally known to me or proved to me on the basis of satisfactory evidence to be the President of Wade Construction Company, Inc. and acknowledged that the respective corporations executed the attached instrument.



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

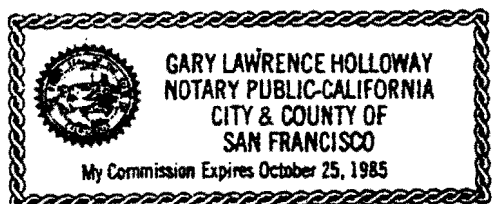
This is to certify that the deed restriction set forth above, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the authority conferred by the Commission when it granted Permit No. 4-83-490, on October 13, 1983, and that the Commission consents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

DATED: January 30 1984 Cynthia K Long

CYNTHIA K LONG STAFF COUNSEL
CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

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



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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 13 of 36

EXHIBIT A

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

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

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

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

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

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

EXHIBIT B

November 30, 1983 ✓✓
E1092 ✓

(Pismo 4)

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

Area 1:

Lateral Public Access Easement (100' Park Dedication)

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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 15 of 36

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

Area 2: Lateral Public Access Easement (Beach Dedication)

Beginning at the Southwest corner of Area 1, herein above described, said point being at the top of the ocean bluffline herein above described said point being the True Point of Beginning; Thence, South $43^{\circ} 24'$ West along the Southeast boundary line of the property conveyed by above said deed recorded in Book 2505 of Official Records at Page 371 to the intersection with the ordinary high tide of the Pacific Ocean; Thence, Northwesterly along said ordinary high tide of the Pacific Ocean to the intersection with a line which is due West of the Northwest corner of said Area 1. said point being the intersection point of said top of the ocean bluffline with said existing top of bank of the creek channel as described in said Area 1; Thence, East to said northwest corner; Thence, Southeast along the westerly line of said Area 1 and said top of ocean bluffline to said Southwest corner of said Parcel 1 and the True Point of Beginning.

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

According to that certain deed recorded in Book 594 of Official Records at Page 386 in the Office of the County Recorder, referenced in said deed recorded in Book 2505 at Page 371: Beginning at a point in the Southwesterly line of the California State Highway No. 101 at the most Easterly corner of the land described in the deed to Thomas S. Nelson and Harry G Nelson, recorded December 19, 1949 in Book 545 at Page 177 of Official Records of said County; Thence, South $43^{\circ} 24'$ West 40.00 feet;

CCC-00-RO-01 & CCC-00CD-04

Exhibit 6 16 of 36

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

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

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

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

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

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

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

Containing .22 acres, more or less.

EXHIBIT B

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

TRUE POINT OF BEGINNING
FOR PISMO-4: AREA 3

POINT OF BEGINNING

S 43°24'N 40.00'

N 46°30'W 907.00'

NELSON

SHELL

BEACH

ROAD

N 55°42'13"N
125.64'

AREA 3

PISMO-4

S 43°24'N 605.9'

WILKERSON

CENTERLINE 10' VERTICAL PUBLIC
ACCESS EASEMENT

CENTERLINE 30' VERTICAL
PUBLIC ACCESS EASEMENT

100'

LATERAL PUBLIC ACCESS
EASEMENT LINE

AREA 1

AREA 2

OCEAN

BLUFF LINE

LINE

(APPROXIMATE)

ORDINARY

HIGH

TIDE LINE

PACIFIC OCEAN

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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 19 of 36

END OF DOCUMENT

VO 2576 PAGE 107

RECORDING REQUESTED BY

3/19/84 9040 6^E

SAFECO TITLE INSURANCE COMPANY

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

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

MAR 19 1984

FRANCIS M. COONEY
County Clerk-Recorder

TIME 8:02 AM

DEED RESTRICTION

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

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

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

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

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

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Exhibit 6 20 of 36

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

Geologic Hazard Setback and Waiver of Liability

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

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

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

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

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

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

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

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Exhibit 6 22 of 36

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

DATED: 2/21, 19 84.

L. R. Wilkerson Interests, Inc.

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

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

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

P. Ann Smith
(Notary Signature Line)

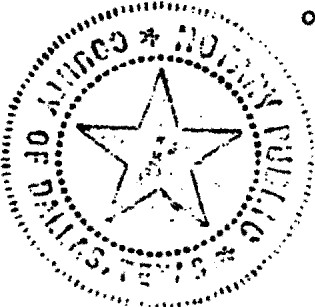


EXHIBIT A

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

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

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

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

EXHIBIT B

November 30, 1983
E1092

(Wilkerson)

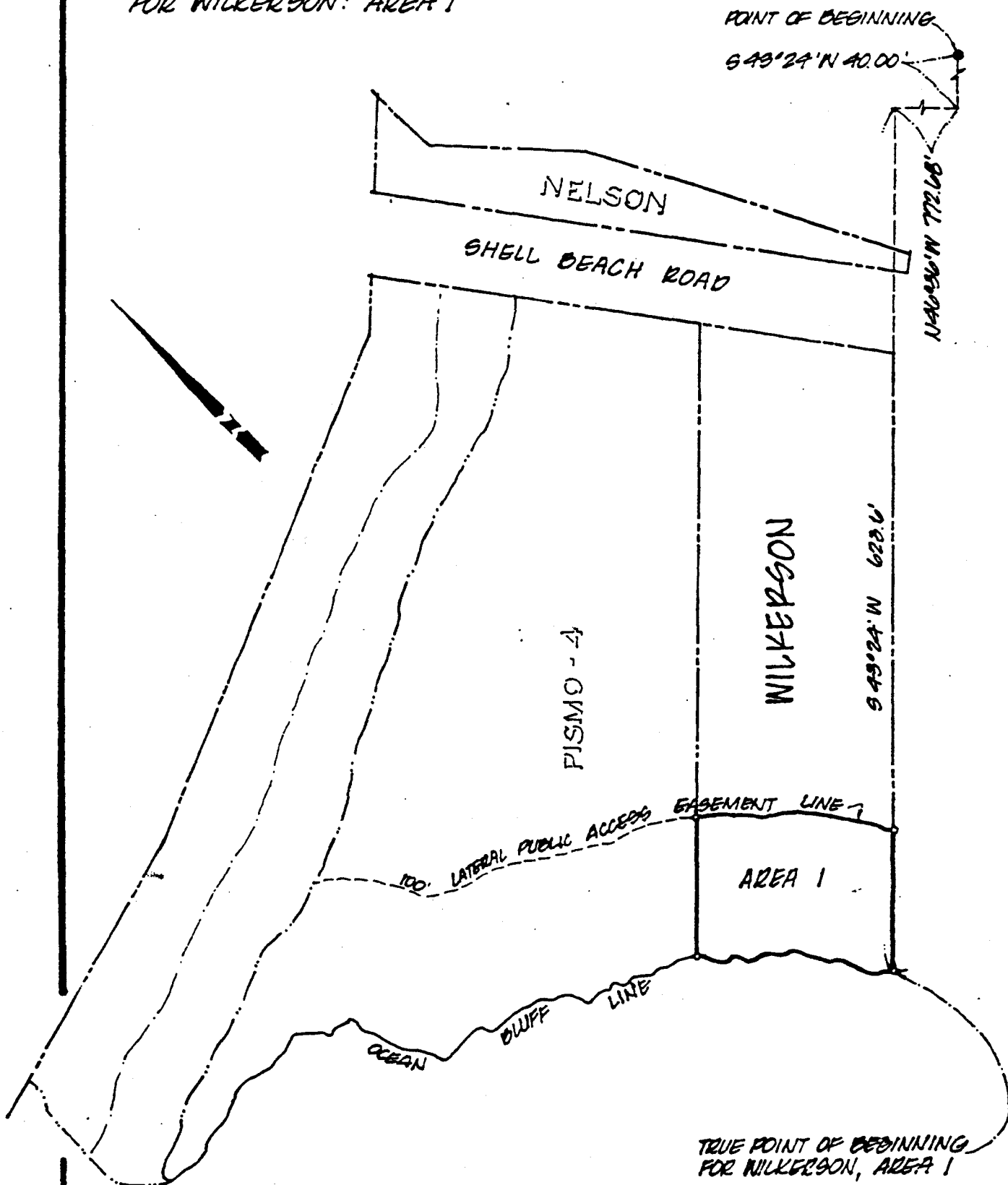
All that real property situate in the County San Luis Obispo, State of California, being a part of that certain portion of Lot 5 of the Subdivisions of a part of the Ranchos El Pismo and San Miguelito, described in a deed recorded in Book 2298 of Official Records at Page 322 in the office of the County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

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

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

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

GEOLOGICAL SETBACK FOR WILKERSON: AREA 1



TRUE POINT OF BEGINNING
FOR WILKERSON, AREA 1

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 27 of 36

END OF DOCUMENT

RECORDING REQUESTED BY

SAFECO TITLE INSURANCE COMPANY

RECORDING REQUESTED AND RETURN TO:
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CA 94105

3/19/84 9041 6

12.01
12.01ST

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

MAR 19 1984

FRANCIS M. COONEY
County Clerk-Recorder

TIME 8:02 AM

DEED RESTRICTION

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

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

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

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

V. WHEREAS, pursuant to the California Coastal Act of 1976, the Applicants have applied to the California Coastal Commission for a Coastal Development Permit to develop the the Subject Property; and

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

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

The deed restriction shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The deed restriction shall bind any successor and assigns in interest of the Applicant or landowner.

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

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

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

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

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

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

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

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

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

DATED: 2/21/84

L. R. WILKERSON INTERESTS, INC.

Signed By:

L. R. Wilkerson, President

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

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

Ann Smith
NOTARY PUBLIC IN AND FOR SAID COUNTY
AND STATE

-4-

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 31 of 36

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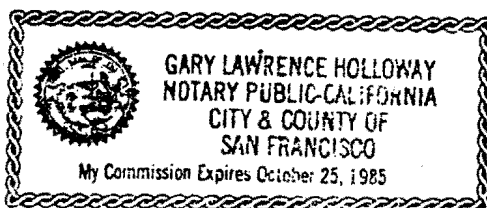
This is to certify that the deed restriction set forth above, is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to the authority conferred by the Commission when it granted Permit No. 4-83-490, on October 13, 1983, and that the Commission consents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

DATED: January 30 1984 Cynthia K Long

CYNTHIA K LONG STAFF COUNSEL
CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

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



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

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 32 of 36

EXHIBIT A

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

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

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

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

EXHIBIT B

November 30, 1983
E1092

(Wilkerson)

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

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

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

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

Area 2: Lateral Public Access Easement (Beach Dedication)

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

EXHIBIT B

LATERAL PUBLIC ACCESS
WILKERSON: AREA 1 & 2

POINT OF BEGINNING

S 43° 24' N 40.00'

NELSON

SHELL BEACH ROAD

N 40° 36' N 772.68'

WILKERSON

S 43° 24' N 623.6'

PISMO - 4

100' LATERAL PUBLIC ACCESS EASEMENT LINE

AREA 1

AREA 2

OCEAN

BLUFF LINE

HIGH TIDE LINE

(APPROXIMATE) ORDINARY

PACIFIC

OCEAN

TRUE POINT OF BEGINNING
FOR WILKERSON, AREA 1

CCC-00-RO-01 & CCC-00CD-04
Exhibit 6 36 of 36

END OF DOCUMENT

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cc P. Breton (NC)
J. Bouers
A. Reach
R. Subramanian

June 22, 1999

Ms. Nancy Cave
CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

**Re: Compliance With Permit Conditions and Pending Rip-Rap Removal;
THE CLIFFS at SHELL BEACH RESORT**

Dear Ms. Cave:

In follow-up to our telephone conversation this morning, please accept this letter as confirmation that we have closed escrow on the Cliffs Hotel and Restaurant in Pismo Beach, and will be assuming lead responsibility within the ownership group for addressing outstanding permit and violation issues with the Commission.

Pursuant to your request, the following entities comprise the new ownership:

Title Owner:

LA NORIA IMS, LLC
c/o King Ventures
290 Pismo Street
San Luis Obispo, CA 93401

Managing Member:

Mahmood Khimji
Highgate Holdings
545 E. John Carpenter Freeway
Suite 1400
Irving, TX 75062

Member:

John King
King Ventures
290 Pismo Street
San Luis Obispo, CA 93401

Member:

Larry Shupnick
Post Office Box 2436
166 Village Crest
Avila Beach, CA 93424

Member:

Roger Joseph
Franklin-Croft Group
4510 Executive Drive, Suite 125
San Diego, CA 92121

Permit me to also confirm the status of your permits as they relate to compliance issues, as you relayed them to me today. The December, 1998, Commission permit

requiring certain landscaping improvements to be completed by 6-30-99, will not be enforced by the Commission or staff at this time, pending an opportunity for the new owners to meet with your staff, and staff of the Santa Cruz office, to review outstanding requirements. We indicated that it is our desire to work cooperatively with you to develop an appropriate plan for compliance as soon as is practical. You suggested that staff was aware of some of the unique difficulties associated with removal of the rip-rap, and that as long as we worked in good faith to identify and implement a compliance program, penalties would not be pursued against the new owners of the resort.

You further indicated that you had negotiated detailed terms with the former potential buyers related to compliance options, and that you would make those available to us sometime next week, after completion of your present assignment. I agree that this information would be a good starting point for us, and I will anticipate receipt of those materials from you early in July.

Please do not hesitate to use our office as the point of contact, and to call me on any of these matters. We appreciate your courtesy and look forward to working with the Commission on resolution of these matters.

Sincerely,



David Watson, AICP

Director of Planning and Project Development

cc: John King
Larry Shupnick
Mahmood Khimji
Roger Joseph
Frederick K. Glick, Esq.
Diane Landry, Santa Cruz Coastal Commission Office

CLFScave01coastal

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

July 8, 1999

David Watson, AICP
Director of Planning and Project Development
King Ventures
290 Pismo Street
San Luis Obispo, CA 93401

Subject: The Cliffs at Shell Beach Resort; your letter dated June 22, 1999

Dear Mr. Watson:

Thank you for your letter of June 22, 1999, in which you clarified new ownership of the above-referenced property, and stated your company's willingness to administratively resolve the outstanding Coastal Act violations existing at the property. These violations include the placement of structures within a deed-restricted setback area upon the bluff, placement of rip-rap along the beach below the subject establishment and failure to provide at least 19 public beach access parking spaces with signs for the same.

As you know, in November 1998 the Commission denied a request to retain the riprap as well as the placed structures within the deed-restricted bluff setback area. The former owner filed a lawsuit against the Commission for its permit action.

I indicated I would send you additional clarifying information regarding Commission staff desires for resolving the outstanding Coastal Act violations. First and most important, Commission staff would like to see the riprap revetment removed in accordance with Commission permit action. King Ventures, as new owners will need to submit a coastal development permit application for removal. The application should include a competent geo-technical evaluation of the revetment removal plan and should include a plan for restoring the site to its pre-development status. Commission staff would like to see such application as soon as practically possible. To avoid future formal Coastal Act enforcement, King Ventures should submit such an application no later than November 1, 1999.

Second, all unpermitted development located within the bluff setback area must be removed. This includes, but is not limited to, a sewage holding tank, lift station, pipelines, storm drain, irrigation system and landscaping. King Ventures must seek coastal development permit action from the Commission for this removal as well as the removal of the riprap revetment. All placed structures must be identified in-place, when removal/relocation will occur, and where the relocated structure(s) will be on the subject property. Obviously, the existing public lateral access path must remain between the Cliffs hotel facilities and the edge of the bluff as should the bluff sediment de-watering

system. To avoid future formal Coastal Act enforcement, King Ventures should submit such an application no later than November 1, 1999.

Finally, the original permit issued for the construction of the hotel and its associated structures required the provision of at least 19 public beach access parking spaces with signs. These spaces and the respective signs need to be provided no later than November 1, 1999.

Currently, King Ventures is not obligated to meet any other deadlines with respect to coastal development permits requested by prior owners of the Cliffs property. King Ventures has not been assigned the relevant coastal development permits and therefore is not subject to those deadlines. If King Ventures wishes to avail itself of any coastal development permit conditionally approved by the Commission for the prior owner, King Ventures must have the former owners assign said permit to them. If you wish to receive an assignment application, please contact our Central Coast District office for such a form.

Although you and I have previously discussed the existence of unpermitted development at the subject property, please consider this letter formal written notice to King Ventures that there is unpermitted development at the subject site and that the Commission has denied a permit request to retain the rip-rap revetment and most of the placed development within the restricted bluff set-back area. I understand that King Ventures wishes to resolve these unpermitted activities by removing the development and restoring the site to its pre-violation status. Resolution would also include installation of 19 public beach parking spaces and signs.

With respect to possible meetings to resolve this matter, I would request that the meetings be scheduled in San Francisco if at all possible. These violation cases have been elevated to my Unit, and all assigned personnel work in San Francisco. Of course, if this would present a hardship for you, we would consider conducting such a meeting in Santa Cruz for your convenience.

Please let me know if our suggested deadlines are acceptable and your thoughts regarding meetings in San Francisco no later than July 31, 1999. If I am not available, please contact Ravi Subramanian at (415) 904-5248 of my staff who is assigned to Coastal Act Violation File No. V-3-96-003 (Cliffs Hotel).

Sincerely,



Nancy L. Cave
Supervisor, Statewide
Enforcement Program

Cc: Dan Carl, Central Coast
Ravi Subramanian



October 6, 1999

Ms. Nancy Cave
CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

**Re: Compliance With Permit Conditions and Pending Rip-Rap Removal;
Follow-up To Our August 27, 1999 Meeting in Santa Cruz;
THE CLIFFS at SHELL BEACH RESORT**

Dear Ms. Cave:

John King and I appreciated the opportunity to meet with you, Diane Landry, Dan Archer and Charles Lester recently to review in detail the status of the Commission's permit and violation actions at the captioned property. Permit me to initially summarize the status of these issues, and then suggest some options for consideration.

Violation Action and 1998 Permit Action Identifying Structures For Removal

Based on our discussion, the following existing improvements are considered by staff to be structures that were developed in violation of the Commission's 1983 permit:

Sewer Lift Station	Sewer Holding Tank
Gravity Sewer Collection Line running parallel to bluff	
Absence of Public Parking Signs/Marked Spaces	

Not related to the Violation action, but required to be removed under the Commission's 1998 permit action, is the rock revetment located below the southern corner of the site.

In contrast, the following existing improvements located within the bluff setback are recognized as "permitted", or otherwise allowed structures:

Surface Storm Drain	Public Access Path/Signs
Subsurface Electric Utility	Fences
Irrigation Systems	Three (3) dewatering wells
Landscaping	Geomembrane (if needed)

The various "permitted" structures noted above were recognized as such during the Commission's 1998 permit action. This clarification of "permitted" structures is

important as the structures noted above as "subject to removal" are fewer than those suggested in your July 8, 1999 correspondence to us. Please correct our understanding if I am in error in any significant way on these distinctions.

Possible Violation and Rip-Rap Remedies

On the matter of the public parking spaces, we indicated we would stencil them immediately. We noted we would paint "Public Parking / Daylight Hours" at the driveway end of the 19 spaces you have noted as required. These are spaces adjoining the public access trail along the northern barranca.

On the matter of the sewer holding tank, we indicated it's use has been discontinued via a plug placed between the tank and the lift station. We have reviewed geologic and civil engineering analyses on this subject generated previously. We are of the opinion that removal of the tank at this time may present a greater risk to blufftop instability. We are also of the opinion, that the holding tank is not a contributing factor in bluff erosion, which is clearly the result of wave action and resulting beach scour at the base of the bluff. In light of the holding tank's discontinued use, we would suggest abandonment in place, with removal as a future option if, in the event of continued erosion or other erosive factors, retention of the structure is viewed as necessary to stabilizing the bluff.

You indicated that staff was open to retention of the underground sewer collection line that runs roughly parallel to the bluff and the front of the buildings. Since this line appears to be located immediately landward from the underground storm drain line, which is considered a permitted structure, we would propose your acknowledgment and recognition of this essential utility improvement as a "permitted structure".

On the matter of the sewer lift station, it is located immediately adjoining (and in some limited instances straddling) the 100' erosion setback established at the southern end of the site. This improvement is obviously vital to the entire site, and is situated behind the holding tank that has been discontinued from use. By all qualified accounts of the record we have seen, the lift station has not been identified as a contributing factor to bluff erosion. We would propose that the staff recognize the lift station as a permitted structure. In exchange, we would acknowledge that the station is a "permitted structure that is not subject to shoreline protective devices". In other words, we would covenant that the lift station would not be viewed as "existing development otherwise subject to protection under the Coastal Act and Pismo Beach LCP", and therefore could not be the subject of future applications for protective structures. This would essentially require the property owners to relocate or remove the lift station in the future if erosion ever encroaches within a safe distance of the facility.

On the matter of the rip-rap, as we suggested in our meeting, we believe there was sufficient technical data in the record, and clearly an effort to follow proper procedures for permitting and constructing these improvements, prior to its installation. As we stated in our meeting, our flexibility in resolving this matter is entirely contingent upon a clear and unequivocal recognition that legitimate shoreline protection at the Cliffs Hotel property is now and will remain an option in the future to respond to unforeseen conditions and circumstances that may arise. We also understand that the placement of the rip-rap appears to the untrained observer to have been somewhat indiscriminate, and did impact some 5,000 SF of beach area. It is also abundantly clear that the jurisdictional snafu during these periods of time lent more confusion than timely assistance, and perhaps resulted in some hard feelings among the prior participants. In our case, we do not want to approach the solution from these "entrenched" earlier positions, and based on that, we believe the following course of action is supported by the technical evidence, the discretion allowed under the LCP to the City and the Commission's own implementation of the Act:

- We would prepare and submit a new application for City action, with Commission review for consistency with your earlier permit action, and to bring finality to the outstanding issues at their level. (In-lieu of an "assignment" of the old permit);
- The rip-rap placement would be modified (cleaned-up) to reduce the footprint of the rock presently covering the beach areas immediately seaward of the placement;
- The beach would be re-established in the areas of the removed rip-rap (we estimate at least 3,000 SF of beach can be reclaimed in this fashion);
- The upper rip-rap zone (generally above wave action areas) would be planted with appropriate bluff face and seaside plant materials (designed for added stabilization effect as well);
- You would acknowledge that the original permits and deed restrictions should not be interpreted as precluding future consideration of legitimate shoreline protective structures, consistent with the Pismo Beach LCP, and subject to City permitting above the mean high tide line.

We would further propose an annual monitoring program of our remedial actions, continued shoreline erosion and wave action conditions. This would permit us to collectively monitor the site conditions and permit knowledgeable engineering and geotechnical professionals to observe conditions on a routine and regular basis. This should, in most normal instances, alert us to items of immediate remediation, and allow us all the time needed to carefully and deliberately consider the proper range of options in response and to discuss and implement a consensus-style solution or solutions.

Lastly, as we noted at the outset of our meeting, and in earlier correspondence to you, the ownership of the site is "La Noria, LLC", which is made up of the individuals noted in my June 22nd transmittal.

Nancy, I believe this approach will achieve our mutual objectives; namely to resolve "unpermitted structures", allow a comprehensive review by the Commission as a part of a workable solution, and end the current litigation. As you suggested in our meeting, we need to find a solution that serves our mutual purposes.

Please consider these thoughts as an outline of the options we believe would be prudent to pursue. As we discussed in August, following your review of these options, you were going to outline how any or all of the options could be implemented, and to what degree one option may require Commission approval or actions, whereas others could be handled at an administrative level. It is possible you may also differ or not support one or more of these options, and your assistance in identifying those as such would expedite our evaluation of a final option.

Please contact me to discuss any clarifications you may need, or to address any suggestions you have at this time.

Sincerely,



David Watson, AICP

Director of Planning and Project Development

Cc: Diane Landry, Santa Cruz Coastal Commission Office
Dan Archer, Santa Cruz Coastal Commission Office
Charles Lester, Santa Cruz Coastal Commission Office
John King
Larry Shupnick
Mahmood Khimji
Roger Joseph
Frederick K. Glick, Esq.

CALIFORNIA COASTAL COMMISSION

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Faxed to (805)544-5637
(Original sent by certified Mail Article No. Z 387 425 296)

November 4, 1999

David Watson
Director of Planning and Project Development
King Ventures
290 Pismo Street,
San Luis Obispo, CA 93401

RE: CLIFFS HOTEL at Shell Beach

Dear Mr. Watson:

Thank you for your letter to Nancy Cave dated October 6, 1999. We are disappointed with the content of your proposal as it does not adequately address the Commission's enforcement concerns. Your proposal to resolve this matter through submittal of a coastal development permit (CDP) application to retain most of the currently unpermitted development as an avenue for resolution of this matter is not consistent with Commission action on this site and is not acceptable. The following response is structured to respond to the various points of your proposal and to clarify the concerns of Commission staff regarding retention and/or removal of unpermitted and/or denied structures on the property.

1. Legal Status of Site Development

The first section of your October 6th letter describes the various project components that you believe to be permitted to date and those that remain in violation of the Commission issued CDP 4-83-490 ("1983 Permit"). We do not entirely agree with your characterization of permitted and unpermitted development on the Cliffs Hotel site. The following paragraphs outline our understanding of the status of development at this site.

1983 Permit (4-83-490): The permit authorized the construction of a 4-story, 170-unit motel with a 1-story 251-seat restaurant, conference rooms, and a 245-space parking lot. The same permit imposed conditions requiring the provision of public access improvements including vertical and lateral pathways and stairways, 19 public parking spaces individually marked for public use, a sign marking the entrance to the public beach access parking area, and an official coastal access sign marking the accessway. This approval was implemented in part by deed restrictions recorded on the property to implement Special Conditions 1a and 3. The deed restriction for geologic hazard setback and waiver of liability flatly precludes any development within 100 feet of the hotel and restaurant other than "pathways and stairways." The deed restriction for public access implies a potential for additional development if it will not "impede access." The effect of these property restrictions is that the entire area between the principal Cliffs Hotel structures and the Pacific Ocean is restricted to public access use. There are, however, a number of existing structures located within the setback area that have been placed in violation of the deed restrictions and the 1983 permit.

1998 Commission action on Coastal Permit Amendment Request (4-83-490-A1): The Commission conditionally approved retention of the following development within the setback area: three de-watering wells with underground electrical connection; a sump pump and pit with underground electrical connection; a blufftop concrete path/swale with black anodized chain link fence (less than four feet); a

storm drain drop inlet; an irrigation system with moisture sensing controls; an impermeable geomembrane under any turf areas consistent with the landscape irrigation control recommendation of the Geologic Bluff Study by Earth Systems Consultants dated January 30, 1996; drought and salt tolerant native blufftop landscaping; and the existing storm drain location. This development is however, not considered to be "permitted development" because the conditions of approval imposed by the Commission have not been satisfied and the permit amendment has not been issued. Until these conditions have been met and the amended permit is actually issued, it is incorrect to characterize these items as permitted or legal development.

Outstanding Violations. We agree with you that the sewer lift station, sewer holding tank and gravity sewer collection line parallel to the bluff are in violation of the 1983 permit and are thus unpermitted structures. The existing rock revetment is also unpermitted and remains in violation of Special Conditions 1a and 3 of CDP 4-83-490 ("1983 permit") as a result of the Commission's denial on November 5, 1998, of your predecessor's application for a permit amendment (CDP 4-83-490-A1) to retain the revetment. Additionally, the 19 public beach access parking spaces have not been identified and signs for the accessway and public parking have not been placed, in conflict with CDP 4-83-490.

2. Administrative Solutions To The Violations On This Site

In Nancy Cave's letter of July 8, 1999 and at the meeting on August 27, 1999, Commission staff outlined methods to bring the subject property into compliance with the Commission's previous actions and thus resolve this enforcement matter. You have proposed an alternative resolution that provides for public parking and retention of the lift station, sewer holding tank, sewer collection line and most of the rip-rap revetment not permitted by the 1998 coastal permit amendment action. Many elements of your current proposal are not consistent with our previous communications with you.

To reiterate our past discussions, we believe the following steps must be undertaken by La Noria, LLC to resolve the violations:

Public Access, Parking and Signage: Your letter mentions that La Noria, LLC would paint "Public Parking/Daylight Hours" at the driveway end of the 19 spaces. Your proposal does not address the remaining requirements of the 1983 permit. Special Conditions of that approval also required "a sign marking the entrance to the public beach access parking area ... placed on Shell Beach Road and each parking stall shall be individually marked 'Public Beach Access Parking Only'." The 1983 approval also required that the vertical and lateral accessway be signed as available for public use.

In order to resolve this portion of the violation, you will need to provide at least 19 public beach access parking spaces in an area outside the Arroyo on the ocean side of Shell Beach Road and place a sign marking the entrance to the public beach access parking area on Shell Beach Road. As agreed to in your letter, each parking stall should be individually marked "Public Beach Access Parking Only." You also need to provide an official coastal access sign marking the vertical and lateral accessway.

Rock Rip-Rap Revetment: You have proposed an amendment to the project to retain most of the currently unpermitted revetment on the site. Please note that the Coastal Commission has jurisdiction over any proposed amendments to CDP 4-83-490. Furthermore, the revetment is located in substantial part in the Commission's original/retained permitting jurisdiction. Therefore, any such application must be submitted for Commission consideration. That being said, we would not encourage the submittal of such an amendment application, because your proposal is inconsistent with the Commission's 1998 denial of the revetment.

Special Condition 1 of CDP No. 4-83-490-A1 specifically identifies the "approved project" and states "this approval does not include construction of the rock rip-rap revetment." Section 13166(a) of the Commission's regulations prohibits the Executive Director from accepting amendment requests that "lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted." We agree with the assertion in your letter that the 1983 original permit and recorded deed restrictions do not preclude "future consideration" of proposed shoreline armoring if it is necessary to protect existing principal structures in danger from erosion. However, based upon Section 13166(a) and our current understanding of the site geology as discussed in the Commission's 1998 permit amendment findings, it does not appear that an amendment application to allow the retention of the rip-rap could be filed.

In order to resolve this aspect of the violation, we recommend that you file an application to remove the rock rip-rap revetment in its entirety and restore the bluff and beach to its pre-violation condition. This application must include a competent geo-technical evaluation of the revetment removal and a plan for restoring the site to its pre-violation status. The Commission's action in November 1998 found the revetment to be inconsistent with Chapter 3 policies and as a result denied the permit amendment request for its retention. The adopted findings for that action very clearly identified the adverse impacts of the revetment, including the loss of public access and recreation, alteration of natural landforms, loss of sand supply and beach erosion. Through the same action the Commission found that the revetment was not necessary, as there was no evidence of any immediate threat to existing permitted structures. Therefore, we find no reason for continued retention of any of the revetment.

Other Unpermitted Development: In November 1998 the Commission conditionally approved some development currently located within the deed-restricted setback area. This development consists of: three de-watering wells with underground electrical connection; a sump pump and pit with underground electrical connection; a blufftop concrete path/swale with black anodized chain link fence (less than four feet); a storm drain drop inlet; an irrigation system with moisture sensing controls; an impermeable geomembrane under any turf areas consistent with the landscape irrigation control recommendation of the Geologic Bluff Study by Earth Systems Consultants dated January 30, 1996; drought and salt tolerant native blufftop landscaping; and the existing storm drain location. The status of these unpermitted structures can be resolved by fulfilling the conditions attached to the 1998 permit amendment approval and Commission issuance of the amended permit.

The sewer lift station, sewer holding tank and gravity sewer collection line parallel to the bluff have been placed in violation of the 1983 permit, have not been considered by the Commission for permit approval after-the-fact and are thus unpermitted structures. Commission staff cannot, as you propose, acknowledge any such structures as "permitted structures." The permitted retention of any such structures would need to be approved by the Commission, and any relevant conditional requirements met, before they could be considered by Commission staff as "permitted structures."

If you intend to pursue retention of unpermitted structures currently located in the setback area, please submit an application to that effect. If not, please submit an application to relocate these structures inland of the 100-foot geologic setback area as they remain in violation of the Coastal Act. Furthermore, we have not seen any geotechnical analyses, or conclusions, on the subject of removal versus retention of the abandoned sewage holding tank. Absent information to the contrary, we see no reason why the sewage holding tank should not be removed immediately from the top before it eventually daylight in the bluff face and requires more complicated removal techniques. We suggest that the abandoned tank could be removed at the same time as the revetment.

Summary: Your administrative resolution proposal is not acceptable to Commission staff. We believe your proposal should include the removal of all structures inconsistent with Commission permit action and should resolve all remaining violation issues concerning the requirements of CDP 4-83-490 and 4-83-490-A1. To avoid formal enforcement action, La Noria, LLC must comply with the following on or before December 15, 1999:

- 1.) Submit evidence of condition compliance with CDP 4-83-490 in regards to Public Access Parking and Signage.
- 2.) Submit an application to the Coastal Commission to remove the rock rip-rap revetment and restore the bluff and beach to its pre-violation status.
- 3.) Comply with Special Conditions 2 and 3 of CDP amendment 4-83-490-A1 so that the amended permit can be issued.
- 4.) Submit an application to the Coastal Commission for authorization to either retain or remove all unpermitted development in the blufftop setback area.

Any application for a coastal development permit action must be complete and include all necessary attachments as noted in the application form and in this letter, including, but not limited to, detailed plans showing all development which was performed without a coastal development permit and proposed removal and restoration plans. Competent geotechnical analysis of any project(s) must be provided. The application must also include a request to amend the geologic setback deed restrictions to allow for retention of the development.

If the requirements mentioned above are not complied with on or before December 15, 1999, we will commence formal enforcement action as set forth in Chapter 9 of the Coastal Act. Coastal Act section 30811 states that if the Commission, determines that any person has undertaken a development without a permit or is inconsistent with the Coastal Act and that the development is causing continuing resource damage, it may issue an order directing that person to restore the site. A violation of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists.

If you have any questions you can contact me at (415) 904-5248.

Sincerely,



Ravi Subramanian
Statewide Enforcement

cc: Charles Lester, Diane Landry and Dan Carl, Coastal Commission's Central Coast District Office
Nancy Cave, Supervisor, Coastal Commission's Enforcement Program

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**DAVE WATSON
King VENTURES
290 PISMO ST
San Luis Obispo CA 93401**

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December 9, 1999

Ms. Nancy Cave
Mr. Ravi Subramanian
CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

**Re: Compliance With Permit Conditions, Violations and Rip-Rap Removal;
Follow-up To Our August 27, 1999 Meeting in Santa Cruz;
Our Correspondence of October 6, 1999;
Your Response of November 4, 1999;
THE CLIFFS at SHELL BEACH RESORT**

Dear Ms. Cave and Mr. Subramanian:

Thank you for your comprehensive response of November 4th to our letter and our earlier meeting in Santa Cruz. Your "disappointment" over our efforts to clarify and respond to our meeting in August, which unfortunately the author of your letter did not attend, seem surprisingly premature and combative. We hope that you will all continue to show us the courtesy and assistance we have been able to build with Coastal staffs in almost 20 years of coastal projects all over the State.

Your letter contains several inaccurate characterizations of either the discussions we had in August, our purpose in writing you in October, original 1983 permit conditions, and the status of permit compliance. The purpose behind our August meeting and October correspondence was to gain clarity on our part, having been involved in the project as the new owners less than 90 days. Please do not take offense to our efforts to understand the options available to us, some of which were discussed in August but did not appear in your recent letter.

Nevertheless, it is not our interest to delay tangible progress in resolving all these matters. The following responses will, we hope, outline a course of action on each item to bring all matters to a close.

1. Legal Status of Site Development

Your comments regarding our effort to clarify distinctions between "permitted" and "unpermitted" development are understood and acknowledged.

Regarding the 1983 permit, and public parking issues in particular, as we stated in August restriping work would be completed promptly. That work was completed prior to your letter of November. Please note that the parking spaces have been striped "Public Parking Daylight Hours" consistent with the 1983 permit, Special Condition 1(c), as well as consistent with the City's 1984 permit action on the hotel, which according to City records was coordinated with Coastal staff. Throughout our communications since July of this year, the coastal accessway has been signed for "coastal access" adjoining the project frontage at Shell Beach Road, consistent with the permit.

The 1983 permit did not require placement of "an official coastal access sign", whatever that is. If you are referring to the Coastal Conservancy's wooden or metal standardized signage, please be advised that such signage was originally installed at the site in cooperation with the City of Pismo Beach many years ago, and subsequently removed by a souvenir seeker. This, however, does not diminish our continuing compliance with the permit condition.

I do note that a sign specifying "public beach access parking" does not presently exist on the ocean side of Shell Beach Road. I will see that that sign is completed prior to the end of this month. This final actions would appear to resolve this violation matter.

One final note on your statements regarding "legal status", Section 1. We do not agree with your statement that the combined "effect of [various deed] restrictions is that the entire area between the principal Cliffs Hotel structures and the Pacific Ocean is restricted to public access use." The general public has been granted a public access easement for pedestrians to pass over and through this area, but we do not construe that to suggest that the described area is limited to only public use, as your letter purports. By your own descriptions, various other "uses" of this area were allowed by the original permit, and the more recent Commission actions.

2. Solutions To Violations

The foregoing comments should address the public access and parking questions.

Regarding the rip-rap matter, your position is the subject of pending litigation, and it would appear that any of the alternative solutions we have discussed are not supported by staff, and any applications to the Commission on these points would be fruitless by your measure. We do appreciate your acknowledgments that the deed restrictions recorded in 1983 and the Commission's permit (1) did not preclude future shoreline protective projects, and (2) did contemplate other uses of the blufftop areas if they do not "impede public access". The protective projects issue was a point of some disagreement between staff during our August meeting, and resolution of this matter in this fashion was important to the owners.

Your characterization of the rip-rap as a "violation" is curious, since it was in fact the subject of the 1998 permit conditions. I will assume that you are not intending to add the rip-rap to the violation matters, and simply expect that the permit conditions are complied with, if your position prevails.

On the subject of the 1998 permit actions, it is my understanding that, except for the removal of the rip-rap, all the conditionally-approved improvements referenced in the Commission's permit were installed as a part of the previous owner's actions under the emergency permit issued by Pismo Beach. That would include pre-existing storm drainage facilities, de-watering improvements, storm water swale, blufftop fencing and drought tolerant landscaping, and the like.

Finally, on the subject of the sanitary sewer improvements located in part or in whole oceanward of the geologic setback, we are willing to submit an application for the retention and relocation of those facilities. My experience with Coastal permitting suggests that a City permit is required before being able to present any necessary applications to the Commission. We cannot comply with your timeframe of December 15th in this regard, but we will make applications to the City promptly.

Please contact me to discuss any remaining clarifications you may need, or to address any further suggestions you have at this time.

Sincerely,



David Watson, AICP

Director of Planning and Project Development

Cc: Diane Landry, Santa Cruz Coastal Commission Office
Dan Archer, Santa Cruz Coastal Commission Office
Charles Lester, Santa Cruz Coastal Commission Office
John King
Larry Shupnick
Mahmood Khimji
Frederick K. Glick, Esq.

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Faxed to (805)544-5637
(Original sent by Certified Mail - Article No. Z 387 425 286)

January 31, 2000

David Watson
Director of Planning and Project Development
King Ventures (owner La Noria LLC)
290 Pismo Street,
San Luis Obispo, CA 93401

SUBJECT: Notice of intent to commence Restoration and Cease and Desist Order proceedings.

Coastal Act Violation File No. V-3-96-03a and b

Property Owner: La Noria LLC

Property Address: 2757 Shell Beach Road, Pismo Beach, CA 93449
APN 010-041-044

Dear Mr. Watson:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist and Restoration Order proceedings as a result of the continuing existence of unauthorized and denied development on the subject property at 2757 Shell Beach Road, Pismo Beach, CA 93449 (APN 010-041-044).

On December 17, 1999, in a telephone conversation with Commission staff member Ravi Subramanian, you stated the following:

1. King Ventures was in discussion with the City of Pismo Beach to apply and obtain a permit to remove and relocate the unpermitted sewer lift station and sewer holding tank outside the geologic set back area. The permit would be obtained before the end of 1999.
2. King Ventures intended to implement the removal and relocation of the unpermitted sewer lift station and sewer holding tank structures before June 2000.
3. King Ventures would contact the Commission's Santa Cruz office and comply with the conditions of CDP Amendment 4-83-490-A1 (hereinafter, "1998 approval/denial") before the end of 1999.
4. King Ventures would like to retain the unpermitted gravity sewer collection line parallel to the bluff at the same location and would apply to the Coastal Commission for a CDP for this sewer collection line after accomplishing 1, 2 and 3.
5. Due to existing litigation with respect to the rock revetment, the Coastal Commission can contact Frederick Glick, attorney for King Ventures / La Noria LLC.

On January 14, 2000, staff at the City of Pismo Beach Planning, Building and Engineering Department informed Commission staff that no application had been submitted or filed by King

Ventures for the authorization of the development outlined in items 1 and 2 above. In addition, King Ventures has not as of the date of this letter complied with the conditions of the 1998 approval/denial, as promised in item 3 above.

The subject development activities are inconsistent with the special condition requirements of Coastal Development Permit (CDP) No. 4-83-490 (hereinafter, "1983 permit") and the Commission's action on CDP Application No. 4-83-490-A1

CDP 4-83-490. The 1983 permit conditionally authorizes the construction of a 4-story, 170-unit motel with a 1-story 251-seat restaurant, conference rooms, and a 245-space parking lot. Special Conditions 1a and 3 of this approval required the recordation against the property of certain deed restrictions. The deed restriction for geologic hazard setback and waiver of liability precludes any development within 100 feet of the hotel and restaurant other than "pathways and stairways." The deed restriction for public access allows additional development only if it will not "impede access." The effect of these property restrictions is that the entire area between the principal Cliffs Hotel structure and the Pacific Ocean is restricted to public access use. There are, however, a number of existing structures located within the setback area that have been placed in violation of the deed restrictions, the 1983 permit and therefore the Coastal Act.

VIOLATIONS

- A. Rock revetment approximately 435 ft. long and 18 to 35 ft. high, located within the deed restricted 100-foot public access setback area on the beach and the toe of the bluff.**

The revetment violates the above-described 100-foot lateral public access and geologic hazard Deed Restrictions. The revetment is unpermitted as a result of the Commission's denial on November 5, 1998, of your predecessor's application for a permit amendment (CDP 4-83-490-A1) to retain the revetment. Commission enforcement staff has asked for the submittal of a CDP application for restoration/removal of the revetment. King Ventures has failed to submit such an application to resolve this matter.

- B. The sewer lift station, sewer holding tank and gravity sewer collection line parallel to the bluff located in the deed restricted 100-foot blufftop geologic setback area are unpermitted and in violation of the 1983 permit.**

The development is unpermitted, and has been placed in violation of the above-described Deed Restrictions. Commission staff has asked the applicant to obtain local approval for removal and relocation of this development consistent with action taken on CDP Application Nos. 4-83-490 and 4-83-490-A1. King Ventures has failed to respond to staff's request to resolve this matter.

- C. Three de-watering wells with underground electrical connection; a sump pump and pit with underground electrical connection; a blufftop concrete path/swale with black anodized chain link fence (less than four feet); a storm drain drop inlet; an irrigation system with moisture sensing controls; an impermeable geomembrane under turf areas; drought and salt tolerant native blufftop landscaping; and storm drain.**

These developments are unpermitted. On November 5, 1998, the Commission approved CDP 4-83-490-A1 conditionally authorizing the cited development, . Special condition No. 2 titled, "Facility Relocation Plan" and No. 3 titled, "Blufftop Landscape and Irrigation Plan,"

of CDP 4-83-490-A1, required submittal of facility relocation, blufftop landscape and irrigation plans within 60 days of Commission action (November 5, 1998). These requirements have not been satisfied and, as a result, permit amendment CDP 4-83-490-A1 has not been issued. Therefore, the cited development activity is unpermitted and in violation of the Coastal Act.

- D. 19 public beach access-parking spaces have not been identified and a sign marking the entrance to the public beach access parking area has not been placed on Shell Beach Road, in conflict with the 1983 permit.**

The 1983 permit imposed Special Condition 1c requiring the provision of public access improvements including vertical and lateral pathways and stairways, and 19 public parking spaces individually marked for "Public Beach Access Parking Only." Your December 9, 1999 letter to Commission staff stated that *"the parking spaces have been striped 'Public Parking Daylight Hours' consistent with the 1983 permit."* Special Condition 1c of the 1983 permit required the parking spaces to be designed "to discourage use by hotel patrons during daylight hours." Special condition No. 1c also required each parking stall to be marked "Public Beach Access Parking Only." The public was not restricted to parking only during daylight hours. Striping the parking spaces in a manner, which restricts access only to daylight hours is not consistent with the 1983 permit.

- E. An official coastal access sign has not been placed to mark the vertical accessway, in violation of the 1983 permit.**

The 1983 permit imposed Special Condition 1c requiring the provision of an official coastal access sign to mark the vertical accessway. King Ventures has not provided the Coastal Commission with any evidence of placement of such a sign. Your December 9, 1999 letter stated that such a sign was "installed at the site in cooperation with the City of Pismo Beach many years ago, and removed by a souvenir seeker." In the same letter you asserted that the removal did not "diminish [y] our continued compliance with the permit condition." Erection and existence of the subject sign remains a mandatory requirement of the 1983 permit. The absence of the required sign constitutes a clear violation of the 1983 permit.

In staff's letters of July 8 and November 4, 1999, and at our meeting with you on August 27, 1999, Commission staff outlined methods to bring the subject property into compliance with the Commission's previous permit actions and thus resolve this enforcement matter. In your October 6, 1999 letter you proposed an alternative resolution that provides for public parking and retention of the lift station, sewage holding tank, sewer collection line and most of the rip-rap revetment not permitted by the 1998 coastal permit amendment action. In a letter dated November 4, 1999, Commission staff requested King Ventures/La Noria, LLC to comply with the prior Commission permit action as cited in the letter on or before December 15, 1999 to avoid formal enforcement action. In your December 9, 1999 letter you changed your position by stating a willingness to submit an application for the retention and relocation of the lift station, sewage holding tank, sewer collection line. You reiterated this willingness in your December 17 phone conversation with Mr. Subramanian.

Despite your assurances, King Ventures has not followed through with statements made in your December 9, 1999 letter and December 17, 1999 conversation with Ravi Subramanian.

Pursuant to sections 30810 and 30811 of the Coastal Act, the Executive Director of the Coastal Commission has decided to commence a proceeding to request the Commission to issue both a

Cease and Desist Order and a Restoration Order respectively, because the cited developments remain in violation of the 1983 permit, the 1998 Commission action and therefore the Coastal Act.

The proposed Cease and Desist and Restoration Orders would require King Ventures/La Noria to cease and desist from engaging in any further development activity at the subject property in violation of the 1983 permit or the Coastal Act without first obtaining a Coastal Development Permit to authorize any such activity. The orders would also require you to remove from the property any development that is in violation of the 1983 permit or the Coastal Act¹, and to restore the property to its pre-violation condition.

We anticipate the Commission acting on this enforcement matter at its March, 2000 meeting scheduled to take place in Carmel. We will contact you once an assigned date and time has been established. Only the receipt of previously requested complete CDP applications and condition compliance material at our Santa Cruz office on or before the scheduled date of Commission action will cause us to delay this scheduled matter.

In accordance with the Commission regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. Pursuant to California Code of Regulations, Title 14, Section 13181(a), **the completed Statement of Defense form must be received by this office no later than February 21, 2000.** Should you have any questions, please contact Nancy Cave at (415) 904-5290 or Ravi Subramanian at (415) 904-5248.

Sincerely,



Peter Douglas
Executive Director

Encl.: Statement of Defense form

cc (with enclosure):

Frederick Glick, Esq.

1315 Santa Rosa Street

San Luis Obispo, CA93401-3715

Sent by fax to (805) 544-3284 and by certified mail (Article No. Z 387 425 287)

cc (without enclosure):

Charles Lester, Santa Cruz Coast Area Office, Coastal Commission

Nancy Cave, Supervisor, Statewide Enforcement Program, Coastal Commission

G.R. Overton, Deputy Attorney General, Land Law Section, Department of Justice

¹ Pursuant to section 30810(b) of the Coastal Act, "the cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division."

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it no later than **February 21, 2000**, to the Commission's enforcement staff at the following address:

**Ravi Subramanian, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105**

If you have any questions, please contact Ravi Subramanian at (415) 904-5248.

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

5. Any other information, statement, etc. that you want to offer or make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

CA COASTAL COMM

(AUTO)

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
096	MEMORY TX		918055445637	09/09	OK

ERRORS

1) HANG UP OR LINE FAIL 2) BUSY 3) NO ANSWER 4) NO FACSIMILE CONNECTION

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 PREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200
FAX (415) 904-5400**Fax**

To: DAVE WATSON	From: Ravi Subramanian
Co: King Ventures	Date: January 31, 2000
Fax: (805) 544-5637	Pages: 9 (including cover page)
Phone: [Click here and type phone number]	Phone: (415) 904-5248
Re: CLIFFS HOTEL	CC: [Click here and type name]

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

CCC-00-RO-01 & CCC-00CD-04

Exhibit 12 9 of 12

Z 387 425 286

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

PS Form 3800, April 1995

Sent to DAVID WATSON	
Street & Number 290 Pismo Street	
Post Office, State, & ZIP Code San Luis Obispo, CA 93401	
Postage	\$ 0.55
Certified Fee	1.49
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 3.20
Postmark or Date R.Subramanian	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**DAVID WATSON, Director
Planning & Project Development
King Ventures (Owner of
La Noria LLC)
290 Pismo Street
San Luis Obispo, CA 93401**

2. Article Number (Copy from service label)

Z 387 425 286

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
04 2000

C. Signature

[Signature]

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

CA COASTAL COMM

(AUTO)

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
078	MEMORY TX		918055443284	09/09	OK

ERRORS

1) HANG UP OR LINE FAIL 2) BUSY 3) NO ANSWER 4) NO FACSIMILE CONNECTION

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

48 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94108-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400**Fax**

To:	Frederick Glick Esq.	From:	Ravi Subramanian
Co:	[Click here and type name]	Date:	January 31, 2000
Fax:	(805) 544-3284	Pages:	9
Phone:	[Click here and type phone number]	Phone:	(415) 904-5248
Re:	CLIFFS HOTEL	CC:	[Click here and type name]

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

CCC-00-RO-01 & CCC-00CD-04

Exhibit 12 11 of 12

Z 387 425 287

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to FREDERICK GLICK	
Street & Number 1315 Santa Rosa St.	
Post Office, State, & ZIP Code San Luis Obispo, CA 93401	
Postage	\$ 0.55
Certified Fee	\$ 1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 3.20
Postmark or Date R.Subramanian	

PS Form 3800 April 1995

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**FREDERICK GLICK, Esq.
1315 Santa Rosa Street
San Luis Obispo, CA 93401-3715**

2. Article Number (Copy from service label)

Z 387 425 287

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

PC Stearns **FEB 2/25/00**

C. Signature

X **PC Stearns** ☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes



February 18, 2000

Mr. Dan Archer
CALIFORNIA COASTAL COMMISSION
725 Front Street, Suite 300
Santa Cruz, California 995060

Re: Compliance With Permit Conditions, CDP 4-83-490-A1;
(1) Blufftop Improvements Consistent with 1998 CCC Action
(2) Public Parking & Signage Identification Consistent with 1983 Permit
THE CLIFFS at SHELL BEACH RESORT

Dear Mr. Archer:

In my letter to your SF office dated December 9, 1999, we referenced issues specific to the permit compliance matters from both the original 1983 permit (public parking striping and access parking signage) and the Commission's 1998 conditional approval of various improvements within the blufftop setback area (specifically pre-existing storm drainage line and drop inlet facilities, de-watering improvements, storm water swale, blufftop fencing and drought tolerant landscaping).

In a telephone conversation with Mr. Subramanian that occurred in the afternoon of December 20, 1999, he strongly encouraged me to proceed with as much of the "permit compliance" matters as possible. In my 12/9/99 letter, I wrote...

"...[o]n the subject of the 1998 permit actions, it is my understanding that, except for the removal of the rip-rap, all the conditionally-approved improvements referenced in the Commission's permit were installed as a part of the previous owner's actions under the emergency permit issued by Pismo Beach. That would include pre-existing storm drainage facilities, de-watering improvements, storm water swale, blufftop fencing and drought tolerant landscaping, and the like."

In fact, plans in your possession describe those improvements. Nevertheless, I indicated to Mr. Subramanian that I could generate "as-built" plans that reflect these improvements, and forward those to your office under the auspice of "permit compliance". He indicated his concurrence with that approach.

To this end, I am forwarding plans that reflect the "as-built" conditions of the improvements referenced above. Two (2) sets of plans are included for your review and records. These plans consist of four (4) sheets of Fred Schott & Associates civil

CCC-00-00-01 & CCC-00CD-04
Exhibit 1 of 3

engineering plans covering the storm drainage underground collection and discharge line and surface drop inlet facilities, underground de-watering wells and sump improvements including electrical services, a surface storm water collection and disposal swale with drop inlet, a relocated sidewalk for public access, and black anodized chain link blufftop fencing that does not exceed 4' in height. Also enclosed are landscape and irrigation plans that reflect drought tolerant landscaping (non-irrigated) nearest the blufftop, modified underground landscape irrigation moisture sensors and related "as-built" landscape improvements.

Notable in its omission is the underground impermeable geomembrane under the turf areas referenced in your permit. My review of the January 30, 1996 and October 15, 1996 "Geologic Study" and "Addendum to Geologic Study", respectively, each prepared by Earth Systems of SLO, and my review of the records of the project, suggest that the soils and civil engineering consultants associated with the project ultimately determined that the original (1-30-96) basis for the membrane was erroneous and chose not to install this feature. This rationale was based on the supplemental findings of the soils and geotechnical engineers in their 10/15/96 Addendum.

Subsequent to these studies, and following the City of Pismo Beach's August, 1997, permitting of the project without the membrane, the owners constructed the landscape and irrigation improvements as reflected in the enclosed "as-built" plans.

We would appreciate your written confirmation that these "as-built" plans comply with permit CDP 4-83-490-A1 in specific regard to all special conditions of the permit, with the exception of the rip-rap matter.

On the subject of the public parking and access requirements of the 1983 permit, the restriping we completed for the 19 spaces was inadequate according to Mr. Subramanian, and he continues to insist on an "official" coastal access sign. We will make a second attempt to comply by re-striping the public spaces to read: "Public Beach Access Parking Only". The sign that I indicated we would install in my 12/9/99 letter, identifying the "Public Beach Access Parking", has been installed at Shell Beach Road adjoining the coastal access and public parking. Regarding the "official" access sign, can you advise if this is a "Coastal Conservancy"-type access sign, and if so, how I could acquire one? We requested this in our Santa Cruz meeting in August, but have not heard from staff on this point. In the mean time, we believe our signs do comply with the spirit and terms of the 1983 permit.

~~I am advised that, weather permitting, the re-re-striping of the parking spaces will be completed next week. When it is done, I will confirm this in writing, and seek written confirmation from you on these points.~~

Please do not hesitate to contact me on any of these matters if you wish to clarify or discuss our submittals.

Sincerely,



David Watson, AICP
Director of Planning and Project Development

cc w/o encls: Nancy Cave
 Ravi Subramanian
 Charles Lester, Santa Cruz Coastal Commission Office

CLFSecruz01esbuilts.lwp