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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
SANTA BARBARA, CA 93001
(805) 641-0142

Filed: 1/25/01
49th Day: 3/15/01
180th Day: 7/28/01
Staff: Vta. Dist. Staff
Staff Report: 4/26/01
Hearing Date: 5/8/01



STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-STB-01-021 and 022

APPLICANT: Ed St. George

AGENT: Holle Brunsky

APPELLANTS: Commissioners Sara Wan and Pedro Nava

PROJECT LOCATION: 6583 (Lots 1 and 2) Del Playa Drive, Isla Vista, Santa Barbara County

PROJECT DESCRIPTION: Construction of two new 2,093 sq. ft., two-story, single family residences with attached garages and patios on two adjacent bluff top lots.

SUBSTANTIVE FILE DOCUMENTS: County of Santa Barbara Local Coastal Program, Santa Barbara County Coastal Development Permits 99-CDP-046 and 99-CDP-047

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed.

The appeal contends that the approved project is not consistent with policies and provisions of the certified Local Coastal Program with regard to blufftop development, seawalls and shoreline protective devices, and visual resources.

I. Appeal Jurisdiction.

The project sites are located on the two adjacent bluff-top lots on the seaward side of Del Playa Drive, in the community of Isla Vista. The Post LCP Certification Permit and Appeal Jurisdiction map certified for the County of Santa Barbara (Adopted November 19, 1982) indicates that the appeal jurisdiction for this area extends 300 feet from the bluff. The map shows this 300 feet wide area extending to a point between Del Playa Drive and the next street to the north, Sabado Tarde Road. As such, the subject project sites are located within the appeal jurisdiction of the Commission and any projects approved for these sites are therefore appealable to the Commission.

A. Appeal Procedures.

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas.

Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses. (Coastal Act Section 30603[a]) Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]) Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5])

2. Grounds for Appeal.

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

4. De Novo Permit Hearing

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds substantial issue, staff will prepare the de novo permit consideration staff report for the Commission's June, 2001 meeting.

B. Local Government Action and Filing of Appeal.

On December 18, 2000, the County of Santa Barbara Zoning Administrator approved two coastal development permits (99-CDP-046 and 99-CDP-047) for the development of two single family residences on two adjacent parcels. The County's appeal period ran with no local appeals filed. Commission staff received the Notice of Final Action for the project on January 10, 2001. A ten working day appeal period was set and notice provided beginning January 11, 2001 and extending to January 25, 2001.

An appeal of the City's action was filed by Commissioners Wan and Nava during the appeal period, on January 25, 2001. Commission staff notified the City and the applicant of the appeal and requested that the City provide its administrative record for the permit. The administrative record was not received in sufficient time for staff to prepare a staff report and recommendation for the Commission's February 2001 hearing. The Commission opened and continued the hearing on substantial issue at the February hearing. The administrative record was received from the County on February

14, 2001 and additional information was submitted by the applicant's agent on February 28, 2001.

II. Staff Recommendation on Substantial Issue

MOTION: *I move that the Commission determine that Appeals No. A-4-STB-01-021 and 022 raise **NO** substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local actions will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeals No. A-4-STB-01-021 and 022 present a substantial issue with respect to the grounds on which the appeals have been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Findings and Declarations for Substantial Issue.

The Commission hereby finds and declares:

A. Project Description.

The County's coastal development permits approved the construction of two single family residences on two adjacent 7,000 sq. ft. blufftop lots. Each structure is 2,093 sq. ft. in size, each with a 293 sq. ft. attached garage and is 25-feet in height. A variance was granted for each structure such that there is a zero setback between the structures, giving the appearance of a duplex development. The bluff setback provided for each structure varies from 32 feet to 36 feet from the bluff edge. Each structure would have an at-grade patio setback approximately 5 feet from the bluff edge.

B. Appellant's Contentions.

The appeal filed by Commissioners Wan and Nava is attached as Exhibit 4. The appeal contends that the approved project is not consistent with the policies of the certified LCP with regard to bluff protection (Policies 3-4, 3-5, and 3-6), seawalls and shoreline structures (Policy 3-1), and visual resources (Policies 4-4 and 4-5)

C. Analysis of Substantial Issue.

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as ground for appeal, although the public access policies of the LCP were cited. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access of the Coastal Act would be addressed in the de novo review of the project.

A substantial issue does exist with respect to the grounds on which the appeal has been filed. The approved project is inconsistent with policies of the County of Santa Barbara Local Coastal Program for the specific reasons discussed below.

1. Bluff Protection.

The appellants contend that the projects, as approved by the County, do not conform to the policies of the LCP with regard to bluff protection. There are several policies in the County LCP that relate to bluff protection. Policy 3-4 states that:

In areas of new development, above-ground structures shall be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 75 years, unless such a standard will make a lot unbuildable, in which case a standard of 50 years shall be used. The County shall determine the required setback. A geologic report shall be required by the County in order to make this determination. At a minimum, such geologic report shall be prepared in conformance with the Coastal Commission's adopted Statewide Interpretive Guidelines regarding "Geologic Stability of Blufftop Development". (See also Policy 4-5 regarding protection of visual resources.)

Policy 3-5 states that:

Within the required blufftop setback, drought-tolerant vegetation shall be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements, i.e. patios and fences that do not impact bluff stability, may be permitted. Surface water shall be directed away from the top of the bluff or be handled in a manner satisfactory to prevent damage to the bluff by surface and percolating water.

Policy 3-6 states that:

Development and activity of any kind beyond the required blufftop setback shall be constructed to insure that all surface and subsurface drainage shall not contribute to the erosion of the bluff face or the stability of the bluff itself.

Evidence submitted by the County to support their analysis that the blufftop setback of approximately 35 ft. from top of bluff for the residence sited on Lot 1, and approximately 43 ft. from top of bluff for the residence sited on Lot 2, indicates that a 30-year development life and a 12 inch per year average retreat rate were the basis for the approval of the development footprint authorized by the County for each lot. While the use of the 75-year standard might be ideal, the narrow, deep lots suggest that the use of the 50-year standard may be appropriate on the subject lots. Use of the standard set forth in Policy 3-4 would reduce the potential requirement for bluff stabilization measures or shoreline armoring to protect the bluff in the future, while the increased setbacks (between 7 and 15 ft of additional setback for the residential footprint from the footprint presently authorized in the County's approval) could be feasibly incorporated into revised project plans. Because the County only required a setback adequate for a 30-year life, the County's approval is inconsistent with Policy 3-4, which requires, at a minimum, a setback for a 50-year life.

In addition, the County approval authorizes coverage of most of the bluff setback area with pavers and bicycle parking. These structures increase the impervious surface area of the setback and may decrease bluff stability as the result. There is substantial evidence that similar decks and patios have been lost to blufftop retreat on similar lots in Isla Vista, leaving hazardous overhangs of debris to threaten the beach below. In one recent case, eroded patios and other concrete debris fell from the blufftop to the beach below.

The County has only required a blufftop setback of five (5) feet from the bluff edge in authorizing the decks and patios within the setback area. This setback precludes the vegetation of the bluff with drought tolerant, native plants that would better stabilize the bluff and limit the application of artificial irrigation water input. Blufftop irrigation can contribute to moisture loading of slopes and accelerate erosion rates. This combination is inconsistent with the requirements of Policy 3-5. Even though the policy allows some minor patio structures, the proposed projects approved by the County comprise almost the entire area of the bluff setbacks.

Finally, the installation of pavers, rather than more permeable surface management materials (if any) is inconsistent with the blufftop drainage management requirements of Policy 3-6. The plan shows arrows indicating slope drainage toward the street, however appropriate drainage management that is also consistent with the requirements of 3-5 and incorporates primarily drought tolerant native plants within slope setback areas would better achieve consistency with both policies.

For all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet the blufftop setback provisions of the certified Local Coastal Program.

2. Seawalls and Shoreline Structures.

The appellants state that the projects, as approved by the County, are not consistent with the LCP policy regarding seawalls and shoreline structures. LCP Policy 3-1 provides that:

Seawalls shall not be permitted unless the County has determined that there are no other less environmentally damaging alternatives reasonably available for protection of existing principal structures. The County prefers and encourages non-structural solutions to shoreline erosion problems, including beach replenishment, removal of endangered structures and prevention of land division on shorefront property subject to erosion; and, will seek solutions to shoreline hazards on a larger geographic basis than a single lot circumstance. Where permitted, seawall design and construction shall respect to the degree possible natural landforms. Adequate provision for lateral beach access shall be made and the project shall be designed to minimize visual impacts by the use of appropriate colors and materials.

The primary means by which the construction of seawalls can best be avoided for the protection of development on erodible blufftop slopes, is through the proper application of the maximum feasible setbacks from the bluff edge.

The County staff have notified Commission staff that the Isla Vista blufftop retreat upon which they have relied was obtained by the County's geologist, Brian Baca, through site specific collection of bluff retreat data. According to County staff, this data indicates that the applicable retreat rate for the subject sites is twelve (12) inches per year. As stated previously, this retreat rate, calculated for a 50 year development life indicates that structures subject to protection by means of shoreline armoring should be set back a minimum of 50 feet from the top of bluff. The footprint of the residences authorized by the County are only 35 feet and 44 feet, respectively. In addition, the County has authorized development of significant impervious (or low permeability) surfaces such as pavers and hardscape designated for bicycle parking within the majority of the bluff setback area. The decreased permeability and lack of native vegetation to stabilize the bluff setback area may accelerate erosion patterns on the subject sites.

In some cases the Commission has authorized minor structures within bluff retreat/setback areas but has generally done so subject to special conditions of approval requiring the removal or pull-back of such structures if erosion occurs up to an identified distance from the structures. The County's permit approvals contain no such conditions that would prevent the applicant from seeking future approvals for shoreline protective devices to protect these incidental structures or residences within bluff setback areas.

Thus, the County's actions in approving the subject permits without adequate blufftop setbacks and without special conditions limiting the applicant's right to seek approval for shoreline protective device(s) to protect such structures if threatened by future erosion, is inconsistent with LUP Policy 3-1.

As such, the Commission finds that substantial issue exists with regard to the project's consistency with the seawall and shoreline protective device policy of the certified Local Coastal Program.

3. Visual Resources.

The appellants assert that the projects, as approved by the County, do not conform to the LCP policies regarding visual resources. The County LCP contains two policies regarding visual resources that are applicable to the proposed project. Policy 4-4 states that:

In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.

Policy 4-5 states that:

In addition to that required for safety (see Policy 3-4), further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures on both sides of the proposed structure already impact public views from the beach. In such cases, the new structure shall be located no closer to the bluff's edge than the adjacent structures.

Site visits by Commission staff indicate that patios, furniture, umbrellas, barbecues, within blufftop setbacks are highly visible from public coastal vistas along the beaches below the bluffs. In some locations, structures threatened by bluff erosion hang over the bluff edge, causing significant adverse impacts to the public coastal viewshed available from the beaches below. In addition, the failure to set these structures back sufficiently in light of coastal bluff retreat rates has created significant hazards to pedestrians utilizing the public beaches below these bluffs.

The County's permit approval does not require an adequate setback from the blufftop edge to ensure that the patios, pavers, bike areas, and other impervious surfaces within the bluff setback areas will not infringe on public views, now, or in the future as blufftop retreat due to normal erosional forces occurs. The County's approval did not contain any conditions to require the removal of such structures or incidental development within the blufftop as erosion progresses in the future. Thus the County's approval of the placement of these structures within the blufftop setback area shown on the applicant's proposed plans is inconsistent with LUP Policy 4-5.

Therefore, the Commission finds that the appellants' contention raises substantial issue with regard to the consistency of the approved project with the visual resource provisions of the certified Local Coastal Program.



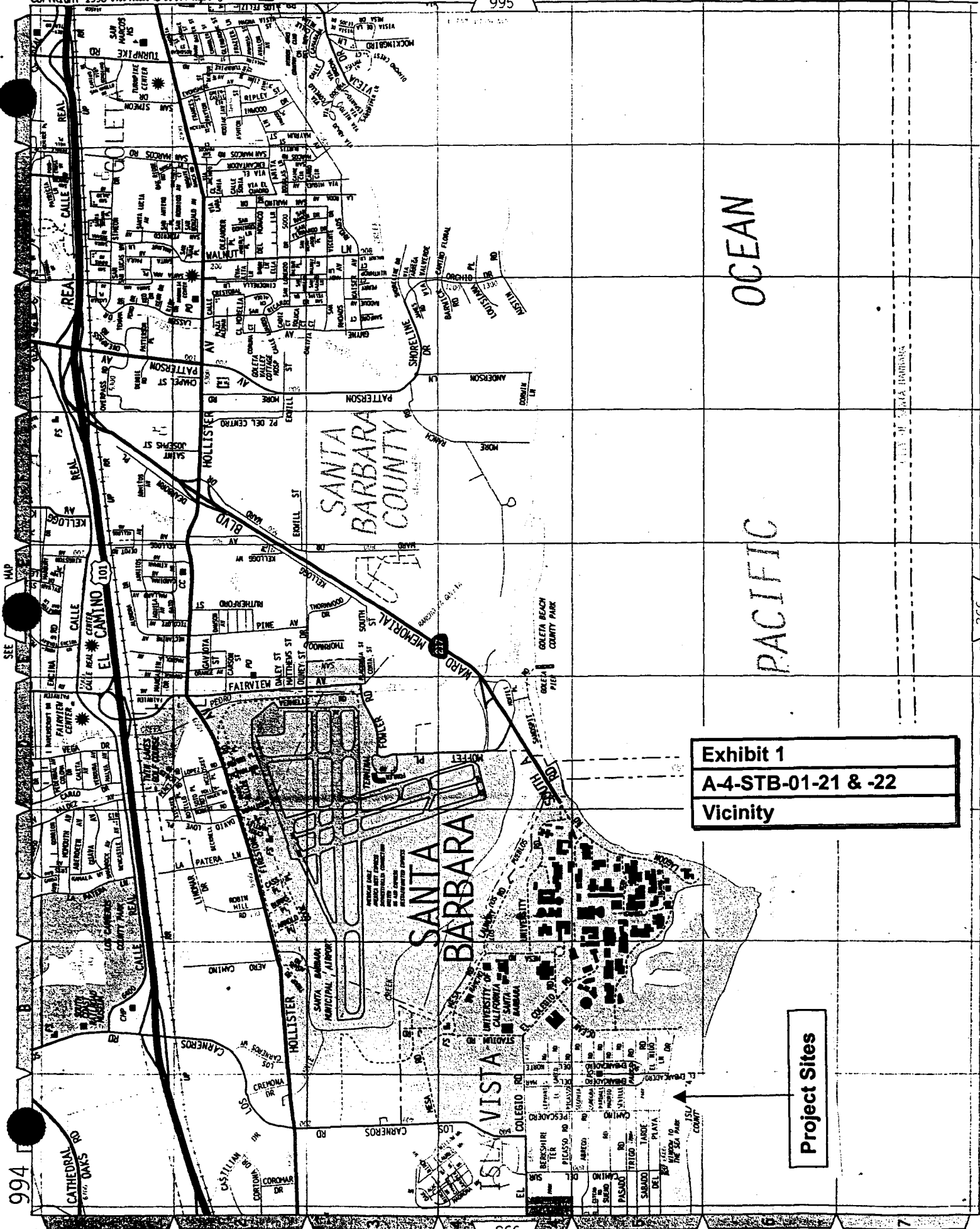


Exhibit 1
A-4-STB-01-21 & -22
Vicinity

Project Sites

994

996

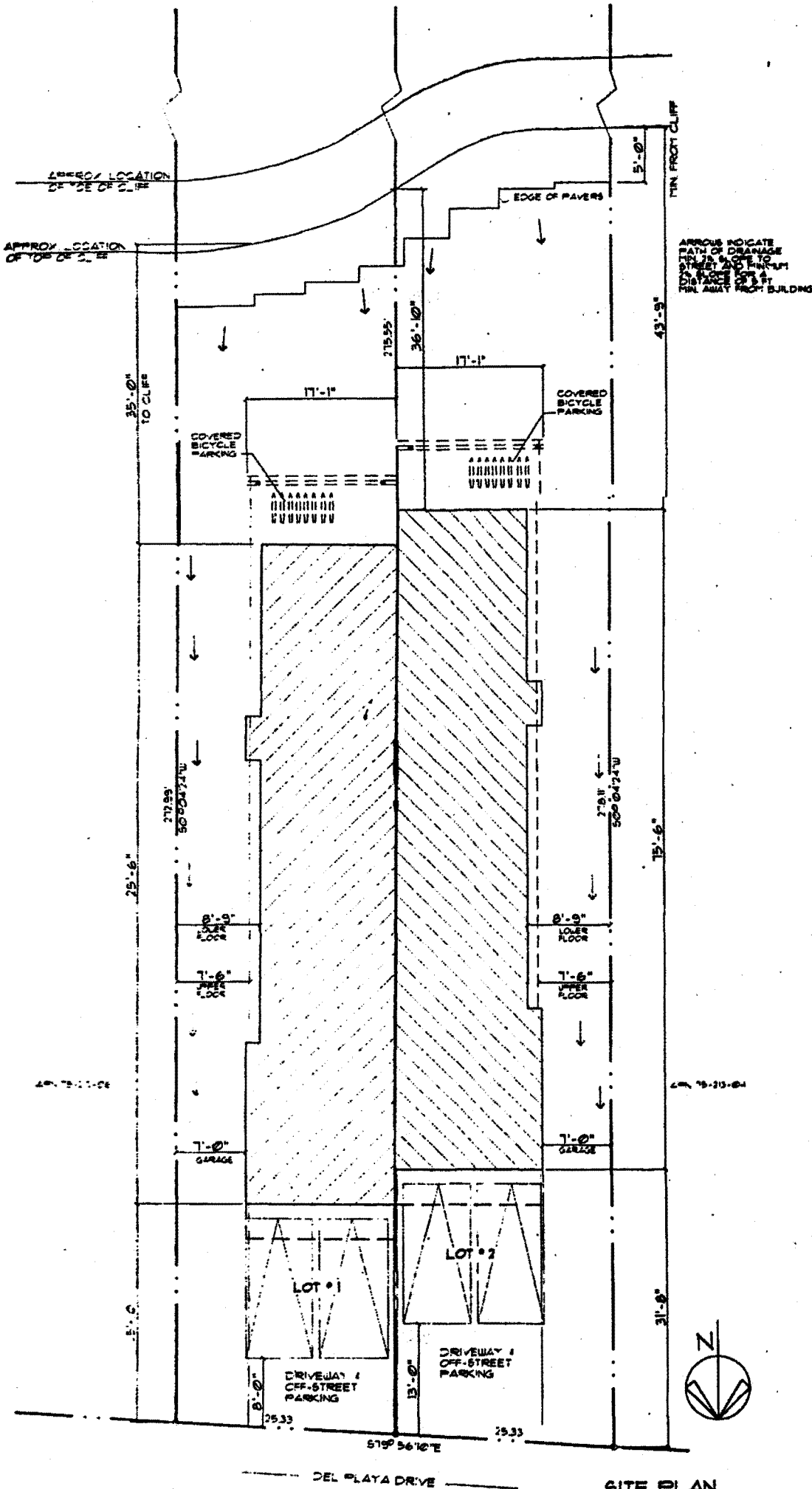


Exhibit 2
A-4-STB-01-21 & -22
Site Plan



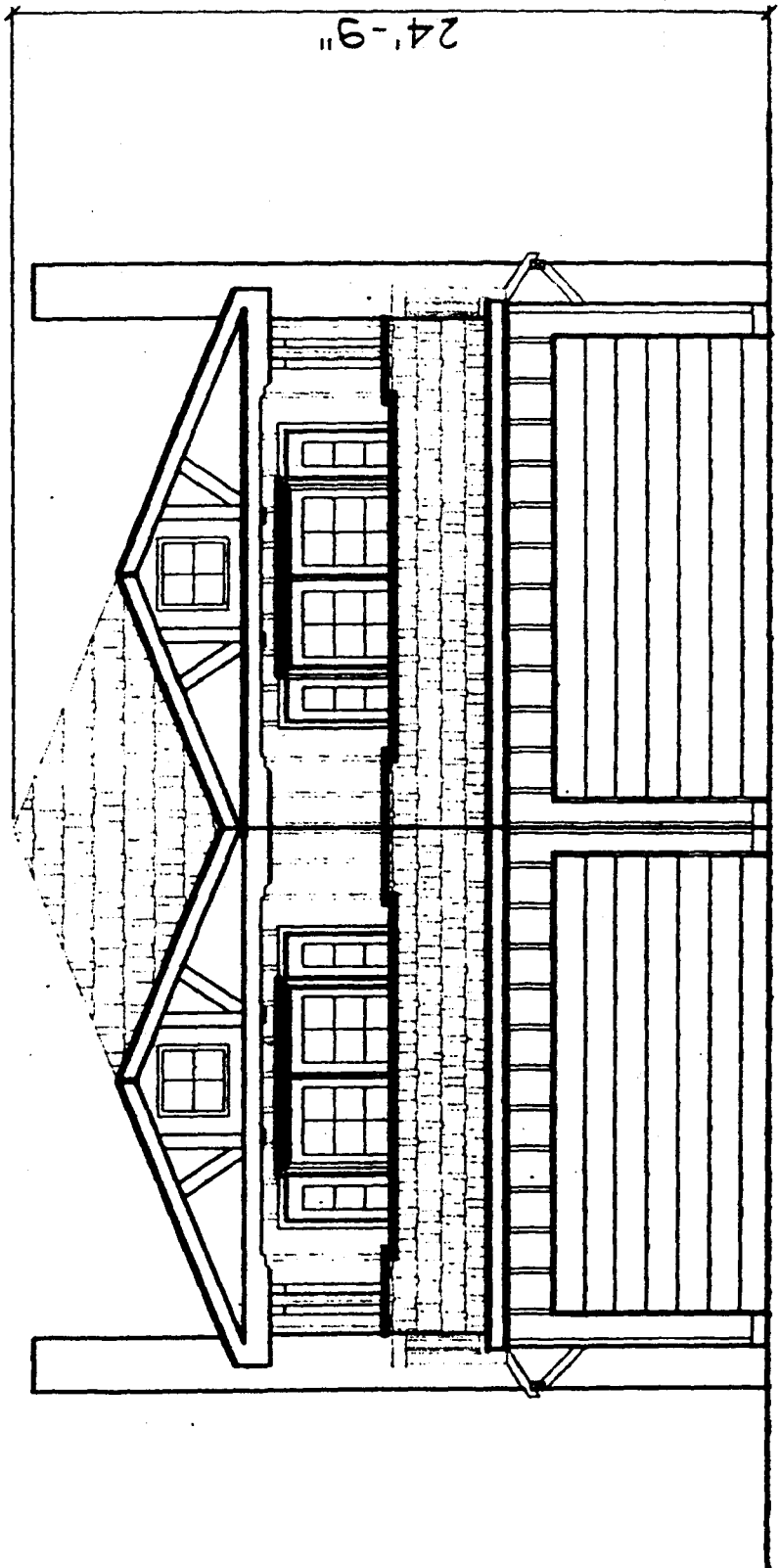


Exhibit 3
A-4-STB-01-21 & -22
Elevation

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Pedro Nava, 45 Fremont St., #2000, San Francisco 94105-2219

Sara Wan, 45 Fremont St., #2000, San Francisco 94105-2219

(415) 904-5200

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port
government: Santa Barbara County

2. Brief description of development being
appealed: New single family dwelling, garage, patio & side yard
variance on bluff-top lot.

3. Development's location (street address, assessor's parcel
no., cross street, etc.): 6583 Del Playa Drive, Isla Vista (LOT 1)
APN 075-213-005

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____ **X** _____

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

Exhibit 4

A-4-STB-01-21 & -22

Appeal

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: 12-18-2000 (Final Notice Rec'd) 1-10-01

7. Local government's file number (if any): 99-CDP-047H

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:
Ed St. George
PO BOX 6311
Santa Barbara, CA 93160

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

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

SECTION V. Certification

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

Signed: *Lee J. War*
Appellant or Agent

Date: 1/25/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: _____
Appellant or Agent

Date: 1/25/01

RECEIVED

JAN 25 2001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

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

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

PROJECT RAISES ISSUE ^{WITH} BLUFF + BEACH EROSION POLICIES
OF CERTIFIED LCP RELATIVE TO BLUFF PROTECTION
(P 3-4, 3-5 + 3-6) ; SEAWALLS + SHORELINE STRUCTURES
(P 3-1) ; AND VISUAL RESOURCES (P 4-4 + 4-5)

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

SECTION V. Certification

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

Signature of Appellant(s) or
Authorized Agent

Date _____

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____