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CALIFORNIA COASTAL COMMISSION

TH CENTRAL COAST AREA
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180th Day: 1/14/03
Staff: JCJ *for*
Staff Report: 11/21/02
Hearing Date: 12/10/02
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-01-203

APPLICANT: Howard & Kathy Klein

RECORD PACKET COPY

AGENT: None

PROJECT LOCATION: 32248 Pacific Coast Highway, City of Malibu

PROJECT DESCRIPTION: Reconstruct an existing stairway to the beach.

Lot area

2.45 acres

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department, Approval in Concept, June 14, 2002.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu Local Coastal Program; "Limited Geologic Reconnaissance Report" GeoConcepts, Inc., January 15, 2002. Coastal Development Permit No. 4-95-176 (Hackett).

Summary of Staff Recommendation

Staff recommends **denial** of the proposed project, as the proposed reconstruction of the existing private stairway to the beach is inconsistent with the public access provisions of the Coastal Act and the public access, hazard, environmentally sensitive habitat area, and scenic and visual resource provisions of the City of Malibu Local Coastal Program. The stairway provides private access for three neighboring residentially developed properties, including the applicant's residence located on the seaward side of Pacific Coast Highway (Exhibit 10). The applicant has a pedestrian easement to cross two adjoining properties to access the bluff area to sandy beach. The stairway consist of two sections spanning two steep sections of the bluff located on one beach front parcel.

Staff Note

This application was filed on July 18, 2002 and tentatively scheduled for the November 2002 Commission meeting. Due to staffing limitations and other priority workload this application was delayed to the December 2002 Commission meeting. Due to Permit Streamlining Act Requirements the Commission must act on this permit application by the January 7-10, 2003 Commission meeting.

I. Staff Recommendation of Denial

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-01-203 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

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

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and History

The applicants are proposing to reconstruct an existing stairway to the beach (Exhibits 3 and 6). The existing lower stairway is severely damaged, the upper stairway has been partially repaired (Exhibits 4 and 5). The applicants propose to replace both sections of these stairways with new materials (Exhibits 6 – 10). These two sections of the stairway are located within an easement designated for pedestrian ingress and egress from Pacific Coast Highway to the beach. The stairway provides private access to the beach for a total of three neighboring residentially developed properties, including the applicant's residence from the existing shared driveway and along a short dirt pedestrian trail to the first of two sections of the stairway. The stairway consists of two sections separated into upper and lower stairways separated by a dirt trail. The upper stairway is about 22 feet long and three feet wide with guardrails traversing a portion of the bluff from elevation 48 feet above sea level to 68 feet above sea level. A short dirt trail leads from the base of the upper stairway along a slightly sloping ridge to the lower stairway that is about 18 feet long by three feet wide. The lower stairway traverses the portion of the bluff from elevation 34 feet above sea level down to the sandy beach at 5.2-foot elevation level. According to the applicant's engineer, the mean high tide is located at the 4.2-foot elevation as surveyed by W. R. Benson in July 2002. The applicant proposes to replace these sections of the existing stairway, although most of the lower stairway no longer exists, with the same design, size and location, except that a small security gate will be added to the top of the lower stairway to prevent the public from accessing the sloping ridge between the stairways. According to the applicant, this gate was required by the City of Malibu in order to receive City approval under their General Plan on June 14, 2002.

The subject site is a 2.39-acre bluff top parcel located on the seaward side Pacific Coast Highway between La Piedra State Beach and El Matador State Beach in the City of Malibu (Exhibits 1-2). This parcel is owned by a neighboring property owner and includes a residence and shared driveway from Pacific Coast Highway. This stairway accesses the Robert Meyer Memorial State Beach. The subject parcel extends from Pacific Coast Highway to the sandy beach and includes an existing single family residence owned by Buddy and Sherry Hackett. The applicants have an easement along the northeastern portion and the southwest portion of this parcel providing pedestrian access to the beach from their parcel which is adjacent to Pacific Coast Highway. This paved driveway accesses the applicant's residence and two other residences from Pacific Coast Highway (Exhibit 3).

History

On October 12, 1995, the Executive Director approved an emergency coastal development permit number G4-95-176 (Hackett) to construct a soldier pile wall to provide support for the existing residence where an existing retaining wall was failing at 32232 Pacific Coast Highway, Malibu. The property owners, the Hackett's, received approval in Coastal Permit Application No. 4-95-176 on January 11, 1996 for the soldier pile wall, a patio located seaward of the residence, a drainage system, bluff top fill and the repair and replacement of the subject bluff face stairs and a gang plank ramp structure. However, the Hackett's have not complied with the special conditions necessary prior to the issuance of this coastal permit. Because this coastal permit included the soldier pile wall which was constructed as a result of the emergency coastal permit, it is unknown if this coastal permit number 4-95-176 is vested and has or has not expired. Further, since this coastal permit application was approved, it appears that the lower stairway has further deteriorated to the point of only the two stringers, a few vertical posts that once supported the railings and the concrete base only remain as of January 3, 2002 when viewed by Staff (Exhibit 4, photo received from applicant November 15, 2001). The upper stairway has been partially repaired with 50% replacement steps and four vertical handrail supports (Exhibit 5, photo received from applicant November 15, 2001).

The applicant submitted this subject application on November 15, 2001. Additional information was submitted and the application filed as complete on July 18, 2002. On August 2, 2002 the applicant requested that this application be considered as a disaster replacement permit exemption. On August 30, 2002, the Executive Director declined to approve this replacement project as a disaster replacement as the stairway appeared to have deteriorated over time rather than as a result of a specific natural disaster.

On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). The subject permit application was filed prior to the date the LCP was adopted and therefore remains under the jurisdiction of the Commission. Prior to the adoption of the LCP the standard of review for permit applications in Malibu were the chapter three policies Coastal Act. After the adoption of the LCP the standard of review for permit applications is the LCP and for development located between the nearest public road paralleling the sea (Pacific Coast Highway) and the sea the development must also be found in conformity with the public access and recreation policies of the Coastal Act.

B. Public Access

The proposed development is located on two bluff faces separated by a relatively flat ridge leading to a small promontory on a bluff top lot which includes sandy beach (Exhibits 3-5). The

site is located in the City of Malibu between the first public road paralleling the sea, Pacific Coast Highway, and the sea. Coastal Act Policies related to public access and recreation which are also incorporated as part of the Malibu LCP and include the following applicable policies. The Malibu Local Coastal Program (LCP) also contains the following development policies related to public access and recreation in relation to bluff top development that are applicable to the proposed development.

Sections 30210, 30211, 30212, 30212.5, and 30214 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that:

Section 30210 states that:

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.

Section 30211 states that:

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.

Section 30212 states 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.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10

percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 states 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.

Section 30214 states that:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The certified City of Malibu LCP includes the following policies related to public access and bluff faced development.

- 2.23 No new structures or reconstruction shall be permitted on a bluff face, except for stairways or accessways to provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster.**
- 2.63 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only 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. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.**
- 4.29 No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion on the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.**

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The applicants propose to replace both sections of these stairways with new materials. The stairway provides private access for a total of three neighboring residentially developed properties, including the applicant's residence. The upper stairway is about 22 feet long and three feet wide with guard rails traversing a portion of the bluff from elevation 48 feet above sea level to 68 feet above sea level. A short dirt trail leads from the base of the upper stairway along a slightly sloping ridge along a promontory to the lower stairway that is about 18 feet long by three feet wide. The lower stairway traverses the portion of the bluff from elevation 34 feet above sea level down to the sandy beach at 5.2 foot elevation above sea level. According the applicant's engineer, the mean high tide is located at the 4.2 foot elevation as surveyed by W. R. Benson in July 2002. The applicant proposes to replace these sections of the existing stairway, although most of the lower stairway no longer exists, with the same design, size and location, except that a small security gate will be added to the top of the lower stairway to prevent the public from accessing the sloping ridge between the stairways.

The purpose of the applicants' project is to reconstruct two sections of an existing but damaged stairway for the purpose of providing private vertical access to the public beach at Robert Meyer Memorial State Beach and the subject parcel's narrow private beach located between the base

of the bluff and the State's Tidelands located below the mean high tide line. Coastal Act Sections 30210, 30211, 30212, 30212.5, and 30214 all refer to providing public access to the shoreline. There is no mention or provision in the Coastal Act to allow development for the purpose of providing private access to the shoreline. These Coastal Act policies provide for public access to the shoreline.

The certified City of Malibu Local Coastal Program includes more specific policies intended to carry out the goals and objectives reflected in the policies of the Coastal Act. LCP Policy 2.23 specifically prohibits the reconstruction of structures on a bluff face, except for stairways or accessways that provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster. In addition LCP Policy 4.29 specifically prohibits permanent structures on a bluff face, except for engineered stairways or accessways to provide public beach access. LCP Policy 2.63 mandates maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development, private public access is not identified. As a result, these the LCP policies specifically prohibit private stairways or accessways on bluff faces and therefore are not consistent with the Malibu LCP.

Further, the proposed reconstruction of these stairways is not the result of a structure destroyed by a natural disaster. In the staff report – revised findings dated October 31, 1995 for Coastal Permit No. 4-95-176 (Hackett), the Commission found that the repair and replacement of these stairs initially constructed in the 1960's was considered repair and maintenance under the Commission's Administrative Regulation guidelines. Although no photographs of these stairs were found in this file confirming their condition or status in 1995 or provided by the applicant, it is logical to expect that the upper and lower stairways, constructed of wood, have further deteriorated since 1995 due to the nearly 40 years of weather and exposure of the construction materials to sun, salt spray, ocean waves, wind and rain due to the fact that the stairways are located on a bluff face and the lower stairway's concrete base is located on the sandy beach. The sandy beach and bluff faces are considered coastal locations subject to extraordinary hazard from wave attack during storms and water related erosion or slope failure, as noted in this staff report and confirmed in special condition number three, Assumption of Risk Deed Restriction for Coastal Permit No. 4-95-176. As noted above, Coastal Permit No. 4-95-176 was never issued to allow the repair and reconstruction of these stairways as the applicants, the Hackett's, have not complied with the Special Conditions required in this Coastal Permit approval. As a result, the proposed reconstruction of these stairways does not qualify for replacement of a structure destroyed by a natural disaster pursuant to Section 302610 (g) because it appears these stairways have deteriorated over time rather than have been destroyed by a specific natural disaster.

Regarding public access to the shoreline, there are two public beach parks with vertical public access available to access the shoreline in the immediate vicinity. To the east about 600 feet of the project site, El Matador State Beach, provides public access along a trail and stairway to the beach and to the subject project site on the sandy beach (Exhibit 2). To the west about 3,600 feet, El Pescador State Beach, provides public access along a pedestrian trail to the beach. There are also two private stairways located further to the west from the project site providing private access to the beach. Therefore, the Commission finds that there are alternative public vertical access routes available to the applicants and the public to access this sandy beach, one located as close as about 600 feet away.

Therefore, the Commission finds that the reconstruction of these stairways on a bluff face providing private access to the shoreline is not consistent with the public access policies of the Coastal Act or the policies of the City of Malibu Local Coastal Program.

C. Hazards

The proposed development is located on two bluff faces separated by a relatively flat ridge on a bluff top lot which includes sandy beach in the City of Malibu between the first public road paralleling the sea, Pacific Coast Highway, and the sea. Coastal Act Policies related to hazards which are also incorporated as part of the Malibu LCP include the following applicable policies. The Malibu Local Coastal Program (LCP) also contains the following development policy related to development on a bluff face that is applicable to the proposed development.

Coastal Act Section 30253 states in part 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.

The certified City of Malibu LCP includes the following policy related to structures permitted on a bluff face.

4.29 No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

10.4 Development Standards

B. New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100 year economic life of development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible to the maximum extent practicable. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

D. All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet if the

City geotechnical staff determines that either of the conditions below can be met with a lesser setback. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer, or a Registered Civil Engineer with experience in soil engineering. ...

13.5 NON-CONFORMING USE OR STRUCTURES.

- A. This section (13.5) shall apply to the following: (1) any existing and lawfully established or lawfully authorized use of land or to any existing and lawfully established or lawfully authorized buildings and other structures that do not conform to the policies and development standards of the certified LCP, or any subsequent amendments thereto and (2) development that is not exempt from the coastal development permit requirements pursuant to Section 13.4 of the Malibu LIP (Exemptions). Development that occurred after the effective date of the Coastal Act or its predecessor, the Coastal Zone Conservation Act, if applicable, that was not authorized in a coastal development permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development, is not subject to the provisions of Section 13.5, but is subject to the provisions of Section 13.3 (F) of the Malibu LIP.
- C. Non-conforming structures as defined by 13.5(A) of the Malibu LIP may be repaired and maintained if it does not result in enlargement or expansion of the structure. However, demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including all demolition and/or reconstruction that was undertaken after certification of the LCP, is not permitted unless such structures are brought into conformance with the policies and standards of the LCP.

By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this section of the coast are subject to erosion from wave action, underground water seepage, and the sheet flow from rain.

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The Coastal Act and the Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazards. The applicants propose to replace both sections of these stairways with new materials. The applicants submitted a geology report titled "Limited Geologic Reconnaissance Report" dated January 15, 2002 by GeoConcepts, Inc.. This report concludes that the orientation of the local bedrock structure is considered geologically favorable from the standpoint of gross stability relative to the replacement stairway. Further, the report concludes that the potential for slope failure in the terrace deposits is considered to be low to moderate and that the bedrock or terrace deposits should possess sufficient strength to support the stairways.

LCP Policy 4.29 specifically addresses bluff face development by prohibiting permanent structures on a bluff face, except for engineered stairways or accessways to provide public beach access. The applicants proposed to reconstruct a permanent structure on two sections of a bluff face for the purpose of providing private access to the shoreline. Although the applicant has provided a geology report that states that the proposed project is located on bedrock or terrace deposits that should possess sufficient strength to support the stairways, such structures are not allowed by the Malibu LCP, and thus, is inconsistent with the Malibu LCP.

Further, the Geologic Report concludes that the geology of this bluff face is adequate to support a stairway. However, the Report is very limited in scope and was based solely on field observations and geologic map research. The Geologic analysis did not include any subsurface evaluation or slope stability analysis. As previously mentioned, bluffs are erosional features created by wave action at the base of the bluff, underground water seepage and sheet flow from rain over the top an face of the bluff. In this case, the stairways are proposed on very steep slopes that are subject to the typical erosional forces associated with a coastal bluff landform.

The applicant is not proposing routine repair or maintenance of these stairways but rather complete replacement by first demolishing the stairways and then reconstructing the stairways in the same location. As a result the reconstruction is considered new development. LCP Local Implementation Plan (LIP) section 10.4 B. requires that new development, the reconstruction of the stairways after the demolition of the existing stairways, shall be sited outside areas subject to hazards such as on the beach where wave runup occurs and where bluff erosion occurs. Section 10.4 B. also requires that all development be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line. A review of the project plans identifies the location of the stairways as on two bluff faces and the base of the lower stairway is located on the beach where wave runup occurs. In addition, the base of the lower stairway is located as close as nine (9) feet from the most recent surveyed mean high tide line dated July 2001. Therefore the proposed location of the reconstructed stairways in areas of hazard are not allowed by these sections of the LCP LIP.

Although it appears that these stairways were constructed prior to the effective date of the Coastal Act in 1977 they are considered under the Malibu LCP as non-conforming structures. LCP Local Implementation Plan (LIP) section 13.5 C. states that demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including all demolition and/or reconstruction that was undertaken after certification of the LCP, is not permitted unless such structures are brought into conformance with the policies and standards of the LCP. LCP LIP section 13.5 C. in effect does not allow the demolition and reconstruction of private access stairways, a non-conforming structure, to the beach as proposed in this application. Therefore, the proposed reconstruction of these two sections of the stairways, considered non-conforming structures, located on the face of two sections of the bluff and on the beach are not consistent with these policies of the certified LCP and LCP LIP.

Therefore, for the reasons discussed above, the Commission finds that the proposed project is inconsistent with the applicable hazard policies of the Malibu LCP and LIP.

D. Environmentally Sensitive Habitat Area

The proposed development is located on two bluff faces separated by a relatively flat ridge on a bluff top lot with native and non-native vegetation on the bluff top and face. Coastal Act Policies related to the protection of environmentally sensitive habitats are also incorporated as part of the Malibu LCP as the following applicable policies.

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The certified City of Malibu LCP includes the following policy related to environmentally sensitive habitat areas.

3.1 Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.

3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary:

- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.**
- Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law.**

- Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.
- Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.

ESHA Protection

- 3.8 Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- 3.9 Public accessways and trails are considered resource dependent uses. Accessways and trails located within or adjacent to ESHA shall be sited to minimize impacts to ESHA to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect ESHA.
- 3.11 Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.
- 3.26 Required buffer areas shall extend from the following points:
- The outer edge of the canopy of riparian vegetation for riparian ESHA.
 - The outer edge of the tree canopy for oak or other native woodland ESHA.
 - The top of bluff for coastal bluff ESHA
- 3.30 Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

Environmental Review

- 3.38 The Environmental Review Board (ERB) shall be comprised of qualified professionals with technical expertise in biological resources (marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity), geology (coastal protection devices, slope stability, onsite waste treatment), architecture or civil engineering (siting of structures in hillside areas), and landscape architecture (fuel modification, planting of wildland edges). In addition, ERB members shall be knowledgeable about the City of Malibu and the Santa Monica Mountains.

- 3.39 The ERB, in consultation with the City Biologist, shall review development within or adjacent to designated ESHA or other areas containing ESHA identified through a biological study as required pursuant to Policy 3.37. The ERB shall consider the individual and cumulative impacts of the development on ESHA, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB when required by this policy.**

The applicants are proposing to reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The Malibu LCP designates coastal bluffs as environmentally habitat areas. Specifically Policy 3.1 requires that coastal bluff areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. However, a specific site could be determined not to include ESHA if there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Policies 3.1 and 3.8 require that ESHA on bluffs be protected against significant disruption of habitat values and that only uses dependent on such resources shall be allowed within such areas. Policy 3.4 requires that any area not designated on the LUP ESHA map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA. Policy 3.11 requires that applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property. Policy 3.9 identifies that public accessways and trails are considered resource dependent uses. Policy 3.11 require that development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property. Policy 3.3 requires that protection of ESHA and public access take priority over other development standards. Policies 3.38 and 3.39 require development within ESHA be reviewed by the City ERB.

This application was submitted in November 2001 at a time when staff did not require the completion of a ESHA study for the project site to identify the specific plant species on site. This application was filed on July 18, 2002 prior to the date of the Commission's certification of the Malibu LCP. In any event, staff observation of the site as identified in photo attached as Exhibit 5 includes giant coreopsis, a rare and endangered plant species, which with other potential plant species possibly including coastal sage scrub, the site is considered to include ESHA. Further, the reconstruction of a private accessway such as a stairway is not a resource dependent use within an ESHA.

Therefore, the demolition and reconstruction of these stairways located within ESHA is inconsistent with the Malibu LCP.

E. Scenic and Visual Resources

Section 30251 of the Coastal Act set forth below, is incorporated herein as a policy of the Land Use Plan.

Section 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.

The certified City of Malibu LCP includes the following policies related to structures permitted on a bluff face and on the beach.

- 6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.
- 6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.
- 6.4 Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

2. New Development

- 6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.
- 6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of

visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

The applicants are proposing to demolish and reconstruct an existing stairway to the beach; the existing lower stairway is severely damaged, the upper stairway has been partially repaired. The Malibu LCP designates beaches as public viewing areas containing scenic areas of regional and national importance as noted in Policies 6.1, 6.2, and 6.4. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced as required by the Malibu LCP. Policy 6.5 requires that new development such as these stairways be sited and designed to minimize impacts on scenic areas from public viewing areas to maximum extent feasible, while Policy 6.6 requires the avoidance of impacts to visual resources through site selection and design alternatives.

The location of the proposed reconstruction of these stairways is on a bluff face and on a beach, a coastline that is a scenic area that is required to be protected and where feasible, enhanced. This new development, the stairways, should be removed to avoid impacts along the scenic coastline from public viewing areas. As noted in the public access section above, it is feasible to access this beach area from an existing public stairway located about 600 feet to the east from the subject site. Therefore, the proposed project is inconsistent with the scenic and visual resource policies of the Malibu LCP.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmentally 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 that the activity may have on the environment.

The Commission finds that, the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. There are feasible alternatives to the proposed project including existing public accessways to the shoreline in the vicinity of the proposed project. Therefore, the proposed project is not the preferred alternative and is determined to be inconsistent with CEQA and the policies of the Coastal Act.

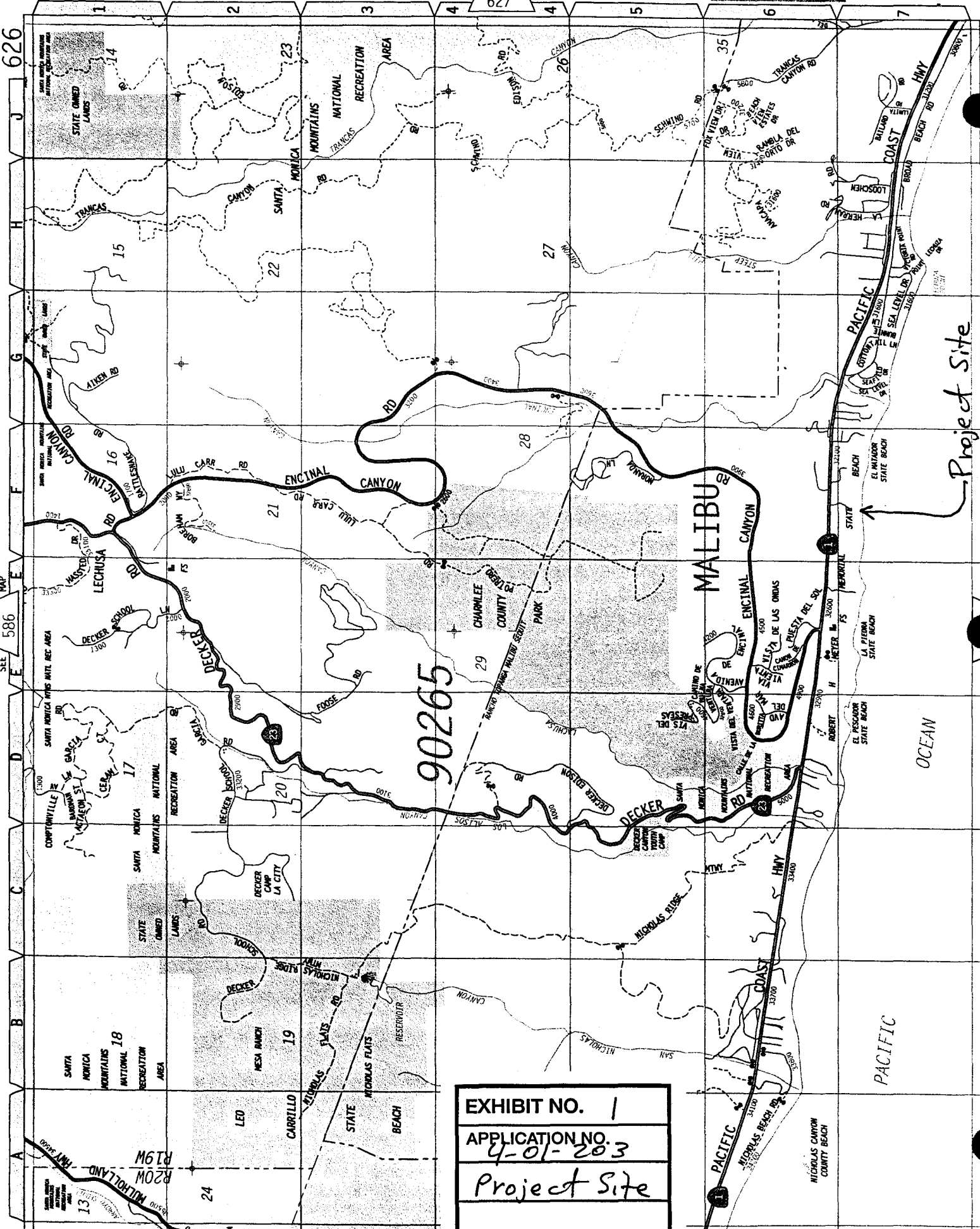
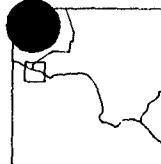


EXHIBIT NO. 1
APPLICATION NO. 4-01-203
Project Site



Los Angeles County

WESTERN MALIBU



NAME	LOCATION	FACILITIES											ENVIRONMENT					
		Entrance	Parking	Restrooms	Lifeguard	Campground	Showers	Firepits	Stairs to Beach	Path to Beach	Bike Path	Hiking Trail	Facilities for Disabled	Fishing	Equestrian Trail	Sandy Beach	Dunes	Rocky Shore
Leo Carrillo State Beach	36000 block of Pacific Coast Hwy., Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Nicholas Canyon County Beach	Pacific Coast Hwy., about 1 mi. S. of Leo Carrillo, Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Charmlee County Park	Encinal Canyon Rd., N. of Pacific Coast Hwy., Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
El Pescador State Beach	32900 Pacific Coast Hwy., Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
La Piedra State Beach	32700 Pacific Coast Hwy., Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
El Matador State Beach	32350 Pacific Coast Hwy., Malibu	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

LEO CARRILLO STATE BEACH: 1,600-acre park at the west end of Malibu, named after L.A.-born actor Leo Carrillo, famous for his T.V. role as Pancho, Cisco Kid's sidekick. Good surfing, swimming, skin diving, and camping; nature trail, tidepools, and rock formations. \$3 fee for day use parking and \$6 fee for camping. The 6,600-foot beach is divided into two areas by Sequit Point, which contains sea caves and a natural tunnel. Lifeguards year-round. Migrating gray whales may be seen from the beach November-May.

The park has three campgrounds: the canyon campground, which has 138 campsites; the beach campground, which has 25 tent sites and 25 trailer sites accessible only to vehicles less than 8' in height; and the walk-in group campground (reservations required) which accommodates up to 75 people. For information, call: (213) 706-1310 or (805) 499-2112.

NICHOLAS CANYON COUNTY BEACH: Across Pacific Coast Highway from the Malibu Riding and Tennis Club. The parking lot is on the bluff; a stairway and path lead down to the 23-acre sandy beach. The beach is also accessible from Leo Carrillo to the west. Cliffs are highly eroded; surfing and diving at the beach. \$3 parking fee. Call: (213) 457-9811.

CHARMLEE COUNTY PARK: 460-acre park in a natural setting with picnic tables and a view of the ocean. Planned future developments include a camping area, equestrian trail, and interpretive center.

The following are units of Robert H. Meyer Memorial State Beaches, which are administrated by the California State Department of Parks and Recreation: El Pescador State Beach, La Piedra State Beach, and El Matador State Beach. There is private property adjacent to each beach; do not trespass. Lifeguards on duty during summer only. For information, call (213) 706-1310.

EL PESCADOR STATE BEACH: Ten acres; facilities include a 20-car parking lot, wheelchair-accessible restrooms, and picnic tables on the bluff; a pedestrian trail leads down the bluff to the narrow, sandy beach. \$3 parking fee. Steep cliffs; stay on the trail.

LA PIEDRA STATE BEACH: Nine acres, with a 15-car parking lot, picnic tables, and wheelchair-accessible restrooms on the bluff. A trail leads down the bluff to the beach; stay on the trail. \$3 parking fee.

EL MATADOR STATE BEACH: 18 acres; facilities include a 40-car parking lot, wheelchair-accessible restrooms, and picnic area. Beach access is via a trail and stairway down the bluff to the narrow, sandy, 1/4-mile long beach. \$3 parking fee. Eroded cliffs; stay on the trail. Scenic sea stacks.

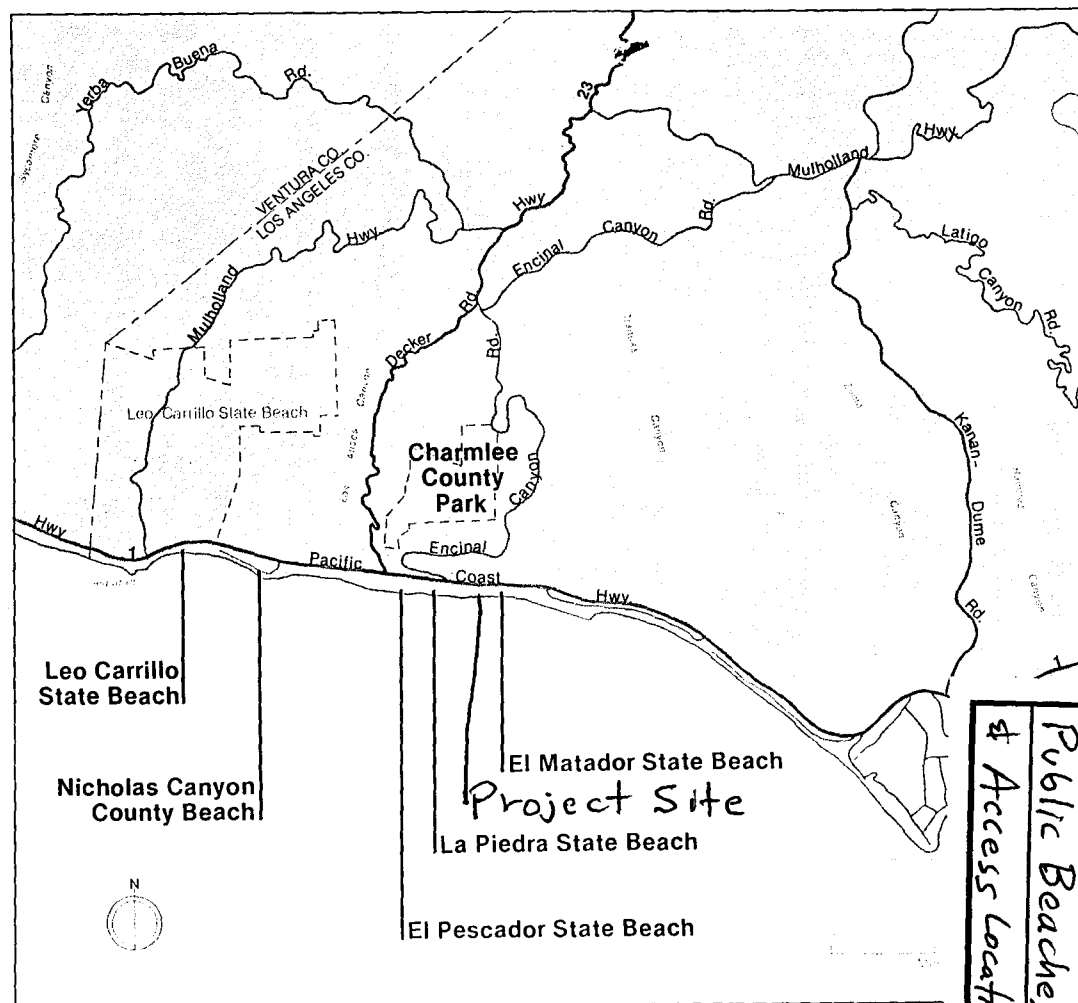
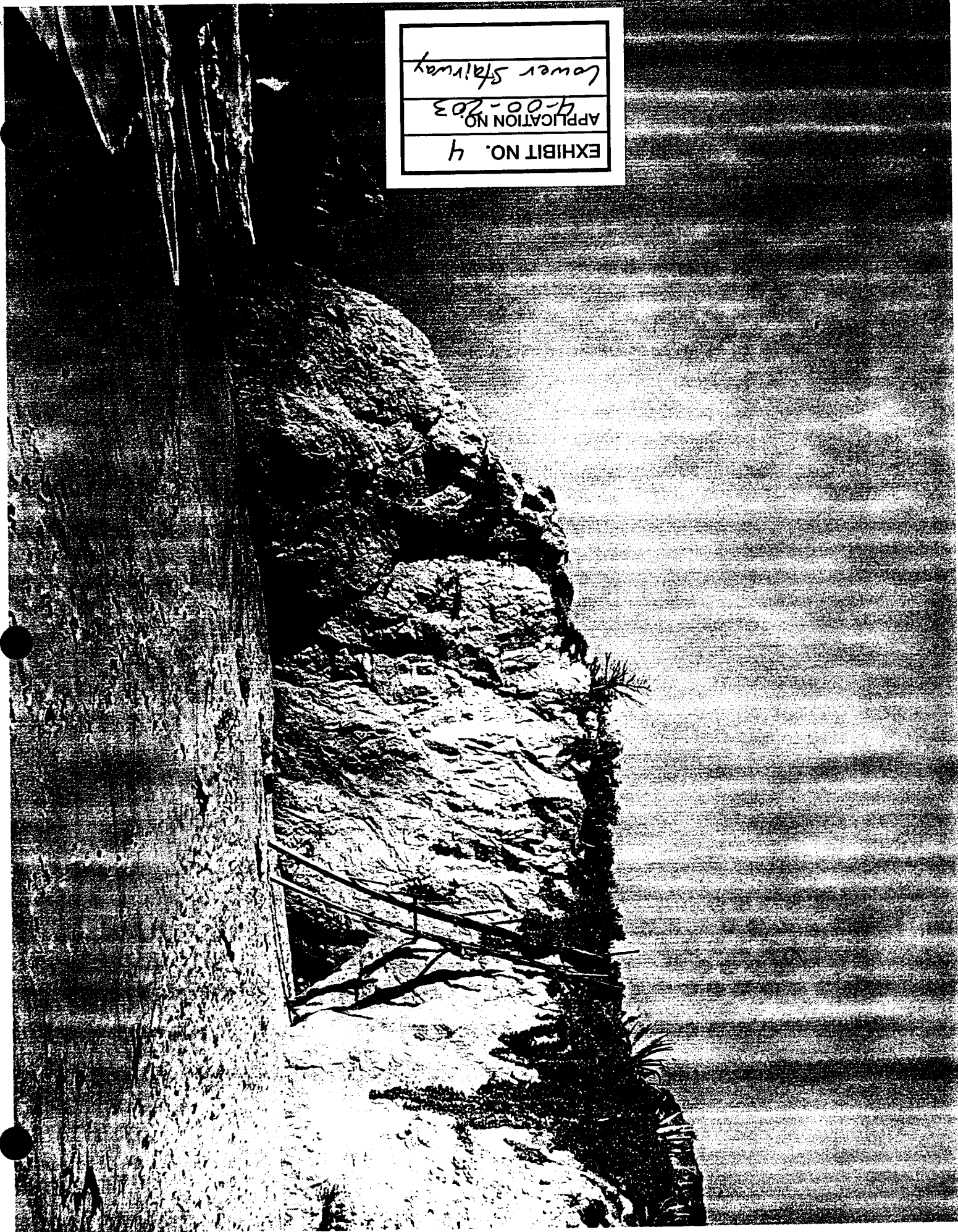


EXHIBIT NO. 2
APPLICATION NO. 4-01-203
Public Beaches
& Access Locations

Lower Stairway

APPLICATION NO.
4-00-203

EXHIBIT NO. 4



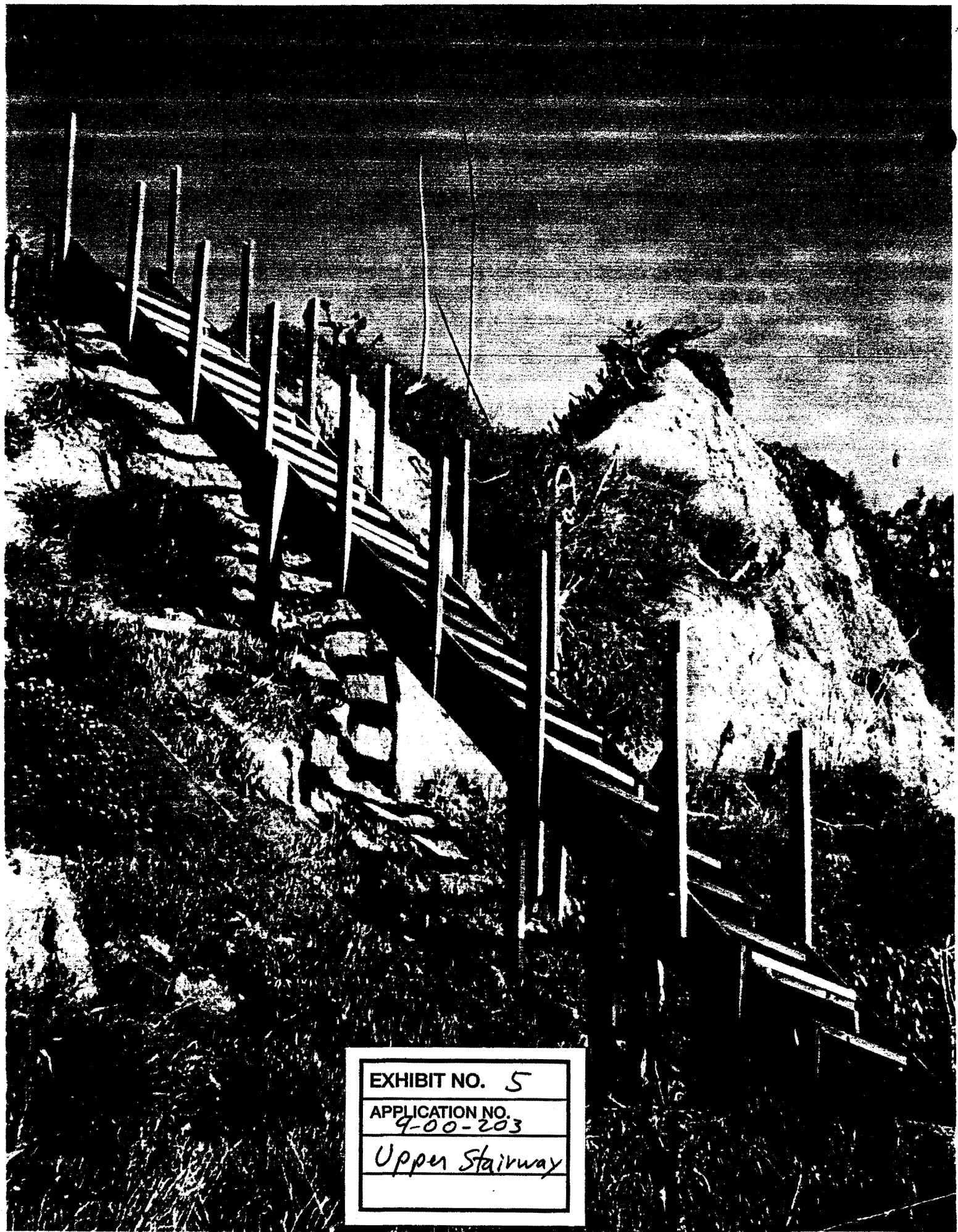
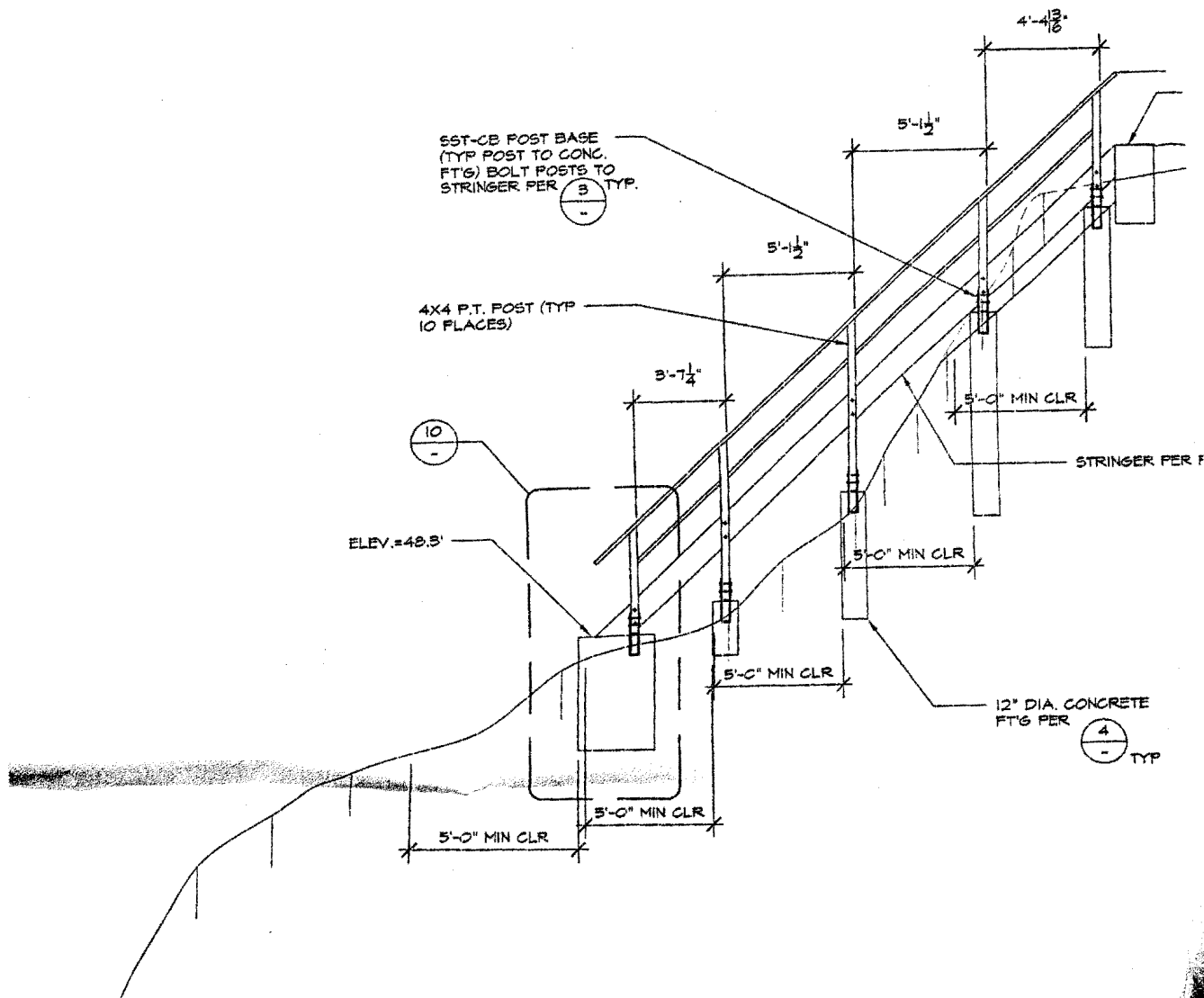


EXHIBIT NO. 5

APPLICATION NO.
9-00-203

Upper Stairway

SCALE: 1/4" = 1'



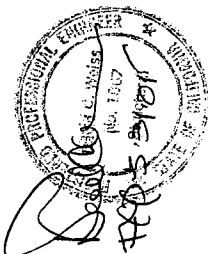
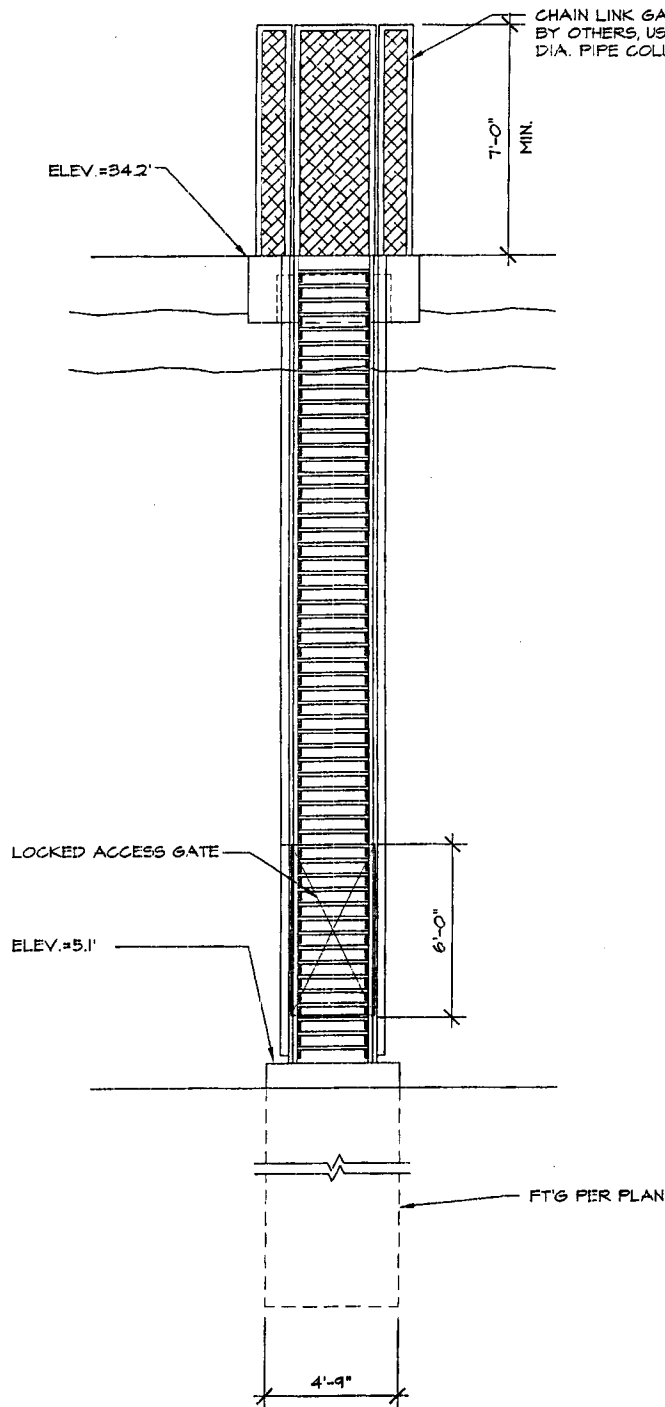
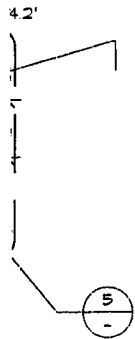
UPPER STAIR ELEVATION

SCALE: 1/4" = 1'-0"

EXHIBIT NO. 7
APPLICATION NO. 4-01-203
Upper Stair
Elevation

CHAIN LINK GATE & FENCE
 BY OTHERS, USE MIN. 2 1/2"
 DIA. PIPE COLUMNS

CHAIN LINK GATE & FENCE
 BY OTHERS, USE MIN. 2 1/2"
 DIA. PIPE COLUMNS



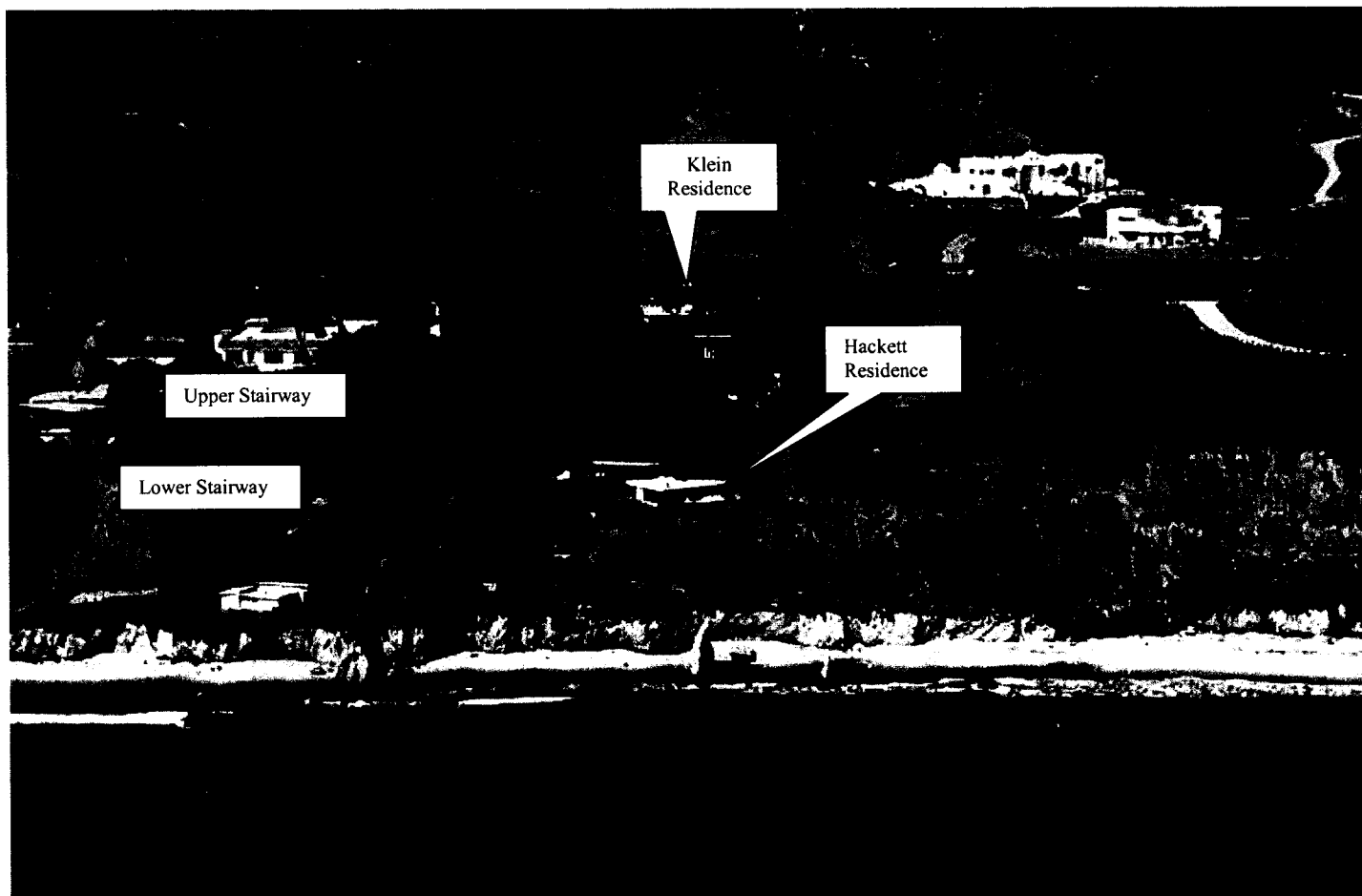
LOWER STAIR ELEVATION

SCALE: 1/4" = 1'-0"

EXHIBIT NO. 8

APPLICATION NO.
 4-01-203

Lower Stair
 Elevation



N34 01.97 W118 52.71 Image 3773 Mon Sep 23 13:34:23 2002

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Exhibit 10
Application No.
4-01-203
Aerial Photo of
Site

