

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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**Tue 11a**

Staff: DL-SD
Staff Report: June 21, 2000
Hearing Date: July 11-4, 2000

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-92-203-A1

Applicant: Encinitas Resort Corporation
(Sports Shinko)

Agent: James C. Hirsch

Original Description: Demolition of 3 single-family residences, relocation of 7 mobile homes and the construction of an approximately 138,460 sq. ft., two-story, 130-unit resort hotel complex with banquet facilities, a restaurant, public access amenities, and 230 space underground parking garage on 4.3 acre blufftop site. Also proposed are the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements totaling .67 acres.

Proposed Amendment: Construction of a public beach access stairway on a coastal bluff from the bluff top to the adjacent State Parks parking lot, as required by special condition #2 of the original permit.

Site: 2100 North Highway 101, Leucadia, Encinitas, San Diego County.
APN 216-041-24, 254-043-02, 03, 04

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); Michael Hart, "Engineering Geologic Reconnaissance," 7/22/96; Michael Hart, "Update of Engineering Geologic Reconnaissance," 2/9/99; URS Greiner Woodward Clyde (URS), "Preliminary Geotechnical Recommendations Beach Access Stairway," 10/15/99; David Shug, "Update Geologic Reconnaissance," 11/18/99, revised 1/6/00; David Shug, "Potential Increased Bluff Erosion Encinitas Beach Resort," 1/10/2000; URS, "Addendum No. Geotechnical Investigation," 02/23/00; CDP #6-92-203-E4.

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed beach stairway. The stairway, which was approved in concept in the original project, will be located partially on private property, partially on California Department of Parks and Recreation property, and provide an additional public accessway to the beach. The original project provided for a number of public access improvements which will connect to the subject stairway.

Adverse impacts of the proposed stairway on the stability of the bluff and the scenic quality of the area have been mitigated. Special conditions on the project ensure that construction activities will not have an adverse impact on public access or recreation.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-92-203-A1 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

In addition to the 20 special conditions placed on the original permit, the permit as amended is subject to the following conditions:

21. Prior Conditions of Approval. All special conditions adopted by the Coastal Commission as part of the original permit action or any subsequent amendments, except as specifically modified or replaced herein, remain in full force and effect, including conditions requiring that the subject stairway be constructed prior to or concurrent with the hotel construction, and shall be completed prior to occupancy of the hotel. Construction of the stairway is not permitted until release of the original permit.

22. Assumption of Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion

and wave damage and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project (as identified in CDP Amendment No. 6-92-203-A1) for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

23. Construction Schedule/Staging Areas. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, detailed plans identifying the location of construction and staging areas, and a final construction schedule. Said plans shall include the follow criteria specified via written notes on the plan:

a. No work in the South Carlsbad Beach parking lot shall occur during the summer months (start of Memorial Day weekend to Labor day) of any year.

b. Use of public parking areas shall be limited to a maximum of 15 parking spaces in the South Carlsbad Beach parking lot with the written approval of the Department of Parks and Recreation.

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

24. California Department of Parks and Recreation Permit. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a copy of a permit from the California Department of Parks and Recreation for the development herein approved. Any mitigation measures or other changes to the project required through said permit shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

25. Maintenance Activities/Future Alterations. Any debris, rock or materials which become dislodged through weathering after completion of the stairway that impairs public access shall be removed from the beach and public parking lot. If after inspection, it is apparent repair or maintenance of the stairway is necessary, the applicant should contact the Commission office to determine whether permits are necessary.

26. Exterior Treatment. Consistent with the color samples submitted for coastal development permit application #6-92-203-A1, the exterior of the stairway shall be constructed and maintained with earthen tone materials.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The original project consists of the demolition of three single-family residences, the relocation of seven mobile homes, and the construction of an approximately 138,460 sq.ft., two-story plus basement level, 30-foot high, 130-unit resort hotel. Also included is the construction of a 5,128 sq. ft. restaurant, a 420 sq. ft. retail shop, 1,600 sq. ft. of meeting rooms, 4,072 sq. ft. of floor area devoted to banquet facilities, a 3-level, 320-space subterranean parking garage, a swimming pool with cabanas, and approximately 92,000 cubic yards of excavation. As proposed, all structures will be set back 55 feet from the edge of the coastal bluff. No structure on the site is permitted to exceed 2 stories or 30 feet in height, and landscaping and color and signage restrictions were included in the original project approval. In addition, the approved development includes the consolidation of 4 lots into 1 lot and the vacation of two public access easements on the site that area no longer viable.

The 4.3-acre bluff-top lot is located along the west side of Highway 101, just south of Batiquitos Lagoon in the northernmost portion of the City of Encinitas. The site is bounded by South Carlsbad State Beach Parking Lot to the north, Highway 101 to the east, a large condominium development and restaurant to the south and the beach and Pacific Ocean to the west.

The project was approved by the Commission on December 10, 1992 with a number of special conditions including revised plans to include a 25-foot inland blufftop setback, an extensive public access program including construction of a blufftop overlook, a new public access stairway, and dedication of a public access easement, and a minimum \$156,000 fee for the acquisition of land and/or construction of low-cost visitor serving overnight accommodations.

The subject permit has been extended several times, both by legislation (which provided for the extension of all permits issued by a state agency for projects which included a tentative subdivision map or parcel map, if both the permit and the map were unexpired on the date the statute went into effect), and by Commission action. Most recently, in February 2000, the Commission approved extension of the permit until December 10, 2000.

As originally approved, the project provided for the installation of several public access amenities that include a blufftop overlook, public access through the site, and a stairway to the state park parking lot, which is the subject of this permit amendment. Special Condition #2 of the original permit specifically required construction of a stairway;

however, there was insufficient information at the time the project was approved to give final approval of a stairway; therefore, the condition also required that a separate coastal development permit for the stairway be obtained. The subject permit amendment is in response to this permit condition.

The proposed stairway would be located at the northwest corner of the site on a coastal bluff promontory that faces the ocean to the west, and the South Carlsbad State Beach parking lot to the east. The stairway will extend from the top of the bluff at approximately elevation 60 Mean Sea Level (MSL) down to a lower terrace around elevation 40 MSL, and descend to beach level at the developed parking lot, next to the existing restroom facility. The surface of the coastal bluff at the lower terrace is flat and clear of vegetation. The slope below the terrace is sparsely vegetated with ice plant. The stairway will generally be on the portion of the bluff that faces the parking lot more than the ocean.

The City of Encinitas has a certified Local Coastal Program (LCP), however, the applicant is amending a previously-approved permit issued by the Commission prior to certification of the City's LCP and as such, the proposed improvement falls under the Commission's purview. The certified LCP is the standard of review for the amendment.

2. Geologic Conditions and Hazards /Visual Resources/Public Access. There are a number of provisions of the certified City of Encinitas LCP that are relevant to the proposed project, including the following:

Geologic Conditions:

Land Use Plan Resource Management (RM) Policy 8.5: The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource...

Public Safety (PS) Policy 1.7: The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. . . . In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City will not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis...

Implementation Program (IP) Section 30.34.020(B)(2)(9): ...In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principle structure is imminently threatened and, based on a thorough alternative analysis, an emergency

permit is issued and emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30.34.020(C)(2)(b)(2): When a preemptive measure is proposed...The proposed measure must be necessary for the protection of a principal structure on the blufftop...

PS Policy 1.6 of the City's Land Use Plan (LUP): The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

- a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

Visual Resources

Resource Management (RM) Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

RM Policy 8.5: The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible....

RM Policy 8.7: The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures....

Implementation Program (IP) Section 30.34.020B.8: The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

Section 30.34.020.C.2.b.(4): The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.

Section 30.34.020B.8: The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

Recreation/Public Access:

Policy 1.4: Establish a balance of natural open space and "improved" recreational open space and implement measures to preserve, and maintain the natural environment.

Policy 2.3: Encourage the preservation and protection of areas for the recreational activities characteristic of Encinitas such as horseback riding, surfing, skindiving, bicycling, walking and jogging.

Policy 2.6: Encourage the provision of a full range of recreational facilities distributed throughout the area.

Policy 2.8: Encourage the maintenance of the bluffs, beach, shoreline, reefs and ocean and discourage any use that would adversely affect the beach and bluffs except a reasonable number of public access stairways, lifeguard towers, and similar public beach facilities.

Goal 3: The Coastal Areas will continue to play a dominant role in providing residents with open spaces for recreation.

Policy 5.1: The City recognizes Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beach in the Encinitas area. The City will work with the State to upgrade and promote access to these State beaches...

Policy 5.4: The areas of South Carlsbad Beach State Park...shall be designated as high intensity beach recreational use areas.

The proposed project involves construction of a beach access stairway on a coastal bluff. The bluff at the project site forms a north-trending promontory that overlooks the inlet to Batiquitos Lagoon. An extensive cobble berm extends along the base of the west-facing portion of the bluff. Numerous geotechnical studies have been performed on the subject site before and since the original project was approved in 1992. As recently as February 2000, the Commission found that extension of the original permit should be granted, as there was no evidence of any changed circumstances on the project site, including accelerated or unanticipated erosion on the site.

The applicant has also submitted a geotechnical study addressing the proposed stairway. The topography of the bluff has been modified by grading which occurred prior to approximately 1957. The stairway will be located generally within a previous cut area consisting of a wide bench in the middle of the slope at approximate elevation 40 feet MSL. The area has been eroded by gullies, although there are no indications of slumping or other previous slope failures. The geotechnical report notes that previous analyses on the bluff indicated a factor safety for slope failures greater than 1.5. Therefore, the risk of a deep-seated slope failure within the slope is considered low. The stairway has been

designed to follow the contours of the existing bluff, and is an on-grade structures, involving minor cuts on the order of two to three feet deep below existing grade. As noted above, the stairway will be located on the northeastern side of a bluff promontory, not directly on the oceanfront, and will land on an existing parking lot inland of the sandy beach (waves occasionally do reach the parking lot during major storms, and thus, could reach the lower stairway at times). The report concludes that construction of stairway will not destabilize the bluff face, and that the stairway will be relatively protected from bluff erosion due to its location on the inland portion of the promontory. The Commission's staff engineer and geologist have reviewed the proposed project and the geotechnical report and concur with its conclusions (see Exhibit #4). Therefore, construction of the stairway can be found consistent with the above-cited LCP policies allowing only the construction of public access stairways and minimizing geologic hazards.

Should erosion threaten the stairway in the future, the applicant has indicated that the proposed stairway foundation, which will consist of shallow spread footings, could be removed and relocated in the future. Therefore, the project is not expected to require shoreline protection, consistent with the Public Safety policies of the certified LCP as cited above. In addition, the Commission has typically found that accessory structures such as stairways are not principle structures for which shoreline protection must be permitted, but are expendable if not able to be repaired or relocated. In addition, as cited above, the certified LCP specifies that such protection shall be permitted only for the protection of "principal" structures. Thus, in this particular case, there is no need for the applicant to waive a "right" to shoreline protection that does not exist for this project. Special Condition #25 requires the applicant to remove any rock or debris associated with weathering of the stairway in the future that might impact public access. Therefore, as conditioned, the proposed stairway can be found consistent with the geologic hazard policies of the certified LCP.

However, although the Commission finds that the project has been designed to minimize the risks associated with their implementation, the Commission also recognizes the inherent risk of shoreline development. The stairway is located on a coastal bluff that receives wave action. Thus, there is a risk of bluff failure during and after construction of the fill. Given that the applicants have chosen to construct the notch fill despite these risks, the applicants must assume the risks. Accordingly, Special Condition #22 requires that the applicants record a deed restriction that evidences their acknowledgment of the risks and that indemnifies the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit.

Any construction on the bluffs alters the natural appearance of the landscape, and has some impact on the scenic quality of the beach and bluff environment. Therefore, construction on the bluffs can be permitted only under limited circumstances, and when mitigation for the visual impact of the project is provided. In this particular case, as noted, the proposed stairway will closely follow the contours of the existing bluff, and will require only a minimal amount of landform alteration. As cited above, a number of policies of the certified LCP, including Sections 30.34.020B.8, 30.34.020.C.2.b.(4), and

30.34.020B.8, address visual resources and require that structures visible from public vantage points be protective of natural scenic qualities of the bluff and not cause a significant alteration of the natural character of the bluff face. The applicants have submitted a color sample indicating that the stairway will be colored in earthen tones to match the bluff, with beach cobble-type rock accents. Special Condition #26 requires the applicant to color the stairway with the proposed earthen tones. Therefore, the project is expected to have a minimal impact on the visual quality of the natural environment, consistent with the certified LCP.

In addition, although the construction of the stairway will alter the natural appearance of the area, as cited above, the certified LCP contains many policies acknowledging the need and importance of providing public recreational and access improvements to and along the shoreline. Although the project is associated with an approved resort hotel, the middle and lower portions of the stairway will be located on California State Parks property, and the stairway will be open to the public. In addition, previously approved walkways on the bluff top adjacent to the hotel that will lead to the stairway and a lookout point are all required to be open to the public. Conditions of the original project require that the applicant record public easements over the required access features, to ensure the accessways remain open to the public. Thus, the project will provide an important coastal access and recreation amenity for the public.

Since the stairway landing ends on an existing parking lot, no beach area will be required for construction staging activities. The applicant has indicated that much of the construction work will take place on the bluff top, not the State Park parking lot, and thus, there should be minimal impacts to the public. However, at certain times during the construction process, it may be expedient to work from the base of the bluff. The State Department of Parks and Recreation, which owns the South Carlsbad State Beach facility, has given permission for construction of the stairway on state property. However, the State has not yet issued a permit for the project.

With improvement projects such as the one proposed, the Commission has typically restricted, where possible, the use of any public beach or recreation area for construction staging areas, and precluded work from occurring during the prime beach season between Memorial Day and Labor Day. There are approximately 360 parking spaces in the State Beach facility, which is severely underutilized much of the time, even during the summer. Therefore, in this particular case, Special Condition #23 restricts work from occurring in the parking area to outside the summer season, while allowing the use of no more than 15 parking spaces during this time period, with the written approval of the State Department of Parks and Recreation. Allowing the use of these spaces in this location outside the prime beach season is not expected to have any adverse impact on public access or recreation. Special Condition #24 requires that the applicants submit a copy of the final Parks and Recreation permit for the project. The California State Lands Commission has indicated that it does not appear that the project will intrude onto sovereign lands.

Therefore, as conditioned, the Commission, finds the subject proposal should not result in any significant adverse impacts on geologic stability, visual quality, beach access, or public recreation in the area consistent with the certified Local Coastal Program.

3. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as conditioned, such a finding can be made.

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction, therefore, the standard of review is the City's LCP.

As described above, the proposed project will not have an adverse impact on bluff stability, will not harm the scenic quality of the area, and will provide a public accessway to the beach, consistent with the City's certified LCP. Therefore, the Commission finds that approval of the proposed stairway development will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

4. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permit Amendments to be supported by a finding showing the permit amendment, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access and visual resource policies of the Coastal Act. Mitigation measures, including conditions addressing timing of construction and public access, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



SUBJECT
SITE

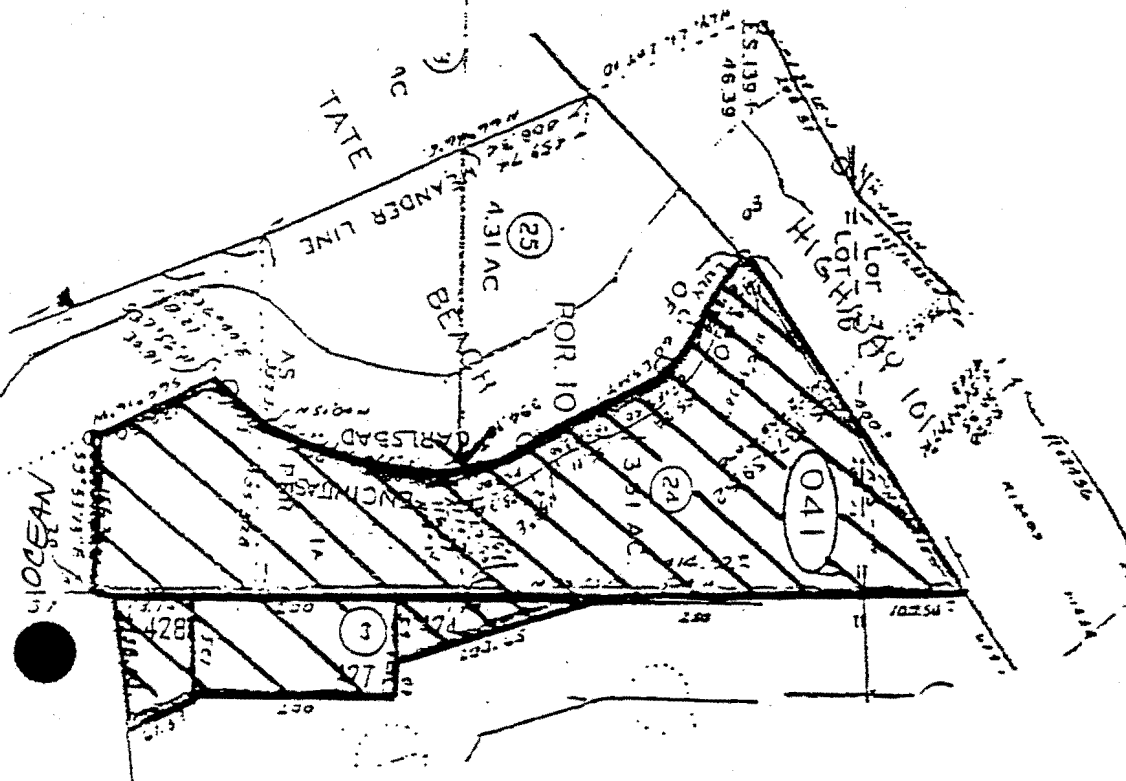
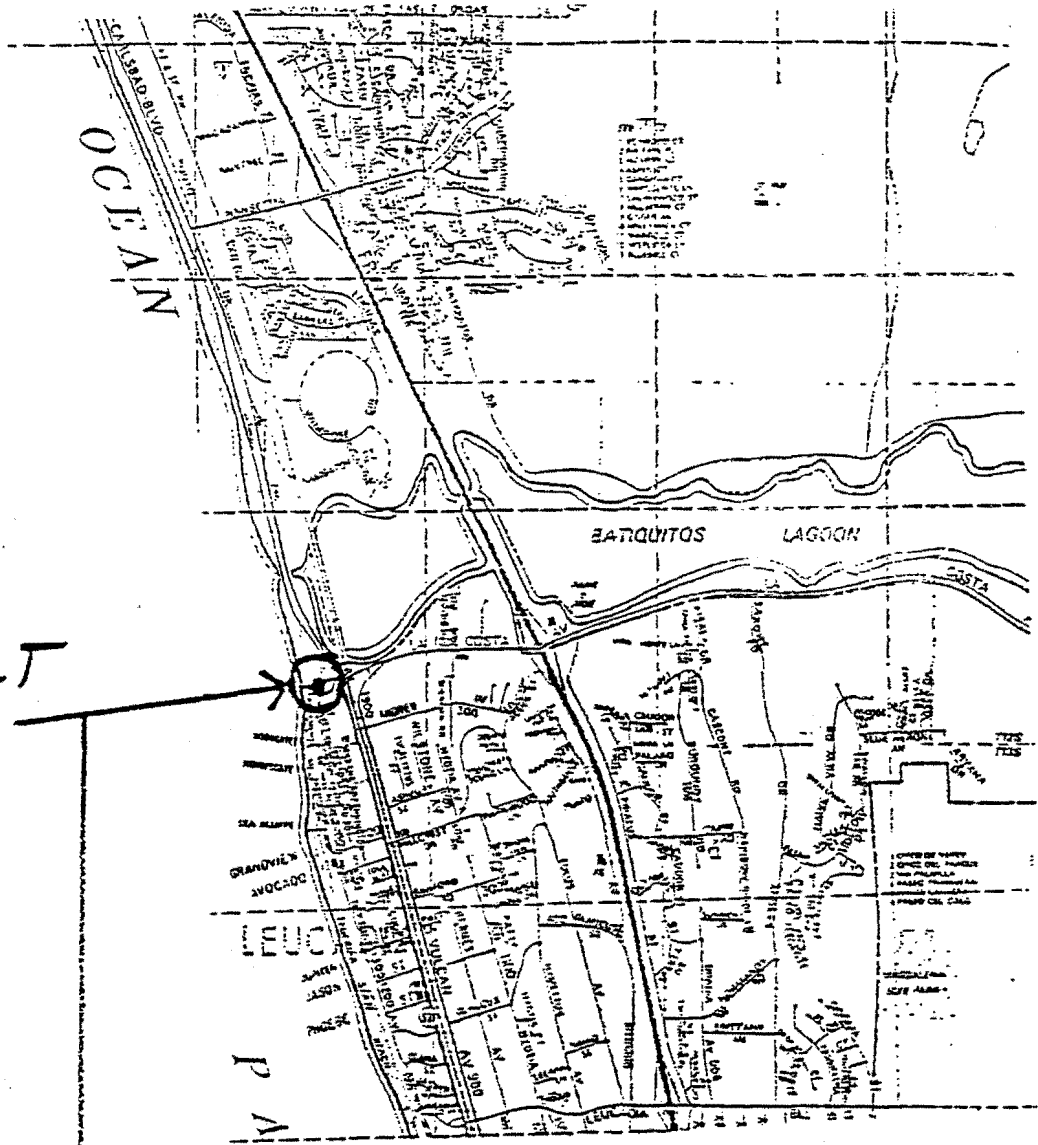
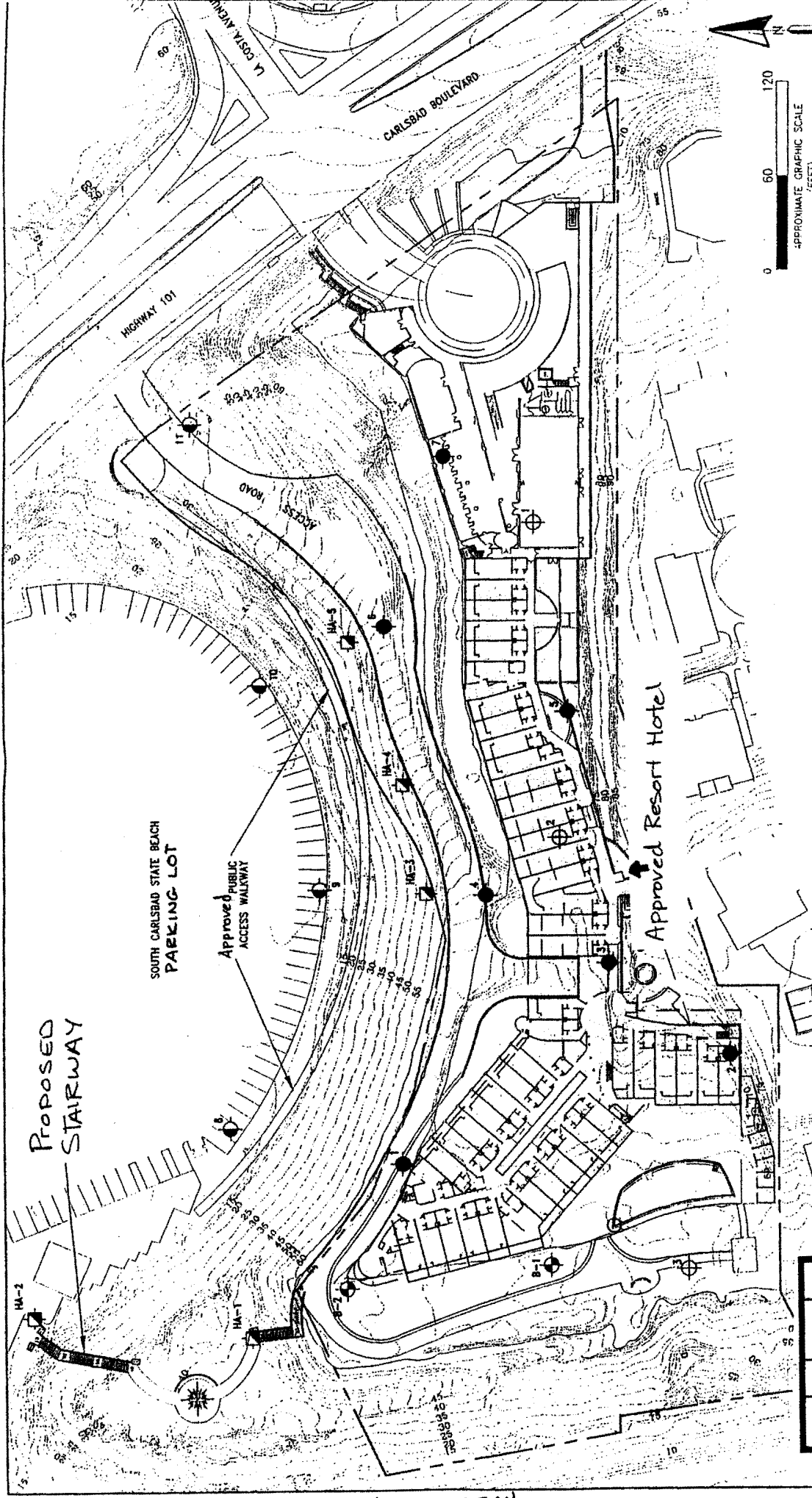


EXHIBIT NO. 1
APPLICATION NO.
6-92-203-A1
Location Map



SITE PLAN
ENCINITAS RESORT HOTEL

PN: ALL SITE PM: CLS CHECKED BY: JLD DATE: 12-5-99
PROJECT NO: 58-93110570.00-00001 FIGURE NO: 1

URS Greiner Woodward Clyde

- LEGEND**
- APPROXIMATE LOCATION OF URS/GWC TEST BORING (2000)
 - APPROXIMATE LOCATION OF URS/GWC HAND AUGER BORING (2000)
 - APPROXIMATE LOCATION OF URS/GWC TEST BORING (1999)
 - APPROXIMATE LOCATION OF WCC TEST BORING (1997)
 - APPROXIMATE LOCATION OF MINTO & MOORE TEST BORING (1980)
 - INDICATES PARKING LEVEL P-2

EXHIBIT NO. 2
APPLICATION NO.
6-92-203-A1
Site Plan

California Coastal Commission

PACIFIC OCEAN

CALIFORNIA COASTAL COMMISSION

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17 May 2000

MEMORANDUM

To: Diana Lilly, Coastal Program Analyst
From: Mark Johnsson, Senior Geologist
Re: 6-92-203-A1 (Sports Shinko); Stairway, access road, pedestrian pathway

This memo presents my evaluation of the geotechnical issues surrounding the proposed stairway, access road, and pedestrian pathway at the proposed Sports Shinko resort, Encinitas. In preparing this evaluation, I reviewed the following documents:

- "Preliminary Geotechnical Recommendations, Beach Access Stairway, Proposed Encinitas Resort Hotel" by URS Greiner Woodward Clyde, dated 15 October 1999 and signed by David Schug and Moi Arzamendi
- "Addendum No. 1, Geotechnical Investigation, Encinitas Resort Hotel", by URS Greiner Woodward Clyde, dated 23 February 2000, and signed by Leo Handfelt and David Schug.

I previously visited the site, on 16 February 2000. In addition, I discussed the proposed project with the Coastal Commission's Civil Engineer, Lesley Ewing, who also has reviewed these documents. This memo incorporates both of our evaluations.

We concur with the conclusions of the URS Greiner Woodward Clyde reports, and feel that the bluff face will be stable provided that the recommendations in the reports are followed. The bluff will retreat from both a seaward direction and from the north-facing bluff by combined marine and subaerial processes. As the bluff reaches or threatens the stairway and the observation platform, the stairway and observation platform can be relocated without much difficulty. There could be some damage to the bluff from removal of the stair supports, but these could be left in place and removed incrementally as they are exposed.

The access road and pedestrian walkway similarly pose no slope stability problems. Bluff retreat on the north-facing slope could threaten this development, but would be minimized if drainage is carefully controlled and directed away from the bluff face; I believe that this was conditioned in the original permit.

I hope that this evaluation is useful; please do not hesitate to contact me if you have further questions.

Sincerely,

Mark Johnsson
Senior Geologist

EXHIBIT NO. 4
APPLICATION NO.
6-92-203-A1
Staff Geologist
Review
California Coastal Commission